

MONTANA TAXPAYER



MONTANA TAXPAYERS ASSOCIATION

HELENA, MONTANA

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85th Annual Meeting of the Montana Taxpayers Association – December 5, Helena

Upcoming Meetings

- April 14 – EPP (Executive Planning Process)
Agencies submit legislative proposals/concepts to OBPP. (Preliminary fiscal notes are to be prepared if proposal has a fiscal impact)
- April 20 and 21 - [Energy and Telecommunications](#)
- April 21 – [State Administration and Veterans' Affairs](#)
- April 24 – [EOC Subcommittee on HB790](#) – Helena
- April 27 – Legislative Finance work group on State Lands
- May 1 – EPP Proposals to OBPP
- May 2 – [Revenue and Transportation Interim Committee](#)
- May 3 – Oral arguments in Senator Elliott vs. MDOR and MT Taxpayers, Intervenor
- May 11 – Rail Service Competition Council
- May 11 and 12 – [Law and Justice](#)
- May 12 - [State Administration and Veterans' Affairs](#)
- May 12 – [Economic Affairs](#)
- May 18 – 19 - [EOC](#)
- June 5 – [Legislative Council](#)
- June 8 and 9 – [Legislative Finance Committee](#)
- June 12 and 13 – [Education and Local Govt.](#)
- June 22 and 23 – [State Administration and Veterans' Affairs](#)
- June 29 and 30 – [Law and Justice](#), Butte
- June 20 and 30 – [Revenue and Transportation](#)
- Details on meetings are available on our calendar [website](#): or at www.montax.org

Oral Arguments set in Senator Elliott vs. MDOR and Montana Taxpayers Association, Intervenor

The Montana Supreme Court has set oral arguments in Jim Elliott vs. The Montana Department of Revenue, Respondents and the Montana Taxpayers Association, Intervenor, Case No. 05-336, for May 3 at 9:30am. Senator Jim Elliott appealed the decision of the First Judicial District Court. The lawsuit seeks a ruling that the tax returns and tax return related information filed by certain corporations doing business in Montana are public documents.

Contrary to the claim by Senator Elliott that his lawsuit against the Department of Revenue is limited to publicly traded corporations with Montana sales over \$1 million, we believe that if the Senator prevails it will affect *all*

corporations including Limited Liability Corporations (LLCs), Sub S corporations, Limited Liability Partnerships (LLPs) and other pass through entities.

The Montana Taxpayers Association intervened in this litigation because we believe in your right to privacy. Senator Elliott's petition serves as a perfect illustration of why the state of Montana has developed an image as a poor place to do business. Additional information regarding the litigation is on our website at <http://www.montax.org/index.php?pr=Confidentiality>

Legislative Finance Committee

Principal Fiscal Analyst, Terry Johnson, presented the committee an [update of the general fund](#). Collections through February 2006 compared to February 2005 are up \$93.6 million, representing a growth rate of 11.6 percent (this is up from the January growth rate of 9.9 percent). During the Special Session in December, the legislature assumed collections to date would be \$11.6 million higher than the previous year, or a growth rate of 0.8 percent. If the current growth rate continues to the end of this fiscal year (FY06 ends June 30, 2006), revenues could be approximately \$160 million higher than the estimates in HJ1 from the Special Session. Mr. Johnson said there could be events that change this estimate such as one-time occurrences or changes in the growth rates of the underlying taxes that represent the largest portion of the general fund.

Although growth in revenues is stronger, there are other factors that could have a negative impact on state revenues. Refunds of state income taxes are 56.7 percent lower when compared to the same time frame last year (most of the refund activity is expected to take place during March and April). It is still unclear if taxpayers adjusted their estimated tax payments to reflect the new tax laws under SB407 which could add to the level of refunds. There is also the potential for lower collections than estimated for oil severance tax due to capacity constraints in the pipelines in Montana. Testimony at the presentation indicated Montana

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Utilities – Tom Ebzery, Billings

producers are receiving up to \$26 less per barrel due to the limits on capacity.

On the expenditure side, supplemental requests by state agencies could be as high as \$60 million. Additional budget pressures include a potential liability to the state of up to \$140 million resulting from litigation on worker's compensation, the unfunded liability of approximately \$600 million for the state and teacher retirement plans, the potential for reduced federal funds for Montana programs and the uncertainty of potential fire costs this summer.

State Retirement Systems

Jon Moe, Fiscal Specialist, provided an update on the unfunded liability of the state retirement plans. Although the infusion of \$125 million during the December Special Session, reduced the potential liability to \$600 million, the constitution requires the plans to be "actuarially sound" when amortized over a 30 year period. A new valuation of the systems as of June 30, 2006 will be finalized by this fall. The result of the valuation could change the state's liability in either direction.

It is expected there will be numerous bills to address the soundness of the retirement plans. HB2, passed during the Special Session, directed the State Administration and Veterans Affairs (SAVA) to a review of the retirement systems. Other interim committees are discussing legislative options to reduce the liability as well as the Governor's Office of Budget and Program Planning and the retirement boards.

Due to the complexity of analyzing the impact various proposals could have on the actuarially soundness of the retirement systems, legislators are being asked to submit their ideas to SAVA by June 9, 2006. On June 22-23, the committee will hold a hearing on each proposal submitted. The committee hopes this process will expedite the bill drafting process, allow potential problems to be resolved prior to the session, and facilitate decision making during the session.

Update on School Funding

A report by Jim Standaert, Fiscal Analyst, stated that the Montana Quality Education Coalition (MQEC), the plaintiffs in the school funding suit Columbia Falls et.al. vs. Montana, have indicated they will submit a school funding status report to the district court in late April. They will also ask the court at that time to order a show-cause hearing at the conclusion of the 2007 legislation session.

In a memo sent to MQEC members, Jack Copps said "the State Legislature and the Governor deserve credit for responding to the court's order by passing legislation that helped stop the downward spiral of funding public education." He added "the State has made a good-faith effort, but believe the 2007 Legislature will need to take more steps to ensure adequate funding is provided so schools can provide the services, programs, and infrastructure set forth in SB152's definition of quality education." They believe, in order to meet the Court's order, the 2007 Legislature will need to enact a solution that:

- Provides a mechanism for ongoing and adequate state support for public education;
- Provides adequate funding for schools that satisfies the requirements of SB152;
- Bases funding levels on costs, rather than politics; and
- Results in relief from increasing burdens on local property taxpayers.

The coalition will be holding eleven workshops in May to local trustees to get input on the ultimate direction they will seek legislatively.

In late January, the Governor sent a [letter](#) to the Attorney General's Office outlining the steps taken by the legislature to address the court's decision. In that letter he stated that the state has:

- Taken action to comply with the Montana Supreme Court's decision;
- Honored its commitment to preserve the cultural integrity of American Indians in its educational curricula;

- Honored its commitment to the children of Montana to increase school funding aimed at providing students with a quality education;
- Honored its commitment to the teachers of Montana to increase funding to better recruit, retain and compensate them; and
- Honored the desires of Montanans that the state live within a properly balanced budget.

Mr. Standaert's report states that the Attorney General's Office and the Governor's Office indicated they have no plans to file a status report with the district court.

Court Challenges to State Statutes

Valencia Lane, Staff Attorney with the Legislative Services Division compiled a comprehensive report on lawsuits challenging state statutes from information received as a result of a request for information sent to state agency chief legal counsels in February.

The report can be found at:

http://www.montax.org/index.php?pr=Legis_Council

or at our website - Interim Committees/Legislative Council

Management of State Lands

Barbara Smith, Associate Fiscal Analyst and Krista Lee Evans, Research Analyst, presented a document that was also provided to the members of the Environmental Quality Council regarding issues surrounding the management of state lands. Both the Department of Natural Resources and Conservation and the Department of Fish Wildlife and Parks manage state owned lands. In the past, situations have arisen where the management practices of the agencies have conflicted. In most cases, the purchase, sale, or exchange of state land must ultimately receive approval from the Board of Land Commissioners (Land Board). A recent exchange in front of the board led to the identification of various policy questions that the legislature might want to address. A working group has been set up to review the policy questions and make a recommendation to both the Legislative Finance Committee as well as the EQC. Members are: Senator Mike Cooney, Chair, Senator Carol Williams, Senator Rick Laible and Representative Rick Ripley. (Meeting April 27).

Fiscal Note Work Group

Fiscal notes are a critical component of the legislative process. They provide information to legislators and the public on the potential impact on revenues and expenditures of proposed bills. Currently, the Office of Budget and Program Planning oversees the fiscal note process. Bills are sent to the agencies or local officials affected by the proposal for the preliminary preparation of the fiscal note. Analysts in the Budget Office review the information and ultimately, the Budget Director signs off on the note.

In the 2005 Session 773 of the 1,441of the introduced bills (nearly 54 percent) required a fiscal note. Time and staff constraints, coupled with a lack of understanding or disagreement with the assumptions of a fiscal note add to the complexity of the process. The Legislative Council established a working group to study the fiscal note process and format to determine ways to provide better information to the legislature. The working group consists of two members from the Legislative Council (Representative Dave Wanzenried, Chair, and Representative Michael Lange) and two members of the Legislative Finance Committee (Representative Tim Callahan and Representative John Sinrud). Other participants are from the Fiscal Division, the Department of Revenue, leadership staff and the Office of Budget and Program Planning.

A survey was sent to all legislators for input on the process prior to the first meeting of the group. The group decided at their first meeting to pursue the following options:

Process Options

Reengineering the Process

- Move the fiscal note process out of the Governor's budget office.
- Establish an independent review of fiscal notes during the session.
- Increase staff resources to aid in timeliness and accuracy.
- Replace a sponsor's fiscal note with a rebuttal form.
- Clarify in statute the required content of fiscal notes.

Training and Communications

- Provide more legislator training on fiscal notes.
- Encourage sponsors to contact the budget office when they have a disagreement with a fiscal note.
- More communication between the preparer of the fiscal note and the sponsor.
- More communication between the drafter and the preparer.

Timeliness

- Require fiscal notes be ready for hearings.
- Ensure the sponsor has the fiscal note prior to the hearing and distribution.
- Ensure committee reports state whether a revised fiscal note is needed.
- Make the revision of a fiscal note automatic when a bill is amended, not by request of the presiding officer.
- Have the 6 day preparation date begin when the bill is pre-introduced, not on Day 1 of the Session.

Content Options

Format Options

- Require a special format for pension plan related fiscal notes.
- Show the impact of the bill for the budget years and the following two years.
- Simplify the format.
- Add a brief description of fiscal impact to the beginning of the fiscal note.
- Indicate “up front” what changed in a revised fiscal note.
- Allow the sponsor to add their comments on the fiscal note.

Data and Assumption Options

- Clearly differentiate assumptions vs. facts.
- Clearly state uncertainties or limitations of assumptions and data.
- Use ranges regarding fiscal impact when appropriate.
- A “prepared date” be included as part of the LAWS database.

Legislative Council

Television Montana - TVMT

Stephen Maly, Executive Director of Helena Civic Television presented the Council with various options to consider for expansion of coverage of governmental proceedings. The goal of TVMT is to provide maximum coverage of all three branches of government: legislative, executive and judicial, plus cultural, educational, and public service programming. This would be accomplished by telecast and the internet.

TVMT is currently providing approximately 3,000 hours of production per biennium with nearly 2,000 of those hours by real time telecast. Distribution of the telecast is limited to the capital city area. They have tried some connections to community access cable stations in Missoula and Billings but these have not been sustainable due to costs. There has also been some live videostreams though OPI's server.

In order to expand beyond the Helena “island,” additional investment in technology is necessary. The amount of the investment will determine the additional reach and coverage to Montana's urban and rural communities. Members wanted additional information about the various options for going statewide (e.g., satellite uplink/downlink, terrestrial fiber/copper network). They requested a table describing each option and identifying how many people would be reached and the cost of each option.

Senators Harrington and Barkus will meet with the Governor before the June 5 meeting of the Council. They will discuss with the Governor a potential donors' conference and other ways to engage the private sector in funding statewide broadcasting.

Dates set for Caucus, Orientation and Continuing Education

The Council agreed that the party caucuses and orientation would be scheduled for November 27, 28, and 29. However, they did not decide whether orientation would be conducted first followed by the caucuses or the reverse arrangement. They will make that decision at their June 5 meeting.

2006 Ballot Initiatives – status as of March 31, 2006

Approved for Ballot

C-43 – Change the name of the state auditor to the insurance commissioner. (SB191). Author: Referred by Legislature, sponsored by Senator Duane Grimes. Type: Constitutional Amendment. Status: On Ballot.

Approved for Signature Gathering

I-151 – Raise the Minimum Wage - Author: Stephen C. Bullock, Bullock Law Firm

I-152 – Protect Private Property Rights – Author: Trevis Butcher, Protect Our Homes

CI-97 – State Spending Limit – Author: Trevis Butcher, Stop Over Spending Montana

CI-98 – Allow Recall of Judicial Officials – Author: Trevis Butcher, Judicial Recall Montana