

MONTANA TAXPAYER



MONTANA TAXPAYERS ASSOCIATION

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Mark your calendars now – 85th Annual Meeting, December 5

We are pleased to announce that Governor Brian Schweitzer will be the guest speaker at the 85th Annual Meeting of the Montana Taxpayers Association. The meeting begins at 11:30 with registration and lunch at noon. The afternoon will include panel discussions on Montana's regulatory environment, economy, general fund outlook and the Governor's proposed budget. A panel of the legislative leadership will give their views on the upcoming session. We'll conclude the day with a hosted reception.

Upcoming Meetings

October 30 – [MBA Tour](#) – Havre – 7:30 a.m. – Countryside Bagel café

October 30 – [MBA Tour](#) – Shelby – Noon – Griddle

October 30 – [MBA Tour](#) – Great Falls – 4 p.m. – Great Falls Chamber

October 31 – Last day to submit agency bill drafts to LSD

November 7 – General Election

November 15 – [Revenue and Transportation](#) (note date change)

November 27 – Senate and House Caucuses (noon)

November 28 and 29 – [State Administration and Veterans' Affairs](#)

November 28 – New Legislator Orientation

November 29 – New Legislator Orientation

December 5 – 85th Meeting of the Montana Taxpayers Association

December 11 – Committee Chair Training

December 26 – last day for pre-introduction of agency bills

January 3 – Start of Session

Details on meetings are available on our calendar [website](#): or at www.montax.org

Confidentiality of tax records upheld by Montana Supreme Court

John Alke, Hughes, Kellner, Sullivan & Alke, representing intervenor Montana Taxpayers Association in Jim Elliott v. Montana Department of Revenue.

On October 24th, the Montana Supreme Court rejected State Senator Jim Elliott's demand that the confidential income tax records of some 500 companies doing

business in Montana be publicly disclosed. The decision affirmed an earlier Montana District Court ruling which also rejected Senator Elliott's unreasonable demands.

Income tax records are confidential under both state and federal statute. Senator Elliott claimed that the Montana courts were obligated to ignore those state and federal statutes, and meet his demand for public disclosure, because of the "Right to Know" provision in the Montana Constitution, Article II, Section 9. According to Senator Elliott, the state and federal statutes, which clearly specify that income tax records are confidential, can simply be ignored to meet his demand for public disclosure of the income tax records of the companies he is targeting.

The Montana District Court ruled that the federal statutes protecting the confidentiality of the income tax records for which Senator Elliott was demanding public disclosure controlled over any possible interpretation of state law. In other words, the District Court held that federal law preempted any interpretation of Montana law requiring public disclosure. The Montana Supreme Court took a somewhat different approach. It ruled that Senator Elliott was bound by the confidentiality provisions of the Montana statutes.

Senator Elliott wanted to be seen as the protector of the "little guy", whose sole interest in the litigation was the public disclosure of the income tax records of large publicly traded companies. He did not want to be seen as the person who made the income tax returns of every partnership, subchapter S corporation, and trust a matter of public record. He knew if he successfully contended the state confidentiality statutes were unconstitutional, that ruling would, in the absence of federal preemption, make the income tax returns of every partnership, subchapter S corporation, and trust a matter of public record.

Since Senator Elliott didn't want to be blamed for the end result of his own advocacy, he tried to straddle the fence. He did not contend that the state confidentiality

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statute was unconstitutional. Instead, he argued that the Montana courts could simply ignore it for purposes of meeting his demand for the public disclosure of the income tax records of the companies he was targeting.

The decision of the Montana Supreme Court makes very clear that it both understood and disapproved of Senator Elliott’s attempt to straddle the fence. It held that since he was not contending the state confidentiality statute was unconstitutional, the Court had no basis for ignoring it simply to meet his demands. According to the Court, the legislature’s duly enacted confidentiality statute was binding upon it, and Senator Elliott had no reasoned basis for demanding the public disclosure of confidential income tax information.

Ed. Note: The Montana Taxpayers Association would like to commend John Alke for successfully defending the right of every business in Montana to have their income tax records kept confidential. Income tax systems are based on voluntary reporting with the expectation the information reported will be kept confidential by the taxing agency. The Supreme Court’s decision will ensure Montana remains a great place to do business.

2007 Legislative Session

The 60th Legislative Session is scheduled to begin Wednesday, January 3. A [preliminary calendar](#) approved by the Legislative Council on September 15 is now available on the 2007 Legislative website.

Some other important legislative dates to note:

January 15 – Last day to request general bills

January 23 – Last day to request revenue bills

February 14 – Last day for Committee to request general bill

February 24 – Transmittal of general bills to other house

February 26 – 28 – Transmittal break.

March 17 – Transmittal of revenue estimating joint resolutions

March 20 – Last day for committee to request revenue bills

March 26 – Transmittal of appropriation bills

March 30 – Transmittal of revenue bills

April 2 – Transmittal of amendments to general bills

April 4 – Last day to request res. or comm. bills to implement HB2

April 12 – Transmittal of amendments to appropriation bills

April 14 – Transmittal of amendments to revenue bills and revenue estimating joint. resolutions.

April 18 - Transmittal of interim study resolutions

April 24 – Sine Die

As of October 27, 641 bill drafts have been requested. The [LAWS](#) database has a list of these legislative requests as well as a variety of additional information you will find useful during the legislative session.

Also, our [website](#) has more specific information regarding bills and new programs proposed by various agencies. Look under Legislative Sessions, [2007 Regular Session](#) and then choose the agency, interim committee or local government. Details of Department of Revenue bills and the corresponding LC can be found under [Department of Revenue](#). We will notify you when drafts of legislation become available.

Please let us know what other information you would like to receive during the 2007 Legislative Session.

A Closer Look at the General Fund

The Legislative Fiscal Division presented their “[Big Picture Report](#)” for the 2009 Biennium and update on the general fund at the Legislative Finance Committee on October 12th. Estimates of up to a \$900 million ending fund balance have been projected for the end of the next biennium.

A \$900 million ending fund balance for 2009 is welcome news given the 2003 Legislature faced a \$250 million dollar deficit just a few short years ago. We can thank positive tax legislation from prior sessions, a rebounding economy and our Montana businesses for this rosy picture. However, as the Legislative Fiscal Division staff point out in their report, “there are a number of issues with potential material impacts on the 2009 biennium budget that are not included in the projections. The fate of these potential issues could significantly reduce, or eliminate, the funds available for the 2009 biennium budget prioritization process.”

Montana's legislature meets every two years and adopts a biennium budget. The budget they adopt anticipates revenues and expenses for two fiscal years, a biennium. For example, the 2005 Legislature adopted revenue and expense estimates from July 1, 2005 to June 30, 2007. The 2007 Legislature will be adopting revenue and expenditure estimates for July 1, 2007 thru June 30, 2009. Since legislative sessions adjourn in April and the fiscal year does not end until June 30, revenues and expenditures even for the current biennium are still estimates.

We have tracked the ending fund balance since the adjournment of the 59th Legislature in April, 2005 to explain the changes that have occurred. Please refer to the enclosed spreadsheet to follow these changes.

2007 Biennium General Fund Outlook with Special Session Action - \$76M to \$267M

The 2005 Legislature estimated a \$76 million ending fund balance for the 2007 biennium when they adjourned in April, 2005. When the final numbers for the 2005 Biennium were available in the summer of 2005, revenues were actually \$135 million higher than anticipated (see Comment Box 1, on the right hand side). When the Legislature met for the Special Session in December of 2005, they increased the revenue estimate for the biennium by an additional \$253 million (Comment Box 2). After accounting for expenditures of \$197 million during the Special Session (Comment Box 3), the new estimated ending fund balance for the 2007 Biennium was \$267 million.

As you can see from the comment boxes, most of the increases were due to higher collections in income and corporation taxes and oil and gas severance taxes.

2007 Biennium General Fund Outlook as of October, 2006 - \$267M to \$509M

Each month, as new information becomes available, the Legislative Fiscal Division updates the general fund estimates. New information comes from actual revenue collections (Comment Box 4) and agencies requesting supplementals (expenditures higher than adopted by the prior legislature due to increased caseloads, firefighting, etc – Comment Box 5). Using the most current numbers available in October, the projected ending fund balance increases to \$509 million.

Once again, higher collections in income and corporation taxes are driving the increased revenues.

2009 Biennium General Fund Outlook as of October, 2006 - \$509M – \$903M

The next shaded block shows revenues and expenses for the 2009 biennium based on anticipated revenues and the present law base for expenditures (present law base is

the ongoing cost of government expenditures adjusted for inflation and caseload increases without new programs or actions by the 2007 Legislature). Revenues are expected to grow approximately 2.2 percent per year. Individual income taxes are expected to increase approximately 9.3 percent over the biennium, while corporation taxes expected to decline approximately 20 percent from the 2006 level as Montana's economy returns to a more moderate growth level and commodity prices abate from historically high levels.

If the \$509 million ending fund balance from the 2007 Biennium is taken into account, the projected figures for the 2009 Biennium produce an ending fund balance of \$903 million.

Look Below the Dotted line – Structural Balanced Budget - Ongoing - \$351M

What is important to consider is how much of this revenue could be considered ongoing. Looking only at ongoing revenues and expenses for the 2009 Biennium and a reserve for emergencies and wildfires produces only \$351 million of ongoing revenues or \$175.5 million per fiscal year that should be considered in new programs. But, with inflation and rising caseloads associated with new programs, it would be risky to commit the entire amount.

Reconciliation - \$401M One Time Only (OTO)

Once again, beginning with the anticipated \$903 million ending fund balance for the 2009 Biennium, subtracting a reserve for the general fund and the ongoing funds, only \$401 million should be considered for one-time only spending.

Significant Issues Not Included in 2009 Projections

Page 2 on the enclosed spreadsheet lists issues not included in the projections from the first page. These are only a few of potential costs or requests legislators will be facing during the 2007 Session. We have only included issues contained in the Legislative Fiscal Division's Big Picture and DOR, OPI, Governor, and DPHHS new proposals or initiatives to give you an indication of just the beginning of the wish lists. Although many of the issues do not have a monetary cost associated with them, totals for potential on-going, one-time only and the unfunded liability of the pension plan are listed at the bottom of the page.

Caution is the Key

The Big Picture Report summarizes the need for our legislative leaders to use caution adopting the final 2009 budget. The projections could change dramatically depending on economic and unexpected expenditures such as wildfire suppression and other natural disasters. Many of the "significant issues" listed on page 2 of the enclosed spreadsheet could become a fiscal reality even

without legislative action. Litigation and reduced federal funding are just two of the events outside of the control of the legislature. These events would require utilization of the funds projected for the next biennium. We would also encourage close examination of existing programs before increasing or adding new services.

Transferring Montana Real Estate

The Montana Department of Revenue has developed a brochure to help clarify Montana's tax filing requirements for the transfer and rental of real estate. Under Montana's tax filing responsibilities, when Montana property is transferred, a Montana tax return must be filed to report and recognizable gain. The [brochure](#) is available on the Department of Revenue's website.

We are pleased to see the Department utilize more tools to explain Montana's filing requirements. *Education is an important component of compliance.*

School Funding

The Montana Quality Education Coalition (MQEC) has hired the firm of Augenblich, Palaich and Associates (APA), to conduct yet another study on the cost of school funding. These are the same consultants used in their lawsuit against the state, *Columbia Falls v. State of Montana*. In a recent update on the [MQEC website](#), new executive director, Pete Carparelli outlined the original purpose of the coalition as well as their current activities.

"When it first organized some four years ago, the Montana Quality Education Coalition announced it would pursue two parallel strategies. It would support the litigation brought by parents, teachers and school administrators to determine the constitutional sufficiency of the current system AND it would work with policy makers and participate actively in the development of a solution.

With the recent decision of the District Court to await the outcome of the 2007 legislative session before reviewing the adequacy of the state's progress toward meeting the Court's mandate that part of our work is on-hold at this point.

What is important for every Montanan to know, however, is that our work is far from done. The Montana Quality Education Coalition is working to keep its promise. The Coalition, its members and its member districts are right now working with nationally recognized, independent experts to evaluate Montana's school funding system and to provide data and analysis to the public and to legislators before the Legislature convenes in January. It is important that we do this right and that we do it now.

The 2007 legislature must enact a long-term solution to problem of education funding in Montana, a solution that implements the road-map the legislature passed and the Governor signed in Senate Bill 152. Failing to do so would mean failing to keep our promise to Montana. That is not an option. That's why we at the Montana Quality Education Coalition have redoubled our efforts to gather information and work with the policy makers before and during the session to find a solution that keeps our promise."

The Montana Taxpayers Association recently met with the new Executive Director of MQEC. We were pleased with his commitment to work openly with stakeholders in this process. He anticipated information from the consultants would be ready by mid to late November and that the coalition would be working on a remedy to present to the 2007 Legislature.