

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2020-003

**TO:** Mayor John Engen, City Council, Dale Bickell, Leigh Griffing, Scott Paasch, Ellen Buchanan, Eran Pehan, Jeremy Keen, Marty Rehbein, Kirsten Hands

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** January 14, 2020

**RE:** Limited instances where Montana state legislature authorizes Montana local governments to grant a real property tax benefit to the owner of real property pursuant to Sections 15-24-1501 and 15-24-1502 MCA

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### **FACTS:**

There has been city council inquiry as to whether the City of Missoula has any legal authority to grant a real property owner real property tax benefits in any instance.

### **ISSUE(S):**

Has the Montana State Legislature provided Montana local governments with any legal authority to grant real property tax benefits to real property owners?

### **CONCLUSION(S):**

Two statutory authorization laws, Sections 15-24-1501 and 15-24-1502 MCA authorize real property tax benefits to be granted by Montana local governments in some limited remodeling, reconstruction or expansion of existing buildings or structures instances where the taxable value of the existing building or structure increases at least 2% as determined by the Montana Department of Revenue or commercial building remodeling, reconstruction or expansion of an existing commercial building where the taxable value of the existing commercial building increases at least 5% as determined by the Montana Department of Revenue.

### **LEGAL DISCUSSION:**

Title 15 MCA is entitled “TAXATION”. Title 15, Chapter 10 MCA is entitled “PROPERTY TAX LEVIES”. The statutory law setting forth the procedure for calculating real property tax levies is set forth in Section 15-10-420 MCA entitled “PROCEDURE FOR CALCULATING LEVY”. There is no authorization in Section 15-10-420 MCA authorizing or empowering a

Montana local government to provide real property owners with property tax benefits in the form of property tax reductions or exemption.

Title 15, Chapter 24 MCA is entitled "SPECIAL PROPERTY TAX APPLICATIONS. Title 15, Chapter 24, part 15 MCA is entitled "REMODELING OF BUILDINGS OR STRUCTURES". Pursuant to Sections 15-24-1501 and 15-24-1502 MCA the Montana State Legislature authorizes a Montana local government to provide very limited real property tax benefits to real property owners who are remodeling, reconstructing or expanding existing buildings or structures that increase the taxable value of the building or structure certain minimum taxable value.

Section 15-24-1501 MCA pertains to the remodeling of existing buildings or structures that increase the taxable value at least 2%. Section 15-24-1502 MCA pertains to remodeling, reconstruction, or expansion of existing commercial buildings that increase the taxable value at least 5%. Both state laws provide a phasing of the application of any new increased real property taxes.

Section 15-24-1501 and 15-24-502 MCA provide in their entirety as follows:

15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures -- assessment provisions -- levy limitations. (1) Subject to 15-10-420 and the authority contained in subsection (5) of this section, remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 1/2% as determined by the department, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2), (4), and (5) and the following schedule. The percentages must be applied as provided in subsections (4) and (5) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order for a taxpayer to receive the tax benefits described in subsection (1), the taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall, following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public hearing, approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (5).

(3) (a) The governing body shall:

- (i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and
- (ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).

(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, city, or town is located a writ of mandamus to compel the governing body to make a determination.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

(5) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

15-24-1502 Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property – approval

15-24-1502. Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property -- approval. (1) (a) Subject to the conditions of this section, remodeling, reconstruction, or expansion of an existing commercial building or structure that increases its taxable value by at least 5%, as determined by the department, may receive a property tax exemption during the construction period, not to exceed 12 months, and for up to 5

years following completion of construction. The property tax exemption is limited to 100% of the increase in taxable value caused by remodeling, reconstruction, or expansion.

(b) (i) In addition to the property tax exemption described in subsection (1)(a), the buildings and structures may receive a property tax reduction for 4 years following the exemption period as provided in this subsection (1)(b). The percentages must be applied to the increase in taxable value caused by remodeling, reconstruction, or expansion according to the following schedule:

First year following the exemption period	20%
Second year following the exemption period	40%
Third year following the exemption period	60%
Fourth year following the exemption period	80%
Fifth year following the exemption period	100%
Following years	100%

(ii) Mill levies are assessed against the reduced taxable value of the remodeling, reconstruction, or expansion determined under subsection (1)(b)(i).

(c) To be eligible for the property tax exemption and the property tax reduction, the commercial building or structure may not have been used in a business for at least 6 months immediately preceding the date of application to the governing body for approval under subsection (2).

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The governing body of the affected county or consolidated government or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall, following due notice as provided in 7-1-2121 if a county or consolidated local government or 7-1-4127 if an incorporated city or town and a public hearing, approve by resolution for each remodeling, reconstruction, or expansion project the use of the property tax exemption and property tax reduction.

(b) The governing body may not grant the property tax benefits described in subsection (1) if property taxes on the buildings or structures are delinquent.

(3) (a) The governing body shall:

(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and

(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).

(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the

district court in the jurisdiction in which the county, consolidated local government, city, or town is located a writ of mandamus to compel the governing body to make a determination.

(4) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

A general summary of the statutory provisions set forth in sections 15-24-1501 and 15-24-1502 MCA indicates the following statutory conditions that must be met in order for a potential real property tax benefit to be granted by a Montana local government:

**I. SECTION 15-24-1501 MCA REMODELING, RECONSTRUCTION OR EXPANSION OF EXISTING BUILDINGS OR STRUCTURES:**

- (1) The remodeling, reconstruction, or expansion of an existing building or structure must increase the taxable value of the building or structure by at least 2% as determined by the Montana Department of Revenue.
- (2) The phased in property taxes may apply during the construction period and for the following 5 years.
- (3) The real property owner must submit a written application for the real property tax benefit by March 1.
- (4) City Council approval must occur pursuant to resolution for each project.
- (5) The Montana local government must publish notice of the tax benefit application. Within 60 days
- (6) The Montana local government must hold a public hearing with respect to the tax benefit application.
- (7) The portion of the increased taxable value real property taxes affected are the high school, elementary school and city real property taxes.
- (8) Property taxes abated from the reduction in property taxes allowed by section 15-24-1501 MCA are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of section 15-24-1501 MCA.

**II. SECTION 15-24-1502 MCA REMODELING, RECONSTRUCTION OR EXPANSION OF EXISTING COMMERCIAL BUILDINGS:**

- (1) The remodeling, reconstruction, or expansion of the existing commercial building must increase the taxable value of the commercial building by at least 5% as determined by the Montana Department of Revenue.

- (2) The phased in property taxes may apply during a construction period not to exceed 12 months and for up to 5 years following the construction.
- (3) To be eligible for the property tax exemption and property tax reduction, the commercial building or structure may not have been used in a business for at least (6) six months preceding the submittal of the written application for the property tax benefits.
- (4) The real property owner must submit a written application requesting the property tax benefit by March 1.
- (5) City Council approval must occur pursuant to resolution for each project.
- (6) The Montana local government publish notice of the tax benefit application.
- (7) The Montana local government must conduct a public hearing on the tax benefit application.
- (8) The portion off the increased value of property taxes receiving benefit is apparently limited to city property taxes. There is no statutory authorization that other government entity property taxes are or would be affected.
- (9) Property taxes abated from the reduction in property taxes allowed are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of section 15-24-1502 MCA.

### **CONCLUSION(S):**

Two statutory authorization laws, Sections 15-24-1501 and 15-24-1502 MCA authorize real property tax benefits to be granted by Montana local governments in some limited remodeling, reconstruction or expansion of existing buildings or structures instances where the taxable value of the existing building or structure increases at least 2% as determined by the Montana Department of Revenue or commercial building remodeling, reconstruction or expansion of an existing commercial building where the taxable value of the existing commercial building increases at least 5% as determined by the Montana Department of Revenue.

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