

December 13, 2010

Mr. Scott W. Herring  
Dawson County Attorney  
P.O. Box 1307  
Glendive, MT 59330-1307

Re: Mont. Code Ann. § 15-10-420

Dear Mr. Herring:

You have requested an opinion from the Attorney General on a question that arises from the carryover provisions of Mont. Code Ann. § 15-10-420. The statute is the result of the Legislature's reworking of the property tax limitation adopted by the voters in 1998 as I-105. See 49 Op. Att'y Gen. No. 5 (2001) (explaining relationship between 2001 amendments to Mont. Code Ann. § 15-10-520 and I-105). It is a long and technical statute, but your question relates only to the workings of Mont. Code Ann. § 15-10-420 (1)(b), which provides:

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

Your question is whether carryover mills may accumulate from year to year when a local government does not levy the full number of allowed mills for several years. Since the answer is found in the plain language of the statute, this letter of advice rather than a formal opinion has been deemed to be appropriate.

The last sentence of subsection (1)(b) provides that carry-over mills may "be imposed in a subsequent tax year." There is no language in the statute from which one could infer a requirement that they be used in the next tax year or be lost. In fact, the use of the word "subsequent" rather than "next" would seem to imply the contrary.

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Your hypothetical, as I understand it, is based on an incorrect assumption, i.e., that for years 2 through 10 the cap would remain at 100 mills. Under your hypothetical, the City's cap in year 1 is 100 mills because that is the number that would be needed in year 1 to generate the same amount of tax as was assessed in year -1, leaving aside the other variables found in Mont. Code Ann. § 15-10-420(1)(a). If the City only levies 99 mills in year 1, the cap in year 2 is 99 mills (the amount needed to match the previous year's tax assessment, as "authorized under subsection (1)(a)"), not 100 mills as you assume in your hypothetical, plus one carryover mill to account for the fact that the City left one mill unlevied in year 1. The carryover mill is available to levied, but it does not add to the cap calculated under subsection (1)(a).

In year 3, the cap remains 99 mills (the number needed to match the tax assessments in year 2), plus one carryover mill (leftover from year 1), since the City levied up to the cap of 99 mills in year 2. As long as the cap remains 99 mills and the City levies 99 mills, no new carryover mills accrue, but the City still keeps the one carryover mill from year 1.

The hypothetical is simplified because in the real world taxable values will fluctuate, "newly taxable property" will come on the tax rolls, an inflation adjustment will be applied, and, because of increasing costs, the local government will not be able to keep expenditures flat for ten years at a time. But if the local government is frugal and can get by from year to year without levying up to the cap, nothing in the statutes prevents it from accumulating several carryover mills from those years in which it has not levied up to the cap provided in Mont. Code Ann. § 15-10-420(1)(a).

I hope you find this helpful. This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN  
Chief Civil Counsel

cdt/jym

c: Harold Blattie  
Mike Sehestedt  
Alec Hansen