



Montana Legislative Services Division
Legal Services Office

October 9, 2007

TO: Chairman and Members of the Revenue and Transportation Interim Committee

FROM: Lee Heiman, Staff Attorney

RE: Trigger Language for Property Tax Income Tax Credit

Question

Whether the state revenue receipt trigger in 15-30-140(1)(a)(ii), MCA, can be based upon the 2007 Revenue Estimating Resolution and whether the revenue certification may include revenue based upon the error correction made after the fiscal year records were closed.

Conclusion

The trigger must be based upon the plain language of the statute unless the language is ambiguous. The language is not ambiguous. The trigger amount is the total revenue received in fiscal year 2007 that is recorded according to generally accepted accounting principles for records that are closed in July 2007. The trigger is temporary, so no legislation in the future is necessary to clarify the provision.

Background

Section 6, Chapter 6, Special Laws of May 2007, enacted 15-30-140, MCA, which provides for a tax credit for payment of residential property taxes for returns filed in 2008 on 2007 income. The credit is based upon an established factor. Sections 1 and 2 of Chapter 6 established the \$400 property tax rebate for the last half of calendar year 2007.

The factor for determining the amount of the income tax credit for returns filed after 2008 is to be established by later bills recommended by the Revenue and Transportation Interim Committee. The factor for the first year was to be determined by a trigger specified for that year only.

Section 15-30-140(1)(a)(ii), MCA, reads:

The department of administration shall certify to the budget director on August 1, 2007, the amount of unaudited general fund revenue received in fiscal year 2007 as recorded when the fiscal year 2007 statewide accounting, budgeting, and human resources system records are closed in July 2007. Fiscal year 2007 is the period from July 1, 2006, to June 30, 2007. General fund revenue is as recorded in the statewide accounting, budgeting, and human resources system using generally accepted accounting principles in accordance with 17-1-102(2). If the unaudited

general fund revenue received in fiscal year 2007 exceeds \$1,802,000,000, for each \$1,000,000 greater than \$1,802,000,000, the factor in subsection (1)(b)(i) must increase by 0.1 for tax year 2007 only.

The applicable portion of 17-1-102, MCA reads:

(2) The department shall prescribe and install a uniform accounting and reporting system for all state agencies and institutions, reporting the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles.

On July 27, 2007, the Department of Administration certified the fiscal year 2007 general fund revenue. A copy of the certification is attached.

The certification states that the revenue "includes an error that was discovered after the records were closed in July 2007". The certification further states that it is based on "assumptions underlying the estimates used to make the 'official' legislative general fund revenue estimate" and that the "amount differs from the unaudited general fund revenue . . . due to different definitions of revenue".

Discussion

In reading a statute, a person does not look for legislative intent in anything other than the words of the statute unless the words are ambiguous. In construing a statute, a court must find legislative intent from the plain meaning by reasonably and logically interpreting the statute as a whole without omitting or inserting anything or determining intent from a reading of only a part of the statute. See Gaub v. Milbank Ins. Co., 220 M 424, 715 P2d 443, 43 St. Rep. 497 (1986).

The certification differs from the requirements of 15-30-140(1)(a)(ii), MCA, in two respects. First an error was recorded after the FY 2007 records were closed, and second, the assumptions are based upon the 2007 Regular Session revenue estimate instead of generally accepted accounting principles.

Neither difference is subject to ambiguity. Regarding the recording of the error, 15-30-140(1)(a)(ii) clearly states that the department shall certify "the amount of unaudited general fund revenue received in fiscal year 2007 as recorded when the fiscal year 2007 statewide accounting, budgeting, and human resources system records are closed in July 2007. Fiscal year 2007 is the period from July 1, 2006, to June 30, 2007." The certification specifically states that the error correction was made after the records were closed.

The second difference is no less ambiguous. The Department based the certification on House Joint Resolution No. 2, the Revenue Estimating Resolution, which it characterizes as the "official" basis of the underlying assumptions. House Joint

Resolution No. 2 died in the House Taxation Committee. The resolution provides a tool for the Legislature to use in meeting its constitutional requirement for establishing a balanced budget. It provides uniform assumptions for the Legislature and executive agencies to estimate future revenue. The trigger in 15-30-140(1)(a)(ii), MCA, however, provides that “[g]eneral fund revenue is as recorded in the statewide accounting, budgeting, and human resources system using generally accepted accounting principles in accordance with 17-1-102(2)”. No estimating is involved: the trigger amount is a fiscal yearend “snapshot” of the amount of recorded state revenue using generally accepted accounting principles. According to 17-1-102(4), MCA, routine accounting transactions of state government agencies throughout a fiscal year must be made according to generally accepted accounting principles. I do not practice accounting and cannot give an opinion as to whether generally accepted accounting principles were followed, but the department’s certification stated that the certified revenue amount differed from the revenue in the state’s comprehensive annual financial report, which I understand is the report prepared according to generally accepted accounting principles.

The trigger language applies only to the certification to be made in 2007. For future years, the income tax credit for property taxes is to be determined by a factor to be enacted by the Legislature based upon a bill that is the product of a recommendation of the Revenue and Transportation Interim Committee.

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