

VOLUME 31

Opinion No. 21

**TAXATION; Levy: limited to taxable valuation—Section 69-812,
R.C.M. 1947.**

**HELD: Section 69-812, R.C.M. 1947, does not authorize the levy of more
than one mill on the taxable value of the property located with-
in the taxing unit.**

August 24, 1966

Dr. John S. Anderson
Executive Officer
State Board of Health
Helena, Montana

Dear Dr. Anderson:

Section 69-812, R.C.M. 1947, provides in part that:

Funds for operation of full-time health departments shall be derived from the general fund of participating agencies, provided, however, if the general fund is insufficient to meet the approved budget, **a levy, not to exceed one (1) mill, may be made on the assessed valuation** in addition to all other taxes allowed by law to be levied on such property. (Emphasis supplied.)

You wish to know if this statute limits the allowed levy to one mill on the percentages of assessed value prescribed by sections 84-301 and 84-302, R.C.M. 1947.

The problem arises because we have at least two valuations of property for tax purposes, "taxable value" and "assessed value." The "assessed value" of property is defined by Section 84-401, R.C.M. 1947, which provides that "all taxable property must be assessed at its full cash value." The "taxable value" is determined by sections 84-301 and 84-302, R.C.M. 1947, which provide that taxable property shall be classified into nine classes and that "As a basis for the imposition of taxes . . . a percentage of the true and full value of the property of each class shall be taken . . ."

The taxable property in a city may have an assessed value of ten million dollars. However, after applying the percentage computations prescribed by Sections 84-301 and 302, the tax base would probably be about 30% of the assessed value, or three million dollars. A one mill levy on the full assessed value would raise \$100,000 in taxes, while a one mill levy on the percentages of assessed value prescribed by section 84-302 would raise only \$30,000. Thus, in order to raise an amount of money equal to the amount available from a one mill levy on the **assessed** value of the taxable property in the city, a levy of three and one-third mills would have to be imposed on the taxable value of such property.

Applying your question to the above hypothetical example, you wish to know if, under section 69-812, the city is limited to a one mill levy or to a three and one-third mill levy.

In **Wibaux Improvement Co. v. Breitenfelt**, 67 Mont. 206, 215 Pac. 222 (1923) it was held that the classification statutes impliedly amended the words "assessed value" to mean "taxable value" and therefore the statute (now section 84-4701, R.C.M. 1947) limiting city taxes to a certain percentage of the assessed value of the property in the city must be applied to the value of the property after classification rather than to the full assessed valuation.

As our Supreme Court pointed out in **Northern Pacific Ry. v. Dunham**, 108 Mont. 338, 344, 90 P. 2d 506, 509 (1939):

The subject [whether maximum levy is to be measured by assessed or taxable value of property] is one over which the legislative intent controls, and it is competent for the legislature to provide, if it sees fit, that taxes for certain purposes may be im-

posed upon the assessed value of property, rather than the taxable value, notwithstanding the classification statutes. (**State ex rel. Judd v. Cooney**, 97 Mont. 75, 32 P. 2d 851.)

Even though the legislature used the term "assessed value" in Section 69-812, it is difficult to believe that they thereby intended to authorize more than one mill levy on the taxable value of property—the value on which this mill levy has been consistently imposed. To my knowledge, no governmental unit has ever levied more than one mill under this statute since its enactment in 1945, an executive construction entitled to some weight in determining legislative intent. It is a cardinal principle of Montana tax law that any uncertainty in a tax statute must be resolved in favor of the taxpayer. See, e.g., **H. S. Gypsum Co. v. State Board of Equalization**, 116 Mont. 275, 149 P. 2d 274 (1944); **State ex rel. Anderson v. State Board of Equalization**, 113 Mont. 8, 319 P. 2d 221 (1957).

It is therefore my opinion that section 69-812 does not authorize the levy of more than one mill on the taxable value of the property located within the taxing unit.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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