

VOLUME NO. 41

OPINION NO. 60

LOCAL GOVERNMENT - Distribution of accrued interest on protest fund;
PUBLIC FUNDS - Distribution of accrued interest on protest fund;
TAXATION AND REVENUE - Distribution of accrued interest on protest fund;
MONTANA CODE ANNOTATED - Sections 7-6-201, 7-6-202, 7-6-204(1), 7-6-205, 7-6-206, 15-1-402, 17-6-204, 32-1-102(4), 32-2-101(3), 32-3-102;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 25 (1985).

HELD: Interest accrued on amounts held in a protest fund established under section 15-1-402, MCA, must be distributed to the affected taxing units in the same proportion as the tax amounts in the fund are paid to those units.

18 April 1986

John P. Connor Jr.
Jefferson County Attorney
Jefferson County Courthouse
Boulder MT 59632

Dear Mr. Connor:

You have requested my opinion concerning the following question:

Should interest accrued on money held in a protest fund established under section 15-1-402, MCA, be distributed to the general fund or to the various taxing jurisdictions within the county on a pro rata basis after resolution of the protest, either by settlement or by decision favorable to the county?

I conclude that the accrued interest should be distributed to the affected taxing units in the same proportion as the corpus of the protest fund.

Section 15-1-402, MCA, deals generally with the payment of county or municipal taxes under protest. Subsection (6) requires that

[a]ll portions of taxes and license fees paid under protest ... shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any action or suit to recover the same.

If a timely action to recover the protested taxes is not filed or, if properly initiated, the action is resolved favorably to the county or municipality, "the amount of the protested portions of the tax or license fee shall be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs." § 15-1-402(8)(a), MCA (emphasis added). Significantly, section 15-1-402(8)(b), MCA, which

governs should the taxpayer be successful, includes as recoverable amounts not only the protested portions of the tax but also the "costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest." The lack of any reference in subsection 8(a) to the crediting of accrued interest to the taxing governmental entities, when read together with subsection 8(b)'s express provision for interest payments, indicates that the words "protested portions" in subsection 8(a) were not intended to include accrued interest. No other statutory provision directs that interest on monies deposited into the protest fund be paid to the affected taxing entities upon distribution of the tax payments to those entities.

Nonetheless, the general rule is that, in the absence of statutory provision to the contrary, accrued interest on taxes follows the taxes themselves; i.e., the interest is distributed in the same proportion as the taxes to the involved taxing jurisdictions. 85 C.J.S. Taxation § 1064 (1950); Yreka Union High School District v. Siskiyou Union High School District, 227 Cal. App. 2d 666, 39 Cal. Rptr. 112, 116 (1964); see State ex rel. Fort Zumwalt School District v. Dickherber, 576 S.W.2d 532, 537 (Mo. 1979) ("the resolution we make comports with the general principle that the interest on public funds designated for a specific purpose follows those funds in the absence of an unequivocal legislative expression otherwise"); State ex rel. Board of County Commissioners v. Montoya, 91 N.M. 521, 575 P.2d 605, 607 (1978) ("[a]bsent a special statutory provision, the general rule is that the interest is an accretion or increment to the principal fund earning it, and becomes part of that fund"); Miles v. Gordon, 234 Ark. 525, 353 S.W.2d 157, 159 (1962) ("since it is interest on the tax monies, the interest itself falls within the category of tax money"); see generally Annot., 143 A.L.R. 1341, 1342-46 (1943); cf. School District No. 12 v. Pondera County, 89 Mont. 342, 347, 297 P. 498, 500 (1931) (interest and penalties on delinquent taxes follow the taxes); 41 Op. Att'y Gen. No. 25 (1985) (same). That payments under section 15-1-402, MCA, are deposited into a protest fund and are not available for immediate use does not change their status as tax monies since all amounts placed therein are to discharge alleged tax or license fee liability. See generally Mills v. County of

Trinity, 108 Cal. App. 3d 656, 660, 166 Cal. Rptr. 674, 676 (1980) ("[i]n its broadest sense, a tax includes all charges upon persons or property for the support of government or for public purposes"); Arizona Department of Revenue v. Transamerica Title Insurance Company, 124 Ariz. 417, 604 P.2d 1128, 1131 (1979) ("[a] tax is the enforced contribution of persons and property levied by the authority of the state"). The fund merely ensures that the protested portions will not be distributed for use by the involved taxing jurisdictions prior to resolution of the challenge. Unless some statutory provision requires a different disposition, the accrued interest at issue here must, therefore, be allocated proportionally to the affected taxing entities.

The only statutory provision which may direct a disposition of the accrued interest from the protest fund in a manner contrary to the common-law rule is section 7-6-204(1), MCA. That section requires all interest on "public money" deposited by the county or the city treasurer pursuant to section 7-6-201(1), MCA, to "be credited to the general fund of the county, city, or town to whose credit such funds are deposited." The issue thus becomes whether the term "public money" in section 7-6-201(1), MCA, includes protest funds established under section 15-1-402(6), MCA. Review of these statutory provisions and their legislative histories indicates that protest fund amounts are not so included.

First, section 15-1-402(6), MCA, permits deposits into "local banks or savings and loan associations," while section 7-6-201(1), MCA, provides for deposits into not only banks and savings and loan associations but also credit unions. Banks, savings and loan associations, and credit unions are, however, separately defined and regulated under Montana law. See §§ 32-1-102(4), 32-2-101(3)(a), 32-3-102, MCA. Section 15-1-402(7), MCA, allows investment of protest fund amounts in interest-bearing accounts and the state unified investment program. In contrast, "public money" may be placed not only into demand, time, or savings deposits but also into direct obligations of the United States government, securities issued by its agencies, and repurchase agreements. §§ 7-6-202, 7-6-205, 7-6-206, MCA. Although "public money" may further be placed into the state pooled investment fund pursuant to section 17-6-204, MCA, investment of protested tax amounts under

the state program is not limited to that fund. Second, section 15-1-402, MCA, requires that a special fund be established for protested taxes; section 7-6-201, MCA, effectively authorizes commingling of all "public money." Third, section 15-1-402, MCA, specifically directs the method and manner of the protest fund's distribution. Section 7-6-201, MCA, is substantially less detailed, requiring in subsection (4) only that the deposits "shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time." Finally, aside from the differing conditions for the deposit, investment, and withdrawal of monies subject to sections 7-6-201 and 15-1-402, MCA, the obligation to deposit "public money" into interest-bearing accounts was established in 1913 (1913 Mont. Laws, ch. 88), but the comparable provision in section 15-1-402, MCA, was not added until 1977 (1977 Mont. Laws, ch. 394). Quite obviously, there would have been no need for the modification to section 15-1-402, MCA, if section 7-6-201, MCA, had already accomplished the desired result. See Crist v. Segna, 38 St. Rptr. 150, 152, 622 P.2d 1028, 1029 (1981); State ex rel. City of Townsend v. D. A. Davidson, Inc., 166 Mont. 104, 109, 531 P.2d 370, 372 (1975). In sum, sections 7-6-201 and 15-1-402, MCA, operate independently, and section 7-6-204(1), MCA, is thus inapplicable to interest accrued on protest fund amounts.

THEREFORE, IT IS MY OPINION:

Interest accrued on amounts held in a protest fund established under section 15-1-402, MCA, must be distributed to the affected taxing units in the same proportion as the tax amounts in the fund are paid to those units.

Very truly yours,

MIKE GREELY
Attorney General