

COUNTIES - Budget allocation of proceeds from settlement of mines net and gross proceeds taxes;

MINES AND MINING - County budget allocation of proceeds from settlement of mines net and gross proceeds taxes;

SCHOOL DISTRICTS - Lawful use of proceeds from county settlement of mines net and gross proceeds taxes;

TAXATION AND REVENUE - County budget allocation of proceeds from settlement of mines net and gross proceeds taxes;

MONTANA CODE ANNOTATED - Sections 7-6-2318(1), 15-8-601, 15-16-102, 15-23-106, 15-23-107, 15-23-501, 15-23-803, 15-23-804, 15-23-806, 20-9-502, 20-9-503, 20-9-508.

HELD: 1. Proceeds under the February 1986 Atlantic Richfield Company settlement agreement payable to Butte-Silver Bow County must be allocated to each taxing jurisdiction within the county proportionally to the mill levies of all such jurisdictions' funds in effect during the fiscal year when such proceeds are contractually required to be paid.

2. Proceeds under the February 1986 Atlantic Richfield Company settlement agreement may be allocated in proper portion to any

appropriately established building reserve fund of school districts within Butte-Silver Bow County. Such proceeds may not be allocated to any building fund of those school districts.

16 June 1986

Robert M. McCarthy
Butte-Silver Bow County Attorney
Butte-Silver Bow County Courthouse
Butte MT 59701

Dear Mr. McCarthy:

You have requested my opinion concerning several questions which I have rephrased as follows:

1. How should payments to Butte-Silver Bow County under a settlement agreement compromising alleged tax obligations under the mines net proceeds and metal mines gross proceeds taxes be allocated for county budget purposes?
2. To the extent portions of such payments are properly apportioned to school district funds within Butte-Silver Bow County, under what conditions may they be allocated to a particular school district's building reserve fund or its building fund?

Your questions arise as a result of a February 1986 settlement between the Montana Department of Revenue, Butte-Silver Bow County, Anaconda-Deer Lodge County, and the Atlantic Field Company resolving a controversy over revised assessments affecting (1) the metalliferous mines license tax, §§ 15-37-101 to 117, MCA; (2) the resource indemnity trust tax, §§ 15-38-101 to 112, MCA; (3) the mines net proceeds tax, §§ 15-23-501 to 523, MCA; and (4) the metal mines gross proceeds tax, §§ 15-23-801 to 807, MCA. Butte-Silver Bow County receives revenue only under the last two taxes whose amounts are calculated in the same manner as personal property taxes, i.e., they are based upon application of a mill levy against a taxable assessed value. See §§ 15-23-106(1)(d), 15-23-501, 15-23-803, 15-23-806,

MCA. The revised assessments as to those taxes were made in accordance with section 15-8-601, MCA.

Under section 15-8-601(1), MCA, the Department of Revenue is authorized to make revised assessments of taxable property which has escaped or been omitted from taxation or has been erroneously assessed. The Department thereafter issues a revised assessment to county officials for the involved tax year. §§ 15-8-601(5), 15-23-107, MCA. Appropriate revisions must then be entered into the county's assessment roll book, and the treasurer issues a tax notice for any additional amounts which, when collected, will be allocated to the various taxing jurisdictions within the county in the same proportion as such taxes would have been distributed had they been timely paid. However, an aggrieved taxpayer as to centrally assessed taxes, such as the mines net and gross proceeds taxes, may institute proceedings before the state tax appeal board to challenge the revised assessment. § 15-8-601(3)(c), MCA. Atlantic Richfield initiated such an action, and the Department determined that issuance of the revised assessment to Butte-Silver Bow County should be delayed until its validity was established. Thus, in this matter no modifications were made in the County's roll book to reflect the revised assessments.

The subsequent settlement agreement with Atlantic Richfield established a payment procedure independent of the statutory scheme. It provided that \$12,245,000 will be paid to Butte-Silver Bow County over a seven-year period, with the first annual payment due on the third to the last business day of June 1987. The payments in succeeding years must also be tendered by such day. Butte-Silver Bow County and Atlantic Richfield have the right to modify the time and amount of payments without consent of the other parties if the latter's payments will be unaffected. Should a required payment not be made by the last day of June, a 10 percent penalty and interest at 1 percent per month will be assessed. In return for such payments Atlantic Richfield received, inter alia, a full and complete liability release from the disputed taxes for all years to the date of settlement.

While the settlement proceeds are clearly derivative of alleged tax obligations, the agreement's provisions governing payment operate independently of relevant

statutory provisions. Most importantly, (1) there are no entries in Butte-Silver Bow County's assessment book reflecting the disputed valuations; (2) the proceeds are not apportioned to previous tax years in which the Department's revised assessment determined taxes were owing; (3) the payment schedule differs from that applicable to mines net and gross proceeds taxes with respect to time of payment (§§ 15-16-102, 15-23-501, 15-23-804, MCA); (4) the agreement's penalty and interest provisions differ from relevant statutory provisions (§ 15-16-102, MCA); and (5) the County and Atlantic Richfield are given the discretion to modify the time and amount of payments. The settlement proceeds cannot, therefore, be characterized as payment of delinquent taxes which must be apportioned to earlier tax years on the basis of then-applicable mill levies.

Montana statutes are silent with respect to the proper allocation within the county budget of income like the present settlement proceeds. Nonetheless, because Butte-Silver Bow County's portion of the settlement derives from alleged liability under the mines net and gross proceeds taxes, such amounts should logically be allocated among the various county taxing jurisdictions proportionately on the basis of mill levies for the fiscal year during which they are payable under the agreement or any subsequent amendment thereto. This result comports with the County's presumed intent in resolving the disputed tax claims, which was to benefit each taxing jurisdiction through an expeditious and certain settlement.

Although the settlement proceeds must be allocated among Butte-Silver Bow County's taxing jurisdictions proportionally to their mill levies, such amounts clearly do not arise from "the taxation of property" for the purpose of calculating projected fund cash flow under section 7-6-2318(1), MCA. The term "taxation of property" has obvious reference to those revenues deriving from the property tax collection procedure specified under sections 15-16-101 to 704, MCA, and cannot be construed to include the settlement proceeds. Precise calculation of the amounts which should be allocated to the various taxing jurisdictions from the proceeds will, therefore, be difficult since the determination of the mill levies themselves should precede fixing the settlement proceeds' proper allocation. Nonetheless, reference to mill levies in

the previous fiscal year and reasoned judgments as to the relative effect of the proposed budget on those levies should permit a substantially accurate approximation of the projected fund cash flow from the settlement proceeds.

Your second question is largely answered by the above analysis. School finance procedures are extremely detailed and specify the manner in which building reserve funds and building funds may be created and financed. Section 20-9-502, MCA, permits creation of a building reserve fund, which is financed through annual mill levies, and requires elector approval of the fund's establishment. Under section 20-9-503, MCA, trustees must include within the school district's budget the levy so authorized. Building funds are, in contrast, financed principally through issuance and sale of school bonds and may not be financed through additional mill levies. See § 20-9-508, MCA. Consequently, proceeds from the settlement agreement may accrue to the benefit of a properly authorized building reserve fund but may not be placed into a building fund.

THEREFORE, IT IS MY OPINION:

1. Proceeds under the February 1986 Atlantic Richfield Company settlement agreement payable to Butte-Silver Bow County must be allocated to each taxing jurisdiction within the county proportionally to the mill levies of all such jurisdictions' funds in effect during the fiscal year when such proceeds are contractually required to be paid.
2. Proceeds under the February 1986 Atlantic Richfield Company settlement agreement may be allocated in proper portion to any appropriately established building reserve fund of school districts within Butte-Silver Bow County. Such proceeds may not be allocated to any building fund of those school districts.

Very truly yours,

MIKE GREELY
Attorney General