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**IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
 YELLOWSTONE COUNTY**

BRAD MOLNAR, and all similarly situated)	
persons,)	Cause No. _____
)	
Plaintiffs,)	CLASS ACTION COMPLAINT
)	
v.)	
)	
MONTANA DEPARTMENT OF)	
REVENUE,)	
)	
Defendant.)	
)	

COMES NOW Brad Molnar, the Plaintiff in this matter who alleges the following:

I. INTRODUCTION

1. The Montana Legislature enacted property tax statutes in 1989 to raise revenue for equalizing education funding across Montana.
2. The Legislature subsequently imposed mill caps on those and other property taxes statutes.

3. The Montana Department of Revenue (DOR), however, is refusing to apply these caps in its tax calculations for 2023.

4. As a result, Montana property owners will be overtaxed by nearly \$80 million unless this Court grants relief.

II. JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this action. Mont. Code Ann. § 3-5-302(1).

6. This Court has jurisdiction to grant declaratory relief concerning illegal taxes. Mont. Code Ann. §§ 15-1-406, 15-1-407.

7. Venue is proper under Mont. Code Ann. § 25-2-126(1).

PARTIES

8. Plaintiff Brad Molnar is, and at all times pertinent to this action has been, a resident of Yellowstone County, Montana, and an owner of residential property in that county.

9. Defendant Montana Department of Revenue (DOR) is a state governmental entity established by Mont. Code Ann. § 2-15-1301, *et. seq.*, and is responsible for, *inter alia*, calculating the number of mills to be imposed in accordance with the education equalization statutes. Mont. Code Ann. §§ 20-9-331, 20-9-333, and 20-9-360.

FACTUAL ALLEGATIONS

Enactment of Montana's State Mill Statutes

10. The Montana Legislature enacted three statutory provisions in 1989 requiring county commissioners in each county to levy 95 mills on all taxable property for purposes of education equalization, (hereinafter, the "State Mill Statutes"). These include Mont. Code Ann. § 20-9-331 (establishing 33 mills for elementary equalization), § 20-9-332 (establishing 22 mills for high school equalization), and § 20-9-360, (establishing 40 mills for state equalization aid to the public schools of Montana).

11. The State Mill Statutes require counties to remit the proceeds of these levies to DOR.

Enactment of Montana's Mill Levy Cap

12. During the 1999 session of the Montana Legislature, the Legislature enacted SB 184, which capped the number of mills to be imposed on taxable property. The cap is codified at Mont. Code Ann. § 15-10-420.

13. When applicable, the mill levy cap limits annual property tax increases to one-half of the average rate of inflation for the prior 3 years. Mont. Code Ann. § 15-10-420(1)(a).

14. The Legislature made clear when it enacted SB 184 (1999) that the mills generated by the State Mill Statutes are subject to the mill levy cap. Sections

111, 112, and 113 of SB 184 (1999) expressly subject the State Mill Statutes to the mill levy cap by inserting the phrase “Subject to 15-10-420” at the beginning of each of the statutes.

Authority of Local Governments to Carry Forward Mills

15. In 2001, the Montana Legislature enacted SB 265, a bill entitled as follows:

AN ACT ALLOWING A **LOCAL GOVERNMENTAL ENTITY** TO IMPOSE LESS THAN THE MAXIMUM NUMBER OF MILLS AUTHORIZED AND TO CARRY FORWARD THE AUTHORITY TO IMPOSE THE MAXIMUM NUMBER OF MILLS IN A SUBSEQUENT TAX YEAR; AND AMENDING SECTIONS 7-6-2531, 7-6-4431, AND 15-10-420, MCA.

(emphasis added).

16. Section 3 of that bill allows a *local governmental entity* to “bank” unused mills that it could have imposed during a prior tax year but did not impose. The entity may carry forward banked mills and impose them in future tax years. This provision is now codified at Mont. Code Ann. § 15-10-420(1)(b).

17. The authority to carry forward banked mills and impose them in future tax years is limited to local government entities that have authority to *impose* mills. Mont. Code Ann. § 15-10-420(1)(a) & (b).

18. Such local entities include counties (Mont. Code Ann. § 7-6-2501), cities (Mont. Code Ann. § 7-6-4401), special districts (Mont. Code Ann. § 7-11-1025(2)(a)) and school districts (Mont. Code Ann. § 20-9-116).

19. Unlike local governments, DOR does not have the authority to *impose* mills, even mills required by the State Mill Statutes. For the State Mill Statutes, DOR simply *calculates* the number of mills to be imposed pursuant to those statutes. Mont. Code Ann. § 15-10-420(8). The State Mill Statutes expressly direct county commissioners to impose the levies. Mont. Code Ann. §§ 20-9-331, 20-9-333, and 20-9-360.

20. Because DOR has no authority to *impose* mills established by the State Mill Statutes, it has no authority to “bank” mills under Mont. Code Ann. § 15-10-420(1)(b) and carry them forward into future tax years.

21. The authority to bank mills and carry them forward to future tax years belongs solely to local governments.

DOR’s Unlawful Attempt to Carry Forward Mills

22. Because of the enormous increase in property values recently, DOR calculated that a levy of only 77.89 mills (rather than 95 mills) satisfies the requirements of the State Mill Statutes (as capped by Mont. Code Ann. § 15-10-420) for 2023.

23. DOR's calculations are contained in a worksheet it recently prepared.

Exhibit A, ¶ 11.

24. Despite lacking authority to carry forward mills from prior years, DOR has unlawfully purported to do exactly that by adding 17.11 mills to its calculation for 2023, bringing the total to 95 mills. **Exhibit A, ¶ 16.**

25. The extra 17.11 mills that DOR has unlawfully added to its calculation amounts to nearly \$80 million in unlawful taxes that will be levied on Montana property owners absent relief from this Court.

26. On September 11, 2023, DOR issued a memorandum to all counties notifying them that the State Mill Statutes require counties to impose 95 mills on all property throughout the state. **Exhibit B.**

27. Plaintiff Brad Molnar owns a single-family home in Yellowstone County which he uses as his primary residence.

28. He has owned that home since 1980.

29. Plaintiff Molnar has in the past paid excess equalization mills as a result of DOR's unlawful calculations as described above.

30. Without relief from this Court, Plaintiff Molnar and all similarly situated Montana property owners will be unlawfully taxed at a rate that is 17.11 mills higher than the rate allowed by state law.

31. This unlawful tax is directly caused by “an administrative rule or method or procedure of assessment or imposition of tax adopted or used by [DOR].” Mont. Code Ann. § 15-1-406(1)(a).

CLASS ALLEGATIONS

32. Plaintiff Molnar realleges all matters set forth in the preceding paragraphs.

33. Plaintiff Molnar brings this action on his own behalf and on behalf of a proposed class consisting of all persons subject to DOR’s unlawful addition of 17.11 mills to their property tax bills and who timely file protests in accordance with Mont. Code Ann. § 15-10-402.

34. Plaintiff Molnar brings these class action claims on behalf of himself and all other persons similarly situated pursuant to Mont. Code Ann. § 15-10-407(2)(a) and Mont. R. Civ. P. 23(a), (b)(1), (b)(2) and (b)(3).

35. The proposed class is sufficiently numerous to make joinder impractical, given that the total number of Montana property owners affected by DOR’s unlawful tax calculation could number in the hundreds of thousands.

36. The questions of law and fact raised by Plaintiff’s claims are common to, and typical of, those raised by the members of the class he seeks to represent.

37. Common issues of law and fact predominate over any individualized issues.

38. A question of fact common to the class includes whether DOR has lawfully levied an additional 17.11 mills upon property.

39. A question of law common to the class includes whether the levy of 17.11 mills resulting from DOR's calculation is lawful under Montana law.

40. The violations of law and resulting harms suffered by Plaintiff are typical of the violations and harms suffered by all members of the class.

41. If brought individually, the claims of all members of the class would necessarily require proof of the same material and substantive facts and would likely necessitate the same remedies.

42. The claims of Plaintiff Molnar and the absent members of the class have a common origin and share a common basis, given that their claims originate from the same wrongful policies of DOR.

43. DOR has acted in the same way towards Plaintiff and the other members of the class.

44. Consequently, Plaintiff Molnar and each member of the class have similarly been victims of DOR's actions.

45. Plaintiff Molnar is willing and prepared to serve the proposed class in a representative capacity.

46. Plaintiff will fairly and adequately protect the interests of the class and has no interests adverse to, or that directly and irrevocably conflict with, the interests of other members of the class.

47. Plaintiff Molnar, as the class representative, will vigorously prosecute the action on behalf of members of the class.

48. Plaintiff is represented by counsel experienced with complex litigation, including cases involving government liability and taxation. Plaintiff's counsel is also experienced in litigating class action suits.

49. Plaintiff's counsel has identified and thoroughly investigated the claims in this action and has committed sufficient resources to represent members of the class.

50. A class action is superior to other available methods for the fair and efficient adjudication of justice because individual joinder of claims by the members of the class is impractical.

51. In light of the relatively small amount of potential damages that would be available to individual class members if individual actions were brought, there are not any significant individualized interests in controlling the prosecution of separate actions.

52. The prosecution of separate actions by individual members of the class could result in inconsistent or varying adjudications with respect to individual members of the class.

53. In addition, adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interest.

54. By way of example, a ruling on the legality of DOR's authority to carry forward mills from prior tax years could create binding precedent for the adjudication of claims that are identical to those presented by Plaintiff.

55. DOR has acted on grounds generally applicable to all members of the class, necessitating declaratory and injunctive relief for the class.

56. In comparison to more complex class actions, this proposed class action will clearly be manageable as the members of the class are readily identifiable and share common issues of fact and law, and counsel has already identified proper mechanisms for communicating with the class.

CAUSES OF ACTION

First Cause of Action Mont. Code Ann. §§ 15-1-406 & 407

57. Plaintiff Molnar realleges all matters set forth in the preceding paragraphs.

58. DOR has purported to “carry forward” 17.11 mills in calculating the number of mills to be levied under the State Mill Statutes and has instructed all Montana counties to impose them on Montana property owners such as Plaintiff Molnar.

59. DOR has no lawful authority to cause counties to levy these additional, unlawful 17.11 mills on Montana property owners. Mont. Code Ann. § 15-10-420(1)(b).

60. By causing counties to levy these unlawful mills, DOR has adopted and used “an administrative rule or method or procedure of assessment or imposition of tax” that is “illegal or improper.” Mont. Code Ann. § 15-1-406(1)(a).

61. Parties bringing actions under Mont. Code Ann. § 15-1-406 may elect to pursue class remedies for all similarly situated taxpayers. Mont. Code Ann. § 15-1-407(2)(a).

62. Plaintiff Molnar and all similarly situated Montana property owners who have or will have paid the illegal taxes resulting from DOR's calculation are entitled to a refund under Montana law.

PRAYER FOR RELIEF

Plaintiff Molnar respectfully requests the following relief from this Court:

1. A declaration that Defendant DOR's calculation of the number of mills necessary to satisfy the State Mill Statutes is unlawful;
2. A declaration that Plaintiff Molnar and every other similarly situated Montana property owner is entitled to a refund of taxes paid as a result of DOR's unlawful calculation of the number of mills necessary to satisfy the State Mill Statutes;
3. An award of attorney fees and costs;
4. Such other and further relief as the Court deems just and equitable.

DATED: September 26, 2023

Respectfully submitted,

MONFORTON LAW OFFICES, P.L.L.C.

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiffs

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury for all issues so triable.

DATED: September 26, 2023

Respectfully submitted,

MONFORTON LAW OFFICES, P.L.L.C.

/s/ Matthew G. Monforton

Matthew G. Monforton

Attorney for Plaintiffs

EXHIBIT A

Determination of Tax Revenue and Mill Levy Limitations

Section 15-10-420, MCA

Aggregate of all Funds/or _____ Fund

FYE June 30, 2024

Entity Name: _____

Reference Line		Enter amounts in yellow cells	Auto-Calculation (If completing manually enter amounts as instructed)
(1)	Enter Ad valorem tax revenue <u>ACTUALLY</u> assessed in the prior year (from Prior Year's form Line 17)	\$ 338,345,008	\$ 338,345,008
(2)	Add: Current year inflation adjustment @ 2.46%		\$ 8,323,287
(3)	Subtract: Ad valorem tax revenue <u>ACTUALLY</u> assessed in the prior year for Class 1 and 2 property, (net and gross proceeds) (from Prior Year's form Line 20)- (enter as negative)	\$ (4,930,633)	\$ (4,930,633)
(4) = (1) + (2) + (3)	Adjusted ad valorem tax revenue		\$ 341,737,662
<u>ENTERING TAXABLE VALUES</u>			
(5)	Enter 'Total Taxable Value' - from Department of Revenue <i>Certified Taxable Valuation Information</i> form, line # 2	\$ 4,701,869,793	\$ 4,701,869,793
(6)	Subtract: 'Total Incremental Value' of all tax increment financing districts (TIF Districts) - from Department of Revenue <i>Certified Taxable Valuation Information</i> form, line # 6 (enter as negative)	\$ 99,816,016	\$ (99,816,016)
(7) = (5) + (6)	Taxable value per mill (after adjustment for removal of TIF per mill incremental district value)		\$ 4,602,053.777
(8)	Subtract: 'Total Value of Newly Taxable Property' - from Department of Revenue <i>Certified Taxable Valuation Information</i> form, line # 3 (enter as negative)	\$ (176,716,662)	\$ (176,716,662)
(9)	Subtract: 'Taxable Value of Net and Gross Proceeds, (Class 1 & 2 properties)' - from Department of Revenue <i>Certified Taxable Valuation Information</i> form, line # 5 (enter as negative)	\$ (38,101,781)	\$ (38,101,781)
(10) = (7) + (8) + (9)	Adjusted Taxable value per mill		\$ 4,387,235.334
(11) = (4) / (10)	CURRENT YEAR calculated mill levy		77.89
(12) = (7) x (11)	CURRENT YEAR calculated ad valorem tax revenue		\$ 358,453,969
<u>CURRENT YEAR AUTHORIZED LEVY/ASSESSMENT</u>			
(13)	Enter total number of carry forward mills from prior year (from Prior Year's form Line 22)	26.49	26.49
(14) = (11) + (13)	Total current year authorized mill levy, including Prior Years' carry forward mills		104.38
(15) = (7) x (14)	Total current year authorized ad valorem tax revenue assessment		\$ 480,362,373
<u>CURRENT YEAR ACTUALLY LEVIED/ASSESSED</u>			
(16)	Enter number of mills actually levied in current year (Number should equal total <u>non-voted</u> mills, which includes the number of carry forward mills, actually imposed per the final approved current year budget document. <u>Do Not</u> include voted or permissive mills imposed in the current year.)	95.00	95.00
(17) = (7) x (16)	Total ad valorem tax revenue actually assessed in current year		\$ 437,195,109
<u>RECAPITULATION OF ACTUAL:</u>			
(18) = (10) x (16)	Ad valorem tax revenue actually assessed		\$ 416,787,357
(19)	Ad valorem tax revenue actually assessed for newly taxable property		\$ 16,788,083
(20)	Ad valorem tax revenue actually assessed for Class 1 & 2 properties (net-gross proceeds)		\$ 3,619,669
(21) = (18) + (19) + (20)	Total ad valorem tax revenue actually assessed in current year		\$ 437,195,109
(22) = (14) - (16)	Total carry forward mills that may be levied in a subsequent year (Number should be equal to or greater than zero. A (negative) number indicates an over levy.)		9.38


EXHIBIT B



GOVERNOR GREG GIANFORTE
DIRECTOR BRENDAN BEATTY

MEMORANDUM

To: County Commissioners
County Treasurers
County Clerk and Recorders
Montana Association of Counties
Montana League of Cities and Towns

From: Ryan Osmundson, Director, Governor's Office Budget & Program Planning
Brendan Beatty, Director, Montana Department of Revenue 

Date: September 11, 2023

Subject: Statewide School Mill Levies for Fiscal Year 2024

The Department of Revenue has finished calculating the number of mills for fiscal year 2024 that the board of county commissioners and other authorized government entities may levy upon all property in the state. The maximum statewide school equalization levy remains at 95 mills. The ad valorem tax on each dollar of taxable valuation for fiscal year 2024 is as follows:

State Equalization Aid Levy	40.00 Mills
County Elementary Equalization Levy	33.00 Mills
High School Equalization Levy	22.00 Mills
University System Levy	6.00 Mills
Vocational –Technical Education Levy	1.50 Mills (for five counties) ¹

These calculations are in accordance with [15-10-109](#), [15-10-420](#), [20-9-331](#), [20-9-333](#), [20-9-360](#), and [20-25-439](#), MCA.

cc. Scott Mendenhall, Deputy Director
Kory Hofland, Administrator, Property Assessment Division
Eric Dale, Administrator, Tax Policy, and Research
Property Assessment Division Area and Regional Managers

¹ In Cascade, Butte-Silver Bow, Missoula, Yellowstone and Lewis and Clark counties only.