

COMMISSIONERS APPROVAL

FOSS *SS*

CHILCOTT

IMAN

STOLTZ *RS*

BURROWS *JB*

Members Present.....Commissioner Suzy Foss, Greg Chilcott, Commissioner J.R. Iman, Commissioner Ron Stoltz and Commissioner Jeff Burrows

Date.....December 20, 2012

► Minutes: Glenda Wiles

► The Board met at 9:30 a.m. with Treasurer Marie Keeton for an update and to pass a resolution cancelling personal property taxes that are over five years old. Also present at this meeting was Treasurer/Tax Staff Linda Issacs. Marie stated this is only business personal property taxes that have not been paid for more than 5 years. Linda noted they have sent delinquent tax notices numerous times, researched addresses and find these to be un-collectable. After a review of the list, **Commissioner Stoltz made a motion to adopt Resolution No. 2980 for the cancellation of the personal property taxes that are delinquent over 5 years. Commissioner Burrows seconded the motion and all voted "aye". (4-0)** Commissioner Foss was not present for this meeting.

► In a discussion with Attorney Recht the Board reviewed the pending Contract with TSEP for the Black Lane Bridge construction. It was noted the County has committed to the project and the issue of financial funding was discussed with the Department of Commerce. The Department does not want to change any language in the contract. Attorney Recht stated the issue of having the Commissioners sign the contract is considered ministerial. He suggested they sign the contract today so it can be placed in the mail and then the issue of the contract can be placed on Monday's calendar. If after a full discussion on the financial issues leads the Commissioners in the direction of not wanting the contract to be executed with the Department then they can rescind if necessary on Monday. **Commissioner Iman made a motion to sign the TSEP Contract for the Black Lane Bridge construction. Commissioner Stoltz seconded the motion. After further discussion the motion was withdrawn and the issue for signature will be placed on the calendar for Monday Dec 24th.** Commissioner Foss was not present for this meeting.

► The Board met at 10:10 a.m. to make an award of the Professional Survey Services Agreement/Contract. Present at this meeting were members of the committee, GIS Director Ken Miller and Planning Administrator Terry Nelson. The Committee indicated they should retain all three applicants for construction surveying. (See attached recommendation). **Commissioner**

**Iman made a motion to accept three applicants as potential contractors for surveying. Commissioner Stoltz seconded.** Discussion: The committee's recommendation was to have the contract read that certain projects like LiDAR will not be included in the contract for County Surveyor. Glenda questioned the fact that a sample contract was included in the RFP and any changes in the language might mean an addendum to the contract. Attorney Recht was now present to review the RFP and recommendation that certain projects such as LiDAR mapping not require the use of the County Surveyor. (Commissioner Foss was now present). **Commissioner Iman withdrew his motion in order to allow Attorney Recht time to review this issue, and to reconvene at 2:00 p.m. today.**

► The Board met at 10:30 a.m. to open the proposals for Hydro geologic Services Statement of Qualification. Present was Environmental Health Director Lea Guthrie. Lea will work with committee members which will include GIS, Planning. Proposals were as follows:

- Trihydro Corporation of Helena, Montana, with a cost analysis of \$56,987
- RLK Hydro of Kalispell, Montana, with a cost analysis of \$54,365.91
- New Fields Solutions of Missoula, Montana, with a cost analysis of \$63,270.00

**Commissioner Chilcott made a motion to have the above named committee review the proposals and make recommendation to the Board for award. Commissioner Stoltz seconded the motion and all voted "aye". (5-0)**

► The Board met at 11:00 a.m. to interview Rob Myers for the Planning and Weed Board.

► The Board met at 1:30 p.m. with Florence School Superintendent John McGee and Journeys from Home Advocate Roger DiBrito in regard to a Safe Routes to School (SRTS) and CTEP Application for the construction of sidewalks and bike path along Long Avenue. John gave an update on the previous applications for Safe Routes to School as well as the CTEP project that Ravalli County managed for the school (bike and pedestrian walk on Old Highway 93 and paralleling the District Office). Long Avenue was not part of the previous CTEP project and is still in need of completion. There are two grant applications, one for non-infrastructure (education, bikes etc) and one for the infrastructure (bike and pedestrian pathway construction) on Long Avenue. The Infrastructure projected budget: CTEP dollars at \$87,519.97, with a \$250,000 match in SRTS Funds, and match of \$15,875.34 for a total project cost of \$363,395.31.

**Commissioner Chilcott made a motion to approve the SRTS and CTEP applications for the projects as discussed in the amount of \$87,519.97 of CTEP Dollars. Commissioner Iman seconded the motion.** Discussion: The use of CTEP monies should be contingent upon the SRTS application being approved at the state level, and the potential of not being able to do the whole project, but streaming the project to one side of the street. **Commissioner Chilcott amended his motion to have the CTEP monies being contingent upon the SRTS application award. Commissioner Iman seconded this amendment. All voted "aye". (5-0)**

► The Board reconvened at 2:00 p.m. to finish their discussion on the award of contract for Surveying. Present was Deputy County Attorney Howard Recht who reviewed the Montana Code for County Surveyor. He feels the County should have a surveyor for the responsibilities under 7-4-2811 MCA and beyond that, the Commissioners would have discretion to contract

outside services (costs and competency should factor into that decision). 18-8-203 MCA allows fairness for firms and individuals to provide their qualifications to the local government; 18-8-205 MCA allows for the local government to negotiate a contract with the most qualified firm. 8-8-212 MCA provides the exception for any fees estimated not to exceed \$20,000 be contracted for the professional services by direct negotiation. Therefore he suggests the Commissioners consider a tiered approach; 1 tier for those considered \$20,000 jobs or less (qualifications and sufficient experience for the project). County could put out another request for the small jobs list - direct negotiation. But not limited to that option.

The Board discussed having a of list of vetted surveyors who they can directly negotiate with under 8-18-212 MCA (use them for the exceptions) by putting out a RFQ. Use the contract for services under this RFP for the three surveyors for the County Surveyor. Also to have the Commissioners approve the surveyor for each specific project. The Board then discussed having Planning Administrator Terry Nelson be the county surveyor (since he is a surveyor). **It was agreed the Board needs to visit with MACo because of the numerous issues involved and thus concurred to postpone this award date until after the first of the year.**

## MONTH END SUMMARY

MONTH

Nov-12

Vouchers (Disbursements)	\$7,700,240.37
Wires/checks out	\$22,250,060.05
FIB wires/checks out	\$22,199,794.42
Ravalli wires/checks out	\$1,486.70
Farmers wires/checks out	\$48,778.93
Total	\$22,250,060.05
Difference	\$0.00

## Receipts for the Month of:

Taxes	\$20,644,232.14
Motor Vehicle	\$473,650.02
A101s	\$7,961,544.22
A102s	\$0.00
Licenses	\$0.00
Total	\$29,079,426.38

Investment Increases	\$14,500,501.82
Deposits	\$27,270,508.23
CCs	\$330,233.56
Total	\$42,101,243.61

FIB deposits	\$27,231,390.20
Ravalli Deposits	\$23,451.07
Farmers deposits	\$304,975.39
Rocky Deposits	\$41,283.34
Stevi Elementary Bond	\$91.75
Ravalli Investment IIA	\$2.09
Ravalli Investment Savings	\$0.00
Farmers Investment	\$2.44
Rocky Money Market	\$0.00
Rocky Savings	\$47.33
RBC	\$0.00
Sterling	\$0.00
STIP	\$14,500,000.00
Merrill Lynch	\$0.00

Total	\$42,101,243.61
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Difference	\$0.00
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update  
Collections  
up thru  
calendar  
year

# Ravalli County Attorney

205 Bedford Street, Suite C ♦ Hamilton, MT 59840 ♦ (406) 375-6750 ♦ Fax (406) 375-6731

County Attorney:  
Bill Fulbright

Deputy Attorneys:  
John Bell  
Daniel Browder  
T. Geoffrey Mahar  
Ryan Weldon  
Angela Wetzsteon

## MEMORANDUM

**TO:** Board of County Commissioners  
**CC:** Marie Keeton, Treasurer  
Deb Reesman, Montana Department of Revenue

**FROM:** Daniel Browder, Deputy

**DATE:** January 19, 2012

**RE:** Write off of personal property taxes five years delinquent

In a previous memo dated November 16, 2011, I mentioned a process by which the BCC may cancel personal property taxes that are at least five years delinquent. As is often the case, the law is not entirely clear.

### THE STATUTORY PROCESS

The relevant statutes follow (emphases added):

*Section 15-16-701. Personal property taxes five years delinquent -- real property taxes ten years delinquent -- list.*

*(1) (a) The county treasurer shall prepare in triplicate and submit to the board of county commissioners of the county, on or before the first Monday in June of each year, a list of personal property taxes that are not a lien on real estate and that have been delinquent for 5 years or more. The list must show the following:*

- (i) the name and address of the delinquent taxpayer;*
- (ii) the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and*
- (iii) the date the taxes became delinquent.*

*(b) The list prepared under subsection (1)(a) may not include personal property taxes that remain uncollected because of bankruptcy or other litigation.*

*(2) (a) At the time the list is prepared as provided in subsection (1)(a), the county treasurer may prepare in triplicate and submit to the board of county commissioners of the county a list of the real property taxes that have been delinquent for 10 years or more. To be included on the list, the tax lien for each property must have been sold at a tax lien sale under chapter 17, which includes the county as purchaser of the tax lien under 15-17-214, at least 3 years before preparation of the list. If prepared, the list must show the following:*

- (i) the name and address of the delinquent taxpayer;*
- (ii) the amount of the delinquent taxes, plus interest, penalties, and costs, if any;*



- (iii) the real property identification number;
- (iv) the legal description of the property;
- (v) the date the taxes became delinquent; and
- (vi) the date of the last tax lien sale on the property.

(b) The list prepared under subsection (2)(a) may not include real property taxes that remain uncollected because of bankruptcy or litigation.

(3) The board of county commissioners may enter an order that permanently and prospectively cancels real property taxes on parcels identified by the county treasurer or the board as being solely used for road purposes and that otherwise meet the requirements of this section.

(4) At the time the list is prepared as provided in subsection (1)(a), the county treasurer shall prepare in triplicate and submit to the board of county commissioners of the county a list of all contractual obligations owed to or held by the county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:

(a) the name and address of the person or persons who entered into the contractual obligation;

(b) the name of the contractual obligation, as "seed loan", "feed loan", or "promissory note", as applicable; and

(c) the date of obligation, the date when the last payment became due, the date of the last payment on the obligation, and the date when the collection of the obligation became barred by the statute of limitations provided in 27-2-202(1).

#### *15-16-702. Cancellation of taxes and obligations -- filing of lists.*

(1) Within 30 days of receiving any list prepared under 15-16-701, the board of county commissioners shall examine the list and make any necessary corrections. After examining the list, the board shall make its order canceling all personal property taxes and contractual obligations contained in the list or lists, as corrected, that are required by this part to be canceled and, subject to subsection (2), canceling real property taxes.

(2) The board may cancel any or all delinquent real property taxes contained in the list prepared under 15-16-701 as corrected under subsection (1) of this section. If the board cancels any real property taxes under this subsection, the cancellation must be included in the order provided for in subsection (1).

(3) The order made under subsection (1) must be included in the board's minutes. The order and minutes may include only a reference for the proper identification of any list included in the order. When the order is made, the original or a copy of the list or lists, as corrected, must be filed with the records of the board. One legible copy of any list included in the order must be filed with the county clerk and recorder as a public record, and one legible copy of any list included in the order must be filed with the county treasurer as a permanent record of the treasurer's office.

*15-16-703. Adjustment of accounts after cancellation.* Upon notification of the order for cancellation, the county clerk and recorder and county treasurer shall adjust their taxes-receivable accounts to conform to the order of cancellation.

*15-16-704. Certain unpaid taxes uncollectible -- stricken from records.* All unpaid taxes constituting a lien on real property in the state, levied and assessed against real property which have remained delinquent more than 10 years prior to July 1, 1976, whether the levy be by

*general or special assessment or by the state or any county, city, or political subdivision of the state, are hereby declared to be uncollectible and stricken from the respective tax records.*

**“PERSONAL PROPERTY TAXES THAT ARE NOT A LIEN ON REAL ESTATE”**

Section 701 provides two requirements for personal property taxes the BCC may cancel: Those taxes must be (1) “taxes that are not a lien on the real estate” and (2) “delinquent for 5 years or more.” “[Five] years or more” is clear, but “taxes that are not a lien on the real estate” is less clear.

Section 15-16-402(1), MCA, states

*(1) Except as provided in subsection (2), the tax on personal property is also a lien upon the real property of the owner of the personal property on and after January 1 of each year.*

*(2) The taxes on personal property based on a taxable value up to and including \$10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes on personal property based on a taxable value in excess of \$10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached to the real property, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes on the taxable value in excess of \$10,000 are not a lien upon the owner's real property.*

\* \* \*

(See the entire statute in endnote i.)

“Personal property taxes that are not a lien on the real estate” means either: (1) hypothetical Taxpayer A’s personal property tax when Taxpayer A holds insufficient real estate to secure the tax, or (2) the personal property taxes on Taxpayer A’s assessed personal property value over \$10,000 when a mortgage holder has performed the procedural requirements outlined above on Taxpayer A’s real property. *Id.*; 38 Op. Atty Gen. Mont. No. 6 at 18 (1979).

**BCC ACTION**

For the BCC to cancel personal property taxes under 15-16-701 to -704, the Treasurer must first determine which personal property taxes are at least five years delinquent, and then determine which of those taxes -- or which portion of any given tax -- is not a lien on real estate. Then, before the first Monday in June, the Treasurer must prepare a list of delinquent personal property taxes showing the information listed in § 15-16-701(1), MCA. Within 30 days of receiving the list, the board shall examine the list and determine whether the taxes shall be canceled. The wording of the statutes (“the board shall make its order canceling all personal property taxes”) indicates that the BCC must cancel all or none of the taxes.

## ENDNOTES

- i. 15-16-402. Tax on personal property lien on realty -- separate assessment -- filing of mortgage satisfaction.
- (1) The tax due on personal property is a prior lien upon the personal property. The lien has precedence over any other lien, claim, or demand upon the personal property. Except as provided in subsection (2), the tax on personal property is also a lien upon the real property of the owner of the personal property on and after January 1 of each year.
- (2) The taxes on personal property based on a taxable value up to and including \$10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes on personal property based on a taxable value in excess of \$10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached to the real property, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes on the taxable value in excess of \$10,000 are not a lien upon the owner's real property. The county treasurer shall, at the request of a mortgagee or lienholder, issue a statement of the personal property tax due on the taxable value up to and including \$10,000. Personal property taxes on a taxable value up to \$10,000 may be paid, redeemed from a tax lien sale as provided by law, or discharged separately from any personal property taxes in excess of that amount. Payment of the taxes on a taxable value up to \$10,000, as provided in this subsection, discharge the tax lien upon the personal property of the owner to the extent of the payment in the order that the person paying the tax directs.
- (3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file each year in the office of the county treasurer of the county and with the department a notice giving:
- (a) the name and address of the mortgagee and holder of the mortgage or lien;
  - (b) the name of the reputed owner of the land;
  - (c) the description of the land;
  - (d) the date of record and expiration of the mortgage or lien;
  - (e) the amount of the mortgage or lien; and
  - (f) a statement that the holder claims the benefit of the provisions of this section.
- (4) The notice is ineffectual as to any taxes that are a lien upon real property prior to the filing of the notice as provided in subsection (3).
- (5) A holder of a mortgage on real property upon which personal property taxes are a lien under this section, when the owner of the real property and personal property has failed to pay taxes due on the real property and personal property for 1 or more years, may file with the department a written request to have the personal property and real property of the owner separately assessed. The request must be made by certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department of the request, the department shall make a separate assessment of real and personal property of the owner of the property, and the personal property taxes may not be a lien upon the mortgaged real property. The personal property taxes must be collected in the manner provided by law for other personal property.
- (6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment of filing the certificate, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:
- (a) the county treasurer if the holder has filed a notice under subsection (3); and
  - (b) the department if the holder has filed a written request under subsection (5).
- (7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

~~18th~~ 20th Dec

**Glenda Wiles**

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**From:** Howard Recht  
**Sent:** Friday, October 05, 2012 2:44 PM  
**To:** Glenda Wiles  
**Cc:** Marie Keeton; Dan Browder  
**Subject:** FW: personal property cancellation  
**Attachments:** 5 yr personal cancellation 03152008.jpg

Res 2980

Glenda:

This ended up on my desk, but I believe the treasurer is generally Dan's responsibility. But as he is busy at the moment, I took a quick minute to review this. I'll copy Dan with this memo. If he has additional instructions, he can provide them.

A resolution canceling personal property taxes can be approved by the BCC. As far as I can see, the form of the resolution can be the same as used previously. (See § 15-16-702, M.C.A. for the process.) It appears that it is mandatory to cancel personal property taxes that are at least 5 years old and not a lien on real property; thus, issuing an order to that effect is a ministerial act.

You may want to calendar the expectation of receiving the list from the treasurer soon after the first Monday of June. The BCC then has 30 days to make necessary corrections. After that, the BCC can make its order canceling the taxes. Making this a continuing task may help everyone to remember to do this each year. ]

Let me know if you have any questions concerning this.

Howard

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**From:** Marie Keeton  
**Sent:** Thursday, October 04, 2012 3:06 PM  
**To:** Howard Recht  
**Subject:** FW: personal property cancellation

Hi Howard,

Following is the most recent email I sent over along with the attachment of the last previous resolution in 2008 to cancel personal property taxes 5 years old. I would just like to address this and get the BCC's approval by 12/31. This should really be done every year. I do not know if we can cover several years with one resolution or not.

Late November, or early December would be fine. October is pretty hectic for me.

Your assistance would be appreciated. Thank-you.

*Marie Keeton  
Treasurer  
Ravalli County  
406-375-6580*

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**From:** Marie Keeton  
**Sent:** Monday, September 24, 2012 12:37 PM

**To:** William Fulbright  
**Subject:** personal property cancellation

Hi Bill,

Could you please assist me in cancelling the 5 year delinquent personal property? I have spoken with the BCC a couple of times in regard to this, and I believe Dan Browder forwarded an email to you last month.

The BCC would like you to approve the wording of a resolution to accomplish this. We should be doing it every year, but the last one I found was in 2008. I have attached the copy.

I would like to do this before the end of the calendar year.

Thanks!

*Marie Keeton*  
*Treasurer*  
*Ravalli County*  
*406-375-6580*

*Lisa Bennett*

FEE: \$0.00

TREASURER'S TAX OFFICE  
215 S 4<sup>TH</sup> ST, SUITE H  
HAMILTON, MT 59840



(406) 375-6600 Phone  
(406) 375-6598 Fax

Date: March 15, 2008

To: Ravalli County Board of Commissioners

From: Ravalli County Treasurer

Regarding: **DELINQUENT 5 YEAR PERSONAL PROPERTY CANCELLATION**

Attached you will find a delinquent Personal Property Report.  
The Taxes for years 2000-2002 that are now a lien on the Real Estate.

I hereby submit these taxes for Cancellation per MAC 15-16-701.

Jo Anne Johnson  
Ravalli County Treasurer

Approved for Cancellation: *Absent*  
Carlotta Grandstaff

*Alan Thompson*  
Alan Thompson

*[Signature]*  
Kathleen Driscoll

*Absent*  
Greg Chilcotte

*James Rokosch*  
James Rokosch