

# SCHOOL EQUALIZATION: NON-LEVY REVENUE

REVENUE INTERIM COMMITTEE  
MEGAN MOORE - MAY 2024

## CERTAIN NON-LEVY REVENUE MUST BE USED FOR EQUALIZATION

Non-levy revenue is revenue from a source other than property tax levies that generally has a connection to property taxation. For the purposes of county school equalization levies, non-levy revenue includes federal payments, state revenue resulting from a shift away from property taxation of natural resources, and payments in lieu of property taxation.

The laws providing for levies for county elementary equalization (33 mills) and county high school equalization (22 mills), [20-9-331](#) and [20-9-333](#), respectively, also identify non-levy revenue that must be transferred to the state for use as Base Amount for School Equity (BASE) funding. This non-levy revenue is accounted for separately from the revenue generated from applying the equalization mill levies to property.

There are eight types of non-levy revenue associated with the county elementary equalization levy and identified in [20-9-331](#). Five of these are also listed in the county high school equalization levy statute in [20-9-333](#).

## LACK OF CLARITY AROUND NON-LEVY REVENUE FOR COUNTY EQUALIZATION

The list of sources of non-levy revenue that must be used for school equalization may benefit from review and updating. One source of non-levy revenue used for school equalization is not listed, one listed source is no longer used for school equalization, and two other sources are difficult to identify.

### Identified in both elementary and high school equalization statutes

- Coal gross proceeds tax, 15-23-703
- Federal forest receipts, 17-3-213
- Any federal or state PILT
- Oil and natural gas production taxes
- Money remaining from prior fiscal year from non-levy revenue sources

### Identified only in elementary equalization statute

- Taylor Grazing Act, 17-3-222
- Federal Flood Control Act, 17-3-232
- Fines and penalties under Title 20, 20-9-332

### Not identified in equalization statutes

- Bentonite production tax, 15-39-110

## BENTONITE TAX NON-LEVY REVENUE NOT LISTED IN EQUALIZATION STATUTES

Pursuant to [15-39-110\(10\)\(b\)](#), a portion of bentonite tax revenue is distributed to the general fund for appropriation for school equalization. However, bentonite tax revenue is not listed as a source of non-levy revenue in the equalization statutes.

## OIL AND NATURAL GAS PRODUCTION TAXES NOT TREATED AS NON-LEVY REVENUE

Oil and natural gas production taxes are listed as sources of non-levy revenue used for county equalization, but county treasurer records show no revenue in these accounts since FY 2003. The taxation of oil and natural gas changed significantly over the last 50 years, with multiple taxes consolidated into a single production tax in 1995.<sup>1</sup>

Before the consolidation, certain net proceeds tax revenue and local severance tax revenue was designated for county equalization. Upon enactment of the oil and natural gas production tax, the Legislature amended the county equalization statutes to remove references to oil and natural gas taxes that no longer existed and to identify “oil and natural gas production taxes” as a source of non-levy revenue to be used for BASE funding.

Changes to the distribution of oil and natural gas production tax revenue are not reflected in county equalization statutes.

Between 1995 and 2002, statutes distributing the new oil and natural gas production taxes continued to require county treasurers to remit revenue from certain wells to the state for BASE funding. However, 2003 legislation revised the distribution of oil and natural gas production tax revenue. Though the new distribution provisions no longer referenced county equalization levies, the legislation did not amend [20-9-331](#) and [20-9-333](#) to remove oil and natural gas production taxes from the list of sources of non-levy revenue.

## UNCLEAR WHAT COUNTY PAYMENT IN LIEU OF PROPERTY TAXATION INCLUDES

Both county equalization statutes list as non-levy revenue “*any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213*” (emphasis added).

The term “payment in lieu of property taxation” (PILT) only appears in state law in the county equalization statutes and there does not appear to be additional detail in statute about the source of this federal or state PILT. However, information on the Montana Association of Counties website indicates PILT payments are made on federal entitlement land such as National Forest, Bureau of Land Management land, and Bureau of Reclamation land, among others.<sup>2</sup>

Treasurer’s reports from Cascade and Richland counties show small amounts of federal PILT.

<sup>1</sup> Ch. 451, L. 1995.

<sup>2</sup> “PILT Payments & History,” Montana Association of Counties, available from <https://www.mtcounties.org/resources-data/pilt/>, accessed April 22, 2024.

## SCHOOL EQUALIZATION: NON-LEVY REVENUE FINES NOT TRACKED WITH OTHER COUNTYWIDE SCHOOL REVENUE

As provided in [20-9-332](#), fines and penalties collected under Title 20, except those collected by a justice's court, are considered non-levy revenue that must be used for BASE funding for purposes of county elementary equalization levy. Examples of penalties subject to fines under [Title 20](#) include: failure to deliver materials to a successor ([20-1-203](#)), disturbance of a school or a school meeting ([20-1-206](#)), and selling textbooks without a dealer's license ([20-7-606](#)).

The district court clerk reports the fines to the county treasurer, who sends the funds to the state at the end of each month. County treasurers do not include the fines in the report that accounts for other countywide school funds.<sup>3</sup>

### NON-LEVY REVENUE CONTRIBUTES \$12 MILLION TO SCHOOL EQUALIZATION

The following table summarizes sources of non-levy revenue required to be used for BASE funding. The figures come from annual FP6b reports filed by county treasurers with the Office of Public Instruction.

In fiscal year 2023, non-levy revenue totaled at least \$12.2 million. Coal gross proceeds revenue and federal forest reserve funds account for most of the total: 75% and 23%, respectively.

Amounts for two sources of non-levy revenue are not available:

- Money remaining from the prior fiscal year from non-levy revenue sources is included in the cash balance, which also includes remaining revenue from property tax levies.
- Non-levy revenue from fines and penalties is not included in the FP6b reports.

### SCHOOL EQUALIZATION NON-LEVY REVENUE BY TYPE, FY 2023

Non-L Levy Revenue Source	Elementary	High School	Total
Coal Gross Proceeds	\$5,675,423	\$3,481,383	\$9,156,806
Federal Forest Reserve	\$1,705,770	\$1,139,202	\$2,844,972
Taylor Grazing Act	\$101,321	-	\$101,321
Bentonite Production Tax	\$35,769	\$23,846	\$59,615
Federal PILT	\$5,828	\$3,885	\$9,713
Federal Flood Control Act	\$3,484	-	\$3,484
Oil and Natural Gas Production Tax	\$0	\$0	\$0
Money from prior fiscal year	Not available		
Fines and Penalties	Not available	-	Not available
<b>Total</b>	<b>\$7,527,596</b>	<b>\$4,648,316</b>	<b>\$12,175,911</b>

<sup>3</sup> Email from Terri Kunz, Jefferson County Treasurer, April 17, 2024.

## NON-LEVY REVENUE STILL DEPOSITED IN GENERAL FUND

[House Bill 587](#) (2023) revised the deposit of property tax revenue from the county equalization and state equalization mills from the general fund to a new state special revenue account known as the [School Equalization and Property Tax Reduction Account](#) (SEPTR).

The legislation did not revise the deposit of non-levy revenue listed in county equalization statutes. That revenue is still deposited in the general fund.

## LEGISLATIVE OPTIONS RELATED TO NON-LEVY REVENUE

The following options for possible legislative changes are sorted by category. All options stand alone, except Option F, which is dependent on other chosen options.

Options	Implications/Decisions
<b>Combination of Levies</b>	
<b>Option A:</b> Retain separate sections of law for county elementary equalization, county high school equalization, and state equalization	No change to current law
<b>Option B:</b> Combine equalization levies into a single section of law	Requires maintaining distinct subsections for 33 mills and 22 mills due to federal funding implications
<b>Deposit of Non-L Levy Revenue</b>	
<b>Option C:</b> Continue to deposit non-levy revenue in general fund	Levy revenue and non-levy revenue is deposited into different accounts
<b>Option D:</b> Deposit non-levy revenue in <a href="#">School Equalization and Property Tax Reduction Account</a> (SEPTR)	Determine how/whether to include non-levy revenue in the forecasting of next fiscal year's revenue [see <a href="#">20-9-336(3)</a> ]
<b>Update of Non-L Levy Revenue Sources</b>	
<b>Option E:</b> Retain list of sources of non-levy revenue in <a href="#">20-9-331</a> and <a href="#">20-9-333</a>	Statute will not reflect actual sources of non-levy revenue
<b>Option F:</b> Update list of non-levy revenue sources	Depends on other options chosen: <ul style="list-style-type: none"> <li>Option A: include updated list in <a href="#">20-9-331</a> and <a href="#">20-9-333</a></li> <li>Option B: include updated list in combined section</li> </ul>