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# Bresnan faces possible $19 million in back taxes

*by Evelyn Pyburn*

BILLINGS – A Montana Supreme Court decision on a tax protest case could boost revenues to Yellowstone County taxing jurisdictions by an unexpected $9 million, in addition to $10.2 million that's been held in escrow pending the court decision.

It might also bankrupt the company, said County Treasurer Max Lenington, in discussing the matter with Yellowstone County commissioners on Monday.

The resolution involving Bresnan (now Charter) tax protests for 2010 through 2013 is unlike anything he's ever seen, said Lenington.

In a 5-2 decision, the Supreme Court overturned a lower court decision that sided with Bresnan. The company had protested a change in how the state assessed them, placing them in the same category as public utilities rather than as a Class A property. The change boosted the amount of taxes paid by Bresnan by 329 percent, from $1.7 million to $7.2 million in 2009.

But the upper court not only overturned the decision regarding protested years, but applied the decision retroactively – another rarity, according to Lenington.

The Supreme Court directed the state to apply the change in assessment retroactively to 2007, 2008 and 2009 – increasing the taxes paid for those years by $9 million. Lenington said that he had been directed by the state to refund the company's Class A property taxes for those years and to rebill them as a Class 13 property.

Lenington told county commissioners he was reluctant to refund any taxes until he is certain about the court decision. Raising doubts for Lenington was a letter he received from company attorneys, which indicated that the matter is not yet settled.

Deputy County Attorney Dan Schwarz said that the only recourse left open to the company, as far as he knows, would be to file a motion "to review the mandate." The action alleges that the court didn't take into account all information. Schwarz said it is "extremely rare" that the court would grant the motion.

If that is indeed the motion that the company plans on filing, Schwarz said, it won't take the court long to consider it – a couple of weeks, perhaps. However, the matter may be complicated by the fact that the court in which the case originated was presided over by District Court Judge Judy Watters. Watters has since left that position, and it will not be filled for a matter of months.

Another uncertainty in the case has to do with the fact that Bresnan has twice been sold since they first protested the taxes.

Lenington said that the lion's share of the taxes will go to School District 2.

The disbursement of what could be a total of over $19 million is just part of the tax revenues that the county is waiting to disburse. Lenington is still waiting for numbers from the DOR, directing him how to disburse another $16 million from an earlier settlement with CHS (Cenex).

The county is also awaiting decisions on another $35 million in protested taxes involving Phillips 66, ATT, Verizon and WWC Holdings (Alltel).

County commissioners indicated that they plan to direct the county's share of the disbursed revenues into their capital improvement fund.

"We have a lot of brick and mortar in need of repairs," said County Commissioner Jim Reno.