



Montana Legislative Services Division
Legal Services Office

December 16, 2008

TO: Senator Jeff Essmann

FROM: Lee Heiman, Staff Attorney

QUESTION: Whether the exempt values for residential and commercial property under 15-6-222, MCA, can be different for different geographical areas of the state.

CONCLUSION: The exemption rates must be applied uniformly statewide. The application of different percentage taxable market value exemptions in different areas subjects taxpayers with identical increases in reappraisal value to different tax assessments in violation of the Equal Protection requirements of Article II, section 4, of the Montana Constitution.

You have asked whether the "homestead" and "comstead" market value exemptions established in 15-6-222, MCA, can be different for different areas of the state. The exemptions are percentages, different for each year of a reappraisal cycle, that exempt a portion of the market value of property and that also retains the ratio of the value of residential and commercial property within class four under 15-6-134, MCA. Residential and commercial percentages change annually to complement the phase-in of reappraisal values over a 6-year period. Residential property is valued primarily on a sales comparison model and commercial property is valued primarily under an income model but also on a cost model. The percentages are uniformly applied to all class four residential or commercial properties. Under your question different areas of the state would be subject to different percentages, presumably based upon whether the area was subject to different growth rates in market value under the current revaluation of property.

Montana Department of Revenue v. Barron, 245 Mont. 100, 799 P.2d 533 (1990), was a case dealing with problems from cyclical revaluation. The Legislature provided that property value were to be adjusted each year of the cycle based upon geographic areas. The value of each residence in each of the 48 areas of the state was to be adjusted by a percentage based upon a statistical analysis of sales in the area during the prior year. If the ratio of sales prices to taxable market values was more than 5% above or below the average, the value of all the property in the area was to be adjusted by the percentage difference. In Area 2.1, a part of Great Falls, the difference was 30%. The 30% was applied to all residential properties in the area. The Court looked at those that had recently sold in the area. The underappraised properties increased in value, but even so, many were still valued at only 65% of actual sales price, where overappraised properties ended up 255% over their actual sales price. The Supreme Court said that "the use of the 1990 tax values derived from the ratio studies and the application of the 30% factor to residential properties in Area 2.1 require certain taxpayers therein to bear a disproportionate share of Montana's tax burden in violation of the Equal Protection requirements of the Fourteenth Amendment of the United States Constitution, and Art. II, §4, 1972 Montana

Constitution" at page 111. The Supreme Court went further and said that "[s]uch a method may achieve equalization between areas, but not between individual properties in the areas, where inequities already exist."

The use of different exemption rates under 15-6-222, MCA, for different areas would run into the same problem. Within an area all properties will not have increased at the same percentage rate. Using a locally applicable percentage rate that is applied to all property will lower taxable market value for all residential properties in the area by the same percentage. A different percentage in another area will affect the taxable market value in that area differently, but a residence in both areas that increased by the same percentage, but different than the average of the area, will end up with different taxable market values and thus different assessments. The arbitrary factor of location of a property will result in different amounts of an exemption based not on the characteristics of the property but on the general growth or stagnation of the area.

Article VIII, section 3, of the Montana Constitution reads: "The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law." Usually this section comes up in the course of appraisal or equalization of property, but the same legal arguments for uniformity in appraisal and equalization apply to the assessment of taxes. Since the percentage of taxable market value exemption in 15-6-222, MCA, involves the assessment of property, it too must be done on a uniform basis, which under Department of Revenue v. Puget Sound Power and Light Co. 179 Mont. 255, 270, 587 P.2d 1282, 1291 (1978), is the same as the Equal Protection requirements under Article II, section 4, of the Montana Constitution.

The Supreme Court has interpreted the Equal Protection provision of Article II, section 4, of the Montana Constitution to replace the "uniformity" requirement of the 1889 Constitution relating to taxation. This has engrafted the prohibition on disproportionate taxation into the equal protection discussion of taxation. The discussion of rational basis and other analysis is sometimes ignored and the Court goes straight to the disproportionate taxation discussion. See Department of Revenue v. Puget Sound Power and Light Co. 179 Mont. 255, 587 P.2d 1282 (1978), and Kottel v. State, 2002 MT 278, 312 Mont. 387, 60 P.3d 403 (2002), at ¶ 62.

In Roosevelt v. Montana Department of Revenue, 1999 MT 30, 293 Mont. 240, 975 P.2d 295 (1999), the Supreme Court affirmed its determination that laws that cause taxpayers to pay a disproportionate share of Montana taxes because the class of taxpayer is treated differently is a violation of the Equal Protection of the laws guaranteed by Article II, section 4, of the Montana Constitution. The case involved a 2% annual phase-in of value change under reapportionment. Roosevelt's property has declined in value, but the decline was to be phased in just as other taxpayers increases were to be phased in. Other taxpayers were assessed on property worth less than market value but Roosevelt was being assessed on property greater than its market value, causing the disproportionate tax burden.

"[T]he equal protection clause does not forbid classifications. [cites omitted] Rather, it prevents arbitrary or discriminatory government classifications that treat people differently 'who are in all

relevant respects alike." Kottel v. State, 2002 MT 278, 312 Mont. 387, 60 P.3d 403 (2002), at ¶ 53.

The use of a different percentage for different areas of the state to compute the residential and commercial taxable market value exemptions would treat people differently who are in all relevant respects exactly alike--the only difference is location, which is an integral part of the underlying valuation process. The market value of all residential property inherently includes the location of property as it affects its market value. The use of different percentages of exemption for market value based upon the varying geographical increases in market value would decrease values in areas with high growth and increase relative valuation in areas with lesser growth. The change would give a tax advantage to taxpayers in an advantaged location and a disadvantage to taxpayers in disadvantaged locations.

CI0425 8350lhqa.