



## Revenue and Transportation Interim Committee

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### 63rd Montana Legislature

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JARET COLES, Staff Attorney  
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TO: Members of the Revenue and Transportation Interim Committee

FROM: Megan Moore, committee staff

RE: Information Requests Related to SJR23 Taxpayer Appeal Study (revised)

DATE: November 22, 2013

This memorandum addresses information requested at the October 1, 2013, meeting of the Revenue and Transportation Interim Committee for the Senate Joint Resolution No. 23 study of the taxpayer appeal process. The topics covered include the State Tax Appeal Board budget, other states with a statewide property tax, the availability of data about the taxpayer appeal process in other states, and an overview of the taxpayer appeal processes of other states.

#### **State Tax Appeal Board Budget & Pay Band**

This section answers questions about the portion of the State Tax Appeal Board budget that covers county tax appeal board expenses and the pay band for the members of the State Tax Appeal Board.

The Department of Administration provided the following summary of expenditures and budget spent for the county tax appeal boards:

"As you know, reappraisal increases the workload of the county tax appeal boards. Thus, the budget is most affected during the beginning of a reappraisal cycle. The state tax appeal board requested additional one-time only fund for the first four years of the most recent reappraisal cycle. Our base budget was just below \$500,000 for FY 2010 -- and the one-time only funds granted by the legislature were \$36,400, \$21,00, \$24,000 and \$18,000 for FY 2010, 2011, 2012 and 2013. For total direct payments to counties, in FY2010, we paid out just over \$52,000, and then just over \$40,000 and just over \$44,000 for FY 2011 and 2012. This percentage works out to about 10.5% of our expenditures in the biggest reappraisal year, dropping to 8.55-9% of expenditures. In 2013, I believe the percentage is closer to 6% direct expenditures. During the recent reappraisal, we did allocate all of our state travel costs to cover the expenditures of the county tax appeal boards; primarily because the expenditures in certain counties exceeded our typical expenditure allocations and we could not absorb those expenditures without reallocation of funds.

Those numbers do not include indirect costs borne by the state tax appeal board, which includes staff time to design and present biennial trainings, monthly management and processing of all of the

reimbursements of county board and secretarial expenses and per diem, and on-going support and training of the local boards."<sup>1</sup>

The three members of the State Tax Appeal Board are Administrative Law Judges included in Pay Band 8 of the Broadband Pay Plan. For the period July 1, 2013, through June 30, 2015, the annual minimum base salary for a Pay Band 8 employee is \$61,048 and the annual maximum base salary is \$172,681.<sup>2</sup>

### **Statewide Property Taxes Overview**

Thirteen states in addition to Montana levy a statewide property tax: Alabama, Indiana, Kansas, Kentucky, Maryland, Michigan, Nevada, New Hampshire, Utah, Vermont, Washington, Wisconsin, and Wyoming.<sup>3</sup> Two other states levy a statewide property tax on only certain property: Alaska on oil and gas property and Minnesota on commercial, industrial, and seasonal residential recreational property.

The mills or rates levied in these states are not particularly instructive for determining how the statewide property tax compares with other revenue sources and with other states without a thorough examination of how the state arrives at taxable value. As a proxy, a National Conference of State Legislatures' publication, "Which States Rely on Which Tax"<sup>4</sup> provides an analysis of states with higher than average reliance on a statewide property tax. The average reliance for all states on property tax as a percentage of state revenue is 2.2%. The report highlights the six states listed below with the percentage of state revenue from property tax:

- Michigan, 9.6%;
- Montana, 8.9%
- New Hampshire, 18.1%;
- Vermont, 34.5%;
- Washington, 9.7%; and
- Wyoming, 11.18%.

In Montana, the statewide mill levies are apportioned as follows: 40 mills for state education equalization, 33 mills for elementary equalization, 22 mills for high school equalization, and 6 mills for the Montana University System. Some other states similarly earmark their statewide property tax.

- Kansas designates 1 mill levy for state educational institutions and 0.5 mill levy for state institutions caring for children, the mentally ill, and the visually handicapped.
- Michigan designates 6 mills for state education.
- New Hampshire has a statewide property tax sufficient to generate \$363 million for statewide enhanced education.
- Nevada's statewide property tax goes to debt service.

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<sup>1</sup>Email from Karen Powell, Presiding Officer of Montana Tax Appeal Board, Nov. 22, 2013.

<sup>2</sup>State Human Resources Division, "Broadband Pay Schedule," available from <http://hr.mt.gov/newclassificationandcompensation/broadbandpay.mcp>, accessed Nov. 14, 2013.

<sup>3</sup>National Conference of State Legislatures, "Property Tax Compendium," available from <http://www.ncsl.org/print/educ/PROPERTYTAXCOMPENDIUMII.pdf>, accessed Nov. 14, 2013.

<sup>4</sup>National Conference of State Legislatures, "Which States Rely on Which Tax," available from <http://www.ncsl.org/documents/fiscal/WhichStatesRelyonWhichTax.pdf>, accessed Nov. 14, 2013.

### **Taxpayer Appeal Process Data Availability**

The National Conference of State Tax Judges is "an independent educational and professional organization of state tax judges and members of tax appeal tribunals." The National Conference holds annual meetings that Montana's State Tax Appeal Board members regularly attend. The organization provides some information about case law developments but does not have any national data on frequency of appeals or the speed with which appeals are resolved. Other web-based research did not yield any data of this type either.

### **Trends in State Taxpayer Appeal Processes**

The information in this section was compiled using "Summary of Tax Tribunals" provided to RTIC by the State Tax Appeal Board, an American Institute of CPAs document<sup>5</sup>, and research by committee staff.

1. There are 34 states and the District of Columbia with a tax tribunal or tax court:
  - a. 28 states and the District of Columbia have executive branch tribunals with administrative law judges: Alaska, Delaware, District of Columbia, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, **Michigan**, Minnesota, Mississippi, Missouri, **Montana**, Nebraska, **New Hampshire**, New York, North Carolina, Ohio, South Carolina, South Dakota, **Washington**, West Virginia, Wisconsin, and **Wyoming**.<sup>6</sup>
    - i. 5 states have a tribunal for only certain tax types: Maine (large value property, farms, mines, and non-property taxes), Nebraska (property), New York (non-property), West Virginia (non-property), Wisconsin (non-property).
    - ii. 3 states have different administrative review bodies for property and non-property tax appeals: Louisiana, Missouri, North Carolina.
  - b. 6 states have Judicial Branch tax courts: Arizona, Connecticut, Hawaii, Indiana, New Jersey, and Oregon.
2. 16 states have no state-level tribunal or tax court: Alabama, Arkansas, California, Colorado, Florida, Nevada, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, **Vermont**, Virginia.
  - a. 5 states without a tribunal or tax court considered 2013 legislation to establish an Executive Branch tax tribunal: Alabama, Colorado, Oklahoma, Tennessee, and Texas.
3. Just two states do not have a local review process for property tax appeals: Arizona and Delaware. Arizona property appeals go to the State Board of Equalization. Delaware appeals are made to the Director of the Division of Revenue and may be appealed further to the Tax Appeal Board.
  - a. 3 states have more than one step at the local level: Minnesota, South Dakota, Vermont
    - i. Minnesota: hearing first with a local board of appeal and equalization, further appeal to the county board of appeal and equalization;
    - ii. South Dakota: local board devoted to assessment appeals is the first step, appeal further to the county commission;

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<sup>5</sup>American Institute of CPAs State and Local Tax Technical Resource Panel, "Chart of States with and without State Tax Tribunals," available from [http://www.aicpa.org/Publications/TaxAdviser/2013/September/Pages/Reichenberg-SALT\\_sep2013.aspx](http://www.aicpa.org/Publications/TaxAdviser/2013/September/Pages/Reichenberg-SALT_sep2013.aspx), accessed Nov. 14, 2013.

<sup>6</sup>The underlined states are states with statewide property taxes, and the underlined and bold states are those with above average reliance on a statewide property tax as discussed earlier in this memorandum.

- iii. Vermont: grievance before town board of listers, further appeal before board of civil authority, which can appoint a 3-person inspection committee if necessary.
- 4. 6 states allow a taxpayer to bypass a step in the process:
  - a. New Hampshire: a taxpayer can file a property appeal directly with superior court and skip the Board of Tax & Land Appeals.
  - b. New Mexico: a taxpayer can file a protest with the local valuation protest board or file for a refund of taxes paid in District Court for Santa Fe County.
  - c. Ohio: a taxpayer can appeal a county board of revision decision to the Board of Tax Appeals or common pleas court.
  - d. South Dakota: a taxpayer can appeal a local board of equalization decision to the Office of Hearings Examiners or to circuit court.
  - e. Virginia: a taxpayer chooses whether to appeal to the county board of equalization or directly to circuit court.
  - f. Washington: upon the agreement of the taxpayer, the assessor, and the county board of equalization, a complex issue may be appealed directly to the Washington State Board of Tax Appeals.
- 5. 6 states split appeals into different tracks or divisions at the state level:
  - a. Massachusetts: informal/formal, informal appeal is not required to be issued in writing and the right to appeal further is waived.
  - b. Michigan: small claims and entire tribunal divisions.
  - c. Minnesota: small claims division, which does not allow decisions to be appealed.
  - d. Oregon Tax Court: cases first heard in the informal Magistrate Division by a judicial officer, appeal further to Regular Division for a de novo hearing before the tax court judge.
  - e. Utah: initial hearings are less formal and can be appealed as formal hearings; the initial hearing may be waived.
  - f. West Virginia: small claims and regular cases. Small claims cases are usually decided based on the written record without a hearing and do not allow further administrative or judicial review.

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