SJ 23 STUDY OF TAXATION OF CENTRALLY ASSESSED AND UTILITY PROPERTY FINAL REPORT

September 2018

Revenue and Transportation Interim Committee

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FINAL REPORT TO THE 66TH MONTANA LEGISLATURE

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This report is a summary of the work of the Revenue and Transportation Interim Committee specific to the Revenue and Transportation Interim Committee's 2017-2018 study of the taxation of centrally assessed and utility property as outlined in the Revenue and Transportation Interim Committee's 2017-2018 work plan and Senate Joint Resolution 23 (2017). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Revenue and Transportation Interim Committee in reaching its conclusions. To review additional information, including audio minutes and exhibits, visit the Revenue and Transportation Interim Committee website: www.leg.mt.gov/rtic.

A full report, including links to the documents referenced in this printed report, is available at the Revenue and Transportation Interim Committee website: www.leg.mt.gov/rtic.

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BACKGROUND

The Legislature ranked the Senate Joint Resolution 23 study of the taxation of centrally assessed and utility property as number 11 of 20 ranked studies. As the lowest ranking of the three assigned studies, the committee allocated the least time to this study.

The committee began its study of the taxation of centrally assessed and industrial property with presentations from the Department of Revenue on the appraisal process and timeline for centrally assessed and industrial property.

After this background information, the committee heard from a panel of centrally assessed and industrial taxpayers, including representatives of Northwestern Energy, Charter Communications, and CHS, Inc., and Department of Revenue Director Mike Kadas. The purpose of the panel discussion was to aid the committee in identifying additional issues to include as part of the study. The taxpayers' representatives offered the following comments:

- Montana's assessment ratios of 12% for class nine pipelines and nonelectric generating property of electric utilities and 6% for telecommunications property and electric generating property of electric utilities (referred to in statute as the tax rate) are higher than in other states.
- Effective tax rates in Montana are higher than in other western states.
- Valuation methods used in the state result in higher valuations than would alternative valuation methods.

The committee also received public comment following the panel discussion. Qwest Corporation provided information on its property taxes in Montana and other western states. The Montana Taxpayers Association provided tables showing property tax rates by class and historic property tax rates.

The committee did not request revisions to the study plan based on the panel discussion or public comment.

FINDINGS AND RECOMMENDATIONS

The committee did not make any findings or recommendations or request draft legislation for the study of centrally assessed and utility property.

CLASSIFICATION, ASSESSMENT, AND TAXATION

The following background information was prepared as part of the 2011-2012 Senate Joint Resolution 17 study of the valuation of centrally assessed and industrial property by Jeff Martin and updated for the 2017-2018 study of centrally assessed and utility property.

Trends in Property Classification

In 1987, Montana had 20 classes of property subject to taxation, including 5 classes of personal property. The tax rate on most tangible personal property was between 11% and 16% of market value. Class six property, which included livestock, agricultural products, and personal property intended for rent or lease, was taxed at 4% of market value (see below for more discussion). Class four land and improvements were taxed at 3.86% of market value. Most centrally assessed property (except for railroad and airline property, rural electric cooperatives, rural telephone cooperatives, and mines) was taxed at 12% of market value.

During the 1989 special session, the Montana Legislature consolidated most personal property into class eight property and reduced the tax rate from 11% of market value to 9% (House Bill 20, Chapter 10, Special Laws of June 1989).

In 1991, the Legislature reduced the number of property classes from 17 to 12. The legislation combined the following classes of property:

- nonproductive mining claims with class three agricultural land;
- trailers and mobile homes, nonproductive real estate, and out-of-production agricultural land and timberland with class four property; and
- airline property with railroad property (Chapter 773, Laws of 1991).

In 1993, the Legislature eliminated class eleven property that included improvements on agricultural land (Chapter 267, Laws of 1993). This property was taxed at 80% of the taxable percentage of class four property residential and commercial land and improvements.

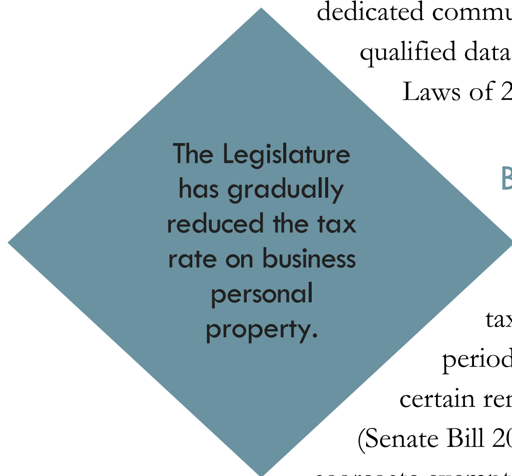
In 1995, the Legislature provided that personal property tax applied to any class of personal property, excluding livestock, owned by a sole proprietor, firm, association, partnership, business, corporation, or limited liability company is a business equipment tax.[1] The legislation also provided for a statement to be used in reporting business equipment (Senate Bill 393, Chapter 348, Laws of 1995).

The number of classes remained constant until 1999. During the 1999 session, the Legislature passed several measures that affected the classification and taxation of property, including business equipment, electric generation facilities, telecommunications property, and intangible personal property. The Legislature also revised the valuation of centrally assessed railroad property.

In 2015, the Legislature exempted air and water pollution control equipment and carbon capture equipment, which are class five property, from taxation for 10 years. The property must be placed into service after January 1, 2014 (Chapter 407, Laws of 2015). The original legislation contained a termination date of December 31, 2025, but the 2017 Legislature removed the termination date (Chapter 444, Laws of 2017).

[1] Codified in 15-6-122, MCA.

The 2017 Legislature created class seventeen property for qualified data centers. Qualified data center property is locally assessed, but class seventeen also includes certain centrally assessed interstate and intrastate dedicated communications infrastructure that is owned or leased by the owner of a qualified data center. Class seventeen property is taxed at 0.9% (Chapter 428, Laws of 2017).



Business Equipment

Since 1989, the Legislature has gradually reduced the tax rate on business personal property. In 1999, the Legislature reduced the tax rate on business equipment to 3% and phased out over a 4-year period the taxation of class six property, which included livestock, certain rental personal property, canola facilities, and malting barley facilities (Senate Bill 200, Chapter 285, Laws of 1999). The legislation also provided an aggregate exemption of $5,000 of class eight property and provided for the phaseout of the taxation of class eight property based on changes in real Montana wage and salary income. In 2005, Senate Bill 48 (Chapter 531, Laws of 2005) increased the aggregate exemption to $20,000 and eliminated the phaseout of the taxation of class eight property.

In 2011, the Legislature reduced the business equipment tax rate on the first $2 million of taxable market value to 2% (Senate Bill 372, Chapter 411, Laws of 2011). If, in any year beginning after fiscal year 2013, the revenue collected from individual income taxes and corporation license taxes exceeds the amount collected in the previous fiscal year by more than 4%, the tax rate on the first $3 million of taxable market value is 1.5% in the next tax year beginning after December 31.

The 2013 Legislature again reduced the business equipment tax rate, created an exemption, and removed the revenue triggers enacted in 2011. The first $100,000 in market value became exempt from taxation for all class eight taxpayers. The tax rate for market value greater than $100,000 and less than $6 million is 1.5%, and the tax rate for market value in excess of $6 million is 3% (Senate Bill 96, Chapter, 396, Laws 2013).

Electric Generation and Telecommunications Property

In 1997, the Legislature restructured the electric utility industry with the enactment of Senate Bill 390 (Chapter 505, Laws of 1997). The legislation also directed the Revenue Oversight Committee to "analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market" and to "recommend legislative changes, if any, to address the establishment of comparable state and local taxation burdens on all market participants in the supply of electricity."

The Legislature also enacted Senate Bill 396 (Chapter 506, Laws of 1997), the Natural Gas Utility Restructuring and Customer Choice Act. Similarly, the legislation directed the Revenue Oversight Committee to "analyze the amount of state and local tax revenue derived from previously regulated natural gas suppliers that will enter the competitive market" and to "recommend legislative changes to address the establishment of comparable state and local taxation burdens on all market participants in the supply of natural gas."

In the course of adopting the study plans for the tax analyses of the electrical utilities and natural gas suppliers, the Revenue Oversight Committee decided to expand the scope of the study to include telecommunications property. The study focused on property tax rates in the context of restructuring and competition and included the impact of any changes to the taxation of centrally assessed class twelve property (railroads and airlines). Although a review of valuation methods was part of the study plan, not much time was devoted to this area.

Based on the study of the Revenue Oversight Committee, the 1999 Montana Legislature reclassified electrical generation facilities (House Bill 174, Chapter 556, Laws of 1999) and telecommunications property (House Bill 128, Chapter 426, Laws of 1999) to help make these industries more competitive with other states.[2] The Legislature also imposed a wholesale energy transaction tax on kilowatt-hours of electricity transmitted in the state and a retail telecommunications excise tax to help offset the revenue loss from the lower property tax rates on these properties.

The new class thirteen property included centrally assessed telecommunications services companies, electrical generation facilities of centrally assessed electric power companies, electrical generation facilities of exempt wholesale generators or entities certified as exempt wholesale generators pursuant to the Public Utility Holding Act of 1935, and non-centrally assessed generators.

Class thirteen property does not include qualifying generation facilities (or cogeneration facilities), as defined in 16 U.S.C. 796, that are taxed under property class four (land and improvements) and class eight (business equipment), rural electric cooperative property, or rural telephone cooperative property.

In 2001, Senate Bill 506 (Chapter 591, Laws of 2001) exempted small electrical generation equipment from a generation facility with a nameplate capacity of less than 1 megawatt from taxation for a period of 5 years after the generation of electricity begins (15-6-225, MCA).

In 2017, the Legislature created class seventeen property for qualified data centers (see section below). The new law also provides a lower tax rate (0.9%) for certain dedicated communications infrastructure based on when the property is constructed. Dedicated communications infrastructure not eligible for classification as class seventeen property is included in class thirteen and taxed at 6%.

Railroad and Airline Property

In 1976, Congress created the Railroad Revitalization and Regulatory Reform Act 1976 (4-R Act). The purpose of the legislation was to reverse the economic decline of the rail industry by, among other means, barring the discriminatory state taxation of railroad property.[3] According to the 4-R Act, a state may not:

(1) "Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial

[2] The Revenue Oversight Committee did not recommend changes to the taxation of natural gas suppliers.
[3] CSX Transportation, Inc. v. Georgia State Board of Equalization, 552 U.S. 9 (2007).

property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the board under this part." (See 49 U.S.C. 11501.)

In the Tax Equity and Fiscal Reform Act of 1982, Congress imposed the same restrictions (except for the last item listed above) on states for the taxation of airline transportation property (see 49 U.S.C. 40116).

The Legislature first dealt with the federal limitations on the taxation of railroad property in 1981. Railroad property was classified in 15-6-141, MCA, and taxed at 15% of market value—all other property was taxed at 12% of market value. In order to comply with the 4-R Act, the Legislature amended 15-23-202, MCA, (renumbered 15-23-205, MCA) by providing that the Department of Revenue may modify the taxable percentage applied to railroads (Chapter 367, Laws of 1981).

In 1985, the Legislature created a separate class of property for railroad and airline property to comply with federal limitations on the taxation of these properties (Chapter 743, Laws of 1985).[4]

Railroad and airline property is taxed at the percentage rate "R" or 12%, whichever is less. R is equal to A/B where A is the total statewide taxable value of all commercial property, except class twelve property, and B is the total statewide market value of all commercial property, except class twelve property.

Commercial property is defined in 15-1-101, MCA. It includes property used or owned by a business, a trade, or a corporation or used for the production of income. Commercial property does not include agricultural lands; forest lands; single-family residences, including mobile homes and manufactured homes; or ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation, and property described in 15-6-135, MCA.

Each year the Department of Revenue calculates the tax rate for railroad, rail car, and airline property after adjusting the value A by a value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

In 1999, the Legislature adopted a statutory method for valuing railroad property (House Bill 669, Chapter 531, Laws of 1999). The legislation was enacted to resolve long-standing valuation disputes between Burlington Northern and the Department of Revenue. For about 20 years, Burlington Northern and the department had disagreed over the valuation of railroad property resulting in lengthy valuation disputes and

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[4] During the March 1986 special session, the Legislature created a separate class for airline property (Ch. 7, Sp. L. March 1986). Airline property was recombined with railroad property in 1991 (Ch. 773, L. 1991).

litigation. For tax years 1997 and 1998, the department and the railroad agreed to an experimental valuation formula based on income and cost. House Bill 669 put into law that procedure for valuing railroad property.[5]

The Department of Revenue determines the current year valuation of a railroad system by multiplying the base value of the railroad by the value change factor. The base value is the system value of railroad transportation property of a railroad in the preceding tax year, and the value change factor is the sum of the income change factor, weighted by 50%; the gross profit margin change factor, weighted by 25%; and the property change factor, weighted by 25% (15-23-205, MCA).

Wind Generation Facilities and Renewable Energy Property

In 2005, the Legislature passed Senate Bill 115 (Chapter 563, Laws of 2005) creating class fourteen property. Initially class fourteen property included wind generation facilities of a centrally assessed electric power company, wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451, noncentrally assessed wind generation facilities, facilities owned or operated by any electrical energy producer, and wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137, MCA. Class fourteen property is taxed at 3% of market value.

During the May 2007 special session, the Legislature passed House Bill 3 (Chapter 2, Special Laws of May 2007), which provided property tax incentives for new investment in the conversion, transport, manufacturing related to, and research and development of renewable energy, new technology energy, and clean coal energy and carbon dioxide equipment and facilities.

The 2007 legislation classified biodiesel and biogas production facilities, all biomass and coal gasification production facilities, natural gas combined cycle production facilities, geothermal facilities, certain transmission lines, and other property as class fourteen property (see the “Centrally Assessed Property” subsection later in this document for a more detailed description of class fourteen property). The legislation also provided a property tax abatement under Title 15, chapter 24, part 31, for certain class fourteen renewable energy, new technology energy, and clean coal energy-related property and allowed a property tax exemption, under certain conditions, for land adjacent to transmission lines.

The 2007 legislation also created class fifteen property for certain pipelines and carbon dioxide equipment and facilities and class sixteen property for certain direct-current converter station property. Class fifteen property is taxed at 3% of its market value, and class sixteen property is taxed at 2.25% of its market value.

The Legislature added biomass generation facilities up to 25 megawatts in nameplate capacity to class fourteen property in 2009 (Senate Bill 198, Chapter 357, Laws of 2009) and added certain energy storage facilities in 2011 (Senate Bill 172, Chapter 309, Laws of 2011).

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[5] Senate Taxation Committee, *Minutes*, April 8, 1999, pp. 13-20.

Qualified Data Centers

In 2017, the Legislature created class seventeen property for qualified data centers and certain dedicated communications infrastructure. Class seventeen property is taxed at 0.9%.

A qualified data center is "the land, improvements, and personal property of a facility designed or modified to house networked computers or equipment supporting computing, networking, or data storage that is:

(i) composed of one or more buildings under single ownership on contiguous parcels of land that consist of at least 300,000 square feet, where the total cost of land, improvements, personal property, and software is at least $150 million; and

(ii) commences construction after June 30, 2017.

(b) The term includes but is not limited to:

(i) cooling systems, cooling towers, and other temperature infrastructure;

(ii) power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the facility, such as exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and

(iii) any other equipment necessary for the maintenance and operation of the facility."[6]

Qualified data center property is locally assessed. Class seventeen also includes centrally assessed interstate or intrastate dedicated communications infrastructure owned or leased by the owner of a qualified data center and composed of telecommunication or data lines, equipment, and services, including copper or fiber optic lines or microwave, satellite, or other wireless communication systems.

To qualify as class seventeen property, construction of the dedicated communications infrastructure must begin after June 30, 2017, and before July 1, 2027. In addition, the dedicated communications infrastructure is included in class seventeen only for 15 years from the start of construction. After the 15-year period, the property is included in class thirteen property and taxed at 6%. The qualified data center property remains class seventeen property taxed at 0.9%.

Response to a Supreme Court Decision on Classification of Oil and Gas Gathering Lines

On December 2, 2008, the Montana Supreme Court decided an appeal filed by Omimex Canada, Ltd., from the judgment of the First Judicial District Court, Lewis and Clark County, "declaring that the Montana Department of Revenue may centrally assess Omimex's property and classify it under 15-6-141, MCA, as class nine property" rather than as class eight personal property under 15-6-138, MCA.[7] The Supreme Court reversed the District Court decision regarding the classification of Omimex's low-pressure gas gathering lines. Omimex also had appealed the central assessment of its property, but the Court did not deal with this issue.

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[6] Codified in 15-6-162, MCA.

[7] Omimex Canada, Ltd., v. State, 347 Mont. 176, 201 P.3d 3 (2008).

The effect of the Supreme Court decision was not confined to Omimex but would apply to other natural gas pipelines that did not have a major natural gas distribution system in the state.[8] In a memo to the Revenue and Transportation Interim Committee analyzing the decision, Lee Heiman, committee staff attorney, noted that the "decision may have serious financial consequences . . . if it is applied to similar properties."[9] Mr. Heiman also said that because the decision was based on statutory construction and not on constitutional principles, the Legislature could revise how this property is taxed.

Senate Bill 489 (Chapter 487, Laws of 2009) dealt with the Supreme Court Omimex decision by revising the laws related to the taxation of oil and natural gas pipelines. The legislation:

- clarified that regulated natural gas and oil pipelines and common carrier pipelines are taxed as class nine property under 15-6-141, MCA; and

- clarified that oil and gas production property, including flow lines and gathering lines, is taxed as class eight property under 15-6-138, MCA.

The legislation specifically included flow lines and gathering lines in the description of oil and gas production equipment in 15-6-138(1)(c)(iii).

However, natural gas gathering lines do not include gas gathering facilities of stand-alone gas gathering companies that provide gas gathering services to third parties on a contractual basis, that own more than 500 miles of gas gathering lines in Montana, and that were centrally assessed in tax years prior to 2009. This property is considered natural gas transmission pipeline property subject to central assessment under 15-23-101, MCA (see 15-6-138(5), MCA).

The legislation also revised the description of centrally assessed property under 15-6-141(1)(d), MCA, by removing the phrase "companies having a major distribution system in this state" and inserting the following italicized language:

> . . . allocations for centrally assessed natural gas *distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5).*

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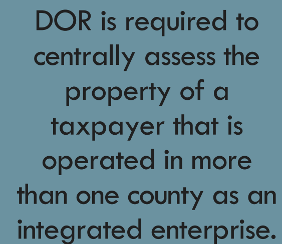
[8] The pipeline companies that would have been affected by the Supreme Court decision included Energy West Development, Colorado Interstate Pipeline, Havre Pipeline, Northern Border Pipeline, Omimex Pipeline, Liscom Creek Pipeline, Devon Energy Production Company, and Fidelity Exploration.

[9] Memo from Lee Heiman, Legislative Services Division Attorney, to members of the Revenue and Transportation Interim Committee, "Omimex Supreme Court Decision," December 15, 2008, p. 3. The memo is available on the Revenue and Transportation Interim Committee web page at http://leg.mt.gov/css/Committees/interim/2007_2008/rev_trans/default.asp under "Publications."

The property of two companies - Liscom Creek Station and Fidelity Exploration and Production Company - has been reclassified from class nine property to class eight property as a result of the legislation. The property of Omimex, on the other hand, is classified as class nine property.[10]

Valuation of Property

Article VIII, section 3, of the Montana Constitution requires that the state (Department of Revenue) "appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law."



Property in Montana is taxed on the basis of fair market value. Section 15-8-111, MCA, provides in part that:

(1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts."

In Montana, the valuation of property is typically described as being locally assessed or centrally assessed (give or take a few differences in interpretation). In Montana, the Department of Revenue centrally assesses property described in 15-23-101, MCA, using the unit value method. Industrial property is assessed by department appraisers in Helena in the county in which it is located.

Locally Assessed Property

Local assessment means that a taxpayer's property is valued separately in each county or taxing jurisdiction in which the taxpayer's property is located. Examples of locally assessed property that is taxed on the basis of market value include:

- Class four property (15-6-134, MCA): residential and commercial land and improvements. The tax rate for residential property is 1.35% and the tax rate for commercial property is 1.89%.

- Class five property (15-6-135, MCA): qualifying new industrial property, real and personal property used for the production of gasohol, all property that is devoted to research and development, and machinery and equipment used in electrolytic reduction facilities (Columbia Falls aluminum plant). Class five property is taxed at 3% of market value.[11]

[10] For more information on the classification and taxation of certain oil and gas property, see Jeff Martin, "Don't Mess with Taxes: HJR 44 Study of the Taxation of Certain Oil and Natural Gas Property and Other Topics Considered by the Revenue and Transportation Interim Committee," Montana Legislative Services Division (Helena, December 2006), Part One.

[11] Class five property also includes centrally assessed rural electric cooperatives, rural telephone cooperatives, and pollution control equipment. These properties are discussed under "Centrally Assessed Properties."

- Class seven property (15-6-137, MCA): rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town. Class seven property is taxed at 8% of market value.

- Class eight property (15-6-138, MCA): business equipment, including (non-centrally assessed) oil and gas production equipment. The first $100,000 of market value is exempt from taxation. The first $6 million of market value in excess of $100,000 is taxed at 1.5%. Taxable value in excess of $6 million is taxed at 3%.

- Class seventeen property (15-6-162, MCA): qualified data centers. Class seventeen property is taxed at 0.9% of its market value.

Locally assessed property also includes class three agricultural land (15-6-133, MCA) and class ten forest land (15-6-143, MCA) valued on the basis of productivity. The productivity value of class three agricultural land is taxed at 2.16%, and the productivity value of class ten property is taxed at 0.37%.

Centrally Assessed Property

The Department of Revenue is required to centrally assess the property of a taxpayer that is operated in more than one county or state as an integrated enterprise. Centrally assessed property is contained in several classes of property:

- Class one property (15-6-131, MCA): the annual net proceeds of mines except coal (taxed under Title 15, chapter 23, part 7), bentonite (taxed under Title 15, chapter 39). Class one is taxed at 100% of net proceeds.

- Class two property (15-6-132, MCA): the gross proceeds of metal mines. Class two property is taxed at 3% of its annual gross proceeds.

- Class five property (15-6-135, MCA): rural electric cooperatives, rural telephone cooperatives, and pollution control equipment.[12] The combined actions of the 2015 and 2017 Legislature exempted pollution control equipment placed into service after January 1, 2014, from taxation for 10 years. Class five property is taxed at 3% of market value.

- Class nine property (15-6-141, MCA): electric transmission and distribution lines, natural gas distribution utilities, electric cooperatives operating in certain municipalities, rate regulated natural gas or oil transmission pipelines, common carrier pipelines, certain gas gathering facilities, and other centrally assessed property except property classified in another class. Class nine property is taxed at 12% of its market value.

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[12] The value of pollution control equipment is certified to the county in which it is located.

- Class twelve property (15-6-145, MCA): rail car, railroad transportation property, and airline property. Class twelve property is taxed at 3.04% (2016) of its market value.[13]

- Class thirteen (15-6-156, MCA): electric generation facilities and telecommunications property. Class thirteen property is taxed at 6% of its market value.

- Class fourteen property (15-6-157, MCA): wind generation facilities, biodiesel production facilities, biomass generation facilities up to 25 megawatts in nameplate capacity, biomass gasification facilities, coal gasification facilities, ethanol production facilities, integrated gasification combined cycle facilities, energy storage facilities, geothermal facilities, renewable energy manufacturing facilities, equipment used to capture carbon dioxide for sequestration or injected for recovery of oil or gas, certain high-voltage direct current transmission lines, electric transmission lines originating at class fourteen facilities, and certain alternating current transmission lines. Class fourteen property is taxed at 3% of its market value.

- Class fifteen property (15-6-158, MCA): carbon dioxide and liquid pipeline property, including pipelines used to transport carbon dioxide for sequestration or having 90% of capacity dedicated to transporting fuels produced by coal gasification, biodiesel, biogas, or ethanol facilities; carbon sequestration equipment; closed-loop enhanced oil recovery equipment; and pipelines connecting a class 14 fuel production facility to an existing pipeline. Class fifteen property is taxed at 3% of its market value.

- Class sixteen property (15-6-159, MCA): high-voltage direct-current converter stations that can direct power to two different regional power grids. Class sixteen property is taxed at 2.25% of its market value.

- Class seventeen property (15-6-162, MCA): certain centrally assessed interstate or intrastate dedicated communications infrastructure that is owned or leased by the owner of a qualified data center and is composed of telecommunications or data lines, equipment, and services, including but not limited to copper or fiber optic lines or microwave, satellite, or other wireless communication systems. Class seventeen property is taxed at 0.9% of its market value.

Depending on the ownership and use, some property in property classes thirteen, fourteen, fifteen, and sixteen is locally assessed.

Valuation of Centrally Assessed Property

Section 15-23-101, MCA, directs the Department of Revenue to centrally assess the following each year:

"(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

[13] Montana Department of Revenue, Biennial Report, July 1, 2014 – June 30, 2016, p. 160.

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state including but not limited to:

(a) telegraph, telephone, microwave, and electric power or transmission lines;

(b) rate-regulated natural gas transmission or oil transmission pipelines regulated by the public service commission or the federal energy regulatory commission;

(c) common carrier pipelines as defined in 69-13-101 or a pipeline carrier as defined in 49 U.S.C. 15102(2);

(d) natural gas distribution utilities;

(e) the gas gathering facilities specified in 15-6-138(5);

(f) the dedicated communications infrastructure specified in 15-6-162(5);

(g) canals, ditches, flumes, or like properties; and

(h) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines, except bentonite mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

The department uses the unit value method to value centrally assessed property except for mines. This method calculates the market value of a utility or other business entity's entire operating system, regardless of location of assets or customer base. The entity's market value is not a summation of the values of its various components but its value as a whole as a going concern.[14]

The Department of Revenue is guided by ARM 42.22.102 in valuing centrally assessed property:

"42.22.102 CENTRALLY ASSESSED PROPERTY

(1) The department shall centrally assess the interstate and inter-county continuous properties of the following types of companies:

(a) railroad;

(b) railroad car;

(c) microwave;

(d) telecommunications;

(e) telephone cooperatives;

(f) gas;

(g) electric;

(h) electric cooperatives;

(i) ditch;

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[14] Advisory Commission on Intergovernmental Relations, "The Role of the States in Strengthening the Property Tax," Vol. 1, Washington, D.C., June 1963, p. 148.

(j) canal;
(k) flume;
(l) natural gas pipeline;
(m) oil pipeline; and
(n) airline.

(2) The property of a centrally assessed company is separated into two categories: operating and non-operating. All operating property will be apportioned to the taxing units as provided in ARM 42.22.121 and 42.22.122.

(3) The department will determine centrally assessed property based on the property's operating characteristics such as but not limited to property use, integration of operations, management, and corporate structure."

In 1999, the department, through the administrative rule process, added ARM 42.22.102(3) to clarify its current practice of valuing centrally assessed property under existing law.[15] According to the department, the rule "effectuates the legislature's intent to centrally assess those unique properties whose true value can only be determined by examining their operating characteristics."[16] This applies to companies that have operating characteristics that exhibit unity where the property is functionally operated as a single entity but may not have a physical connection.

In December 2010, the department adopted a series of rules dealing with centrally assessed property.[17] The department adopted the Western States Association of Tax Administrators - Committee on Centrally Assessed Property *Appraisal Handbook: Unit Valuation of Centrally Assessed Properties* (August 2009) as the reference and overall appraisal guide for conducting unit valuations of centrally assessed properties in Montana. In the same rule, the department adopted the National Conference of Unit Valuation States standards (published October 2005) as standards when conducting unit valuations of centrally assessed properties (ARM 42.22.109).

The department also adopted rules related to intangible property of centrally assessed entities (see the discussion below) and a rule clarifying the reporting requirements for centrally assessed companies (ARM 42.22.105).

The valuation of centrally assessed property includes all tangible and intangible operating assets of the business.

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[15] See Department of Revenue's Response No. 8, Montana Administrative Register, 1999, Issue No. 24, p. 2918, December 16, 1999.
[16] DOR's Brief in Support of Cross-Motion for Partial Summary Judgment, in Pancanadian Energy Resources, Inc. v. Montana Department of Revenue, Cause No. DV-02-3223, February 28, 2003.
[17] A description of the rules contained in an economic impact statement presented to the Revenue and Transportation Interim Committee at a November 19, 2010, meeting, written and oral comments on the proposed rules and economic impact statement, and Department of Revenue responses to the comments can be found in Montana Administrative Register, 2010, Issue No. 24, pp. 2993-3021, December 22, 2010. The December issue is available at http://sos.mt.gov/ARM/Register/archives/MAR2010/index.asp.

According to the National Conference of Unit Valuation States:

> The value of the going-concern value includes an intangible enhancement of the value of the operating business enterprise, which is produced by the assemblage of the land, buildings, labor, equipment, and the marketing operation. This assemblage creates an economically viable business that is expected to continue. The value of the going concern refers to the total value of the property, including both the real property and the intangible personal property attributed to business enterprise value. (The Appraisal of Real Estate, 12th ed., Chicago: Appraisal Institute, 2001, p. 27.)[18]

The unit value method typically includes a cost indicator of value, a capitalized income indicator of value, and a market indicator of value when sufficient information is available (ARM 42.22.111(1)).

Cost Indicator

There are several different cost indicators that may be used when valuing centrally assessed property. These include historical cost less depreciation, original cost less depreciation, reproduction cost less depreciation, and replacement cost less depreciation, among others.

Historical cost less depreciation, or net book value, is generally used for regulated public utilities. It "is the historical cost of the utility's taxable assets less the accumulated accounting depreciation applicable to the assets calculated according to the method used" by the regulatory agency.[19] According to the Western States Association of Tax Administrators, the historical cost less depreciation indicator is not adjusted for obsolescence because the regulatory depreciation should take obsolescence into account.[20]

Reproduction cost is an estimate of the cost to replace the existing property with a new property that is a duplicate of the existing property, while replacement cost is the current cost to replace a property with a new property of equal utility. The difference from reproduction cost may be functional obsolescence.[21]

Replacement cost less depreciation and reproduction cost less depreciation differ in the estimate of undepreciated cost and the estimate for functional obsolescence, but the market value should be the same if depreciation is properly determined.[22]

Income Indicator

The income indicator of value may include direct capitalization of income, yield capitalization, or discounted cash flow.

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[18] National Conference of Unit Value States, *Unit Valuation Standards*, p. 2. Retrieved from http://www.ncuvs.org/.
[19] Western States Association of Tax Administrators - Committee on Centrally Assessed Property, *Appraisal Handbook: Unit Valuation of Centrally Assessed Properties*, August 2009, p. II-8.
[20] *Ibid.*, p. II-12.
[21] *Ibid.*, p. II-2.
[22] *Ibid*, p. II-13.

The Department of Revenue conducts an annual rate capitalization study for each indicator by type of industry. The studies are available at https://revenue.mt.gov/home/publications.

Market Indicator

The market indicator includes sales of comparable assets or the business entity's stock and debt value.

Because the sale of similar properties occurs infrequently, the stock and debt indicator is typically used. Under the stock and debt indicator of value (the value of shareholder's equity and liabilities of the company, including current liabilities, long-term debt, reserves, and deferred credits), the market value of the items on the liability side of the balance sheet is determined. The principle is that since total assets equal total liabilities, the market value of the liabilities is the market value of properties represented on the asset side of the balance sheet.[23]

Weighting of Indicators

Ideally, each of these approaches should yield about the same value of the entity being assessed. In practice, however, they often result in a range of possible values. To resolve the differences, the appraiser will weight each approach in order to produce what the appraiser considers an accurate estimate of the market value of the unitary property. Weighting of the indicators is called "correlation" or "reconciliation" and may involve significant judgment on the part of the appraiser based on the appraiser's experience, judgment, and available data. The particular weighting method may cause disputes between the appraiser and the taxpayer on which indicator should receive the most weight.

Finally, a proportionate share of the entity's total correlated unit value is allocated to Montana and to political subdivisions within the state (15-23-105, MCA).

Department of Revenue Required Information to Taxpayers

Senate Bill 382 (Chapter 276, Laws of 2011) requires the Department of Revenue to provide certain information to taxpayers owning centrally assessed property. Section 15-1-210, MCA, directs the department to post on its website the capitalization rates used to derive the income indicator of value 30 days before sending assessment notices to taxpayers.

The department must also show supporting documentation on how the rates were calculated, including the rationale for adding or deleting a company included in the prior year's study, must accept public comment on the rates and documentation, and must post a written response to each comment.

The department is required to show underlying calculations when providing a taxpayer with a determination of value. The department must also provide a written explanation to the taxpayer if the department changes its reliance on any indicator of value by more than 15%.

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[23] Advisory Commission on Intergovernmental Relations, *op. cit.,* p. 161.

Finally, the requirements of 15-1-210, MCA, do not affect appraisal judgment and do not invalidate an appraisal or provide an independent grounds for appeal because of inaccuracies or inadequate compliance.

Intangible Personal Property

In a financial compliance audit of the department of Revenue for the two fiscal years ending June 30, 1996, the Legislative Audit Division concluded that the Department of Revenue was not specifically identifying and taxing intangible personal property[24] (but was presumably taxing intangible property of centrally assessed companies). The audit recommended that the department tax intangible property in accordance with state law. The department concurred with the recommendation and indicated it would work in consultation with the Revenue Oversight Committee in dealing with the matter.

In the fall of 1998, the Revenue Oversight Committee requested legislation to exempt intangible personal property from taxation. As enacted by Senate Bill 111 (Chapter 583, Laws of 1999), the legislation provided as follows:

"**15-6-218. Intangible personal property exemption.** (1) Except as provided in subsection (3), intangible personal property is exempt from taxation.

(2) For the purposes of this section, "intangible personal property" means personal property that is not tangible personal property and that:

(a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill;

(3) The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter.

(4) The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property. To the extent that the unit value includes intangible personal property, that value must be removed from the unit value according to the provisions in subsection (3).

(5) The department must report intangible personal property annually to the revenue and taxation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001."

In 2005, House Bill 85 (Chapter 318, Laws of 2005) put 15-6-218, MCA, in its current form:

"**15-6-218. Intangible personal property exemption.** (1) Intangible personal property is exempt from taxation.

[24] Legislative Audit Division, Financial Compliance Audit, For the Two Fiscal Years Ended June 30, 1996, Department of Revenue (Helena, MT).

(2) For the purposes of this section, "intangible personal property" means personal property that is not tangible personal property and that:

(a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill.

(3) To the extent that the unit value of centrally assessed property includes intangible personal property, that value must be removed from the unit value."

In December 2010, the department adopted new rules, along with the rules described above, dealing with intangible property. The rules (ARM 42.22.101) were amended in 2014 to remove the definition of intangible personal property, but the 2010 version of the rules provided that intangible personal property has the following attributes:

- Intangible personal property must be separable from the other assets in the unit and capable of being held under separate title or ownership.

- Intangible personal property must be able to be bought and sold, separate from the unit of operating assets, without causing harm, destroying, or otherwise impairing the value of the unit of assets being valued through the appraisal process.

- Intangible personal property must have value as a result of its ability to create earnings that exceeds its contributory value to the unit; or, it must be capable of earning an income as a stand-alone entity or apart from the other assets of the unit.

- Intangible personal property is not the same as intangible value. Intangible value is the value of an entity as a going concern — its ability to make excess revenues over the normal rate of return. Intangible value is part of the overall value of assets. Intangible value is not exempt from property taxation in Montana.

The 2010 rules also provide a definition of goodwill:

- "Goodwill" means booked or accounting goodwill. The booked goodwill must be present on the subject properties' financial statements, and must have been created through the purchase price accounting process as defined by GAAP or other accounting authority (ARM 42.22.101).

The Department of Revenue amended ARM 42.22.101 effective September 19, 2014, to remove the definitions of "goodwill" and "intangible personal property." The reason for the removal was to comply with the decision in *Gold Creek Cellular of Mont. L.P. v. Dept. of Revenue* (2013 MT 273), which held that the definitions of "goodwill" and "intangible personal property" were in conflict with 15-6-218, MCA.[25]

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[25] For detailed discussion, see Jaret Coles, legislative staff attorney, "Court Decisions on the Treatment of Intangible Personal Property," March 2016. Available on the Revenue and Transportation Interim Committee web page at

Department rules (42.22.110) also establish percentages for determining the value of exempt tangible property for centrally assessed property:

Exemption Percentage for Intangible Personal Property			
Type of Property	**Cost Indicator**	**Income Indicator**	**Market Indicator**
Airlines	10%	10%	10%
Pipelines	5%	5%	5%
Electric Cooperatives	5%	5%	5%
Telephone Cooperatives	5%	5%	5%
Electric Utilities	10%	10%	10%
Telecommunications	15%	15%	15%

If a railroad is assessed according to the provisions of 15-23-205, MCA, the amount of intangible property deducted from the system value of the railroad is equal to 5% of the system value. If the railroad is assessed using cost, income, and market indicators of value (e.g., a new railroad), 5% of the value of each indicator reflects the value of intangible property for each indicator.

Finally, the rules allow a taxpayer to recommend to the department at any time a higher deduction for intangible personal property. Previously, the department and centrally assessed taxpayers were supposed to review the percentage deductions every 2 years.

Overview of Selected States

This section describes the methods used in Arizona, Idaho, New Mexico, Oregon, and Utah to value property operated in more than one county of the state or in more than one state.[26] The property described in this report is centrally assessed by the state, but the unitary approach is not always used.

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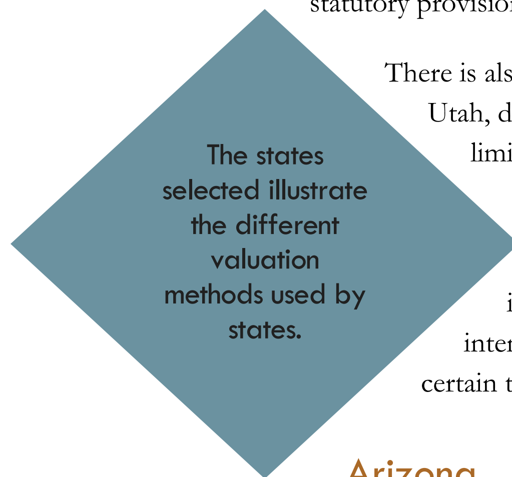
http://leg.mt.gov/content/Committees/Interim/2015-2016/Revenue-and-Transportation/Meetings/March-2016/court-dec-treatment-intang-property.pdf.

[26] Original overview prepared by Jeff Martin, December 2011.

For each state, there is a description of constitutional provisions related to the valuation of property and statutory provisions and administrative rules for valuing centrally assessed property.



There is also a discussion of two court cases, one in Oregon and one in Utah, dealing with the valuation of centrally assessed property within the limited context of the state's constitutional and statutory framework for valuation.

The states included were not selected randomly; their inclusion illustrates the different valuation methods used by states. The intent is to illustrate the complexity involved with the valuation of certain types of property.

Arizona

Article 9, section 1, of the Arizona Constitution provides: "The power of taxation shall never be surrendered, suspended or contracted away. Except as provided by section 18 [dealing with residential property values] of this article, all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only."

Article 9, section 2, of the Arizona Constitution provides: "All property in the state not exempt under the laws of the United States or under this constitution or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law."

Article 9, section 11, of the Arizona Constitution provides: "The manner, method and mode of assessing, equalizing and levying taxes in the state of Arizona shall be such as is prescribed by law."

Property in Arizona is valued at "full cash value" as determined by statutorily prescribed methods. If a statutorily prescribed method is not in effect, full cash value has the same meaning as market value (the estimate of value using standard appraisal methods and techniques).[27] The Arizona Department of Revenue centrally assesses mines; railroads; private car companies; electric, gas, and water utilities; pipelines; airlines; and telecommunications providers that are located in more than county. The values are determined for the entire system and apportioned to local taxing jurisdictions, except for airlines and private car companies. Airlines and private car companies are taxed at the average statewide rate, and their taxes are deposited into the state general fund.

Arizona has nine classes of property. Most centrally assessed property is classified as class one property (42-12001, Arizona Revised Statutes). The property of railroads, private car companies, and airlines is classified as class five property (42-12005, ARS). The department determines net assessment ratios for other types of

[27] New York State Department of Taxation and Finance, "Survey of Railroad and Utility Taxation Practice Among the States: 2005 Update," http://www.tax.ny.gov/research/property/reports/rr/index.htm.

property in determining the assessed valuation of railroad and airline property as required by federal law (42-15005, ARS).

Electric and Gas Utilities (42-14154, ARS): Electric and gas utilities (exclusive of generation property) are valued by using the original plant in service[28] cost less accumulated straight line depreciation. The value is further reduced to take into account federal or state government orders prohibiting the use of the property. The department may not value contributions in aid of construction. Construction work in progress is valued at 50% of the amount spent in the preceding calendar year. The assessed value of environmental protection facilities that are required by law is 50% of the depreciated cost.

Electric generation property (42-14156, ARS): The valuation of electric generation facilities is determined as follows:

- the value of land is the cost to the current owner as of December 31 of the preceding calendar year;
- the value of improvements to real property is the replacement cost new less depreciation schedules adopted by the Arizona Department of Revenue or the cost of the property in an arm's length transaction;
- the value of personal property is the acquisition cost less depreciation schedules adopted by the department. The assessed value of personal property is adjusted as follows:
  - in the first year of assessment, 35% of the depreciated value;
  - in the second year of assessment, 51% of the depreciated value;
  - in the third year of assessment, 67% of the depreciated value;
  - in the fourth year of assessment, 83% of the depreciated value;
  - in the fifth year and subsequent assessment, the scheduled depreciated value (but not below a minimum value).

Personal property associated with construction work in progress is not valued until the property is placed in commercial service.

The value of real property and personal property may not be below 10% of the cost of real property improvements or the cost of personal property. The department must also take into account all forms of obsolescence using standard appraisal methods.

The valuation of existing generation plants was adjusted to stabilize changes in the valuation that may have occurred using the valuation formulas for new plants.[29]

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[28] The term "plant" means all property in Arizona that is used for the transmission or distribution of electric power or distribution of natural gas.
[29] See Jeff Martin, "The Valuation of Electrical Generation Property in Selected States," pp. 2-3. http://leg.mt.gov/css/Committees/Interim/2003_2004/rev_trans/default.asp. The valuation changes were made in response to electric utility restructuring.

Airlines (42-14254, ARS): Airline property is valued by fleet type using original cost less depreciation. Depreciation is computed using 15-year straight line depreciation. The salvage value of aircraft out of production is 10% of original cost, and the salvage value of aircraft in production is 25% of original cost. Additional obsolescence is allowed if supported by market evidence.

Small flight property operated in the state in air commerce is valued at 35% of its original cost less depreciation and additional allowed obsolescence.

The value of airline property apportioned to Arizona is the sum of:

- 50% of the percentage that the total state ground time during the preceding calendar year is of the total system ground time in the preceding calendar year; and

- 50% of the percentage that the total mileage scheduled within the state of the fleet type on flights operated in the state during the preceding calendar quarter is of the total system mileage of the fleet type during the preceding calendar year.

Telecommunications (42-14403, ARS): Telecommunications real estate is valued at market value, and personal property is valued on a unitary basis at original cost less straight line depreciation. The department must also consider all forms of obsolescence using standard appraisal methods.

Except for qualifying broadband infrastructure[30], the useful life of real estate is 25 years, cable is 15 years, telecommunications equipment is 5 years, and all other telecommunications property is 7 years. The computation of depreciation of property except for qualifying broadband infrastructure may not reduce the valuation of real estate below 20% of cost and may not reduce the valuation of cable, telecommunications, and other telecommunications property below 10% of cost.

For qualifying broadband infrastructure, the useful life of cable is 10 years, telecommunications equipment is 5 years, and all other telecommunications property is 7 years. Additional depreciation is applied to personal property as follows:

- in the first year of assessment, 25% of the depreciated value;
- in the second year of assessment, 41% of the depreciated value;
- in the third year of assessment, 57% of the depreciated value;
- in the fourth year of assessment, 73% of the depreciated value;
- in the fifth year of assessment, 89% of the depreciated value;
- in the sixth year and subsequent assessment, the scheduled depreciated value.

The computation of depreciation of qualifying broadband infrastructure may not reduce the valuation below 2.5% of cost.

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[30] "Qualifying broadband infrastructure" means cable, telecommunications equipment and other tangible personal property capable of being used for or in connection with the transmission of data at a rate that is at least equal to four megabits per second in at least one direction, including multiplexers, routers, servers, fiber optics, coaxial cable and equipment supporting the transmission function first placed in service on or after January 1, 2017.

For wireless telecommunications providers, the taxable unit is the applicable metropolitan statistical area or rural statistical area. Assessed value does not include the value of a license issued by the Federal Communications Commission.

Mines (42-14053, ARS and Arizona Administrative Code): Mines are valued by using the three approaches to value: the income approach, the cost approach, and the market approach (R15-4-201). The income approach is based on a discounted cash flow method (R15-4-203). The cost approach is based on reproduction cost new, less depreciation (R15-4-204). The market approach is based on an arm's-length transaction of more than 50% interest in the assets, or the sale of more than 50% of the stocks, bonds, notes, or other instruments that represent a share in a corporation or a debt owed by a corporation (R15-4-205).

The income approach is the preferred method of valuing mines, although the cost and market approaches may be correlated with the income approach where applicable (R15-4-206).

Railroads (42-14355, ARS): The Arizona Department of Revenue values railroad operating property in the state. The assessment includes franchises, intangible values, right-of-way, roadbed, rolling stock, buildings and telecommunication lines, and all other real and person property (42-14354, ARS). The value of railroad property is determined by multiplying the base value by the value change factor and multiplying that result by the allocation factor.

The base value is the full cash value of the railroad system in the preceding calendar year. If the railroad was not valued in the prior year, the base value is the acquisition cost of the railroad. If the railroad is transferred to a new owner, the base value is transferred to the new owner.

The value change factor is the sum of the income change factor (change in earnings divided by change in capitalization rate) weighted by 50%, the profitability change factor (average of the gross profit margin factor and return on investment factor) weighted by 20%, the efficiency change factor (quotient of current year's earnings divided by gross revenue and that amount divided by previous year's quotient) weighted by 15%, and the property change factor (dividing system cost as of December 31 by the system cost as of the previous December 31) weighted by 15%.

Pipelines (42-14204, ARS): The department determines the value of pipelines by multiplying the base value by the value change factor to result in the preliminary system value; adding the value of construction work in progress, materials and supplies, noncapitalized leased operating property, and gas stored underground; and multiplying that result by the allocation factor.

The base value is the full cash value of the system plant in service in the preceding valuation year. If the property was not subject to valuation in the preceding valuation year, the value is the net book value of plant in service plus the value of construction work in progress, materials and supplies, noncapitalized leased operating property, and gas stored underground. If the ownership changes, the base value is transferred to the new owner.

The value change factor is the average of the income change factor (change in earnings before interest and taxes divided by the change in capitalization rate) and the asset change factor (system net book value of plant

in service as of December 31 preceding the current valuation year by the system net book value of plant in service as of December 31 preceding the prior valuation year).

Idaho

Article VII, section 3, of the Idaho Constitution requires that property be defined and classified by law. The classes of property are real property, personal property, and operating property.

Operating property includes real and personal property of public utilities, railroads, or private railcar fleets, operated wholly or partly in Idaho.

Public utilities include electrical companies, pipeline companies, natural gas distribution companies, power producers, or telephone corporations. Public utilities do not include energy cogenerators, mobile telephone services, pager services, except when the services are an integral part of services provided by a certificated utility company. Public utilities also do not include businesses providing solely on a resale basis any telephone or telecommunication service that is purchased from a telephone corporation (63-201, Idaho Statutes).

Operating property is assessed by the Idaho State Tax Commission (63-405, IS).[31] The commission identifies property to be included as operating property for assessment purposes. Nonoperating property is assessed by the county assessor (63-402, IS).

The market value of operating property for assessment purposes is the system value of the property when considered as a unit. Most intangible personal property is exempt from taxation.

Intangible personal property includes stock and bonds, deposits in financial institutions, goodwill, customer lists, contracts and contract rights, patents, trademarks, custom computer programs, copyrights, trade secrets, franchises, licenses, and possessory rights-of-way (63-602L, IS). Exempt intangible value does not include values attributable to availability of a skilled workforce, condition of surrounding property, geographic features, location, rights-of-way accompanied by title, view, zoning, and attributes or characteristics of real properties (Rule 615.02, 35.01.03, Idaho Administrative Code).

The owner of operating property may elect one of three methods for excluding exempt intangible personal property from the taxable value of the property:

- exclusion of exempt intangible personal property from the system-level value;
- exclusion of exempt intangible personal property from the system value allocated to the state; or
- exclusion of exempt intangible personal property by valuation of only tangible personal property and nonexempt intangible personal property using valuation models that do not impound or include values of exempt intangible personal property (63-602L, IS).

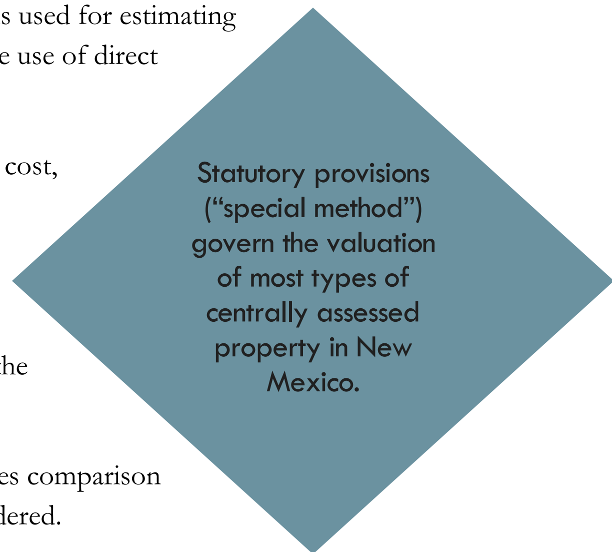
[31] The Idaho State Tax Commission is constitutionally established under Article VII of the Idaho Constitution. It is a four-member commission appointed by the governor. No more than two members may be of the same political party.

Rule 405 (35.01.03, IAC) provides that the unit method of valuation is preferred for valuing operating property when the individual assets function collectively, are operated under one ownership and one management, are interdependent, and the property would be expected to trade in the marketplace as a unit. Under the unit method, the value of the tangible and intangible property is equal to the value of the going concern. The three approaches to value may be considered for all property. Market value is determined through procedures, methods, and techniques accepted by nationally recognized appraisal and valuation organizations.

Income approach: The yield capitalization of income is used for estimating value under the income approach. The rules prohibit the use of direct capitalization of income for estimating value.

Cost approach: Under the cost approach, replacement cost, reproduction cost, or original or historical cost may be considered. Construction work in progress may be considered in the cost approach. The appraiser must attempt to measure obsolescence, if any exists. If obsolescence is found to exist, it may be considered in the cost approach.

Market approach: Under the market approach, the sales comparison approach or the stock and debt approach may be considered.



New Mexico

Article VIII, section 1, of the New Mexico Constitution provides for the taxation of tangible property. Taxes are levied on tangible property in proportion to its value and are uniform on property of the same class. It also provides that different methods of valuation may be enacted to determine the value of different kinds of property.

New Mexico has two classes of property - residential and nonresidential - but all property is taxed at one-third of its assessed value. Intangible property is not subject to valuation. Intangible property includes, but is not limited to, shares of stock, bonds, bills, notes, checks, drafts, bills of exchange, certificates of deposit, letters of credit, and negotiable instruments (3.6.1.7, New Mexico Administrative Code).

Centrally assessed property is valued under Chapter 7, Article 36, New Mexico Statutes Annotated. Statutory provisions ("special method") govern the valuation of most types of centrally assessed property.

Special Method of Valuation - Pipelines (7-36-27, NMSA): The New Mexico Department of Taxation and Revenue values pipelines and direct customer distribution pipelines at cost, less straight line depreciation over the useful life of the property. The department may take into account functional or economic obsolescence. The value of property may not be less than 20% of the cost of tangible property before depreciation. Construction work in progress is valued at 50% of the amount expended as of December 31 of

the preceding calendar year. Real property used in the pipeline or public utility business, but that is not defined in 7-26-27, NMSA, is valued separately.

Special Method of Valuation - Electric Plant (7-36-29, NMSA): The department values electric generation, transmission, and distribution (electric plant) at cost, less depreciation (net book value).[32] The electric plant does not include land, land rights, buildings and improvements, construction work in progress, materials and supplies, and licensed vehicles, which are valued separately. The value of the electric plant may not be less than 20% of the cost of tangible property before depreciation. Construction work in progress is valued at 50% of the amount expended as of December 31 of preceding calendar year.

The assessment of this type of property is limited to property within the state. The value of electric plant property is allocated to governmental units in which the property is located.

If, however, a regulated utility protests the valuation of the property, the department will conduct a unit valuation assessment.[33]

Special Method of Valuation - Property of a Communications System (7-36-30, NMSA): Owners of communication property may elect to be valued at cost less depreciation and other justifiable factors (e.g., wear and tear of property not covered by depreciation and functional and economic obsolescence) or by the unitary method. The election is effective for a minimum of 3 years. A communications system includes the transmission and reception of information by the use of electronic, magnetic, or optical means or any combination of those means. It includes microwave transmission and reception and two-way cable television systems (3.6.5.37, NMAC).[34]

Under the cost election, the value of communications system property may not be less than 20% of the cost of tangible property before depreciation. Construction work in progress is valued at 50% of the amount expended as of December 31 of the preceding calendar year.

Under the unitary method of valuation, the department uses one or more methods to appraise telecommunications property: capitalization of earnings, market value of stock and debt, or cost less depreciation and obsolescence.

The capitalization of earnings is determined by dividing net operating income (based on the preceding 5 years' net operating income of the communications business in all states) by the capitalization rate for the particular company. The capitalization rate is determined by the band of investment method or any other method that is consistent with generally accepted appraisal techniques (3.6.5.37, NMAC).

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[32] The New Mexico Department of Taxation and Revenue must consider functional and economic obsolescence and other relevant factors.
[33] Martin, *op. cit.*, p. 5.
[34] State Assessed Properties Bureau, New Mexico Department of Taxation and Revenue, General and Special Reporting Instructions, available at http://www.tax.newmexico.gov/About-Us/Property-Tax-Division/State-Assessed-Properties-Bureau/Pages/General-and-Special-Reporting-Instructions.aspx.

The market value of stock and debt is determined by adding the market value of stock and the market value of debt to produce a total system value. The market value of stock is computed on the basis of the average of the monthly high and low market prices for the preceding tax year. If the stock is not traded or is not traded in sufficient volume to indicate value, the department may rely on price earnings ratio, or other methods consistent with generally accepted appraisal techniques. The market value of debt is determined on the basis of the published quotations for each of the obligations and liabilities of the business. The value of intangible property and the value of noncommunications property that is not used in the communications operation are subtracted from the total system value and the value of leased equipment is added to get the total stock and debt value (3.6.5.37, NMAC).

Cost, less depreciation and obsolescence, is computed for communications plant in service in all states. Construction work in progress is valued at 50% of the amount expended (3.6.5.37, NMAC).

The value of communications property is allocated to governmental units in which the property is located.

Special Method of Valuation - Operating Railroad Property (7-36-31, NMSA): The department uses one or more methods to appraise railroad property under the unitary method of valuation: capitalization of earnings, market value of stock and debt, or cost less depreciation and obsolescence. The indicators of value are determined in a manner similar to communications property. Original cost less depreciation is used under the cost approach (3.6.5.38, NMAC). Construction work in progress is valued at 50% of cost.

Special Method of Valuation - Commercial Aircraft (7-36-32, NMSA): The department values all commercial aircraft used by commercial airline companies as follows:

- gasoline engine propeller-driven aircraft are valued at 10% of original cost regardless of age;
- a jet-propelled aircraft has an assumed life of 12 years and is valued by deducting depreciation, calculated on a monthly basis, from 80% of the original cost but the computed value may not be less than 20% of the original cost.

The department has adopted regulations for allocating the net taxable value of commercial aircraft to taxing jurisdictions based on ground time in New Mexico and flight time over New Mexico.

Oregon

Article IX, section 1, of the Oregon Constitution provides that: "The Legislative Assembly shall, and the people through the initiative may, provide by law uniform rules of assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly throughout the State."

Section 307.030, Oregon Revised Statutes, provides that real property and tangible personal property are subject to assessment and taxation. Intangible property is generally exempt from taxation except for property centrally assessed under 308.505 to 308.665, ORS (see detailed discussion of communications property on the next page). Section 307.020, ORS, provides that "intangible personal property" or "intangibles" includes but is not limited to:

- "money at interest, bonds, notes, claims, demands and all other evidences of indebtedness, secured or unsecured, including notes, bonds or certificates secured by mortgages";

- "shares of stock in corporations, joint stock companies or associations";

- "media constituting business records, computer software, files, records of accounts, title records, surveys, designs, credit references, and data contained therein. "Media" includes, but is not limited to, paper, film, punch cards, magnetic tape and disk storage"; and

- goodwill; customer lists; contracts and contract rights; patents, trademarks, and copyrights; assembled labor force; and trade secrets.

The Oregon Department of Revenue centrally assesses companies maintaining certain businesses, companies performing certain services, and companies selling certain commodities, "whether in domestic or interstate commerce or in any combination of domestic or interstate commerce" (308.515, ORS).

The department assesses property used for railroad transportation; air transportation; water transportation used in inland waters of the state; communications; heating, gas, or electricity; and pipelines, among other types of property.

For the purposes of central assessment, "property" means real property, tangible personal property, and intangible personal property, except for money at interest, bonds, notes, claims, demands, or other evidence of indebtedness, secured or unsecured.

Centrally assessed companies report their assets (current assets; property, plant, and equipment; and intangibles) at book cost, liabilities and equity, and other information.

The department has adopted the *2009 Western States Association of Tax Administrators Appraisal Handbook: Unit Valuation of Centrally Assessed Properties* as the official valuation guide for property assessed under ORS 308.505 to 308.665 for ad valorem tax purposes (150-308-0690, Oregon Administrative Rules).

Intangible Property Owned by a Communications Company

The treatment of intangible property owned by communications companies has been the source of recent litigation and resulted in changes to Oregon law. Communications includes telephone communication and "data transmission services by whatever means provided" (Section 308.505(3), ORS). In 2001, the Oregon Legislature exempted licenses granted by the Federal Communications Commission from property taxation (307.126, ORS).

In 2008, the Oregon Department of Revenue adopted a rule (OAR 150-308.515(1)(h)) that provided that cable companies and Internet service providers are communications service providers for purposes of central

assessment. The Oregon Court of Appeals invalidated the rule because the department failed to follow the correct rulemaking procedures.[35]

In the tax year 2009-2010, the department centrally assessed the property of cable television and internet service providers. Comcast Corporation, "a family of companies" that provides cable television services, Internet access, and voice over internet, challenged the central assessment of its cable television business and its Internet access business in the Oregon Tax Court, Regular Division.[36] An affiliate of Comcast involved in the voice over Internet business had already been centrally assessed.

The Tax Court concluded that the cable television business does not fit within the meaning of "data transmission services by whatever means provided" because Comcast does not transmit data created by the customer but rather transmits its own data or data to which it has obtained the right to make transmission to a third party.[37] The court also concluded that the Internet service is a form of data transmission service.

However, the court said that section 308.510(4), ORS, requires:

> that where the department finds an integrated use of assets in more than one business and at least one such business is subject to central assessment, the department must also determine the primary use of the property.[38]

The upshot of the court's decision was that the primary use of Comcast's properties being in the cable television business does not subject any of the properties (i.e., cable television or Internet access property) to central assessment.

The Oregon Supreme Court, however, reversed the Tax Court and provided that both the cable television services and the Internet access services are communications services subject to central assessment.[39]

In 2015, the Oregon Legislature revised the law exempting licenses granted by the Federal Communications Commission from property taxation and recodified the section as 308.671, ORS. The law now provides that a company centrally assessed under 308.515(1) that owns, leases, or uses the following property may elect one to be exempt from property taxation:

(a) "Licenses granted by the Federal Communications Commission.
(b) If the company is in the business of communications, franchises.
(c) Satellites that are used by the company to provide communication services directly to retail customers or that are being constructed for such use and Federal Communications Commission licenses related to the use of the satellites to provide communications services."

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[35] *Oregon Cable Telecommunication v. Department of Revenue*, 237 Or App 628, 240 P3d 1122 (2010).
[36] *Comcast Corp. v. Department of Revenue*, 20 OTR 319, 320, 2011 Ore. Tax LEXIS 321 (Aug. 10, 2011), *rev'd and remanded,* 356 Ore. 282, 337 P.3d 768 (2014).
[37] *Ibid.*, p. 322, 331-332.
[38] *Ibid.*, p. 336.
[39] *Comcast Corp. v. Department of Revenue*, 356 Ore. 282, 284, 337 P.3d 768, 770 (2014).

A staff analysis of the legislation provides the following background:

> The result of interpreting more companies as being "communication" companies and therefore subject to central assessment is the inclusion of those company's tangible and intangible value in their property tax assessment. The composition of a communication company's [*sic*] tangible and intangible value can vary considerably. High levels of intangible to tangible value can result in tax assessments several times greater than what would be assessed if the assessment was based on tangible value only. This can be especially acute for companies newly investing tangible communication property in Oregon.[40]

Utah

Article XIII, section 2, of the Utah Constitution provides that all tangible property is assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law, and is taxed at a uniform and equal rate. The constitution also provides that the Legislature may exempt intangible property.

However, if intangible property is subject to tax, the property tax may not exceed .005% of its fair market value. In addition, if intangible property is taxed under the property tax, the income from that property may not also be taxed.

Article XIII, section 6, creates the Utah State Tax Commission. The commission consists of four members, not more than two of whom may belong to the same political party. The governor appoints the commission with the approval of the Senate. The commission administers and supervises the state's tax laws. The constitution directs the commission to assess mines and public utilities and may conduct original assessment of property as may be provided law. It is required to adjust and equalize the valuation and assessment of property among the counties.

The provisions related to the taxation of property are contained in Title 59, chapter 2, of the Utah Code Annotated.

Section 59-2-201, UCA, describes property assessed by the commission. It includes all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; all property of public utilities; all operating property of an airline, air charter service, and air contract service; geothermal fluids and geothermal resources; and mines and mining claims.

Public utilities include, among other types of property, the operating property of railroads, gas corporations, oil or gas pipeline companies, coal slurry pipeline companies, electrical corporations, and telephone corporations (including local exchange carriers, local access providers, long distance carriers, and cellular telephone or personal communications service providers and pagers).[41]

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[40] Kyle Easton, SB 611 B, 2015 Oregon Regular Session, Staff Measure Summary.

[41] Utah State Tax Commission, Rules, R884-24P-62, Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann., Section 59-2-201. The rule references the definition of "public utilities" in 59-2-102, UC.

Utah exempts intangible personal property from taxation. Under 59-2-102, UCA, "intangible property" means "property that is capable of private ownership separate from tangible property," including:

- money, credits, bonds, and stocks;
- representative property;
- franchises, licenses, trade names, copyrights, and patents;
- a low-income housing tax credit;
- goodwill; or
- a renewable energy tax credit or incentive.

Under Utah law, goodwill includes acquired goodwill that is reported as goodwill on the taxpayer's books and records and that are maintained for financial reporting purposes. It also includes the ability of a business to generate income that exceeds a normal rate of return or obtain an economic or competitive advantage resulting from such factors as superior management skills, reputation, customer relationships, patronage, or other similar factors.

Goodwill does not include certain attributes of real property, such as zoning, location, covenants, proximity to raw materials or markets, or the condition of surrounding property. It also does not include the enhancement value specifically attributable to the interrelation of tangible property working as a unit.

The administrative rules for valuing centrally assessed property are contained in R884-24P-62: Valuation of State Assessed Unitary Properties Pursuant to 59-2-201, UCA.

The purpose of the rule is to:

(a) "specify consistent mass appraisal methodologies to be used by the Property Tax Division…in the valuation of tangible property assessable by the Utah State Tax Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property."

The rules provide that unitary properties are assessed at fair market value based on generally accepted appraisal theory as provided by rule. The rules specify that "the assemblage or enhanced value attributable to the tangible property should be included in the assessed value." See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process."

The rules state that the preferred methods of valuation are the cost approach and a yield capitalization indicator.

Other generally accepted appraisal methods may also be used when it can be demonstrated that the methods are necessary to more accurately estimate fair market value. However, the rules state that direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other

methods. To the extent intangible property cannot be identified and removed, relatively less weight is given to these methods in the reconciliation process.

The rules describe the various appraisal methods, including the various cost, income, and market indicators to valuation.

In the reconciliation process, the appraiser takes into account the availability, quantity, and quality of data, as well as the strength and weakness of each value indicator. Weighting percentages used to correlate the value approaches generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Property Assessment Division is required to disclose in writing the weighting percentages used in the reconciliation for the final assessment. It must explain in writing any departure from the prior year's weighting.

The rules also provide for "property specific considerations." For example, the historical cost less depreciation is the preferred method of valuing rate-regulated utilities because it represents an approximation of the basis on which the investor can earn a return. On the other hand, the rules state that the cost indicator should be given little or no weight for railroads because there is no observable relationship between cost and fair market value.

Third Time a Charm

In 1995, the Property Tax Division of the Utah State Tax Commission centrally assessed the property of WilTel, Inc., a provider of long-distance telecommunications services. The division assessed WilTel's Utah taxable property at $39.6 million based on a nationwide correlated system value of $1.45 billion[42] and an allocation factor of 2.83%.[43]

WilTel appealed the assessment to the commission, asserting that it was indistinguishable from locally assessed resellers of telecommunications services and should be locally assessed using the cost approach employed for locally assessed property. It also asserted that the assessment included nontaxable intangibles.

Beaver County and other Utah counties challenged the State Tax Commission's determination that intangible property, intangible value, and intangibles are synonymous for tax purposes under 59-2-1101(2)(g) (now 59-2-1101(3)(a)(viii)), which exempts intangible property from taxation.

At the time WilTel was centrally assessed, 59-2-102(19), UCA, provided that "property":

> means property which is subject to assessment and taxation according to its value, but does not include moneys, credits, bonds, stocks, representative property, franchises, goodwill, copyrights, patents or other intangibles.

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[42] In January 1995, LDDS and other companies acquired WilTel for a stipulated price of $2.5 billion.
[43] *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000).

The counties also objected to the Property Tax Division's correlated unit value and submitted its own appraisal to the State Tax Commission, estimating that WilTel's system value was $2.34 billion.[44]

The division argued that "WilTel had failed to establish that locally assessed telecommunications services were 'similarly situated' to WilTel, that the cost approach ('cost less depreciation') to assessment would undervalue WilTel's property, and that this departure from fair market value would discriminate against similarly situated taxpayers such as AT&T, MCI, and Sprint.."[45] It also argued that the intangible exemption is restricted to intangible property and that intangible assets which cannot be characterized as property are not tax exempt.

The commission ruled that WilTel is a centrally assessed company and disagreed with the division that intangible property, intangible assets, and intangible value are distinguishable and determined that, however categorized, intangibles are not taxable under Utah law. It also said that "'there is a distinction . . . between intangible property and the inherent features of a particular parcel of real property' and the value ascribed to such features is subject to property tax."[46]

The commission directed the parties to identify and quantify the intangibles and remove them from the assessment. The division came back with a Utah allocation of taxable property of $37.2 million, while WilTel's calculation was $15.7 million, based on a different determination of the system value of intangible property and a lower allocation factor using net book value.[47]

In its final decision, the commission concluded that "'separately valuing intangibles and deducting them for a unit valuation is impractical.' The commission found that neither the replacement cost new less depreciation nor the adjusted historical cost adjusted for entrepreneurial profit adequately accounted for goodwill or 'for the enhanced value of assets in place and operating as a unit.'"[48]

The commission attempted to resolve the matter of "removing the intangibles and capturing the enhanced value of tangible property operating as a unit by 'using a yield capitalization approach minus any growth factor and a time-adjusted historical cost indicator.'" The commission discouraged "the use of the direct capitalization method and the stock and debt method using stock market indicators because of the tendency each has to impound intangibles at higher levels."[49]

The commission ultimately directed the parties to submit their valuations using the methods prescribed and weighting each indicator by 50%. In a third round of valuation, the commission ruled in favor of the division's determination of value of WilTel's Utah property at $30.6 million, based on a system value of $1.08 billion and an allocation factor of 2.83%.[50]

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[44] *Ibid*., sec. 5.
[45] *Ibid*., sec. 4.
[46] *Ibid*., sec. 6.
[47] *Ibid*., sec. 7.
[48] *Ibid*., sec. 9.
[49] *Ibid*., sec. 10.
[50] *Ibid*., sec. 12.

On appeal to the Utah Supreme Court, WilTel sought review of the Utah State Tax Commission decision subjecting WilTel's property to central assessment on a unitary basis (asserting a right to equal protection under the U.S. Constitution and uniform operation of law under the Utah Constitution); employing cost and yield capitalization to value its tangible property; and using gross book value rather than net book value to apportion WilTel's taxable property in Utah.

The Property Assessment Division and the counties sought review of the commission's ruling that intangible property includes nonproperty intangible assets.

The Utah Supreme Court reaffirmed "that central assessment by the unitary method bears a constitutionally sufficient rational relationship to the legitimate state purpose of assuring that each property is 'accountable for its pro rata share of the burden of local government.'"[51]

The Court also ruled that WilTel was an asset-based carrier and was not singled out and taxed inconsistently with other asset-based carriers (such as AT&T, MCI, or Sprint).[52]

The Court affirmed the Utah State Tax Commission's ruling that all intangibles are tax exempt, based on the definition of property,[53] including the vague phrase "other intangibles." It also concluded that "the statutory and constitutional fair market value requirements recognize some element of value that is not attributable to either intangibles or simple cost and that this enhanced value is taxable."[54]

Finally, the Court upheld the commission's valuation methods, after noting that "[i]t was only after the parties proved the impracticality of determining and deducting the value of intangibles, category by category, that the Commission stepped in with the cost/yield capitalization method."[55] It also upheld the Property Tax Division's allocation factor using gross book value, based on testimony that "the Division's method is used by most appraisers in most states."[56]

Utah Legislature Revises Definition of Property

In the 1998 General Session, the Utah Legislature revised the definition of property under 59-2-102 (House Bill 370):

> (28)(a) "Property" means property that is subject to assessment and taxation according to its value.
> (b) "Property" does not include intangible property as defined in this section.

The legislation removed the description of intangible property and eliminated the phrase "or other intangibles" (see former definition of property, p. 36). The legislation also provided a separate definition of

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[51] *Ibid.*, sec. 22.
[52] *Ibid.*, sec. 26.
[53] *Ibid.*, sec. 29.
[54] *Ibid.*, sec. 40.
[55] *Ibid.*, sec. 44.
[56] *Ibid.*, sec. 48.

intangible property described above (p. 34). In 2006, the Legislature added "goodwill" to the definition of intangible property (2006 Utah Laws 249).

Summary

The survey of the five states shows a variety of methods in valuing centrally assessed property, with methods sometimes varying by type of property.

Arizona and New Mexico have established different statutory procedures for valuing property operating as a unit within the state.

Arizona uses a cost approach for valuing the property of electric and gas utilities located within the state and a separate cost approach for valuing electric generation facilities. The valuation of generation property depends on whether the generation property is new or "vintage."

On the other hand, railroad property and pipeline property are valued as a unit using a base period amount adjusted by value change factors. Montana has a similar method for valuing railroads.

Telecommunications property and airlines are valued on a unitary basis using the cost approach. Real property of telecommunications companies is valued at market value.

New Mexico also has specific statutory provisions for valuing unitary property. The cost approach is used for pipeline property and electric utilities. Telecommunications property, at the election of the taxpayer, may be valued at cost, less depreciation, or by the unitary method. Railroad property is valued on a unitary basis.

Idaho, Oregon, and Utah use the unit value method for valuing property operating in more than one county of the state or in more than one state. Idaho rules prohibit the Idaho State Tax Commission from using direct capitalization of income, while the rules in Utah discourage direct capitalization of income and the stock and debt approach because these methods "typically capture intangible property at higher levels than other methods." Utah rules also provide that the "assemblage or enhanced value attributable to the tangible property should be included in the assessed value."

Idaho and Utah exempt intangible personal property from taxation. Oregon also exempts intangible personal property except for intangible personal property of a taxpayer subject to unit valuation. However, certain intangible property of a communications company subject to unit valuation is exempt from taxation in Oregon.

Each state surveyed expresses in one form or another that standard appraisal methods or appraisal methods accepted by nationally recognized appraisal and valuation organizations (without specific reference) will be used in valuing property. Oregon (as has Montana) has adopted the WSATA handbook as the official valuation guide.

Given the disparate valuation methods used in each of the states surveyed, it is difficult to ascertain whether one state's uniform standards are the same as another state's standards.

Taxes Paid by Public Utility Customers

The study called for a comparison of the total state tax burdens imposed on utility customers in Montana and in neighboring states.

Montana Tax Tracker

Section 69-3-308, MCA, enacted in 2003, provides that the Public Service Commission (PSC) shall allow a public utility to file rate schedules that allow for the automatic adjustment and tracking of Montana state and local taxes and fees, except state income tax. The public utility may also separately disclose in a customer's bill the amount of state and local taxes and fees assessed against the public utility that the customer is paying. The rates must be filed with the PSC, whose role is limited to identifying errors within 45 days, asking for comment, and ordering that the utility address the errors.

Without section 69-3-308, MCA, which is often referred to as the "tax tracker," a public utility would have to file a rate case in order to revise customer rates to include updated taxes levied on the utility. A rate case is the method by which the PSC approves rates charged by a public utility and includes consideration of costs and revenues of the public utility. Three public utilities have used the tax tracker since its implementation: Energy West in 2004; NorthWestern Energy in every year between 2005 and 2017, except for 2007; and Montana-Dakota Utilities Co. in 2017.

Neighboring States' Treatment of Taxes

The states that border Montana do not appear to allow a public electric or gas utility to automatically increase rates to recover taxes and fees. As in Montana, these states include taxes and fees as an operating cost considered during a regular rate case. Wyoming does include franchise fees directly on a consumer's bill. North Dakota and South Dakota allow riders for certain expenses of the utility, such as infrastructure, but those riders do not seem to include taxes and are not automatic.

Conclusion

Determining the taxes paid by utility customers is an involved undertaking that was not fully understood when developing the committee's work plan. Taxes paid by the utility are included in the base rates and in tax tracker filings, which include a reconciliation of tax collections in prior years. A further complication is the allocation of property taxes between retail and wholesale customers.[57] If the committee wished to collect this information, it would have had to allocate significantly more time to the SJ 23 study. The topic is involved enough that an entire interim study could be devoted to determining taxes paid by utility customers. In addition, this topic may fall more within the expertise of the Energy and Telecommunications Interim Committee.

[57] "PSC Orders NorthWestern Energy to Reduce Rates for Property Tax Costs," Jonathon Ambarian, MTN News.

APPEAL PROCEDURES

The 2013-2014 Revenue and Transportation Interim Committee did an extensive study of tax appeals. Information provided for that study can be found here.

Department of Revenue Review Procedures

The Department of Revenue's review procedures differ depending on whether the property is centrally assessed property or industrial property.[58]

Centrally Assessed Property

ARM 42.2.511 provides the process for an informal review of a centrally assessed property. The owner must file a written objection with the department. If the department disagrees with the taxpayer, it must explain the reasons by issuing a Notice of Determination. The taxpayer may then request a review by the department's Office of Dispute Resolution.

Section 15-1-211, MCA, requires the department to have a uniform dispute review procedure. Issues arising from the administration of the property tax are not included in this procedure except for assessments of centrally assessed property.

The section requires the department to establish a dispute resolution office to resolve disputes within 180 days of referral to the office (unless the parties agree to extend the deadline). A person may also elect to bypass review by the dispute resolution office and receive a final decision within 30 days. The section also provides that a person has the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

A centrally assessed property taxpayer may appeal the final decision of the Office of Dispute Resolution to the State Tax Appeal Board.

Industrial Property

Section 15-7-102, MCA, allows a property owner to request an informal classification and appraisal review by submitting an objection to the department. This process is available to industrial property taxpayers by filing a Form AB-26 with the department. If the property owner feels aggrieved by the decision resulting from the informal review, the property owner may file an appeal with the County Tax Appeal Board or the State Tax Appeal Board.

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[58] For additional detail on the Department's informal review procedures see Dan Whyte, Memo: Department of Revenue Informal Review and Appeal Process, Sept. 30, 2013.

Appeals to a Tax Appeal Board

A taxpayer may appeal a final determination of the Department of Revenue to a county tax appeal board or to the State Tax Appeal Board, depending on the property classification, or the taxpayer may appeal directly to the tax appeal board. As with the department review process, the appeal process is different for centrally assessed property and industrial property owners.

Centrally Assessed Property

Section 15-2-302, MCA, provides for the direct appeal of a department decision to the State Tax Appeal Board for centrally assessed property.

Industrial Property

An industrial property owner may appeal to the County Tax Appeal Board for the county in which the property is located or to the State Tax Appeal Board as provided in section 15-2-302, MCA..

The 2015 Legislature enacted House Bill 41 allowing an industrial taxpayer to choose whether to appeal to the County Tax Appeal Board or the State Tax Appeal Board. The 2013-2014 Revenue and Transportation Interim Committee requested the legislation as a result of an interim study of the tax appeal process. The committee heard testimony that industrial property owners may have an appeal based on the same issue in multiple counties. Appealing directly to the State Tax Appeal Board allows those taxpayers to bypass County Tax Appeal Board hearings in each county in which the property is located.

Mediation

Section 15-1-212, MCA, provides for mediation for centrally assessed and industrial properties assessed annually by the department. A centrally assessed property taxpayer or an industrial property taxpayer assessed annually may request mediation by including the request for mediation on the appeal filed with the State Tax Appeal Board or, if the appeal is already filed, with a separate motion to the State Tax Appeal Board.[59] A $100 fee must accompany the request, and that fee is deposited in the state general fund. The department must participate when the taxpayer requests mediation.

Additional provisions require that the mediation be private, confidential, and informal, and that it follow the process outlined in section 26-1-813, MCA. The section also specifies that the mediator is prohibited from conveying information between the parties unless the source party authorizes the conveyance of the information. Records of the mediation may not be disclosed to the public until the dispute is resolved, either through mediation or through the tax appeal process. The mediation may not be conducted by a public employee and must take place in a privately owned facility. The taxpayer and the Department share the costs of the mediator.

[59] A centrally assessed property owner that requests a department review also has the right to consideration of alternative dispute resolution procedures, including mediation, as discussed above.

The section also provides a timeline for the mediation proceedings. The mediator must be selected and the mediation scheduled within 45 days of the request for mediation. Both parties may agree to waive this requirement. Also, a mediation may not proceed longer than 120 days unless the parties agree.

Appeal of a Tax Appeal Board Decision

Regardless of whether the appeal process begins at a County Tax Appeal Board or at the State Tax Appeal Board, industrial and centrally assessed property owners both have the option of appealing the decision to the next level. A County Tax Appeal Board decision may be appealed to the State Tax Appeal Board followed by District Court and the Montana Supreme Court.

INTANGIBLE PERSONAL PROPERTY EXEMPTION[60]

Constitution, Statute, and Administrative Rules

The power to tax and provide exemptions is explicitly provided in the Montana Constitution:

- Article VIII, section 1 provides that taxes "shall be levied by general laws for public purposes";
- Article VIII, section 3 provides that the "state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law"; and
- Article VIII, section 5 provides that the Legislature may exempt "classes of property."

Prior to the 1999 Legislative Session, the Montana Code Annotated contained broad definitions that provided for the taxation of property, and intangible personal property was not exempt. The term "personal property" included "everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements."[61] Likewise, the term "property" included "money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership."[62]

The topic of intangible personal property became ripe after a legislative audit concluded that the department of Revenue was not specifically identifying and taxing intangible personal property (but was presumably taxing intangible property of centrally assessed companies).[63] The audit recommended that the department tax intangible property in accordance with state law. The department concurred with the recommendation and indicated it would work in consultation with the Revenue Oversight Committee in dealing with the matter.

In the fall of 1998, the Revenue Oversight Committee requested legislation to exempt intangible personal property from taxation. The legislation was introduced as Senate Bill 111 (1999) and was sponsored by

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[60] This section of the report written by Jaret Coles, staff attorney, Montana Legislative Services.
[61] Section 15-1-101(1)(n), MCA (1997).
[62] Section 15-1-101(1)(p), MCA (1997).
[63] Legislative Audit Division, Financial Compliance Audit for the Two Fiscal Years Ended June 30, 1996, Department of Revenue (Helena, MT).

Senator Bob DePratu of Whitefish. According to testimony from the Senate Taxation Committee, intangible property of centrally assessed companies was subject to a property tax while other intangible property was not assessed.[64] The purported reasoning for the discrepancy in tax treatment was the fact that centrally assessed properties were appraised using the unit valuation methodology, while other businesses were appraised using the cost or market approach.[65] The legislative remedies were to either tax all intangible property under then-existing state law or exempt all or portions of intangible personal property. For example, the prospect of taxing liquor licenses was discussed.[66] In the end, the Legislature enacted a comprehensive exemption statute that provided as follows:

"15-6-218. Intangible personal property exemption. (1) Except as provided in subsection (3), intangible personal property is exempt from taxation.

(2) For the purposes of this section, "intangible personal property" means personal property that is not tangible personal property and that:

(a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill.

(3) The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter.

(4) The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property. To the extent that the unit value includes intangible personal property, that value must be removed from the unit value according to the provisions in subsection (3).

(5) The department shall report intangible personal property annually to the revenue and taxation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001."

In 2005, Representative Christine Kaufmann sponsored House Bill 85, which amended section 15-6-218, MCA, to its current form as follows:

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[64] Minutes of the Senate Taxation Committee, pp. 11-12 (Jan. 29, 1999), available at http://leg.mt.gov/bills/MinutesPDF/990129TAS_Sm1.pdf.
[65] *Id.*
[66] *Id.* at 13-14.

15-6-218. Intangible personal property exemption. (1) ~~Except as provided in subsection (3), intangible~~ Intangible personal property is exempt from taxation.

(2) For the purposes of this section, "intangible personal property" means personal property that is not tangible personal property and that:

(a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill.

(3) ~~The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter.~~

~~(4) The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property.~~ To the extent that the unit value of centrally assessed property includes intangible personal property, that value must be removed from the unit value ~~according to the provisions in subsection (3)~~.

~~(5) The department shall report intangible personal property annually to the revenue and taxation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001.~~

The present version of the statute provides as follows:

"**15-6-218. Intangible personal property exemption.**

(1) Intangible personal property is exempt from taxation.

(2) For the purposes of this section, "intangible personal property" means personal property that is not tangible personal property and that:

(a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill.

(3) To the extent that the unit value of centrally assessed property includes intangible personal property, that value must be removed from the unit value."

History: En. Sec. 1, Ch. 583, L. 1999; amd. Sec. 1, Ch. 318, L. 2005.

In addition to the statute, there are a few administrative rules that specifically implement the intangible personal property exemption.

The first administrative rule (ARM 42.21.116) was adopted in 1999 and amended in both 2006 and 2013. However, the rule has not changed in substance since 1999, and it essentially provides that the value of exempt intangible property is the value stated in the taxpayer's accounting records, subject to review and verification by the department.

The second administrative rule (ARM 42.21.158) deals more with business equipment reporting and the calculation of the $100,000 exemption than intangible personal property, but subsection (11) provides that industrial and commercial property taxpayers shall provide documentation regarding the installed costs of intangible personal property or alternative methodologies regarding market value for consideration by the department.

A third administrative rule (ARM 42.22.110) gives certain centrally assessed taxpayers with intangible personal property the option to remove certain default percentages from the cost, income, and market indicators. If a centrally assessed taxpayer believes the value of intangible personal property is greater than the default percentages, then an alternative methodology or additional information may be presented, but the default percentages will not be reduced. The exemption percentages for determining the value of exempt intangible property for centrally assessed property are as follows:

Type of Property	Cost Indicator	Income Indicator	Market Indicator
Airlines	10%	10%	10%
Pipelines	5%	5%	5%
Electric Cooperatives	5%	5%	5%
Telephone Cooperatives	5%	5%	5%
Electric Utilities	10%	10%	10%
Telecommunications	15%	15%	15%

If a railroad is assessed according to the provisions of section 15-23-205, MCA, the amount of intangible property deducted from the system value of the railroad is equal to 5% of the system value. If a railroad is assessed using cost, income, and market indicators of value, 5% of the value determined by each indicator reflects the value of intangible personal property for each indicator.

Court Decisions on the Treatment of Intangible Property

There are a few Montana Supreme Court cases that touch on the concept of intangible personal property, and one reported Montana Supreme Court case entitled *Gold Creek Cellular of Mont. L.P. v. Dept. of Revenue* which

discusses section 15-6-218, MCA, in great detail. There are also a few Montana Tax Appeal Board and Montana District Court opinions that were not appealed to the Montana Supreme Court.[67]

Gold Creek Cellular of Mont. L.P. v. Dept. of Revenue

In *Gold Creek Cellular of Mont. L.P. v. Dept. of Revenue,* 2013 MT 273, ¶ 1, 372 Mont. 71, 310 P.3d 533, Gold Creek Cellular (d/b/a Verizon) and AT&T Mobility brought a declaratory judgment action in the First Judicial District (i.e., Lewis and Clark County) against the Department of Revenue alleging that certain administrative rules regarding intangible property were invalid. The District Court granted summary judgment to the plaintiffs, and the department appealed the decision to the Montana Supreme Court. *Id.* The issues before the Montana Supreme Court pertained to whether the department's administrative rules defining "goodwill" and "intangible personal property" conflicted with section 15-6-218, MCA. *Id.* ¶¶ 2-3. The rules at issue were amended in 2010, and the Court described the amendments as "substantial changes." *Id.* ¶ 7. The amendments provided as follows:

42.22.101 DEFINITIONS The following definitions apply to this chapter:

[(1) through (9) remain the same.]

(10) "Goodwill" means booked or accounting goodwill. The booked goodwill must be present on the subject properties' financial statements, and must have been created through the purchase price accounting process as defined by GAAP or other accounting authority.

[(10) remains the same but is renumbered (11).]

(12) "Intangible personal property" has the following attributes:

(a) Intangible personal property must be separable from the other assets in the unit and capable of being held under separate title or ownership.

(b) Intangible personal property must be able to be bought and sold, separate from the unit of operating assets, without causing harm, destroying, or otherwise impairing the value of the unit of assets being valued through the appraisal process.

(c) Intangible personal property must have value as a result of its ability to create earnings that exceeds their contributory value to the unit; or, it must be capable of earning an income as a standalone entity or apart from the other assets of the unit.

(d) Intangible personal property is not the same as intangible value. Intangible value is the value of an entity as a going concern - its ability to make excess revenues over the normal rate of return. Intangible value is part of the overall value of assets. Intangible value is not exempt from property taxation in Montana.

[67] District Court opinions are not reported in a readily available format like Montana Supreme Court cases. As such, this report may not contain relevant District Court opinions that were not provided to the public through LexisNexis.

[(11) through (32) remain the same but are renumbered (13) through (34).[68]]

The department contended that the definitions of "goodwill" and "intangible personal property" were compatible with the statute and that the Department was entitled to receive administrative deference under the federal standard (referred to as *Chevron* deference). *Gold Creek Cellular*, ¶ 10. However, the Court determined the Montana deference standard was the correct standard, and not *Chevron* deference. *Id.* ¶ 11. Under this standard, administrative rules are invalid when they:

(1) engraft additional and contradictory requirements on the statute; or

(2) engraft additional, noncontradictory requirements on the statute which were not envisioned by the legislature.[69]

Using the Montana deference standard, the Court upheld the District Court's conclusions that the administrative rule definitions of "goodwill" and "intangible personal property" were in conflict with section 15-6-218, MCA." *Id.* ¶¶ 18-19, 25.

The Court reasoned that section 15-6-218, MCA, broadly exempts goodwill as a subclass of intangible personal property. *Id.* ¶¶ 15-16, 18. The department's regulation requiring "booked goodwill" that can only be valued using the purchase price accounting method was a restriction on a broad statutory exemption and thus an additional requirement that was not contemplated by the Legislature. *Id.* ¶ 18.

The Court further determined that the administrative rules imposed four additional requirements that were in direct contradiction of the statute's nonexhaustive list of intangible personal property. *Id.* ¶ 21. These requirements included that the personal property:

(1) be separable from other assets;

(2) be able to be bought and sold without impairing value of assets;

(3) create earnings that exceed their contributory value to the unit; and

(4) not have intangible value, which is the value of an entity to make excess revenue over the normal rate of return.

In analyzing the Legislature's usages of the statutory list of property that is considered intangible personal property in section 15-6-218(2)(a), MCA, (i.e., "including but not limited to certificates of stock, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises"), the Court determined that the list illustrates applicable examples of the Legislature's chosen definition. *Id.* ¶ 23. The list does not merely designate those few items that must be exempted. The term "including" is not one of all-embracing definition but connotes an illustrative application of the general principal. *Id.*

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[68] Montana Administrative Register Notice 42-2-846, Notice of Public Hearing on Proposed Adoption and Amendment - Centrally Assessed Property (Sept. 9, 2010).
[69] *Gold Creek Cellular*, ¶ 12.

Based on the Court's ruling, the department is not required to use all available methods to value goodwill, but it may not define goodwill in a way that precludes a taxpayer from proposing alternative methodology or information relating to the valuation goodwill. *Id.* ¶ 19. Additionally, the department must go beyond the statutory list of property that is considered intangible personal property in section 15-6-218(2)(a), MCA, when determining whether property is considered intangible. *Id.* ¶ 23.

Pacificorp v. Dept. of Revenue

In *Pacificorp v. Dept. of Revenue,* 2011 MT 93, ¶ 16, 360 Mont. 259, an issue on appeal in front of the Montana Supreme Court pertained to the department's usage of a direct capitalization method that derives earnings-to-price ratios from an industrywide analysis. The parties did not dispute the default reduction of 10% for intangible property under the administrative rules. *Pacificorp,* ¶ 10; ARM 42.22.110. However, the concept of intangible personal property was brought up in the context of whether it was proper to use earnings-to-price ratios, based on the assumption that nontaxable intangible property is captured under this method. *Id.* ¶ 33. Ultimately, the Court reasoned that Montana's statutory scheme is different from other states, and it upheld the usage of earnings-to-price ratios on the grounds that Montana appraisers must assess a business's entire operating system at 100% market value under section 15-8-111, MCA, before excluding intangible value under section 15-6-218, MCA. *Id.* ¶¶ 34-36.

Dept. of Revenue v. PPL Montana, LLC

In *Dept. of Revenue v. PPL Montana, LLC,* 2007 MT 310, ¶ 3, 340 Mont. 124, an issue on appeal in front of the Montana Supreme Court pertained to whether the department of Revenue deprived a utility of constitutional equal protection by using the unit valuation method and using the utility's recent purchase price as an indicator of value. As part of the unit valuation method, the Department valued the entity as an entire unit and then deducted the intangible personal property. *PPL Montana,* ¶ 34. Ultimately, the Court did not analyze the utility's allegation that the Department of Revenue failed to exempt the proper amount of intangible personal property, and the usage of the unit valuation method was upheld. *Id.* ¶¶ 14, 34-35, 41.

Bresnan Communications, LLC v. Dept. of Revenue

The Thirteenth Judicial District Court of Montana, in Yellowstone County, was confronted with an issue regarding whether customer relations qualified as goodwill or a piece of intangible personal property similar to goodwill. See *Bresnan Communications, LLC v. Dept. of Revenue*, 2011 Mont. Dist. LEXIS 88 (2011), reversed on other grounds, 2013 MT 357, 373 Mont. 29. Ultimately, the District Court determined there was a genuine issue of material fact as to whether a cable company's customer relationships were a benefit or advantage that created an ability to earn income in excess of that which would be expected if the company was composed of a mere collection of assets. The issue was not tried on appeal at the Supreme Court.

Northwestern Corp. v. Dept. of Revenue

The First Judicial District Court of Montana, in Lewis and Clark County, was confronted with multiple issues, including an issue regarding whether intangible personal property was properly removed from a utility's tax assessment. *Northwestern Corp. v. Dept. of Revenue,* 2008 Mont. Dist. LEXIS 360, ¶ 12 (2008). In considering the

utility's value, the department deviated from ARM 42.22.110 and removed 21% (as opposed to the default 10%) for intangible personal property under the cost valuation approach, but it followed ARM 42.22.110 by removing only 10% for the remaining approaches. The Montana Tax Appeal Board determined the department's valuation was appropriate, but the utility argued that further reductions for intangible personal property were required. *Id.* ¶ 21. On appeal, the First Judicial District upheld the Montana Tax Appeal Board, reasoning that the department "did the best that it could with the information it was provided and properly determined the [intangible personal property] allowance". *Id.* ¶ 24. Additionally, the First Judicial District determined that the utility failed to prove its valuation was correct. *Id.* The case was not appealed to the Montana Supreme Court.

Montana Tax Appeal Board Cases - Qwest Corp. v. Dept. of Revenue

The Montana Tax Appeal Board is generally the first stop in reviewing a final decision of the Department that relates to valuation of a centrally assessed property. See section 15-2-302, MCA. Any party that is aggrieved by a final decision of the Montana Tax Appeal Board can then appeal the matter by filing a petition in a Montana District Court. See section 15-2-303, MCA. Montana Tax Appeal Board cases (including cases that are not appealed) are located on the Montana Tax Appeal Board's website at http://mtab.mt.gov/decisions. In regard to the intangible personal property exemption, relevant cases can be found under the Centrally Assessed Electric Generation Property hyperlink and the Other Centrally Assessed Property hyperlink.

Qwest Corp. v. Dept. of Revenue, Docket No.: SPT-2008-2 (2009), provides one example of a Montana Tax Appeal Board case where intangible personal property was at issue in the context of valuation. In *Qwest,* the department's usage of the 15% default reduction for intangible personal property pursuant to ARM 42.22.110 was challenged by a telecommunications company. *Qwest,* at 6, 8-10, 26, 30. At the hearing, the telecommunications company claimed that it had more intangible personal property than the 15% default amount. *Id.* at 20. The appraisal information that was presented at the hearing by the telecommunications company was not given to the department during the appraisal process. *Id.* at 26, 28. In determining that the 15% default amount applied, the board relied on the presumption of correctness in favor of the department's assessment. *Id.* at 28-29. Additionally, the fact that the telecommunications company did not submit information during the appraisal process in advance of litigation made the claims for additional intangible personal property exemptions untimely. *Id.* at 29.

Despite the holding that the information was untimely, the board reviewed the telecommunications company's appraisal and determined that the company "failed to provide the department or this Board with credible data that would support such wide-ranging claims for deduction of intangible personal property." *Id.* at 31.

Proposal to Change Certification Timeline

At the May meeting, the committee heard about a bill draft idea for the Senate Joint Resolution 23 study of the taxation of centrally assessed and utility property. That idea was to delay the lien date by 1 year for centrally assessed property to give the Department of Revenue and the taxpayer more time to share

information regarding the value of the property. The committee requested that staff work with the Department of Revenue and interested parties and provide a bill draft at the July meeting.

Staff provided a draft called LCcald for review in advance of the discussion. The parties discussed the bill draft but did not agree on the language to be included in the bill. Specific concerns raised were how to deal with additions and deletions of property and the necessity of the language in section 1(3) related to extraordinary and unusual events.

Interested parties were invited to suggest additional drafts for discussion. The Department of Revenue provided LCca01 and John Alke requested LCca02.

Upon hearing about the lack of agreement on the bill draft concepts, the committee chose not to advance any of the three drafts.

Conclusion

The Revenue and Transportation Interim Committee has studied the taxation of centrally assessed and industrial property in three of the last four interims without making findings or recommendations or advancing legislation. The interest in the studies seems to be driven by the frequency of tax appeals, disagreements over valuation methodologies and the treatment of intangible property, and higher tax rates for pipelines, electric utilities, and telecommunications property.

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