

Exhibit No. 5  
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# Taxation of Commercial Property in Montana

January 27, 2009

## Taxation of Commercial Property in Montana

"The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law." Art. VIII, Sec. 3, Mont. Constitution "All property in this state is subject to taxation, except as provided otherwise." Section 15-6-101(1), MCA.

In order to ensure that all property subject to taxation within the state is appraised, assessed, and equalized as required by Art. VIII, Sec. 3 of the Montana Constitution, the Legislature has developed a comprehensive classification and valuation system. The portion of that system relating to classification is codified in Title 15, Chapter 6, Part 1, of the Montana Code Annotated. Montana's classification system currently contains 14 distinct classes into which all taxable properties are grouped according to the property's characteristics and use. Both residential and commercial property is included as part of class four, codified at 15-6-134, MCA. The portions of the system relating to appraisal and assessment are codified in Title 15, Chapters 7 and 8, MCA.

Based upon its understanding that similar properties must be similarly treated for tax purposes, the Legislature established the following requirements for the classification and valuation of Commercial property:

### ***General and uniform methods***

- The Department of Revenue must establish general and uniform methods for classifying:
  - Land; city and town lots; and rural and urban improvements 15-7-103(1)
- The methods used by the Department must be adopted by rule pursuant to the Montana Administrative Procedures Act (MAPA) set out in 2-4-101, et seq.

### ***Classification***

- Unless included in another class or exempted by law, Class four commercial property includes:
  - Commercial land 15-6-134(1)(a)
    - Vacant or occupied 15-6-134(1)(g)(i)&(ii)
  - Buildings 15-6-134(1)(g)(i)

### ***Periodic Revaluation***

- The Department must administer and supervise a program for the periodic revaluation of commercial property 15-7-111; 42.18.107, ARM

- Under current law this periodic revaluation must occur every six years 15-7-111(3)
  - The 2009 commercial reappraisal plan has been adopted at 42.18.113, ARM

### **Valuation Methods**

- "All taxable property must be assessed at 100% of its market value except as otherwise provided." 15-8-111(1)
- "Market value is the value at which property would change hands between a willing buyer and a willing sell, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." 15-8-111(2)

### **Land**

- The market value of commercial lots is generally estimated using Computer Assisted Land Pricing (CALP) 42.18.110(3), ARM
  - CALP uses comparable sales approach to value land
  - Sales data is obtained from Realty Transfer Certificates (RTCs) 15-7-301, et seq.

### **Improvements**

- The market value of commercial improvements is generally estimated using the Department's computerized Property Valuation Assessment System (PVAS) 42.18.110, ARM
  - Commercial improvements: the preferred method for valuing commercial improvements is the income approach 42.18.107, ARM
    - $V=I/R$  Value = income/rate 42.20.108, ARM
  - If the Department is unable to develop an income model with a valid capitalization rate, then the cost approach or comparable sales approach will be used 42.18.107, ARM
    - Cost data is generally obtained from commercially generated cost tables that are indexed to reflect local construction material and labor costs
    - Comparable sales data is obtained from RTCs 15-7-301, et seq.

## **Reductions to Commercial Market Values**

- Comstead Exemption 15-6-222
  - Applies to commercial improvements
  - For tax year 2008 and succeeding tax years, 15% of the market value of commercial property is exempt

## **Tax Rate**

- Beginning in tax year 2008, unless otherwise provided, commercial property is taxed at 3.01% of its taxable market value. 15-6-134(2)(a)(iv)

## **Assessment**

- "The Department of Revenue shall have full charge of assessing all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform its duties." 15-8-101
- The Department must assess commercial property by the first Monday in August each year 15-8-201(1)
  - Assessment notices generally issued in June
- The Department must assess commercial property to the person by whom it was owned or claimed or in whose possession or control it was in as of the preceding January 1 15-8-201(2)(a)
  - The Department may issue revised assessments under certain circumstances 15-8-601
    - Escaped assessment
    - Been erroneously assessed
    - Been omitted from taxation
    - Within 10 years
    - Original ownership, possession, or control
      - Must provide notice of revised assessment within 10 days 15-8-601(3)(a)
      - 30 day opportunity for assessment revision review 15-8-601(3)(a)
      - 30 day opportunity to appeal revised assessment to local County Tax Appeal Board (CTAB) 15-8-601(3)(c)

## Appeals

- If the owner of any land or improvements is dissatisfied with the Department's market value appraisal or classification, the owner may request an informal assessment review 15-7-102(3)
  - Request must be made in writing
  - Must be submitted within 30 days of receipt of assessment notice
  - Department must issue its determination in writing
- If the property owner feels aggrieved by the classification or appraisal after the informal review, the property owner may appeal to the CTAB in the county in which the property is located 15-7-102(6)
  - Appeal must be in writing
  - Must be submitted within 30 days after Department mails notice of determination of informal review
  - Taxpayer or representative must appear
- If, following appeal to the CTAB, a taxpayer is dissatisfied with the result, the taxpayer may appeal the CTAB's decision to the State Tax Appeal Board 15-15-104
  - Appeals from a CTAB to STAB are governed by 15-2-301
- Petition for Judicial Review of a STAB decision may be taken to District Court
  - Must be filed within 60 days
  - In Lewis & Clark County or the county in which the property is located
  - Judicial review conducted pursuant to 2-4-701 et seq.,
    - On the record
- District court decisions may be appealed to Montana Supreme Court 2-4-711
  - Must be filed within 60 days