



## Revenue and Transportation Interim Committee

### 62nd Montana Legislature

#### SENATE MEMBERS

CHRISTINE KAUFMANN--Vice Chair  
RON ERICKSON  
JEFF ESSMANN  
KIM GILLAN  
JIM PETERSON  
BRUCE TUTVEDT

#### HOUSE MEMBERS

ROY HOLLANDSWORTH--Chair  
DICK BARRETT  
CYDNIE (CARLIE) BOLAND  
BRIAN HOVEN  
SUE MALEK  
MIKE MILLER

#### COMMITTEE STAFF

JEFF MARTIN, Lead Staff  
JARET COLES, Staff Attorney  
FONG HOM, Secretary

# MINUTES

## February 16-17, 2012

February 16, 2012

Room 137, Capitol Building  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

### COMMITTEE MEMBERS PRESENT

REP. ROY HOLLANDSWORTH, Chair  
SEN. CHRISTINE KAUFMANN, Vice Chair

SEN. RON ERICKSON  
SEN. JEFF ESSMANN  
SEN. KIM GILLAN  
SEN. JIM PETERSON  
SEN. BRUCE TUTVEDT

REP. DICK BARRETT  
REP. CYDNIE (CARLIE) BOLAND  
REP. BRIAN HOVEN  
REP. SUE MALEK  
REP. MIKE MILLER

### STAFF PRESENT

JEFF MARTIN, Lead Staff  
MEGAN MOORE, Research Staff  
JARET COLES, Staff Attorney  
FONG HOM, Secretary

## Agenda and Visitors' List

Agenda (**Attachment 1**)  
Visitors' list (**Attachment 2**)

### COMMITTEE ACTION

The committee approved the minutes of the December 8-9, 2011, meeting.

### CALL TO ORDER AND ROLL CALL

00:00:01 REP. HOLLANDSWORTH called the meeting to order at 8:02 a.m.

00:01:25 The committee secretary called roll (**Attachment 3**).

#### **Tour of Department of Revenue income tax processing center**

00:01:36 **Alan Peura, Deputy Director, Department of Revenue**, gave an overview of the tour to the Department of Revenue's income tax processing center.

#### **Adoption of minutes of the December 8-9, 2011 meeting**

00:05:14 The minutes of the December 8-9, 2011, meeting were approved unanimously by voice vote.

## AGENDA

### SJR 17 STUDY OF VALUING CENTRALLY ASSESSED PROPERTY

00:11:00 Jeff Martin introduced Tom Hamilton who gave a presentation on unitary valuation by phone.

#### **Overview of unitary valuation - Tom Hamilton, University of St. Thomas**

00:16:07 Mr. Hamilton gave a presentation on Unitary Valuation (**Exhibit 1**).

#### **Committee questions of Mr. Hamilton**

00:41:54 REP. HOLLANDSWORTH asked about setting values in other states and if businesses have input in those values before they are put into tax codes. **Mr Hamilton** said that companies provide that information to the state and most states that use a unit value approach are similar.

00:43:46 SEN. TUTVEDT asked about taxing tangible and intangible assets. **Mr. Hamilton** discussed taxing intangible assets and how complex that process is. He said that you don't want to be disproportionately taxing one individual versus another or one entity over another.

00:49:59 REP. BARRETT and Mr. Hamilton discussed how a workforce could be marketable on its own and if that kind of marketing would take place without an

exchange of other kinds of property.

00:53:03 SEN. ERICKSON and Mr. Hamilton discussed cost, income, and market approaches.

## **DEPARTMENT OF REVENUE'S REPORTS - Dan Bucks, Director**

### **Update on property taxation trends**

01:06:07 Director Bucks gave an overview of what will be discussed regarding property taxation trends, the Department's response to public comments, and their attempt at finding panelists for presentations on taxation trends.

### **Analysis of Annualized Growth Rates**

01:09:55 Director Bucks discussed the charts showing growth rates for assessed value, taxable value and estimated taxes paid (**Exhibit 2**). He said that this presentation is in response to Sen. Erickson's request for additional refinement of data on trends in property taxes by classes, removing the effect of inflation between 1999 and 2011.

### **Committee Questions**

01:28:19 SEN. TUTVEDT asked about centrally assessed that would be considered depreciables. **Director Bucks** discussed the Department's concept of what constitutes unit valuation.

01:32:04 SEN. ESSMANN asked if the Department would be able to run graphs with the growth removed for both the change in taxable value over time and the change in taxes over time and present that to the committee.

### **Partial Centrally Assessed Companies New Investment**

01:34:01 Director Bucks discussed centrally assessed companies with new investment compared to total gross investment values in 2005 (**Exhibit 3**).

### **Committee Questions**

01:35:34 REP. MILLER asked if there was any data for other states as to what their growth investment is for the past six years. **Director Bucks** said he did not know if other states compile that data.

### **Information Requested by Senator Peterson**

01:38:09 Director Bucks gave a presentation on valuations that appear on the assessment notices for companies (**Exhibit 4**) in response to Sen. Peterson's request.

### **Summary of Assessed Values of Top 25 Industrial Companies**

01:42:09 Director Bucks gave a presentation on the Summary of Assessed Values of the top 25 industrial companies (**Exhibit 5**).

### **Department of Revenue's response to public comments on Centrally Assessed Property**

01:43:20 Director Bucks discussed the Department of Revenue's responses to December 9, 2011, public comment on centrally assessed property (**Exhibit 6**):

- response to an attorney's comments on direct capitalization rate
- response to Verizon's comments
- response to AT&T's comments
- response to Montana Taxpayers Association's comments

### **Committee Questions**

01:52:05 REP. MILLER asked if Verizon had to litigate to get the figures that Director Bucks had stated and if Verizon didn't litigate, could it be that in Montana, no one has ever gotten more than 15%. **Director Bucks** said that the actual exemption granted is more than three times the default percentage.

02:15:32 **C.A. Daw, Chief Legal, Department of Revenue**, discussed the litigation that the Department has with respect to the valuation of the refineries in Yellowstone County; what he sees as intrinsic barriers to the study that is being proposed with respect of valuations across states and methodologies across states.

### **Committee Questions**

02:29:19 SEN. ESSMANN asked Mr. Daw about taxpayers' perception on taxes due being greater than it is in other states in which they operate and if the Department might have less litigation or less delay of city, school, and county governments getting tax funds. **Mr. Daw** discussed the fact that states say that they assess at 85% rather than at 100%, that could cut down litigation because people assessed at that percentage think that they are getting a good deal on the property tax assessment.

### **Property Taxation in Montana**

02:35:20 Director Bucks discussed a report produced by the Montana Legislative Council in December, 1960, entitled "Property Taxation in Montana" (**Exhibit 7**).

### **Discussion on a proposed study to be conducted by Kristin Gustafson Juras, University of Montana School of Law**

02:41:28 Ms. Juras explained the reasons why she was conducting a comparative study about property taxation focusing on centrally assessed property. Her

recommendations and conclusions will be independent, factual and historical so that people will be better advised in making difficult policy choices as to the proper way to move forward with central assessment. She distributed "*Comparative Study of Montana's Centrally Assessed Property Taxation Statutes and Methodologies*" (**Exhibit 8**) that showed the components of her proposed study.

**Committee questions of Ms. Juras**

- 02:46:32 REP. BARRETT asked Ms. Juras to address what the impact will be by changing the way of doing business on the valuations of the centrally assessed companies. **Ms. Juras** explained that she will look at states that have similar models that show historically what properties were centrally assessed, how they were centrally assessed, and if there are any changes in their methodologies.
- 02:49:03 SEN. ERICKSON asked about Item B in her report in which Director Bucks said was not true. SEN. ERICKSON said that his other concern is that it seems that she has already made a conclusion before the report has been written. **Ms. Juras** said that based upon her review of the pleadings in various cases, including *Bresnan vs. Montana Department of Revenue*, where the pleadings will show that the Department retroactively changed its methodologies of taxing that particular property from past practice. She said she has not made any foregone conclusions with regard to the results of her report, and has not commenced collaborating all of the statutes from various states.
- 02:51:39 REP. MALEK asked if Bresnan is involved in lawsuit addressing those issues contained on page 3 of her report and if it was proper for this committee to get involved in the midst of a lawsuit. **Ms. Juras** said that Bresnan is involved in the lawsuit with the Department of Revenue and she doesn't believe that it is proper for the committee or herself to get involved in that lawsuit, however, she does think it appropriate for this committee to study the issues that are raised.
- 02:55:00 SEN. KAUFMANN asked if Ms. Juras' services were retained specifically by Bresnan to provide information to this committee. **Ms. Juras** said that Bresnan Communications engaged her to prepare a study and that the study be made available to the committee.
- 02:59:55 REP. MILLER asked if her study will be looking at the differences in the methodology used by other states. **Ms. Juras** said that she will see whether the statutes of these states prescribe certain methods to be used or whether they delegate to an administrative agency the ability to choose what methodologies are best served.

- 03:00:42 SEN. GILLAN asked when Ms. Juras looks at different valuations, whether they will be qualitative or quantitative. **Ms. Juras** said that her study will include both qualitative and quantitative. The main issue she is trying to raise is what does Montana law provide for.
- 03:02:12 SEN. GILLAN asked if Ms. Juras will define the differences based on tax rates and not get into the actual valuations. **Ms. Juras** said that she will focus on tax rates and the results of the application of those tax rates based on different methods and classes.
- 03:02:36 REP. BARRETT asked how Ms. Juras intends to incorporate into the study the effects of the issues that have been raised regarding statewide equalization and the fact that Montana has a statewide property tax for all types of property and a constitutional requirement for equalization. Is there some way of incorporating the differences between states in those provisions in the law to make sure that we're comparing apples to apples. **Ms. Juras** said that she will take into account statutes regarding equalization in each of the states and include that in the study.
- 03:04:27 SEN. ERICKSON requested that Ms. Juras be more specific in her response to Rep. Barrett's request because Montana has a constitution that is different from other states, and that she include in her study not only statutory materials but other states' constitutions.

#### **PUBLIC COMMENT**

- 03:05:40 **John Alke** distributed background information (**Exhibit 9**) related to his comments on capitalization rates.
- 03:17:52 **Michael Mupo, Director of Tax, Verizon**, referred the committee to the Department of Revenue's summary of centrally assessed values (Exhibit 4), and specifically to Cellco Partnership DBA Verizon Wireless, and commented on the fairness of the Department of Revenue's valuation.
- 03:29:36 **Bob Strong, AT&T**, commented on AT&T intangibles and the amount on their financial books.
- 03:36:41 **Tara Veazy, Montana Budget and Policy Center, Helena**, commented on a possible outcome of the study and the challenges that policy makers are facing.
- 03:40:41 **Jon Bennion, Montana Chamber of Commerce**, commented on what he is hearing from the different companies in Montana regarding the unpredictable and unfair nature of the centrally assessed methodology of taxation.

03:42:20 **Nancy Schlepp, Montana Taxpayers' Association**, commented on the proposed study by Ms. Juras.

03:44:09 **Gene Walborn, Department of Revenue**, responded to Mr. Alke's comments regarding the Department's capitalization rates.

**LUNCH - reconvened at 1:04 p.m.**

### **TAX INCREMENT FINANCING TOPICS**

#### **Response to questions raised regarding the City of Billings' Tax Increment Finance District - Dan Bucks, Director, Department of Revenue**

05:03:17 Director Bucks discussed the issues raised concerning tax increment finance district in the City of Billings (**Exhibit 10**) and the Department's conclusions.

#### **Committee questions**

05:09:15 REP. HOLLANDSWORTH asked about the number of cross school district boundaries that has occurred. **Director Bucks** said he is only aware of two school districts where the cross school district boundaries and only one incidence where there was a positive increment in one school district portion of the TIF and a negative in the other district.

### **PUBLIC COMMENT ON TAX INCREMENT FINANCE**

05:12:47 **Kevin Nelson, Billings**, said that the committee receives background information for legal opinions on an untimely basis resulting in the public not having time to review it. He also commented on Director Buck's statement of "going forward" where the Department of Revenue made a mistake in the school district cross boundaries and the distribution of the taxes were not resolved. He said that the Department should readjust the numbers and give the people back their money.

05:17:50 SEN. PETERSON asked Director Bucks to respond to the comments made by Mr. Nelson.

05:18:11 Director Bucks explained that once the Department certifies values to local governments and allocates it to districts, budgets are built on that basis and taxes are then levied as of a certain date and the first half bills have been set. There are no means of undoing their certification of values. The Department does not have the authority to order a transfer of money, which is what needs to be done.

- 05:19:58 SEN. PETERSON requested that Director Bucks put in writing the discrepancy and send it to the TIF district asking for a response.
- 05:21:35 SEN. ESSMANN asked that Director Bucks copy the tax increment districts that lost the incremental money as well because it would be the school district, the city, and the county that would actually have a claim on that incremental money.

**BILL DRAFT TO REVISE UNIFORM TAX PENALTY AND INTEREST PROVISION - Jeff Martin, Research Analyst**

**Department of Revenue's proposed revisions to LC 9000**

- 05:23:53 Mr. Martin discussed the Department of Revenue's proposed revisions to LC 9000, Sections 1 and 2 (**Exhibit 11**).

**LC 9000, revising certain provisions related to the administration of taxes**

- 05:39:29 Mr. Martin discussed proposed revisions to LC 9000 (**Exhibit 12**).

**Committee Questions**

- 05:43:40 REP. HOVEN asked Sen. Erickson if Senate Bill 411 was at the request of the Senate Taxation Committee or the Department of Revenue. **SEN. ERICKSON** said that it was the Senate Taxation Committee.
- 05:44:14 SEN. ESSMANN asked about the fiscal note to LC 9000. **Mr. Martin** said that the Department prepared a fiscal note which is included in the Department of Revenue's meeting materials.
- 05:45:59 SEN. ERICKSON asked the Department of Revenue to explain the summary analysis of the fiscal note (**Exhibit 13**). **Dan Dodds, Department of Revenue**, explained that the changes in penalties and interest to this bill apply to a number of taxes and some of those taxes are split between the general fund and the state special revenue funds.
- 05:48:19 SEN. ERICKSON asked why this fiscal note looks different from the two combined before. **Mr. Dodds** said that he updated the fiscal notes from the two bills during the session and took into account that Sen. Erickson's bill went into effect later than SB 199 and that a provision in SB 199 was removing the floor on the interest rate that the Department charges.

**PUBLIC COMMENT**

- 06:02:45 **Jane Egan, Executive Director, Montana Society of CPAs**, said that the Department of Revenue should have some fraud penalties.

## HJR 13 INCOME TAX STUDY

### **Overview of selected states' income tax starting points - Jaret Coles**

05:58:07 Mr. Coles provided an overview of State Income Tax Starting Points (**Exhibit 14**).

### **Update on effective income tax rates with and without credits - Stephanie Morrison**

06:14:40 Ms. Morrison discussed the report "Effect of Tax Credits on Individual Income Tax Rate" (**Exhibit 16**).

### **Overview of effective tax rates of married taxpayers by filing status - Stephanie Morrison**

06:20:16 Ms. Morrison discussed "Married Tax Filers: Highlights from 2007 and 2010" (**Exhibit 17**).

### **Discussion for additional analysis**

06:33:07 REP. MALEK asked how Montana compares to other states in terms of tax brackets. **Mr. Coles** said that a table in a report that was distributed in December that went through the different brackets. Inside that report was a one-page summary of each state's particular structure.

06:34:12 **Mr. Martin** said this committee has looked at credits at every meeting, looked at deductions and directed staff to look at ways to simplify the number of calculations. What we are trying to get at is have a committee discussion and direction rather than individual member's thoughts, but have some direction at how the committee wants to look at trying to simplify the income tax structure.

06:36:16 REP. MILLER wanted to look at a flat tax; SEN. TUTVEDT would like to have tax preparers come and talk about simplifying the tax credits; and REP. HOVEN requested that staff come up with a rate structure to make it revenue neutral.

### **PUBLIC COMMENT**

06:54:20 **Kris Hansen, House District 33**, said that she would be interested in Montana following the federal AGI and then start from there with its own flat rate. Simplifying the tax code is going to be hard but she would like to see some progress in that direction. Tax reform is bipartisan and we should not cringe from it.

07:00:40 **Jane Egan, Montana Society of CPAs**, said that in her 25 years of being with the Society, the number one thing on their legislative policy every session is tax simplification.

07:02:39 REP. HOVEN asked Ms. Egan that if she has any proposals, he would like to see them. **Ms. Egan** said they don't have a specific proposal right now but her members would be interested in bringing a proposal to him.

**PUBLIC COMMENT ON ANY MATTER WITHIN THE PURVIEW OF COMMITTEE**

07:04:10 **Kevin Nelson, Billings**, commented on the Attorney General's opinion of February 3, 2012, that dealt with transfer of funds in school districts. He also commented on the Cabela issue in Billings.

**Recess**

07:08:40 REP. HOLLANDSWORTH recessed the meeting at 3:10 p.m.

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