

Current Issues Involving Montana's Centrally Assessed Property Taxation Statutes and Procedures

Prepared by Kristen Gustafson Juras, Associate Professor, University of Montana School of Law (July 18, 2012)

I. INTRODUCTION

"The Interim Property Tax Committee, composed of 12 diligent and committed legislators, was assigned a devilish task." Recipes for Change: A Menu of Property Tax Alternatives, prepared on Behalf of the Interim Property Tax Committee (November 1998)

Property taxation is complex. Since its inception, the Montana Legislature has initiated numerous studies on the issue of property taxation. Most recently, the 2011 Montana Legislature adopted joint resolution (SJ 17) directing that an interim study analyze Montana's system of valuing and taxing centrally assessed property. The joint resolution was adopted to address concerns regarding the impact of current central assessment policies on the predictability and stability of property valuation and the economic effect of these policies on the business environment. This project was assigned to the Revenue and Transportation Interim Committee.

This report, which has been prepared for consideration by the Revenue and Transportation Interim Committee as it conducts its SJ17 analysis, is comprised of the following components:

(1) the history of property taxation in Montana, including the development of Montana's assessment and classification systems;

(2) the current Montana Constitution and statutes governing the assessment, classification, and taxation of centrally assessed properties, and how those laws are implemented by the Department of Revenue through administrative rules;

(3) the Montana exemption of intangible property from property taxation, and whether intangibles are, in fact, being assessed as a result of valuation methodologies applied by the Department of Revenue; and

(4) a summary of how other western states have addressed issues surrounding central assessment, including the exemption of intangible property.

II. HISTORY AND ROLE OF PROPERTY TAXES

"Taxes are what we pay for civilized society." — Oliver Wendell Holmes, Jr., U.S. Supreme Court Justice

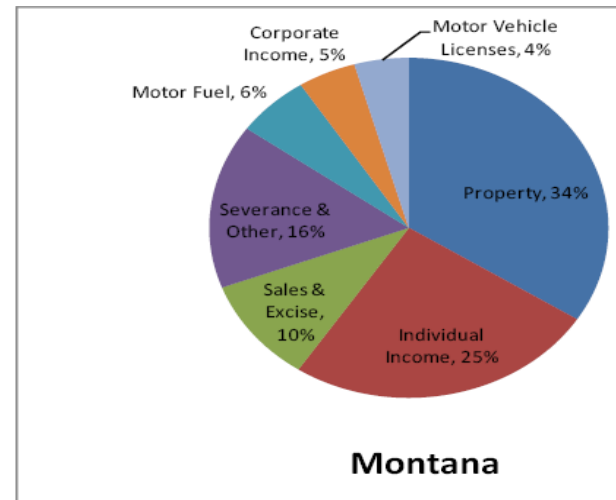
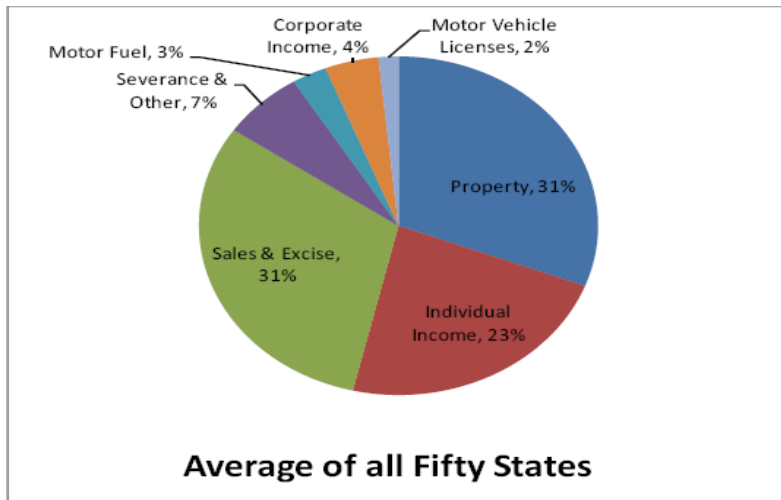
A. History of Property Taxes.

Property taxation is one of the oldest sources of government revenue. Although most property taxes were initially assessed against real property, as economies moved from an agrarian base to industry and commerce, governments increasingly imposed taxes on other types of property, including equipment and intangibles.¹

Commencing in the late 19th and early 20th century, state and local governments in the United States began to impose other forms of taxation in order to fund government services, including income taxes and various forms of sales, severance, and excise taxes. This combination of taxes (property/ income/sales-excise) is often referred to as the "*three legged stool*" of state and local taxation. Montana state and local governments received

¹ For an overview of the history of property taxation in Europe and the United States, see Revenue Oversight Committee, Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues: A Report to the 49th Legislature, Ch. 1, pp. 2-6 (1984) [hereinafter referred to as the "1984 Report"].

34% of their revenues from property taxes (38% if you include motor vehicle licenses, which are a type of property tax), compared to an average of 31% of revenues nationwide (33% if motor vehicle licenses are included).²



B. The Role of Property Taxes.

The property tax is the only tax that is used in every state of the United States.³

Property taxation allocates the cost of government on the basis of a taxpayer’s “property wealth.” For example, a farming operation may earn no income in a given year, and thus pay no income tax, but will nonetheless participate in the costs of government through the property taxes imposed on land, buildings, and equipment. Similarly, nonresidents who own property in Montana (but who do not pay income taxes in Montana) share, through property taxation, in the cost of government services that they enjoy while living in Montana.

Since property values are less susceptible to economic fluctuations, they provide a more stable and predictable source of government revenue than other sources of revenue.

² Montana Department of Revenue, 2008-2010 Biennial Report: Tax Structure Trends, p. 25.

³ International Association of Assessing Officers (IAAO), Standard on Property Tax Policy, ¶ 2.2 (2010) [hereinafter referred to as “IAAO Standard on Property Tax Policy”].

This helps protect against the destabilization to revenue that may occur if there are fluctuations in the other types of taxes that form the “three-legged stool.”⁴ Another advantage of the property tax is local control; property owners who are eligible to vote have a say in the passage of local mill levies.

In spite of its advantages and widespread use, “the property tax is the tax that most Americans, including most Montanans, love to hate.”⁵ Several reasons are cited for the unpopularity of property taxes:

(1) Property taxes are based upon property wealth, which does not always correlate to cash flow or the ability to pay.

(2) Property taxes are payable in a lump sum.

(3) Property appraisals or assessments may be perceived as inequitable, and assessment ratios and property classifications are confusing to many property owners.

(4) Property taxes are income regressive -- lower-income taxpayers pay a higher percentage of their incomes towards property taxes. Property taxes may also be “assessment regressive,” which occurs “when assessment levels or effective property tax rates on lower value properties are greater than assessment levels or effective property tax rates on higher-value properties.”⁶

(5) Disparate treatment of property through classification systems, assessment ratios, and other techniques give rise to a perception that not all property owners are shouldering “their fair share” of the property tax burden. As noted by the 1998 Interim Property Tax Committee, “[t]he owners of virtually every ‘class’ of property believe that the property taxes they pay are overly burdensome.”⁷

⁴ Id., ¶ 2.2.1.

⁵ Interim Property Tax Committee, “Recipes for Change: A Menu of Property Tax Alternatives, A Report of the Interim Property Tax Committee to the 56th Legislature” p. iii (November 1988) [hereinafter 1998 Report].

⁶ IAAO Standard on Property Tax Policy, supra n. 3, p. 24.

⁷ 1988 Report, supra n. 5, p. 37.

III. HISTORICAL OVERVIEW OF MONTANA'S PROPERTY TAXATION SYSTEM

*“As the 21st century nears, Montanans persevere with a property tax system that has its roots in the 19th century. In itself, that reality is neither good nor bad; it is simply a fact.”
Recipes for Change: A Menu of Property Tax Alternatives, prepared on Behalf of the Interim Property Tax Committee (November 1998)*

A. Property Taxation under the 1889 Montana Constitution

The 1889 Montana Constitution vested in the Montana Legislature the authority to levy two types of taxes: property taxes (including taxes on net mine proceeds) and “license” taxes upon persons and corporations doing business in the state.⁸ Following is a summary of the key constitutional provisions relating to property taxation:

(1) The Legislature was authorized to establish “a **uniform rate** of assessment and taxation” and to adopt regulations that would “secure a **just valuation** for taxation of all property.” (Article XII, Section 1). This is referred to as a “*general property tax*” system, which means “that all property is required to be assessed equally, and pay the same rate of taxation.”⁹ In 1891, the Montana Legislature implemented this provision by enacting a statute stating that “[a]ll taxable property must be assessed at its full cash value.”¹⁰ Statewide and locally assessed mills were then applied to the “full value” of property.

(2) Property was defined broadly to include “money, credits, bonds, stocks, franchises, and all matters and things (real, personal, and mixed) capable of private ownership...” (Article XII, Section 17). Apart from certain exemptions set forth in the Constitution (such as government-owned property and property used for religious purposes), **all** property (including intangible property) was subject to property tax levies.

⁸ 1889 Montana Constitution, Article XII, Section 1.

⁹ 1918 Report of the Tax and License Commission, p. 9, excerpted at 1984 report, supra n. 1, Ch. 1, p. 14.

¹⁰ Laws 1891, p. 73.

(3) The Montana Legislature was not authorized to levy taxes against property located within a county, city, or town “for county, city, or town purposes,” but could delegate the authority to assess and collect property taxes to the local governing authority. Article XII, Section 4. Under this two-tiered system, the Montana Legislature was responsible for assessing statewide property taxes for statewide purposes, and local governments were responsible for assessing property taxes for local government purposes.

(4) In somewhat of a contradiction to the mandate of Section 1 of Article XII requiring the Legislature to levy “a uniform rate of assessment,” Section 11 stated that property taxes “shall be **uniform** upon **the same class** of subjects within the territorial limits of the authority levying the tax.” (Article XII, Section 11). This language gave rise to Montana’s classification system, established in 1919.

(5) The 1889 Constitution established a State Board of Equalization comprised of five elected state officials, including the governor. “The duty of the State Board of Equalization shall be **to adjust and equalize** the valuation of the taxable property among the several counties of the state.” (Article XII, Section 15). As explained by the Montana Supreme Court:

The object of [the “adjust and equalize”] provision is to apportion as equitably as may be the burden of the state government among the several counties, to prevent a disproportionate share of the state tax from being thrown upon any county or counties by reason of the action of the local assessors. The grossest inequality might prevail in the valuations in the different counties, and possibly with reference to escaping a fair proportion of the state tax, and without a power lodged somewhere to adjust and equalize the several county valuations, the greatest injustice might be done and there would be a practical annulment of the constitutional provision that ‘all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.’ It was to meet this difficulty and accomplish

this end that the state board of equalization was created with powers to *adjust and equalize*.¹¹

(6) The State Board of Equalization was also directed to centrally assess the value of all railroads that crossed county lines. (Article XII, Section 16).

(7) The Constitution established, within each county, a County Board of Equalization comprised of the county commissioners within each county. “The duty of the County Boards of Equalization shall be to adjust and equalize the valuation of taxable property within their respective counties.” (Article XII, Section 15). Each county was also required to elect a county assessor, who was responsible for the valuation of properties within the county. (Article XVI, Section 5).

B. Early Problems in Implementing Montana’s General Tax System

Montana’s property tax system got off to a rocky start. The first Montana Legislature failed to adopt any rules regarding taxation, leaving both County and State Boards of Equalization without any guidance as they began assessing properties, apart from the broad language of the Constitution. The State Board of Equalization organized itself in 1890 and adopted rules for its own governance, including rules that allowed it to “adjust and equalize” any discrepancies in the valuations of taxable property assessed locally.¹² In 1891, the Legislature passed laws which provided for the assessment of all taxable property at its “full cash value”¹³ and established methods of valuation and equalization procedures.¹⁴ The State Board of Equalization suffered a major setback in

¹¹ State ex rel. Wallace v. State Bd. of Equalization, 18 Mont. 473, 476 (1896) (quoting The People ex rel. Crawford v. Lorthrop, 3 Colo. 428 (1877)).

¹² 1984 Report, supra n. 1, Ch. 1, p. 8.

¹³ “Full cash value” was originally defined by the Montana Legislature as “the amount at which the property would be taken in payment of a just debt due from a solvent debtor.” This definition has been treated as having the same meaning as “market value.”

¹⁴ Laws 1891, p. 73.

1896, when the Montana Supreme Court ruled that the Board did not have the authority under the 1889 Constitution to increase the assessed valuations reported by the counties.¹⁵

Without a mechanism for statewide adjustment and equalization, "glaring defects" and "wide discrepancies" in the valuation and reporting of real estate and personal property amongst the various counties were repeatedly reported over the next decade.¹⁶ The Legislature waited until 1915 to propose a constitutional amendment to overcome the 1896 *Wallace* decision and to specifically allow the Board "to change, increase or decrease valuations made by County Assessors or equalized by County Boards of Equalization."¹⁷ The constitutional amendment expanding the State Board's powers was approved by the voters in 1916, but in 1917 the Legislature focused on enacting a series of license taxes, and commissioned an interim Tax and License Commission to prepare a report on property tax reform for consideration by the 1919 Legislature.

C. The 1919 Move to a System of Property Classification

In its November 1918 report, the Tax and License Commission concluded that the statute requiring "full value" assessment was a "dead letter" that was disregarded by local assessors.¹⁸ The values assigned to "first-class" farm land varied amongst counties from \$5.21 to \$46.29 per acre. Only 12,000 of the 50,000 automobiles in the state were reported by local assessors. Statewide, the average assessment for land represented only 30% of

¹⁵ State ex rel. *Wallace v. State Bd. of Equalization*, 18 Mont. 473 (1896).

¹⁶ 1984 Report, supra n. 1, Ch. 1, pp. 9-11. These problems were reported in the 1898 report of the State Board of Equalization, by Governor Norris in his 1909 and 1911 messages to the Legislature, and by the short-lived Tax Commissioner, a position created in 1915 and abolished in 1917.

¹⁷ Laws 1915, Ch. 47.

¹⁸ 1918 Tax and License Commission Report, p. 9, excerpted at 1984 report, supra n. 1, Ch. 1, p. 14.

the full value of land, 45% of the full value of cattle, and 65% of the full value of bank stock.¹⁹ Not surprisingly, the Commission concluded that

the [general] system of taxation in Montana was a “failure,” resulted in “unjust discrimination,” and was “utterly inadequate.” Specifically, the Commission argued that the operation of a general property tax in Montana was “indefensible, both from the standpoint of producing uniformity and on account of its total failure of enforcement.”²⁰

The Commission recommended that Montana abandon the “general property tax system,” and adopt a classified system in which property would be assigned to various classes to be assessed at different percentages of value or taxed at different rates. The commission proposed a bill, defining seven classes of property with suggested tax rates varying between 7% and 100%.²¹ These classification groups and rates were based on what was in fact happening in Montana informally. By law (“*de jure*”), the assessed value was required to be the “full value” of the property. But in practice (“*de facto*”), the assessed value was only a percentage of the full value, and the proposed classifications, in effect, legalized this existing “*de facto*” situation and attempted to give the Legislature control over it. In support of its proposal, the commission asserted that the classification system was founded on the principle of ability-to-pay, unlike the general property tax.²² House Bill 30, the classification bill, was passed by both the House and Senate in 1919.²³

¹⁹ See excerpts of the 1918 Tax and License Commission Report at 1984 Report, supra n. 1, Ch. 1, pp. 14-17. These rates, Commission members learned, were set in an annual meeting of county assessors who, in the words of the Commission, “resolved themselves into a sort of legislative assembly and proceeded to fix the values at which different species of property shall be assessed.”

²⁰ 1984 Study, supra n. 1, Ch. 1, p. 16.

²¹ For example, money and accounts receivable were to be assessed at 7% of full value; household furnishings and automobiles were to be assessed at 20% of full value; residential homes at 30% of full value; livestock at 33 1/3% of full value; and mine net proceeds at 100% of full value.

²² 1984 Report, supra n. 1, Ch. 1, p. 19. In spite of its assertion, the Commission did not do any research into the income-producing capabilities of the various classes of properties. Teresa Olcott Cohea, *Montana's Property Taxes: Assessment and Classification*, Subcommittee on Taxation (Montana Legislative Council, Helena, December 1976).

²³ Laws 1919, Ch. 51.

HB 30 was immediately challenged as violating the “uniform assessment” requirement of Article XII, Section 1 of the 1889 Montana Constitution. The Montana Supreme Court upheld the classification system, ruling that Article XII, Section 11 of the Constitution specifically allows taxation by “class” of properties, and that taxes must only be uniform within a class.²⁴ The Court further stated that classification of properties “was for the Legislature to determine,” and that the Legislature’s classification was presumed reasonable.²⁵

D. 1920s through the 1972 Constitutional Convention

In 1921, the Legislature expanded the State Board of Equalization’s administrative duties, granting it authority to increase and decrease county assessments and implement the new classification system. Nonetheless, nonuniformity in valuation and assessment persisted. Valuations were largely in the discretion of county assessors, who were still being elected by citizens with whom they had direct contact and close relationships. The State Board of Equalization and their small staff did not have enough manpower to police all fifty-six counties.²⁶

Government studies showed that between 1930 and 1950, assessments departed further and further from full cash value.²⁷ In an effort to fulfill its obligation to “adjust and equalize,” the State Board of Equalization lowered assessment levels in those counties

²⁴ Hilger v. Moore, 56 Mont. 146 (1919). Whereas Section 1 of Article XII mandates “a uniform rate of assessment and taxation,” Section 11 states that property taxes “shall be **uniform** upon **the same class** of subjects within the territorial limits of the authority levying the tax.” The Montana Supreme Court also ruled that the classification system did not violate the U.S. Constitution, citing *Northwestern Life Ins. Co. v. Wisconsin*, 247 U.S. 132, 139 (1918) (“[T]he state is not, because of the Fourteenth Amendment, required to tax all property alike, and may classify the subjects selected for taxation The classification may not be arbitrary and must rest upon real differences--subject to these qualifications the state has a wide discretion.”)

²⁵ 56 Mont. at 177.

²⁶ 1984 Report, supra n. 1, Ch. 1, p. 30, citing Teresa Olcott Cohea, *Property Tax Assessment: A Century Long Struggle for Structured Discretion*, Montana Public Affairs Report No. 26 (Sept. 1978).

²⁷ 1984 Report, supra n. 1, Ch. 1, p. 30.

where assessments were nearer “full value.”²⁸ Local governments resorted to ever increasing mills to raise sufficient revenue from the diminishing property tax base.²⁹ In effect, county assessors and the State Board of Equalization were establishing assessments and the effective rate of taxation, rather than the Legislature.

In 1954, the State Board of Equalization warned the Legislature that the “administration of the law has so deteriorated over the years that we now have a situation where assessments are made upon various percentages of full values, resulting in a classification law within a classification law.”³⁰ Even the Montana Supreme Court noted that as a result of administrative actions, “much property in the State of Montana is placed on the assessment rolls at only a percentage of its true and actual value, in violation of the [full cash value] statute.”³¹

In an attempt to address this problem, the 1955 and 1957 Legislatures enacted legislation requiring, for the first time, a statewide reappraisal of all properties within Montana.³² Local assessors protested the values established in the cyclical reappraisals, and the controversy ended up once again before the 1963 Legislature, which adopted HJR 16 calling for a study to “determine whether Montana’s [property classification] law is equitable, and if so, whether its administration is in fact resulting in equitable taxation.” In the meantime, the State Board of Equalization, based upon an agreement entered into with county assessors and commissioners, issued an order in November 1963 ordering all

²⁸ Teresa Olcott Cohea, *Montana's Property Taxes: Assessment and Classification*, Subcommittee on Taxation (Montana Legislative Council, Helena, December 1976).

²⁹ *Id.*

³⁰ 1984 Report, *supra* n. 1, Ch. 1, p. 31.

³¹ *Yellowstone Pipe Line Co. v. State Bd. of Equalization*, 138 Mont. 603, 610 (1960). In the *Yellowstone Pipe Line* case, the Montana Supreme Court upheld the authority of the State Board of Equalization to assess the real property of pipelines at 74% to 76% of their full cash value, to equalize what was happening in other counties.

³² Laws 1955, Ch. 198; Laws 1957, Ch. 191.

county assessors to value city and rural lots and improvements at 40% of their appraised values – contradicting once again the Legislature’s mandate of assessment at “full value.”³³

The report issued under HJR16 resulted in unfavorable conclusions about Montana’s assessment and classification systems. The report criticized the State Board of Equalization, characterizing it as “a closed corporation” that effectively shut out the voice and influence of the people and the governor in tax policy matters.³⁴ The report concluded that the State Board of Equalization employed several concepts of “value,” which were applied in an arbitrary manner, resulting in an extremely complex, extra-legal, nonuniform, and discriminatory property tax system.³⁵ The report noted that the responsibility to “create a legal framework which encourages high quality administration” lies with the Legislature.³⁶

E. 1972 Montana Constitution

The 1972 Constitutional Convention’s Committee on Revenue and Finance was given the task of proposing resolutions to the significant problems facing Montana’s property tax system. The Committee based its work on this premise:

Tax administration should be established by the Legislature and administered by the executive branch of government, not by a constitutional board which is immune from control by the people. A constitutionally enshrined board is less answerable for its activities and is freer to ignore the mandates and directives of the legislative assembly.³⁷

The 1972 Montana Constitution eliminated the County and State Boards of Equalization, and adopted a state-level system of valuation, assessment, and equalization.

³³ John F. Sullivan, Real Property Tax Assessment in Montana, 34 Mont. L. Rev. 300, 303 (1973).

³⁴ Montana Legislative Council, Property Taxation and the Montana Property Classification Law: A Report to the 39th Legislative Assembly, p.33 (1964) [hereinafter the 1964 Report].

³⁵ Id., p. 35.

³⁶ Id., p. 36.

³⁷ 1984 Report, supra n. 1, Ch. p. 37.

Under Article VIII, Section 3, “[t]he **state** shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.” Eschewing a lengthy and detailed description of the new tax system, the Committee stated that “the details of any tax administration system should be left to the Legislature, which is best qualified to develop the most efficient, modern, and fair system necessary for the needs of the day.”³⁸ Article VIII, Section 4 of the 1972 Montana Constitution also provides that “[a]ll taxing jurisdictions shall use the assessed valuation of property established by the state.”

The stage was set for the Legislature to enact legislation to implement these broad constitutional mandates. The Montana Department of Revenue replaced the State Board of Equalization.³⁹ The 1973 Legislature faced the daunting task of implementing a system that would establish uniform values for property tax purposes across the state, and equalize the widely disparate values currently of record. Overwhelmed, the 1973 Legislature failed to do so.⁴⁰ Piecemeal, over the years, the Legislature has strived to make uniformity and fairness of valuation a reality in the State of Montana. Although the legislative assemblies since 1973 have made great strides, issues of nonuniformity and unfairness continue to exist. In particular, this Committee has been asked to address issues of uniformity and fairness in the context of centrally assessed properties and the exemption of intangible property.

IV. ASSESSMENT

A. Introduction

“Assessment” is the determination of the value of property for tax purposes.

³⁸ Montana Constitutional Convention (1971-72), Vol. II, p. 589.

³⁹ Mont. Code Ann. §2-15-1301 (2011).

⁴⁰ 1984 Report, *supra* n. 1, Ch. 1, pp. 35-39.

Of all the steps necessary to determine property tax liability, assessment is the most crucial, but also the most difficult to control. It is crucial because it is the first step in the taxing process. Consequently, if the assessment is improper, no step which follows can lay claim to validity or propriety. It is the most difficult to control because the determination of value is a complex process, involving a high degree of discretion, judgment, and opinion.⁴¹

Since the adoption of the 1972 Constitution, the Department of Revenue (DOR) has been solely responsible for assessing all taxable property located in Montana and equalizing assessments within the various taxing jurisdictions.⁴² All taxing jurisdictions must use the values established by the DOR in establishing their budgets and mill levies.⁴³ A DOR office is located in each Montana county. Most properties located within a county are “locally assessed”⁴⁴ through the application of uniform methods of appraisal established by the DOR to ensure equalization amongst counties.⁴⁵ Certain properties, as designated by Mont. Code Ann. § 15-23-101, are “centrally assessed” by DOR appraisers in Helena.

Whether locally or centrally assessed, the Legislature has determined that “[a]ll taxable property must be assessed at 100% of its *market value*”⁴⁶ except as otherwise provided by statute.⁴⁷ The Legislature has defined “*market value*” as “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

⁴¹ John F. Sullivan, Real Property Tax Assessment in Montana, 34 Mont. L. Rev. 300 (1973).

⁴² Mont. Const., Art. VIII, Sec. 3 (1972); Mont. Code Ann. § 15-8-101 (2011). In almost all other states, it is the local taxing jurisdiction that is responsible for appraising most property located within their boundaries.

⁴³ Mont. Const., Art. VIII, Sec. 4 (1972).

⁴⁴ Mont. Code Ann. § 15-8-409 (2011) provides that except as otherwise provided by statute, all taxable property “must be assessed in the county, city, or district in which it is situated.” Local appraisers are employees of and are trained by the DOR. Mont. Code Ann. § 15-7-106 (2011).

⁴⁵ Mont. Code Ann. § 15-7-112 (2011).

⁴⁶ Mont. Code Ann. § 15-8-111(1) (2011).

⁴⁷ For example, Class 3 agricultural land is taxed based on its productive value rather than its market value. Mont. Code Ann. §§ 15-6-133; 15-7-201 (2011).

facts.”⁴⁸ Properties must be valued annually, except for properties within Class 3 (agricultural), Class 4 (residential and commercial), and Class 10 (forest), which are reappraised every six years.⁴⁹

The DOR and legislative staff members have presented written summaries and reports regarding Montana’s central assessment statutes and procedures to this Committee, and the information contained in those reports will not be duplicated here.⁵⁰

This report will limit itself to addressing certain aspects of central assessment:

- (1) whether the DOR is centrally assessing properties that do not meet the specific statutory requirements set forth in Mont. Code Ann. § 15-23-101;
- (2) whether the Legislature should consider limiting the discretion of the DOR in the valuation methods that it applies to centrally assessed properties, in order to provide more predictability to taxpayers and less variances in values achieved;
- (3) whether the DOR, through its use of the unit method of valuation, is taxing the value of exempt intangibles owned by centrally assessed companies; and
- (4) whether the DOR is correctly classifying the properties of centrally assessed companies.

B. History and Theory of Central Assessment

Central assessment was first applied in the late 19th century to one of the first regulated industries – railroads.⁵¹ Its purpose was “to withdraw the difficult task of assessing fractional parts of a railroad and its property from the hands of local assessors,

⁴⁸ Mont. Code Ann. § 15-8-111(2)(a) (2011).

⁴⁹ Mont. Code Ann. § 15-7-111 (2011).

⁵⁰ These reports include: Jeff Martin, Overview of Property Classification, Assessment, and Taxation (Sept. 2011); Jeff Martin, Draft Overview of Selected States Methods for Valuing Centrally Assessed Property (Dec. 2011); Mont. Dept. Rev., Centrally Assessed and Industrial Properties (Sept. 27, 2011); Mont. Dept. Rev., Overview of Case Law of Centrally Assessed Property Taxes (Dec. 9, 2011); Jaret Coles, Summary of Major Centrally Assessed Cases Handed out by the Department of Revenue (Dec. 2011).

⁵¹ The original purpose of the Interstate Commerce Commission, created by the Interstate Commerce Act of 1887, was to regulate railroads. Pub. L. 49-104, 24 Stat. 379 (1887). Under the 1889 Montana Constitution, the State Board of Equalization was directed to assess the “franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county.” (Article XII, Section 16).

who could hardly be expected to proceed on any uniform plan, and each of whom would naturally favor his own particular district.”⁵² States expanded central assessment to include other regulated industries.⁵³ In 1919, with the advent of the classification system in Montana, telegraph, telephone, and electric power transmission lines were added to the list of centrally assessed property.⁵⁴ In a majority of states today, the property of regulated (or previously regulated) companies is centrally assessed.⁵⁵

In addition to the characteristic of being regulated, another hallmark of the earliest industries subject to central assessment was the ownership of property that was physically connected, such as the railways of a railroad and the transmission lines of an electric power company. Can properties that are integrated, but not physically connected, be subject to central assessment? This important question was answered by the U.S. Supreme Court in a case involving the central assessment of a pony express company:

Doubtless there is a distinction between the property of railroad and telegraph companies and that of express companies. The physical unity existing in the former is lacking in the latter; but there is the same unity in the use of the entire property for the specific purpose, and there are the same elements of value arising from such use.... We repeat that while the unity which exists may not be a physical unity, it is something more than a mere unity of ownership. It is a unity of use, not simply for the convenience or pecuniary profit of the owner, but existing in the very necessities of the case -- resulting from the very nature of the business.⁵⁶

In 1932, the Montana Supreme Court cited this language verbatim in concluding that the State Board of Equalization appropriately included the value of a telegraph company’s

⁵² Union Pacific Ry. Co. v. Cheyenne, 113 U.S. 516, 522 (1885).

⁵³ For a discussion of the application of “central assessment” to regulated industries, see 2 James Bonbright, *The Valuation of Property* 637-57 (1937). James Bonbright (1891–1985) was a pioneer whose basic positions on property valuation have been widely accepted.

⁵⁴ Laws 1919, Ch. 49, Sec. 6.

⁵⁵ James. A. Amdur, *State Taxation of Transportation, Telecommunications, and Energy Companies* §1810.02.A.3 (Tax Mgt. Portfolio No. 1810-2nd 2002).

⁵⁶ Adams Express Co. v. Ohio State Auditor, 165 U.S. 194, 221-222 (1897).

ocean cables in determining the value of the “unit.” Although the ocean cables were not physically connected to the land transmission lines of the telegraph company, they constituted an essential part of its overall telegraph system, without which messages could not be relayed from Montana to Europe.⁵⁷

Properties located outside of the state that do not “in some plain and fairly intelligible way” add to the value of the properties within the state may not be considered.⁵⁸ For example, in *Western Air Lines, Inc. v. Michunovich*,⁵⁹ the Montana Supreme Court found that the State Board of Equalization had violated the Commerce Clause of the U.S. Constitution when it included all of the airline’s assets in arriving at the total unit value, because there was no significant “organic unity” between the taxpayer’s in-state and out-of-state fleets. The taxpayer used only DC-6B piston aircraft in Montana; its operations in other states employed two types of jets that were not operated in Montana. On the basis of statistics showing that only about one-half of one percent of the passengers arriving in or departing from Montana on the DC-6Bs transferred to other types of aircraft, the court concluded that the DC-6B system was an independent operation and that there was a total lack of significant “organic unity” between the DC-6B operation in Montana and the rest of the taxpayer’s system.

C. Montana’s Current Central Assessment Statute

Consistent with historical practice in other states, the types of properties that the Montana Legislature has determined to centrally assess include companies that are now

⁵⁷ *Western Union Tel. Co. v. State Bd. of Equalization*, 91 Mont. 310 (1932).

⁵⁸ *Wallace v. Hines*, 253 U.S. 66, 69 (1920).

⁵⁹ 149 Mont. 347 (1967).

(or were previously) regulated,⁶⁰ and 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.*”⁶¹ The net proceeds of mines, other than bentonite mines, and the gross proceeds of coal mines are also centrally assessed.⁶²

An issue that has resulted in litigation over the past several years relates to what types of property, other than those specifically listed by the Legislature, may be centrally assessed. The Legislature is the state’s policy making body,⁶³ and it has established specific parameters for centrally assessing properties other than those specifically listed, namely, that the properties must be “single and continuous” and must be operated in more than one county or state. It is the duty of the DOR to implement and administer the laws adopted by the Legislature.⁶⁴ In determining what properties, in addition to those specifically listed by the Legislature, are subject to central assessment, DOR has adopted the following administrative rule:

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.⁶⁵

Several taxpayers have challenged the validity of the rule, because it omits as a criteria the statutory requirements that the company operate a “single and continuous”

⁶⁰ These include the property of railroads, airlines, electric utilities, natural gas distribution companies, telecommunications companies, and common carrier pipelines. Mont. Code Ann. §§ 15-23-101(1), (2), (3) (2011).

⁶¹ Mont. Code Ann. § 15-23-101(2) (2011). This section provides a non-exhaustive list of such properties, including telephone, microwave, and electric power transmission lines, common carrier and regulated pipelines, natural gas distribution utilities, and canals, ditches, and flumes.

⁶² Mont. Code Ann. § 15-23-101(4)-(5) (2011).

⁶³ “[S]tate tax policy is best determined by the state's primary policymaking body, which is the Legislature. Preamble, Laws 1985, Ch. 743.

⁶⁴ Mont. Code Ann. § 15-1-201(1) (2011).

⁶⁵ Mont. Adm. R. 42.22.102(3). The Department also relies on the WSATA-CCAP Handbook for determining whether a property must be centrally assessed.

property” in “more than one county or state.”⁶⁶ The DOR’s position is that the *Western Union* case allows a “unity of operation” to be substituted for a physical connection.⁶⁷ This is an overly broad characterization of the court’s ruling; the *Western Union* case emphasized that there must be “a *unity of use*, not simply for the convenience or pecuniary profit of the owner, but *existing in the very necessities of the case -- resulting from the very nature of the business.*”⁶⁸

Two Montana district courts have reached opposite conclusions regarding the validity of the DOR’s rule. The district court in Liberty County upheld the validity of the rule.⁶⁹ The district court in Lewis & Clark County found that the administrative rule was invalid, because it was overly broad and would result in the addition of properties that were not listed in the statute, namely, properties that are not “single and continuous” and properties which, although single and continuous, do not operate in “more than one county or state.”⁷⁰ The Montana Supreme Court has not yet addressed the validity of the DOR’s administrative rule. Although the issue was raised by the taxpayer in *Omimex Canada, Ltd. v. State*,⁷¹ the Montana Supreme Court ruled in favor of the taxpayer on other grounds, and

⁶⁶ Mont. Adm. R. 42.22.102(1) does refer to “the interstate and inter-county continuous properties” of centrally assessed companies, but those criteria are not reiterated in the section of the rule that identifies the factors to be considered.

⁶⁷ These respective arguments were set forth in *Centennial Energy Resources, LLC v. Dept. of Revenue*, Docket No. CDV-2005-880 (1st Judicial District, Lewis & Clark Co.), 2006 Mont. Dist. LEXIS 596, a case in which the DOR centrally assessed a coal generating station located entirely within Big Horn County, on the basis that a parent company operated an integrated business through various subsidiaries.

⁶⁸ *Western Union Tel. Co. v. State Bd. of Equalization*, 91 Mont. 310, 322 (1932).

⁶⁹ See the order entered Oct. 27, 2003 in *PanCanadian Energy Res., Inc. v. Montana Dep't of Revenue*, Liberty County Cause No. DV-02-3223.

⁷⁰ In an order issued August 9, 2005, Judge Sherlock determined that the rule was invalid. *Omimex Canada, Ltd. v. Dep't of Revenue*, Lewis and Clark County Cause No. BDV-2004-288. However, Judge Sherlock subsequently determined that central assessment of Omimex was appropriate, because the properties, in fact, functionally operated as a “single and continuous” system that crossed county lines, and thus fell within the statutory criteria. *Omimex Can., Ltd. v. State*, 2007 Mont. Dist. LEXIS 36.

⁷¹ 2008 MT 403.

did not find it necessary to address the validity of the DOR rule or whether the taxpayer was subject to central rather than local assessment.

If the DOR is allowed to rely solely upon the factors of “integration of operations, management, and corporate structure,” the number and types of centrally assessed companies in Montana could be expanded, at the discretion of the DOR, beyond those businesses that the Legislature has designated for central assessment. By way of example, by deleting the criteria of “single and continuous,” and relying solely on the criteria of a company’s “property use, integration of operations, management, and corporate structure,” the Albertson’s grocery stores that operate throughout Montana could easily fall within the “centrally assessed” category.

Another issue of recent concern is the application of central assessment procedures to a company that operates, as a small part of its business, some properties that are centrally assessed. Cable networks, which must be issued a franchise by a local government in order to operate within that community, have historically been locally assessed.⁷² As cable television companies began offering Voice over Internet Protocol (VoIP) services over their cable networks, several states’ revenue departments, including the Montana DOR, attempted to centrally assess all properties operated by cable television companies, on the basis that they were operating as telecommunications companies. In the past several years, courts in several jurisdictions have ruled that if the primary use of a cable television company’s assets is to provide cable television services, the addition of VoIP services does not transform it into a telecommunications company subject to central

⁷² Mont. Adm. R. 42.21.151 provides for local assessment of cable television systems at a value of \$2,000 per mile and \$25 per cable service drop.

assessment.⁷³ A Montana District Court recently followed this line of decisions and ruled that a cable television company's properties are subject to local rather than central assessment.⁷⁴

While §15-23-101 mandates central assessment of certain enumerated properties, as adopted by the Legislature in 1979 and amended as recently as 2009, the roster of properties to be centrally assessed omits any reference to "cable television systems." The Department invokes the catchall clause for "property owned by a corporation ... operating a single and continuous property operated in more than one county" §15-23-101(2). In so doing, however, the Department overlooks regulations mandating local assessment of "cable television systems." Having enforced local assessment of cable television systems for going on forty years, the Department is unpersuasive in contending that by virtue of another statute that has remained unchanged for over thirty years (§15-23-101) Bresnan's cable television systems now must be centrally assessed. The Legislature could have, but did not, place cable television systems in the properties to be centrally assessed under §15-23-101. This legislative judgment must be respected.

The DOR has stated that it will appeal the decision.⁷⁵

This Committee should consider making recommendations to amend Mont. Code Ann. § 15-23-101 to provide more clarity and predictability as to which types of properties or businesses are subject to central assessment. Recommendations could include one or more of the following:

- (1) a legislative directive to the DOR to repeal its current administrative rule and replace it with one that adheres to the statutory requirements;
- (2) addition of a definition of "single and continuous" property to the statute;
- (3) making the list of centrally assessed properties exhaustive rather than inclusive;⁷⁶

⁷³ Comcast Corp v. Dept. of Revenue, (Or. Tax Court 2011); In the Matter of Cable One, Inc., June 24, 2011 (Ia. Dept. Appeals); Cable One, Inc. v. Baumhoer, Case Nos. 009-02 & 010-01, Aug. 17, 2011, (Mo. Tax Comm'n); Petition to Amend Rule, Final Order at p. 6, Oct. 9, 2008 (Ut. Tax Comm'n).

⁷⁴ Bresnan Communications, LLC v. Montana Department of Revenue, Cause No. DV-10-1312, Montana 13th Judicial District, Yellowstone County, order dated July 6, 2012, pp 42-43.

⁷⁵ State Appealing Bresnan Tax Decision, Billings Gazette, July 13, 2012.

⁷⁶ As noted in Section VII, almost all other western states have adopted this approach.

(4) adding a provision to the statute stating that a company that owns properties of a type listed in the statute should not be centrally assessed unless the company is engaged primarily in a business subject to central assessment.⁷⁷

D. Valuation Methods

For the most part, the Legislature has relied upon the DOR to adopt and apply appropriate valuation methodologies to arrive at “market value.”⁷⁸ However, in numerous instances the Legislature has limited the discretion of the DOR by giving specific directions as to the types of appraisals to be used for certain properties. These include, for example, special rules for valuing residential and commercial condominium units⁷⁹ and for agricultural implements and machinery.⁸⁰ The Legislature has also imposed an important limitation on the DOR’s ability to apply the income method.⁸¹

The DOR has, by administrative rule, adopted valuation methods that do not adhere to legislative guidelines, as illustrated by the following example:

⁷⁷ See, for example, Oreg. Rev. Stat. 308.510 which provides: Property found by the Department of Revenue to have an integrated use for or in more than one business, service or sale, where at least one such business, service or sale is one enumerated in [central assessment statute] shall be classified by the department as being within or without the definition of [centrally assessed property] to the primary use of such property, as determined by the department.

⁷⁸ “The department may make rules to supervise the administration of all revenue laws of the state.” Mont. Code Ann. § 15-1-201 (2011).

⁷⁹ The DOR must use the comparable sales method to appraise residential condominium units, if sufficient data is available, and the capitalization-of-net-income method to appraise commercial condominium units, if sufficient data is available. If sufficient information is not available to allow for the use of these methods, the DOR must then use the construction-cost method. Mont. Code Ann. § 15-8-111(5) (2011).

⁸⁰ Agricultural implements and machinery are valued at their average wholesale value as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association. Mont. Code Ann. § 15-8-111(4) (2011).

⁸¹ Mont. Code Ann. § 15-8-111(2)(c) (2011).

Mont. Code Ann. § 15-1-111(2)(c)	Mont. Adm. R. 42.20.107
If the department uses the capitalization-of-net-income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.	<p>(1) When determining the market value of commercial properties, department appraisers will consider, if the necessary information is available, an income approach valuation.</p> <p>(2) If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis, the band-of-investment method, or another accepted method, or is not able to collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value.</p> <p>(3) The International Association of Assessing Officers' (IAAO) standards for choice of method guide the department's appraisal decisions. The generally preferred method is the income method to valuation. The department will document in the official record the reason(s) for choosing an alternative method.</p>

Yet a third standard for valuing commercial property is incorporated into the Montana Appraisal Manual, which states:

The appraisal value for commercial property may include indicators of value using the cost approach, the income approach and, when possible, the sales comparison approach. The appraisal value supported by the most defensible valuation information serves as the value for ad valorem purposes.⁸²

These inconsistencies between the statute, the administrative rules, and the Montana Appraisal Manual cause uncertainty and unpredictability in the valuation process. This is an isolated example; there are several other inconsistencies. This Committee should consider making a recommendation that the Legislature direct a legislative committee or the DOR to conduct a comprehensive review of its administrative valuation rules and of the 2008 Montana Appraisal Manual for internal consistency and for consistency with all specific legislative mandates regarding the valuation process.

⁸² 2008 Montana Appraisal Manual, pp. 10-11, adopted by the DOR for the reappraisal cycle beginning January 1, 2009, and ending on December 31, 2014. Mont. Adm. R. 42.18.122.

E. Valuation of Centrally Assessed Properties

The DOR has adopted the “unit method of valuation” to appraise centrally assessed companies “whenever appropriate.”⁸³ Under this method, the operating assets of an enterprise (the “unit”) are valued as a whole on a “going concern” basis. A portion of that value is then allocated to the operating assets of that business which are located in Montana⁸⁴ and further apportioned among its various taxing jurisdictions.⁸⁵ The Montana Supreme Court, in upholding the application of the unit method of valuation to centrally assessed properties, has explained its underlying theory:

Where property is part of a continuous system which extends through many taxing districts, the proper way to find the true cash value of any part of this property requires that the system as a unit be evaluated. The rationale of this theory is that, where a system is involved, the sum of the value of the parts of the system does not truly represent the total value thereof, and therefore, in order to get a true reflection of the economic value, the system as a whole must be valued as a unit.⁸⁶

Under DOR’s administrative rules, the appraiser is authorized to consider cost, income, and market approaches in determining the market value of the unit.⁸⁷ Once the values are arrived at under each of the various approaches that the appraiser applies to a particular unit, the appraiser then decides what weight to assign the various value indicators, in a process referred to as “correlation.”⁸⁸ The Legislature has limited the appraiser’s discretion in several instances:

⁸³ Mont. Adm. R. 42.22.111(1). In 2010, the DOR adopted the 2009 Appraisal Handbook of the Western States Association of Tax Administrators – Committee on Central Assessed Properties (WSATA-CCAP) as an “overall appraisal guide for conducting unit valuations of centrally assessed properties in Montana,” and the 2005 Standards of Unit Valuation of the National Conference of Unit Value States (NCUVS). Mont. Adm. R. 42.22.109.

⁸⁴ Mont. Adm. R. 42.22.121.

⁸⁵ Mont. Adm. R. 42.22.122.

⁸⁶ *Yellowstone Pipe Line Co. v. State Bd. of Equalization*, 138 Mont. 603, 611 (1960).

⁸⁷ Mont. Adm. R. 42.22.111(1). Each of these methods may have sub-methods. For example, under the income approach, the appraiser may ascertain value by capitalizing income based upon the company’s historic income, by capitalizing projected income, or by using a discounted cash flow analysis. Mont. Adm. R. 42.22.114.

⁸⁸ Mont. Adm. R. 42.22.111.

(1) An exception applies for railroad and airline properties, for which specific valuation, weighing, and apportionment methodologies have been adopted as a result of federal legislation prohibiting discriminatory state taxation of these industries.⁸⁹

(2) As noted above, if the appraiser uses the capitalization-of-net-income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the appraiser is required by statute to rely upon the two methods that provide a similar market value as the better indicators of market value.⁹⁰ The DOR does not incorporate this legislative mandate into its unit valuation rules.

Although the unit method is long-established and widely used, it has been criticized as causing significant valuation distortions.⁹¹ As a practical matter, the assessed value of properties generally increases under the unit method when compared to the valuation achieved through local assessment.⁹² As a result, a piece of equipment owned by a centrally assessed company may be taxed at a much higher value than an identical asset owned by a locally assessed company.

One legitimate criticism aimed at the unit method is that the values achieved under the various approaches may be quite disparate.⁹³ If two different approaches, when applied to the same piece of property, result in significantly different values, it raises genuine doubt as to the reliability of either approach and causes one to ask whether the

⁸⁹ Mont. Code Ann. §§ 15-23-205, -403 (2011). The federal acts are the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act) (49 U.S.C. § 11501), the Motor Carrier Act of 1980 (49 U.S.C. § 14502), and the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 40116(d)), all of which are discussed in the 1984 Report, *supra* n. 1.

⁹⁰ Mont. Code Ann. § 15-8-111(2)(c) (2011).

⁹¹ For example, applying the same “unit” method of valuation, the DOR assessed PPL Montana’s undivided 50% interest in Colstrip Units 1 and 2 at a significantly higher market value than Puget Sound Energy’s undivided 50% interest in the exact same assets and operation. This disparity was approved by the Montana Supreme Court, on the basis that Puget Sound Energy was regulated, while PPL Montana was not. *State v. PPL Mont., Inc.*, 2007 MT 310.

⁹² For example, Bresnan's 2010 Montana property taxes more than tripled from 2009 to 2010. Bresnan was required to pay \$7.4 million in personal property taxes as a Class 13 business in 2010, while its Class 8 and Class 13 combined liability would have been approximately \$2.1 million.

⁹³ For example, in *Department of Revenue v. Pacific Power & Light Co.*, 171 Mont. 334 (1976), the three approaches led to values ranging between \$857,201,842 and \$1,347,395,000.

approaches are designed to value the property itself, or the income generated by the property. The state's property tax is not intended to be an income tax.

In many instances, the application of a particular method results in a value indicator that exceeds what a willing buyer would pay for the property. Nonetheless, the appraiser may decide to use this value and weigh it in her discretion. This violates the principle of substitution, which is described in the Montana Appraisal Manual as follows:

The informed buyer is not justified in paying anything more for a property than it would cost to acquire an equally desirable property. That is to say that the value of a property is established as that amount for which equally desirable comparable properties are being bought and sold in the market.⁹⁴

Another criticism of the unit method is that its application may result in significant variations of value from year to year.⁹⁵ Typically, property values are stable and move incrementally. When the unit method results in significant annual variations, it causes unpredictability not only for the taxpayer, but for the taxing jurisdiction and, once again, looks a lot more like an income tax than a property tax.

SJ 17 notes that "predictability and stability of property valuation will improve the business investment climate for Montana businesses." The unit method of valuation can, and does, result in unpredictable and unstable property values for centrally assessed businesses. The Committee should consider making recommendations to the Legislature to build more stability and predictability into the unit method of valuation. These measures may include one or more of the following:

(1) identifying and limiting the use of (or the weight given to) the valuation approaches that result in the most unpredictable and unstable values;

⁹⁴ 2008 Montana Appraisal Manual, p. 14.

⁹⁵ For example, the tax burden of PPL Montana's properties increased by 82% from 1999-2002. Dept. of Rev. v. PPL Mont., LLC, 2007 MT 310, ¶ 30.

- (2) prescribing specific methodologies to be used for specific types of properties;
- (3) allowing centrally assessed property owners to elect between one or more statutorily designated approaches;
- (4) requiring the DOR to incorporate into its rules and enforce the current limitation on the direct capitalization of income method;
- (5) prohibiting the DOR's use of the methods contained in the national appraisal manuals that it has adopted to the extent that those methods are inconsistent with Montana statutes and administrative rules.

V. THE INTANGIBLES PROBLEM

Although the 1972 Constitution does not prohibit it from doing so, the Legislature, as a matter of tax policy, has determined not to assess property taxes on intangible personal property.⁹⁶ Following is a discussion of two key issues surrounding intangibles:

- (1) When is an intangible an intangible?
- (2) Does the "unit method" of assessing centrally assessed properties incorporate the value of intangibles? If so, does the DOR appropriately exclude the value of intangibles in arriving at a final valuation?

A. What Is an Intangible?

The Legislature has adopted a broad definition of "intangible personal property" to include personal property that "is not tangible" and "lacks physical existence." In 2010, the DOR adopted a significantly different and much narrower definition of what constitutes exempt "intangible personal property," as illustrated in the following table:

⁹⁶ Mont. Code Ann. § 15-6-218; see also Mont. Code Ann. § 15-23-303, which specifically states that the franchises of public utilities may not be assessed.

Mont. Code Ann. § 15-6-218	Mont. Adm. R. 42.22.101(12)
<p>"intangible personal property" means personal property that is not tangible personal property and that:</p> <p>(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</p> <p>(b) lacks physical existence, including but not limited to goodwill.</p>	<p>"Intangible personal property" has the following attributes:</p> <p>(a) Intangible personal property must be separable from the other assets in the unit and capable of being held under separate title or ownership.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>

Intellectual property, such as patents and copyrights, would meet the DOR’s definition, as well as money, stocks, bonds, notes, and accounts receivable. Few other items of intangible property would satisfy the DOR’s extra-statutory criteria.

The statute specifically identifies “goodwill” as an item of intangible personal property that is exempt from taxation. However, goodwill would not satisfy the criteria set forth in the DOR’s rule; as noted by the Montana Supreme Court, goodwill “has no

independent existence, and constitutes an element of value in connection with, but not apart from, the corporation and its business.”⁹⁷ It is never sold “separately” from operating assets.⁹⁸ In a legal context, goodwill has been defined generally as the expectation of the continued patronage of a business’s customers.⁹⁹ Courts have identified many components of goodwill, including but not limited to reputation,¹⁰⁰ customer relationships,¹⁰¹ and contractual relationships.¹⁰² These subsets of goodwill vary in type and importance based upon the particular business and/or industry.

While intangible personal property is not subject to tax, there are some intangible attributes of real or tangible personal property that are so entwined with the physical property that they necessarily enhance its value and thus may be considered a component of the property’s assessed value. For example, the Utah Supreme Court has determined that a property’s view or location, though incorporeal, may be included in the assessed value of a property.¹⁰³ Similarly, the enhanced value achieved through the physical assemblage of parcels or assets into an integrated and functional unit may be included in

⁹⁷ *Wylie v. Wylie Permanent Camping Co.*, 57 Mont. 115, 119 (1920).

⁹⁸ Relying upon the Financial Accounting Standards Board rule that goodwill is not “an exchangeable asset that is separate from other assets of the entity,” the Utah Supreme Court recently ruled that goodwill, by its very nature, cannot be sold apart from either the tangible or intangible property of the company. *T-Mobile USA, Inc. v. Utah State Tax Comm’n*, 2011 UT 28.

⁹⁹ *Wylie v. Wylie Permanent Camping Co.*, 57 Mont. 115, 119-121 (1920); Cal Bus & Prof Code § 14100 (2012) (“The ‘good will’ of a business is the expectation of continued public patronage.”) There are variations of the definition of goodwill in different contexts. For example, in valuing a closely held business for estate tax purposes, the IRS has described goodwill “as the excess of net earnings over and above a fair return on the net tangible assets.” Rev. Rul. 59-60, 1959-1 C.B. 237. From an accounting perspective, goodwill is the difference between the price for which a company is purchased and the net value of its assets and liabilities. *See* Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 142, Goodwill and Other Intangible Assets, at 105 (2001).

¹⁰⁰ *T-Mobile USA, Inc. v. Utah State Tax Comm’n*, 2011 UT 28, ¶ 32.

¹⁰¹ *Bergum v. Weber*, 136 Cal App 2d 389 (1955).

¹⁰² *LaGuardia Assocs. v. Holiday Hospitality Franchising, Inc.*, 92 F. Supp. 2d 119, 125 (E.D.N.Y. 2000).

¹⁰³ *Beaver County v. Wiltel, Inc.*, 2000 UT 29, ¶ 36.

the value of assessed property.¹⁰⁴ In contrast, the Utah Supreme Court ruled that values attributable to goodwill, assembled workforce, and customer relations were exempt under Utah's exclusion for "goodwill and other intangibles."¹⁰⁵

B. The Inclusion of Intangibles in the Unit Method of Valuation

It is widely acknowledged that the unit method of valuation necessarily includes the value of all of the company's intangible assets; the NCUVS Standards of Unit Valuation adopted by the DOR specifically direct that "no class of intangibles ... should be removed from unitary appraisals."¹⁰⁶ Yet the Montana Legislature currently exempts intangible personal property from taxation.¹⁰⁷ Recognizing the conflict between the unit method and the exemption, the Legislature has specifically directed that the value of intangible property "must be removed from the unit value."¹⁰⁸

To implement this statutory mandate, the DOR adopted the following administrative rule in 2000:

Cost, income and market indicators can generally be expected to include the value of intangible personal property. To the extent that each unit valuation indicator includes intangible personal property it shall not be relied upon unless such value of intangible personal property is excluded or removed.¹⁰⁹

In December 2010, in conjunction with adopting its new definition for intangible property, the DOR amended this rule to read:

Cost, income, and market indicators of the unit value of centrally assessed properties can generally be expected to include the value of real property, the value of personal property, and in some cases the value of specific intangible personal

¹⁰⁴ *Beaver County v. WilTel, Inc.*, 2000 UT 29, ¶37; *Adams Express Co. v. Ohio State Auditor*, 165 U.S. 194 (1897).

¹⁰⁵ *Beaver County v. WilTel, Inc.*, 2000 UT 29, ¶38.

¹⁰⁶ As stated in the NCUVS Unit Valuation Standards adopted by the DOR, NCUVS Unit Valuation Standards, p. 2.

¹⁰⁷ Mont. Code Ann. § 15-6-218 (2011).

¹⁰⁸ Mont. Code Ann. § 15-6-218(3) (2011).

¹⁰⁹ Mont. Adm. R. 42.22.110 (2009).

property. To the extent that each unit valuation indicator includes the value of intangible personal property it shall not be relied upon unless such value of the intangible personal property is excluded or removed.

Under this new rule, if property does not fall within the DOR’s definition of what it now refers to as “*specific* intangible personal property,” it need not be removed from value. For example, goodwill, because it is not owned or saleable apart from the other assets of the unit, is not required to be removed from value, even though the statute specifically states that goodwill is exempt intangible personal property. The value of intangibles that meet the DOR’s definition, such as a patent, would be removed.

In its administrative rule, the DOR acknowledges that “accurately quantifying the value of intangible personal property is difficult and subject to controversy and litigation.”¹¹⁰ Accordingly, the DOR sets minimum percentages of the unit’s value that must be removed to account for intangibles, as follows:¹¹¹

Airlines	10%
Pipelines	5%
Electric cooperatives	5%
Telephone cooperatives	5%
Electric utilities	10%
Telecommunications	15%
Railroads	5%

If a taxpayer believes that the value of its intangible personal property is greater than the allowed percentage, “the taxpayer may propose alternative methodology or information at any time during the appraisal process and the department will give it full and fair consideration.”¹¹²

¹¹⁰ Mont. Adm. R. 42.22.110(2).

¹¹¹ Mont. Adm. R. 42.22.110(2).

¹¹² Mont. Adm. R. 42.22.110(3).

In *Pacificorp v. State of Montana*, the DOR and the Montana Supreme Court both acknowledged that the DOR's application of the direct capitalization of net operating income approach resulted in a higher value because it "effectively captured" the value of non-taxable intangible property.¹¹³ The Montana Supreme Court did not disapprove of that method, noting that under its 2000 rule, the DOR "must assess a business's entire operating system, including intangibles, at 100% market value and then deduct and adjust for exempt properties like intangibles."¹¹⁴ The parties did not raise, and the court did not address, whether the DOR had in fact effectively removed the value of Pacificorp's intangible property.¹¹⁵ Courts in other jurisdictions have determined that the application of an arbitrary percentage deduction does not effectively remove intangibles from a unit's value.¹¹⁶ Litigation is likely to continue over the DOR's use of an arbitrary percentage, unless the Legislature takes action.

As acknowledged by DOR Director Bucks, it is not the taxpayer's duty to establish and prove the value of its exempt property; it is the express statutory duty of the DOR to accurately determine and remove the value of intangible property from the results of a unitary appraisal.¹¹⁷ The Committee should consider whether the DOR is accurately and consistently removing the value of exempt intangible property from centrally assessed values through its practice of applying an arbitrary, across-the-board percentage

¹¹³ 2011 MT 93, ¶¶ 33-35.

¹¹⁴ 2011 MT 93, ¶ 34.

¹¹⁵ Another issue that the parties did not raise, and the court did not address, was whether the DOR had complied with the requirement of Mont. Code Ann. § 15-8-111(2)(c) to use the approaches leading to the most similar values.

¹¹⁶ *Havill v. Scripps Howard Cable Co.*, 742 So. 2d 210, 213 (Fla. 1998) (application of a 20% deduction was "wholly arbitrary" and an "infirm" method of determining and removing the value of exempt intangibles from a unit's value).

¹¹⁷ Memorandum to Revenue and Transportation Interim Committee from Dan Bucks, dated February 16, 2012, p. 4.

deduction, and then shifting the burden to the taxpayer to prove that another deduction is more appropriate. If the Committee concludes that the current DOR practice is inconsistent with the Legislature’s intent, it should consider making recommendations as to legislation that would rectify the problem. In addition to the measures suggested in Section V, these measures could include:

- (1) providing a more detailed description of the intangible personal property exempt from taxation;
- (2) distinguishing between intangible personal property (which may not be included in a unit’s value) and certain attributes of property, such as location, view, and assemblage, that may be considered in a unit’s value;
- (3) prohibiting or limiting the use of valuation methods which include the value of exempt intangible personal property.

VI. CLASSIFICATION

The classification of property is a separate matter from the valuation of property. It is the duty of the DOR to classify all taxable properties into classes prescribed by the Legislature, and to keep those classifications current.¹¹⁸ Today, there are fourteen different property tax classifications:¹¹⁹

Class	Description	2012 taxable value
Class 1 MCA §15-6-131	Net proceeds of mines other than bentonite, coal, and metal mines	100% of annual net proceeds
Class 2 MCA §15-6-132	Gross proceeds of metal mines	3% of annual gross proceeds
Class 3 MCA §15-6-133	Agricultural land Non-productive patented mining claims Non-qualified agricultural land	2.63% of productive value 2.63% 18.41% of productive value (7 x value of agricultural land)

¹¹⁸ Mont. Code Ann. § 15-7-101 (2011).

¹¹⁹ For a more detailed discussion of the various classes, see Jeff Martin, Overview of Property Classification, Assessment, and Taxation (Sept. 2011).

Class 4 MCA §15-6-134	Residential, commercial, and industrial land and improvements Golf courses, mobile/manufactured homes	2.63% of market value 1.315% of market value
Class 5 MCA §15-6-135	Air and water pollution control equipment Independent and rural electric and telephone cooperatives “New Industry” real and personal property Machinery and equipment used in electrolytic reduction facilities Real/personal property of research and development firms Real/personal property used in ethanol gas production Rural telecommunications companies that provide services exclusively to rural areas and/or small towns (1200 residents or less)	3% of market value
Class 6	Repealed	
Class 7 MCA §15-6-137	Electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by non-centrally assessed utilities All property owned by cooperative rural electrical associations that are not in Class 9	8% of market value
Class 8 MCA §15-6-138	Business equipment, including agricultural equipment; mining equipment; oil and gas production, gathering, and storage equipment; manufacturing equipment; commercial equipment; medical equipment; radio and tv broadcasting and transmitting equipment; and cable tv systems	2% on first \$2 million of market value; 3% on market value in excess of \$2 million; exemption for taxpayers owning \$20,000 or less of Class 8 equipment
Class 9 MCA §15-6-141	Centrally assessed allocations of electric power and/or electric transmission companies (other than Class 13 electrical generation facilities, Class 14 renewable energy, Class 16 HVC); centrally assessed allocations of natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines, and common carrier pipelines (other than Class 15 carbon dioxide/qualifying liquid pipeline property); certain property of rural electric cooperatives used solely for service of less than 95% of consumers in towns with 3500 or more residents	12% of market value
Class 10 MCA §15-6-143	Forest lands	0.31% of forest productivity value
Class 11	Repealed	
Class 12 MCA §15-6-145	All property of railroads and airlines	Variable rate determined by statutory formula; 3.45% of market value in 2012
Class 13 MCA §15-6-156	Electric generation facilities (except Class 14 renewable energy); centrally assessed allocations of telecommunications companies	6% of market value

Class 14 MCA §15-6-157	Renewable energy production and transmission property (including wind generation facilities, biodiesel/biomass/ethanol facilities, energy storage facilities)	3% of market value
Class 15 MCA §15-6-158	Carbon dioxide/qualified liquid pipelines; carbon dioxide sequestration equipment; equipment used in closed-loop enhanced oil recovery operations	3% of market value
Class 16 MCA §15-6-159	High voltage direct converter stations that can direct power to two different regional power grids	2.5% of market value

It is very common for taxpayers to own property in more than one class. For example, a locally assessed farm may own Class 3 agricultural property, Class 4 residential property, and Class 8 business equipment. A centrally assessed electric power company may own electrical generation facilities (Class 13), wind generation facilities (Class 14) and pollution control equipment (Class 5).

In several recent cases, the DOR has taken the approach of relying upon a company's status as locally or centrally assessed in determining the appropriate classification of that company's property. After centrally assessing a company that extracted natural gas from several scattered gas fields throughout Montana, the DOR classified its business equipment (previously classified as Class 8 and taxable at 3% of market value) into Class 9 ("allocations for centrally assessed natural gas companies having a major distribution system in this state," taxable at 12% of market value). The Montana Supreme Court rejected the DOR's approach, ruling that regardless of whether property is locally or centrally assessed, its classification is dependent upon the property's physical attributes and use.¹²⁰

After centrally assessing a cable television company, the DOR reclassified all of its cable television systems from Class 8 (which specifically includes "cable television systems," taxable at 3% of market value) into Class 13 (as "allocations of centrally assessed

¹²⁰ Omimex Canada, Ltd. v. Dept. of Rev., 2008 MT 403, ¶ 18. The Court reclassified the company's property as Class 8.

telecommunications services companies,” taxable at 6% of market value). Citing to the *Omimex* decision, the district court recently ruled that the company’s cable television systems were appropriately classified as Class 8 property.¹²¹ The DOR is appealing the decision.¹²²

Another classification problem facing centrally assessed taxpayers who own properties in more than one class is how to allocate the “unit value” among the various classes of assets.¹²³ To the extent that the income approach and market approach are used in deriving a unit’s value, this is difficult. Under the income approach, income streams are not segregated by classes of assets. Under the stock and debt market approach, an overall company value is determined, without regard to classes of assets. Thus, it may be difficult to determine what portion of the unit value is allocable, for example, to a centrally assessed electric power company’s electrical generation facilities (Class 13), wind generation facilities (Class 14), and pollution control equipment (Class 5). The DOR has not adopted rules providing guidance as to how the value of a centrally assessed will be allocated among classes of assets. This lack of uniformity and guidance creates uncertainty and unpredictability.

To address these issues, the Committee should consider recommending that the Legislature adopt legislation, which could include one or more of the following measures:

- (1) specifically incorporating the Supreme Court’s decision that the classification of a property does not depend upon whether or not the taxpayer is locally or centrally assessed, but upon the primary uses and physical attributes of the property; and

¹²¹ *Bresnan Communications, LLC v. Montana Department of Revenue*, Cause No. DV-10-1312, Montana 13th Judicial District, Yellowstone County, order dated July 6, 2012, pp 41-43.

¹²² State Appealing Bresnan Tax Decision, Billings Gazette, July 13, 2012.

¹²³ Mont. Code Ann. § 15-7-101 (2011).

(2) establishing guidelines for the allocation of a unit's value between classes of property comprising the unit of a centrally assessed taxpayer.

VII. SUMMARY OF APPLICABLE STATUTES FROM OTHER WESTERN STATES

The issues raised in this report are not unique to Montana. Following is a summation of how several other Western states have addressed these issues, including Arizona, California, Idaho, New Mexico, North Dakota, Oregon, Utah, and Washington.¹²⁴

A. Central Assessment

(1) In most of these states, the Legislature has identified an exclusive list of the types of properties or businesses to be centrally assessed. Only Montana¹²⁵ and Utah¹²⁶ provide a listing of centrally assessed properties that is inclusive rather than exhaustive.

(2) Most of these states centrally assess the same types of properties as Montana, including the properties of railroads, airlines, electric power and natural gas companies, pipelines, telecommunications companies, and mines.

(3) If a business owns assets or provides services that potentially fall within both centrally assessed and locally assessed categories, California¹²⁷ and Oregon¹²⁸ provide a statutory direction that the primary use of the assets is determinative. In contrast, a North Dakota statute provides that if property is used “partly for [centrally assessed] purposes and partly for other purposes,” it must be centrally assessed.¹²⁹

¹²⁴ These summaries include the analysis provided by Jeff Martin, Draft Overview of Selected States Methods for Valuing Centrally Assessed Property (Dec. 2011).

¹²⁵ Mont. Code Ann. § 15-23-101(2).

¹²⁶ Utah Code Ann. § 59-2-201 (“all property which operates as a unit across county lines”).

¹²⁷ Cal. Rev. & Tax Code § 723 (unit valuation applies to those properties “operated as a unit in a primary function of the assessee”).

¹²⁸ Or. Rev. Stat. § 308.510(4) (“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”).

¹²⁹ N.D. Cent. Code, § 57-06-03 (2012).

B. Valuation of Centrally Assessed Properties

(1) Either the Constitution or the statutes of each of these states require that centrally assessed properties be valued at “full cash value” or “market value” (or similar terms).

(2) Arizona and New Mexico mandate the application of the cost method of valuation for specific types of centrally assessed properties, as summarized below:

State	Methodology	Applied to:
AZ	Original plant in service cost less depreciation	Electric and gas utilities (exclusive of generation property)
	Land: cost Personal property: cost less depreciation	Electric generation facilities
NM	Cost less depreciation, but value may not fall below 20% of acquisition cost; appraiser may also consider functional or economic obsolescence	Pipelines (exclusive of real property); electric plant (exclusive of real property)

(3) New Mexico allows the owners of telecommunications systems to elect between the cost method or the unit method of valuation.

(4) The statutes of California,¹³⁰ Arizona,¹³¹ and New Mexico¹³² specifically authorize the application of the unit method of valuation to one or more types of centrally assessed properties. In the other jurisdictions, the unit method of valuation has been adopted by administrative rule to apply to one or more types of centrally assessed properties.

(5) Only two other jurisdictions have formally adopted national appraisal standards. Oregon, by administrative rule, has adopted the WSATA handbook as its official valuation

¹³⁰ Cal. Rev. & Tax Code, § 723.

¹³¹ Ariz. Rev. Stat. § 42-14403 (telecommunications).

¹³² N.M. Stat. Ann. §7-36-30 (telecommunications); § 7-36-31 (railroads).

guide.¹³³ Washington, by administrative rule, has adopted the Uniform Standards of Professional Appraisal Practice issued by the Appraisal Standards Board of the Appraisal Foundation.¹³⁴

(6) As in Montana, several of the Legislatures of the states reviewed have adopted specific valuation methods for properties of airlines and railroads, in order to comply with the federal anti-discrimination laws discussed in footnote 89 above.

C. The Problem of Intangibles

(1) None of the Constitutions of the states reviewed prohibit the property taxation of intangible personal property; whether or not to do so is left within the discretion of the Legislature. Under Utah's Constitution, if the Legislature does impose a property tax on intangible property, the income from that property may not also be taxed.¹³⁵

(2) With regard to centrally assessed companies, several jurisdictions, including California, Idaho, and Washington, join Montana in exempting entirely the intangible properties owned by centrally assessed companies; other jurisdictions provide more limited exemptions for the intangible properties owned by centrally assessed companies.

(3) As summarized below, some states attempt to define intangible property; others do not:

¹³³ Oreg. Adm. R. 150-308.655.

¹³⁴ Wash. Adm. Code 458-50-170.

¹³⁵ Utah Const. Art. XIII, § 2, ¶ 5(2012). If a property tax is imposed upon intangible property, it may not exceed .005 of the property's fair market value. California's constitution also limits the amount of tax that may be imposed on certain types of intangible property to .004 of market value. Cal. Const. Art. XIII, § 2 (2012).

State	Definition
AZ	Arizona does not have a statutory definition of intangible personal property. Different types of centrally assessed businesses are subject to specific statutory regimes, which may or may not tax intangibles. ¹³⁶
Cal. Rev. & Tax Code § 212	California generally exempts “intangible assets” from property taxation, but does not have a statutory definition of “intangible assets.” The statute provides that a property’s value may presume the presence of (and thus be enhanced by) those “intangible assets or rights necessary to put the taxable property to beneficial or productive use.”
Idaho Code § 63-602L	Idaho’s statute provides a comprehensive list of exempt property, including goodwill, customer lists, contracts and contract rights, franchises, and licenses; cash, notes, and accounts receivable; and intellectual property. The statute does not have a definition of “intangible personal property.”
NM	New Mexico does not have a statutory definition of intangible personal property. Different types of centrally assessed businesses are subject to specific statutory regimes, which may or may not tax intangibles. ¹³⁷
ND	North Dakota does not have a statutory definition of intangible personal property. Different types of centrally assessed businesses are subject to specific statutory regimes, which may or may not tax intangibles.
Oreg. Rev. Stat. § 307.505; 307.126	For centrally assessed properties, taxable property includes intangible property except for (i) stock, money, bonds, notes, claims, demands or any other evidence of indebtedness and (ii) licenses granted by the Federal Communications Commission .
Utah Code §59-2-102(20); §59-2-1101(3)(a)(vii)	Utah generally exempts intangible property from taxation. “Intangible property” is defined to include (i) goodwill; (ii) property “that is capable of private ownership separate from tangible property,” including a specific list of items such as money, stocks, bonds, and intellectual property; and (iii) low income and renewable energy tax credits.
Rev. Code Wash. § 84.36.070	Washington generally exempts intangible property from taxation. “Intangible personal property” is defined to include (i) a list of specific assets, including items such as money, stocks, bonds; (ii) private nongovernmental contracts and franchises; (iii) “other” intangible personal property such as intellectual property, “franchise agreements, licenses, permits, core deposits of financial institutions, noncompete agreements, customer lists, patient lists, favorable contracts, favorable financing agreements, reputation, exceptional management, prestige, good name, or integrity of a business.” “Intangible personal property” does not include “zoning, location, view, geographic features, easements, covenants, proximity to raw materials, condition of surrounding property, proximity to markets, the availability of a skilled workforce, and other

¹³⁶ For example, the franchises and “intangible values” of railroad operating properties are taxable. Ar. Rev. Stat. 42-14355.

¹³⁷ For example, only tangible property costs are considered in valuing an electric plant. N.M. Stat. Ann. 7-36-29.

	characteristics or attributes of property.” The statute also provides that it does not intend to “preclude the use of, or permit a departure from, generally accepted appraisal practices ... including the appropriate consideration of licenses, permits, and franchises granted by a government agency that affect the use of the property.”
--	---

(4) Although it is widely recognized that the unit method of valuation includes intangible values, among the states that exempt intangibles from centrally assessed taxable properties, only the Idaho Legislature has provided specific statutory guidance as to how to “back out” the intangibles value. Its statute provides:

The commission shall promulgate rules which shall provide for the exclusion of exempt intangible personal property from taxable value of operating property. Such rules shall allow each taxpayer the right to elect one (1) of the following three (3) methods for exclusion of exempt intangible personal property from its taxable value:

(a) Separate exclusion of the exempt intangible personal property at the system level value; or

(b) Separate exclusion of the exempt intangible personal property at the state allocated value; or

(c) Exclusion of the exempt intangible personal property by valuation of only tangible personal property and nonexempt intangible personal property using valuation models which do not impound or include values of the exempt intangible personal property.

(5) Idaho and Utah have attempted to address the problem of capturing exempt intangible assets in the unit method of valuation by restricting the types of approaches that can be used in arriving at a unit value. The preferred method of valuation in Utah is the cost approach and a yield capitalization income approach.¹³⁸ In Idaho, the administrative rules prohibit the use of the direct capitalization income approach.¹³⁹

¹³⁸ Utah Adm. Code R884-24P-62.

¹³⁹ Idaho Property Tax Administrative Rules, Rule 405.04.

VIII. SUMMARY OF RECOMMENDATIONS

Central Assessment	<p>(1) direct the DOR to repeal its current administrative rule and replace it with one that adheres to the statutory requirements;</p> <p>(2) add a definition of “single and continuous” property to the statute;</p> <p>(3) make the list of centrally assessed properties exhaustive rather than inclusive;</p> <p>(4) add a provision to the statute stating that a company that owns properties of a type listed in the statute should not be centrally assessed unless the company is engaged primarily in a business subject to central assessment.</p>
Valuation	<p>(1) direct a legislative committee or the DOR to conduct a comprehensive review of its administrative valuation rules and of the 2008 Montana Appraisal Manual for internal consistency and for consistency with all specific legislative mandates regarding the valuation process;</p> <p>(2) identify and limit the use of (or the weight given to) the valuation approaches that result in the most unpredictable and unstable values;</p> <p>(3) prescribe specific methodologies to be used for specific types of properties;</p> <p>(4) allow centrally assessed property owners to elect between one or more statutorily designated approaches;</p> <p>(5) require the DOR to incorporate into its rules and enforce the current limitation on the direct capitalization of income method;</p> <p>(6) limit the DOR’s use of the methods contained in the national appraisal manuals that it has adopted only to the extent that those methods are consistent with Montana statutes and administrative rules.</p>
Intangibles	<p>(1) provide a more detailed description of the intangible personal property exempt from taxation;</p> <p>(2) distinguish between intangible personal property (which may not be included in a unit’s value) and certain attributes of property, such as location, view, and assemblage, that may be considered in a unit’s value;</p> <p>(3) prohibit or limit the use of valuation methods which include the value of exempt intangible personal property.</p>
Classification	<p>(1) specifically incorporate the Supreme Court’s ruling that the classification of a property does not depend upon whether or not the taxpayer is locally or centrally assessed, but upon the primary uses and physical attributes of the property;</p> <p>(2) establish guidelines for the allocation of a unit’s value between classes of property comprising the unit of a centrally assessed taxpayer.</p>