

Overview of Intangible Personal Property Exemption:  
Statute and Administrative Rules  
Prepared for the Revenue and Transportation Interim Committee  
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The power to tax and provide exemptions is explicitly provided in the Montana Constitution.

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

Prior to the 1999 Legislative Session, the Montana Code Annotated contained broad definitions that provided for the taxation of property and intangible personal property was not exempt. The term "personal property" included "everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".<sup>1</sup> Likewise, the term "property" included "money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership."<sup>2</sup>

The topic of intangible personal property became ripe after a legislative audit concluded that the Department of Revenue was not specifically identifying and taxing intangible personal property (but was presumably taxing intangible property of centrally assessed companies).<sup>3</sup> The audit recommended that the Department tax intangible property in accordance with state law. The Department concurred with the recommendation and indicated it would work in consultation with the Revenue Oversight Committee in dealing with the matter.

In the fall of 1998, the Revenue Oversight Committee requested legislation to exempt intangible personal property from taxation. The legislation was introduced as [Senate Bill No. 111 \(1999\)](#) and was sponsored by Senator Bob DePratu of Whitefish. According to testimony from the Senate Taxation Committee, intangible property of centrally assessed companies was

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<sup>1</sup>Section [15-1-101\(1\)\(n\), MCA \(1997\)](#).

<sup>2</sup>Section [15-1-101\(1\)\(p\), MCA \(1997\)](#).

<sup>3</sup>Legislative Audit Division, Financial Compliance Audit, For the Two Fiscal Years Ended June 30, 1996, Department of Revenue (Helena, MT).

subject to a property tax while other intangible property was not assessed.<sup>4</sup> The purported reasoning for the discrepancy in tax treatment was the fact that centrally assessed properties were appraised using the unit valuation methodology, while other businesses were appraised using the cost or market approach.<sup>5</sup> The legislative remedies were to either tax all intangible property under then-existing state law, or exempt all or portions of intangible personal property. For example, the prospect of taxing liquor licenses was discussed.<sup>6</sup> In the end, the Legislature enacted a comprehensive exemption statute that provided as follows:

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

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

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

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

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

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

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

In 2005, Representative Christine Kaufmann sponsored [House Bill No. 85](#), which amended section 15-6-218, MCA, to its current form as follows:

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

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<sup>4</sup> Minutes of the Senate Taxation Committee, p. 11-12 (Jan. 29, 1999, available at [http://leg.mt.gov/bills/MinutesPDF/990129TAS\\_Sm1.pdf](http://leg.mt.gov/bills/MinutesPDF/990129TAS_Sm1.pdf)).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 13-14.

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

In addition to the statute, there are a few administrative rules that specifically implement the intangible personal property exemption. The full text of the administrative rules is provided in the Appendix.

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

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

A third administrative rule ([ARM 42.22.105](#)) lists section [15-6-218](#), MCA, as a statute that is being implemented, but the rule does not specifically address intangible personal property. The rule lists the general reporting requirements for a centrally assessed company, which include a general description, original cost, and book depreciation of Montana properties.

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

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

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

# Appendix

## Montana Code Annotated

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

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

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

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

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

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

## Administrative Rules of Montana

Rule No.	Rule Title	Rule File	Effective Date
<a href="#">42.21.116</a>	EXEMPT INTANGIBLE PERSONAL PROPERTY DEDUCTION FOR COMMERCIAL AND INDUSTRIAL PROPERTY		12/27/2013
<a href="#">42.21.158</a>	PERSONAL PROPERTY REPORTING REQUIREMENTS		12/27/2013
<a href="#">42.22.105</a>	REPORTING REQUIREMENTS		12/24/2010
<a href="#">42.22.110</a>	DEDUCTIONS FOR INTANGIBLE PERSONAL PROPERTY		9/19/2014

### [42.21.116](#) EXEMPT INTANGIBLE PERSONAL PROPERTY DEDUCTION FOR COMMERCIAL AND INDUSTRIAL PROPERTY

(1) The value of exempt intangible personal property will be for the amount stated in the taxpayer's accounting records subject to review and verification by the department.

History: [15-1-201](#), MCA; [IMP](#), [15-6-138](#), [15-6-218](#), MCA; [NEW](#), 1999 MAR p. 2909, Eff. 12/17/99; [AMD](#), 2006 MAR p. 3108, Eff. 12/22/06; [AMD](#), 2013 MAR p. 2440, Eff. 12/27/13.

#### 42.21.158 PERSONAL PROPERTY REPORTING REQUIREMENTS

(1) A taxpayer having property in the state of Montana on January 1 of each tax year, must complete the statement as provided in [15-8-301](#), MCA by submitting a completed personal property reporting form.

(2) For the purposes of this rule, the statewide aggregate taxable market value of a taxpayer's personal property includes all property owned, claimed, possessed, controlled, or managed by an individual or business entity, either directly or indirectly through an affiliated entity or family member, unless that property is specifically exempted by law.

(3) As used in this rule, "affiliated entity" means:

(a) a member of a combined group of unitary corporations filing a Montana corporation license tax return;

(b) a member of an affiliated group of corporations filing a U.S. Consolidated Income Tax Return;

(c) any corporation if the individual or business entity directly or indirectly owns more than 50 percent of the stock value or voting power;

(d) any partnership if the individual or business entity directly or indirectly owns more than 50 percent of the capital interest in, or the profits of, the partnership;

(e) a corporation and a partnership if the same persons own:

(i) more than 50 percent in value of the corporation's stock; and

(ii) more than 50 percent of the capital interest in, or the profits of, the partnership;

(f) an S corporation and another S corporation, if the same individuals own more than 50 percent in value of the outstanding stock of each corporation;

(g) an S corporation and a C corporation, if:

(i) the same individuals own more than 50 percent in value of the outstanding stock of each corporation; and

(ii) any trust, if the individual or business entity is the grantor or a beneficiary.

(4) For purposes of applying (2) and (3):

(a) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and

(b) an individual is considered as owning the stock, directly or indirectly, by the individual's spouse or minor child.

(5) As determined by the department, if the statewide aggregate market value of an individual's or business entity's class eight property is \$100,000 or less, the individual's or business entity's class eight property is exempt from taxation. If the aggregate market value of an individual's or business entity's class eight property is greater than \$100,000 the market value of an individual's or business entity's class eight property that is greater than \$100,000 is subject to taxation.

(6) Starting in tax year 2014, the department will apply the exemption and the applicable tax rates identified in (a) through (d) to an individual's or business entity's class eight property by adding together the statewide market value of class eight property owned by the individual or business entity to determine the aggregate market value. If the aggregate market value of class eight property is:

(a) \$100,000 or less, the taxable market value of the property is zero;

(b) greater than \$100,000 the department will apply the \$100,000 exemption proportionally between each property owned;

(c) \$6,100,000 or less, the department will apply the \$100,000 exemption proportionally between each property owned and apply the 1.5 percent taxable rate to the remaining taxable market value; or

(d) greater than \$6,100,000 the department will apply the \$100,000 exemption proportionally between each property owned, apply the 1.5 percent taxable rate proportionally to the next \$6,000,000 of taxable market value, and apply the 3 percent taxable rate to the remaining taxable market value.

(7) When the department requires a personal property statement/reporting form as provided in [15-8-301](#), MCA, the statement/reporting form shall advise the taxpayer that they are subject to penalty under the provisions of [15-1-303](#) and [15-8-309](#), MCA, or any other applicable statute, for refusing or neglecting to respond to the department's request for information. The taxpayer's completed personal property statement/reporting form must be returned to the department postmarked no later than March 1.

(8) A taxpayer's completed statement/reporting form postmarked after March 1 will be subject to the penalties referenced in (7) unless the taxpayer provides:

(a) evidence of their inability to comply with the timeframes due to hospitalization, physical illness, infirmity, or mental illness; and

(b) evidence that this/these condition(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March 1 to prevent timely filing of the reporting form.

(9) Beginning in Tax Year 2014, personal property owners whose aggregate class eight market value is \$100,000 or less, as defined in (2), will have no further reporting obligation, except:

(a) if the property owner acquires new personal property, the value of which brings the aggregate market value of the personal property above the \$100,000 exemption, the taxpayer must notify the department and complete a personal property statement/reporting form for the applicable tax year; or

(b) if the department requests the property owner to complete a personal property statement/reporting form as required by [15-8-301](#), MCA, or as a result of an audit and review of taxable value authorized by [15-8-104](#), MCA, and ARM [42.21.159](#).

(10) New businesses that start up in tax year 2014, and after, are not required to submit a personal property statement/reporting form if the entity's business equipment is valued at \$100,000 or less, unless requested by the department in accordance with (9).

(11) Industrial and commercial property taxpayers shall provide documentation of the installed costs of intangible personal property included on the taxpayer's accounting records, or provide other alternative methodologies or information regarding market value for consideration by the department.

(12) The department will provide educational information on the class eight personal property exemption to all individual taxpayers or business entities the department is aware of that currently have class eight business personal property.

History: [15-1-201](#), [15-9-101](#), MCA; [15-1-121](#), [15-1-303](#), [15-6-138](#), [15-6-201](#), [15-6-](#)

[202](#), [15-6-203](#), [15-6-206](#), [15-6-213](#), [15-6-215](#), [15-6-217](#), [15-6-218](#), [15-6-219](#), [15-6-220](#), [15-6-225](#), [15-6-228](#), [15-8-104](#), [15-8-301](#), [15-8-303](#), [15-8-309](#), [15-9-101](#), [15-24-902](#), [15-24-903](#), [15-24-904](#), [15-24-905](#), [15-24-3001](#), MCA; NEW, 1984 MAR p. 2036, Eff. 12/28/84; AMD, 1991 MAR p. 915, Eff. 6/14/91; AMD, 1994 MAR p. 3195, Eff. 12/23/94; AMD, 1996 MAR p. 1174, Eff. 4/26/96; AMD, 1996 MAR p. 3151, Eff. 12/6/96; AMD, 1999 MAR p. 2909, Eff. 12/17/99; AMD, 2000 MAR p. 3563, Eff. 12/22/00; AMD, 2002 MAR p. 3728, Eff. 12/27/02; AMD, 2006 MAR p. 1962, Eff. 8/11/06; AMD, 2007 MAR p. 122, Eff. 12/22/06; AMD, 2009 MAR p. 2497, Eff. 12/25/09; AMD, 2011 MAR p. 345, Eff. 3/11/11; AMD, 2011 MAR p. 2675, Eff. 12/9/11; AMD, 2012 MAR p. 410, Eff. 2/24/12; AMD, 2013 MAR p. 2440, Eff. 12/27/13.

#### **42.22.105 REPORTING REQUIREMENTS**

(1) Each year all centrally assessed companies shall submit to the department a report of operations, called the Centrally Assessed Annual Reporting form, for the preceding year. Railroads, railroad car companies, and pipelines shall submit the report by April 15 and all others by March 31, on forms supplied by the department.

(2) If a centrally assessed company fails to file a report with the department the company will be subject to the penalties listed in [15-23-104](#), MCA. Submission of an annual business property reporting form to a local department county office does not relieve the company of its requirement to file the Centrally Assessed Annual Reporting form to the centrally assessed unit located in Helena. In addition, if the department determines that a company is a centrally assessed company, that company must cease to file the annual business property reporting form to the department's local county office.

(a) Based on the appropriate statutory authority, the department shall determine if a company meets the requirements to be centrally assessed. If a company believes that the department has improperly determined that the company is centrally assessed, the company must still file the required Centrally Assessed Annual Reporting form, and if desired, appeal the department's centrally assessed determination to the appropriate venue.

(3) The report shall contain the following information on the operating properties:

(a) balance sheet for the system;

(b) statement of income for the system;

(c) original cost and book depreciation for system property, including an estimate of current value of property leased from others;

(d) statement of outstanding preferred stock, common stock, and debt, showing both book value and market value;

(e) statement of actual revenue and expense for the Montana operation (if actual amounts are not available, a statement of allocated revenue and expense may be substituted);

(f) if nonoperating properties are included in (3)(a) through (e), their original cost, book depreciation, market value, and income;

(g) general description, original cost, and book depreciation of Montana properties, including description and location of property leased from others, together with name of

lessor, current value or annual rental, and responsibility for the property tax (lessor or lessee);

(h) if rolling stock is allocated to Montana, the method used;

(i) pertinent statistical data on the company's operations within and without this state;

(j) copy of annual report to stockholders;

(k) copy of annual report to the federal regulatory agency if one is filed;

(l) copy of annual report to the Montana Public Service Commission if one is filed;

(m) in the case of centrally assessed railroads, all information required under ARM [42.22.106](#);

(n) in the case of centrally assessed electric utilities, all information required under ARM [42.22.107](#), if applicable;

(o) all other information requested by the department which will assist in valuing the properties; and

(p) signed statement of correctness.

(4) In addition to the report each centrally assessed company must revise and update statements of situs and mileage printouts provided by the department and return them along with the report. The information on the printouts shall be reported by county and taxing units in which they are situated. The situs printouts shall contain a general description and installed cost for operating situs property.

History: [15-6-218](#), [15-23-108](#), MCA; IMP, [15-6-218](#), [15-23-103](#), [15-23-201](#), [15-23-212](#), [15-23-301](#), [15-23-402](#), [15-23-502](#), [15-23-602](#), [15-23-701](#), MCA; NEW, Eff. 12/4/76; AMD, 1980 MAR p. 1011, Eff. 3/28/80; AMD, 1982 MAR p. 705, Eff. 4/16/82; AMD, 1983 MAR p. 1930, Eff. 12/30/83; AMD, 1984 MAR p. 2041, Eff. 12/28/84; AMD, 1989 MAR p. 760, Eff. 6/16/89; AMD, 1992 MAR p. 2560, Eff. 11/26/92; AMD, 1993 MAR p. 435, Eff. 3/26/93; AMD, 2000 MAR p. 872, Eff. 3/31/00; AMD, 2010 MAR p. 2993, Eff. 12/24/10.

#### **42.22.110 DEDUCTIONS FOR INTANGIBLE PERSONAL PROPERTY**

(1) 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 the value of intangible personal property it shall not be relied upon unless such value of the intangible personal property is excluded or removed.

(2) The department recognizes that the following percentages may not necessarily provide a taxpayer-specific measurement of intangible personal property. However, accurately quantifying the value of intangible personal property is difficult and subject to controversy and litigation which would not clarify the issues for future appraisals. The percentages are a good faith effort to comply with the rulemaking requirements of [15-6-218](#), MCA, in a manner that is timely and efficient for both the taxpayers and the department.

(a) Subject to the provisions of (3), intangible personal property shall be removed from the cost indicator by using the following percentages:

(i) Airlines 10%

(ii) Pipelines 5%

- (iii) Electric cooperatives 5%
- (iv) Telephone cooperatives 5%
- (v) Electric utilities 10%
- (vi) Telecommunications 15%

(b) Subject to the provisions of (3), intangible personal property shall be removed from the income indicator by using the following percentages:

- (i) Airlines 10%
- (ii) Pipelines 5%
- (iii) Electric cooperatives 5%
- (iv) Telephone cooperatives 5%
- (v) Electric utilities 10%
- (vi) Telecommunications 15%

(c) Subject to the provisions of (3), intangible personal property shall be removed from the market indicator by using the following percentages:

- (i) Airlines 10%
- (ii) Pipelines 5%
- (iii) Electric cooperatives 5%
- (iv) Telephone cooperatives 5%
- (v) Electric utilities 10%
- (vi) Telecommunications 15%

(d) For railroads assessed according to the provisions of [15-23-205](#), MCA, exempt intangible personal property, which shall be deducted from the railroad system value, is equal to 5 percent of the system value. If a railroad is not assessed pursuant to [15-23-205](#), MCA, but assessed using cost, income and market indicators to value, 5 percent of the value determined by each indicator shall be removed to reflect the value of intangible personal property in each indicator subject to the provisions of (3).

(3) If any taxpayer believes that the value of its intangible personal property is greater than that allowed under (2), 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. If the department concludes that the value of intangible personal property is greater than that allowed in (2), the unit value will be decreased accordingly. In no event, however, will the value of intangible personal property be less than that allowed in (2).

(4) A taxpayer may, at any time, make recommendations to the department, regarding the percentages in (2)(a), (b), or (c).

History: [15-23-108](#), MCA; [IMP](#), [15-6-218](#), [15-23-205](#), [15-23-303](#), MCA; [NEW](#), 2000 MAR p. 872, Eff. 3/31/00; [AMD](#), 2010 MAR p. 2993, Eff. 12/24/10; [AMD](#), 2014 MAR p. 2175, Eff. 9/19/14.