



# Revenue Interim Committee

67th Montana Legislature

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TO: Revenue Interim Committee

FROM: Megan Moore, Committee Staff

DATE: June 16, 2022

RE: Selected States' Treatment of Intangibles

The committee requested information about how other states treat intangible personal property owned by a taxpayer with property in more than one state or more than one county within a state, commonly known as centrally assessed property.<sup>1</sup>

### **Montana Removes Intangible Personal Property Value Using Percentages Set by Industry**

The Department of Revenue uses the unit value method to value centrally assessed property except for mines. This method calculates the market value of a utility or other business entity's entire operating system, regardless of location of assets or customer base, and allocates the value among the jurisdictions in which the property is located.

Section [15-6-218](#), MCA, provides that intangible personal property is exempt from taxation. Administrative rules set standard percentages by industry to be removed from value to account for the intangible personal property exemption.<sup>2</sup> A taxpayer may propose an alternative methodology for the Department to consider when valuing intangible personal property.

### **Analysis of Selected States Shows Less Defined Methods for Removing Intangible Personal Property**

Idaho, New Mexico, and Utah exempt intangible personal property from taxation. In Oregon, certain intangible property of a communications company subject to unit valuation is exempt from taxation, while intangible personal property of other taxpayers subject to unit valuation is not exempt.

Though the states examined exempt at least some intangible personal property from centrally assessed property value, there is not a uniform or clear method of removing the intangible value from assessed value. The method of valuing and exempting intangible personal property from the unit value of multi-jurisdiction property is a source of frequent tax appeals.<sup>3</sup>

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<sup>1</sup> For detailed discussion of centrally assessed property, unit valuation methods, and valuation of intangible personal property see: Megan Moore, "[SJ 23: Updated Overview of Classification, Assessment, and Taxation](#)," Dec. 17, 2017.

<sup>2</sup> [Administrative Rule 42.22.110](#).

<sup>3</sup> K.E. Powell, "[Identifying Exempt Intangible Assets in State Property Tax: Urging Stricter Application of Burden of Proof](#)," *Cornell Journal of Law and Public Policy*, Vol. 30, Winter 2020, Number 2.

The following sections provide more detailed information on how selected states treat intangible personal property for the purpose of property valuation.<sup>4</sup>

### Idaho

The Idaho State Tax Commission assesses operating property, which includes electrical companies, pipeline companies, natural gas distribution companies, power producers, telephone corporations, railroads, or private railcar fleets, operated wholly or partly in Idaho.<sup>5</sup>

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

Intangible personal property includes contracts, copyrights, custom computer programs, customer lists, franchises, goodwill, licenses, patents, rights-of-way not accompanied by title, trademarks, and trade secrets.<sup>6</sup> Exempt intangible value does not include values attributable to availability of a skilled work force, condition of surrounding property, geographic features, location, rights-of-way accompanied by title, view, zoning, and attributes or characteristics of real properties.<sup>7</sup>

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

- exclusion of exempt intangible personal property from the system-level value;
- exclusion of exempt intangible personal property from the system value allocated to the state;
- or
- exclusion of exempt intangible personal property by valuation of only tangible personal property and nonexempt intangible personal property using valuation models that do not impound or include values of exempt intangible personal property.<sup>8</sup>

For purposes of valuing intangible personal property, the Commission considers the value and supporting data provided by the owners. If no supporting intangible valuation information is provided by the owners, known exempt intangible personal property will be subtracted or will not be impounded in the value.

If the taxpayer elects the third method of excluding exempt intangible personal property, the Commission gives primary consideration to the cost less depreciation model, without regulatory adjustment, in valuing tangible personal property and non-exempt intangible personal property. Only if this model fails to produce market value of the tangible personal property and nonexempt intangible personal property, will the Commission consider other appropriate valuation models.<sup>9</sup>

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<sup>4</sup> Information adapted from Megan Moore, "[SJ 23: Updated Overview of Selected States' Methods for Valuing Centrally Assessed Property](#)," December 2017.

<sup>5</sup> [63-201](#) and [63-405](#), Idaho Statutes.

<sup>6</sup> [63-602L](#), Idaho Statutes.

<sup>7</sup> Rule 615.02, [35.01.03](#), Idaho Administrative Code.

<sup>8</sup> [63-602L](#), Idaho Statutes.

<sup>9</sup> Rule 615.03, [35.01.03](#), Idaho Administrative Code.

## New Mexico

Intangible property is excluded from the definition of "property" for the purposes of taxation. Intangible property includes, but is not limited to, shares of stock, bonds, bills, notes, checks, drafts, bills of exchange, certificates of deposit, letters of credit and negotiable instruments.<sup>10</sup>

New Mexico Administrative Codes provides for special methods that govern the valuation of most types of centrally assessed property. The method for valuation of property of a communications system requires that the value of intangible property be subtracted from the total system value.<sup>11</sup>

## Oregon

Intangible property in Oregon is generally exempt from taxation except for property centrally assessed. Centrally assessed property includes property used for: railroad transportation, air transportation, water transportation used in inland waters of the state, heating, gas, or electricity property, and pipelines.<sup>12</sup>

Oregon statute provides that intangible personal property includes but is not limited to:

- money at interest, bonds, notes, claims, demands, and all other evidences of indebtedness, secured or unsecured, including notes, bonds or certificates secured by mortgages;
- shares of stock in corporations, joint stock companies, or associations;
- media constituting business records, computer software, files, records of accounts, title records, surveys, designs, credit references, and data contained therein. "Media" includes, but is not limited to, paper, film, punch cards, magnetic tape, and disk storage;
- goodwill; customer lists; contracts and contract rights; patents, trademarks, and copyrights; assembled labor force; and trade secrets.<sup>13</sup>

Communications property is centrally assessed but not all of their intangible property is taxable. The taxpayer may select one of the following types of intangible property to be exempt from property taxation:

- licenses granted by the Federal Communications Commission;
- franchises; or
- satellites that are used by the company to provide communications services directly to retail customers or that are being constructed for such use and FCC licenses related to the use of satellites to provide communication services.<sup>14</sup>

## Utah

The Utah Constitution provides that the Legislature may exempt intangible property. However, if intangible property is subject to tax, the property tax may not exceed .005 of its fair market value. In addition, if intangible property is taxed under the property tax, the income from that property may not also be taxed.<sup>15</sup>

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<sup>10</sup> [Section 3.6.1.7](#), New Mexico Administrative Code.

<sup>11</sup> [Section 3.6.5.37](#), New Mexico Administrative Code.

<sup>12</sup> [Section 307.030](#), Oregon Revised Statutes.

<sup>13</sup> [Section 307.020](#), Oregon Revised Statutes.

<sup>14</sup> [Section 308.671](#), Oregon Revised Statutes.

<sup>15</sup> [Article XIII, Section 2](#), Utah Constitution.

The Utah State Tax Commission administers and supervises the state's tax laws. The constitution directs the commission to assess mines and public utilities. It is required to adjust and equalize the valuation and assessment of property among the counties.

The Commission assesses:

- property that operates as a unit across county lines, if the values must be apportioned among more than one county or state;
- all property of public utilities;
- all operating property of an airline, air charter service, and air contract service;
- geothermal fluids and geothermal resources;
- and mines and mining claims.<sup>16</sup>

Public utilities include, among other types of property, the operating property of railroads, gas corporations, oil or gas pipeline companies, coal slurry pipeline companies, and electrical corporations.

Beginning January 1, 2023, the Commission will not assess property owned by telecommunications service providers. Instead, a Multicounty Appraisal Trust will value personal property of a telecommunications service provider using the valuation guides established by the Commission.<sup>17</sup>

Utah exempts intangible personal property from taxation. Intangible property means:

- property that is capable of private ownership separate from tangible property, including:
  - money, credits, bonds, and stocks;
  - representative property;
  - franchises, licenses, trade names, copyrights, and patents;
- low-income housing tax credits;
- goodwill; or
- renewable energy tax credits or incentives.<sup>18</sup>

Administrative rules on the valuation of state assessed unitary properties provide that the value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.<sup>19</sup>

The rules state that the preferred methods of valuation are the cost approach and a yield capitalization indicator. Other generally accepted appraisal methods may also be used when it can be demonstrated that the methods are necessary to more accurately estimate fair market value.

However, the rules state that direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight is given to these methods in the reconciliation process.

In the reconciliation process, the appraiser accounts for the availability, quantity, and quality of data, as well as the strength and weakness of each value indicator. Weighting percentages used to correlate the

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<sup>16</sup> [Section 59-2-201](#), Utah Code Annotated.

<sup>17</sup> [Section 59-2.306.5](#), Utah Code Annotated.

<sup>18</sup> [Section 59-2-102](#), Utah Code Annotated.

<sup>19</sup> [R884-24P-62](#), Utah Administrative Code.

value approaches generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Property Assessment Division is required to disclose in writing the weighting percentages used in the reconciliation for the final assessment. It must explain in writing any departure from the prior year's weighting.