

## Legal Framework for Property Valuation

### Property Tax Modernization Study: Property Valuation

Prepared for the Revenue Interim Committee

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On January 23, 2024, the Revenue Interim Committee desired to revisit the legal framework for property valuations at the next meeting. This memorandum is a summary of the valuation provisions of the detailed memorandum entitled [Constitutional Property Tax Parameters](#) that was prepared as part of the [House Joint Resolution 35](#) (2019) [study of state and local tax policy](#).

#### **Article IV, section 2, of the United States Constitution:**

"The citizen of each State shall be entitled to all of the Privileges and Immunities of Citizens of the several States."

Use of residency to classify persons is a matter of federal law under the U.S. Constitution. Classification based upon residency is prohibited by the privileges and immunities clause of the U.S. Constitution, Article IV, section 2. In general, this clause prohibits discrimination against nonresident taxpayers, and providing preferential tax treatment to residents may discriminate against nonresidents.

The clause permits states to provide different rules for nonresidents if there is a "valid independent reason for" the treatment. Also, it only applies to interests that are "fundamental," i.e., bear on "the vitality of the Nation as a single entity." In the landmark U.S. Supreme Court case entitled *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371 (1978), the Court permitted differential treatment because hunting and fishing in our state is not a fundamental activity for the vitality of the nation.

#### **Article II, section 4, of the Montana Constitution:**

**Section 4. Individual dignity.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

The equal protection clause essentially requires that similarly situated individuals and entities be treated in the same manner. In the area of taxation, the Legislature is required to have a rational

basis for its action. *Montana Stockgrowers Association v. State*, 238 Mont. 113, 777 P.2d 285 (1989), followed in *GBN, Inc. v. Department of Revenue*, 249 Mont. 261, 815 P.2d 595 (1991).

Despite the Legislature's broad authority over classification, it is most likely a violation of equal protection provisions of the Montana Constitution to levy different mill levy rates on different classes of property within a jurisdiction.<sup>1</sup> The 1889 Montana Constitution, in Article XII, section 1, required that property taxes be levied under “a uniform rate of assessment and taxation”, and Article XII, section 11, required that taxes be levied and collected by general laws and in a manner that was “uniform upon the same class of subjects within the territorial limits of the authority levying the tax”. These two provisions became known as the “uniformity” provisions. The delegates excluded uniformity clauses and specifically recognized that the uniformity of taxation was required by the equal protection clause of the U.S. Constitution. See Verbatim Transcript Vol. II, pp. 579, 580, 582. Uniformity allows classification to reflect the character of the property and thus allows different taxes per dollar of value of the taxed property. Uniformity does not allow different levies against different classes of property.

**Article II, section 17, of the Montana Constitution:**

**Section 17. Due process of law.** No person shall be deprived of life, liberty, or property without due process of law.

The due process clause contained in Article II, section 17, of the Montana Constitution also applies to property taxation. The provision is frequently cited in Supreme Court opinions regarding equalization. A violation of statutory uniformity requirements generally results in violation of and due process requirements. *Patterson v. Department of Revenue*, 171 Mont. 168, 557 P.2d 798 (1976). See also *Department of Revenue v. Barron*, 245 Mont. 100, 799 P.2d 533 (1990) (sales assessment ratio study violated due process requirements by requiring property owners to bear a disproportionate share of the state tax burden).

**Article VIII, section 3, of the Montana Constitution:**

**Section 3. Property tax administration.** The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

The Montana Supreme Court has noted that three themes were prevalent in the Constitutional Convention debate concerning Article VIII, section 3, of the Montana Constitution: (1) equalization between counties; (2) flexibility so that the Legislature would be able to define means of taxation; and (3) more than one approach was permissible as a legitimate means of determining value (*i.e.*, market data approach and income approach). *Albright v. State*, 281 Mont. 196, 211-212, 933 P.2d 815 (1997).

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<sup>1</sup> For further analysis regarding this issue, see a staff attorney memorandum by Lee Heiman, Montana Legislative Services Division, Levying Different Property Tax Mills Against Different Classes of Property, Dec. 6, 2007.

**Article VIII, section 4, of the Montana Constitution:**

**Section 4. Equal valuation.** All taxing jurisdictions shall use the assessed valuation of property established by the state.

This section is similar to Article XII, section 5, of the 1889 Montana Constitution. It is intended to guarantee that the same assessed values will be used by all taxing authorities.

**Article VIII, section 5, of the Montana Constitution:**

**Section 5. Property tax exemptions.** (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

This section was a substantial revision of the 1889 Montana Constitution. The 1889 Montana Constitution required that property be listed in Article XII, section 2, of the 1889 Montana Constitution in order to be exempt. Under the 1972 Montana Constitution, all exemptions are at the discretion of the Legislature.

**Summary of Key Montana Supreme Court Rulings:**

- A statewide plan must be in place, or a county reappraisal can result in a disproportionate tax burden in one county as compared to the rest of the state. *Larson v. State*, 166 Mont. 449, 534 P.2d 854 (1975).
- All like property should be appraised by a uniform standard under the plan according to uniform procedures set forth in the same designated manual. *Patterson v. Department of Revenue*, 171 Mont. 168, 557 P.2d 798 (1976).
- This use of different manuals for the same class of property can result in valuations that are not always comparable for similar classes of property across the state. *Department of Revenue v. State Tax Appeal Board*, 188 Mont. 244, 613 P.2d 691 (1980).
- Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. *Department of*

*Revenue v. State Tax Appeal Board*, 188 Mont. 244, 613 P.2d 691 (1980), quoting *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 446 (1923). Reduction in valuation is required where it is satisfactorily shown that, under the system as applied, it is impossible to meet both the true value and equality standards.

- Tax values derived from a stratified sales assessment ratio study and the subsequent application of a percentage factor to certain residential properties, which in 1989 were assessed or appraised at or above their true market values, resulted in unfair discrimination by requiring those property owners to bear a disproportionate share of the state tax burden in violation of the equal protection and due process requirements of both the United States and Montana Constitutions. *Department of Revenue v. Barron*, 245 Mont. 100, 799 P.2d 533 (1990).
- An appraisal method that achieves equalization between areas must also achieve equalization between individual properties where inequities already existed. A statute that fails to solve inequities violates equal protection. *Department of Revenue v. Sheehy*, 262 Mont. 104, 862 P.2d 1181 (1993).
- Perfection in the field of valuation is unattainable. The use of the market data approach, income approach, cost approach, or some combination of approaches was a reasonable attempt to equalize appraisal of real property throughout the state. *Albright v. State*, 281 Mont. 196, 933 P.2d 815 (1997).
- A 6-year cyclical plan of reappraisal did not violate a taxpayer's rights when the property depreciated in value during the cycle because the Montana Constitution requires only a periodic attainment of equality of tax treatment. *Covenant Investments, Inc. v. Department of Revenue*, 2013 MT 215, 371 Mont. 186, 308 P.3d 54.
- Creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property while other property owners are assessed property taxes based on the actual or less than actual value of the property causes the property owners in the first class to "bear a disproportionate share of Montana's tax burden" in violation of equal protection under the Montana Constitution. *Roosevelt v. Dept. of Revenue*, 1999 MT 30, 293 Mont. 240, 975 P.2d 295 (1999).
- In order to secure a just valuation of all property, the method of assessing value must be uniform, and subsequently, after the property has been justly valued via a uniform method, property within the same class must be uniformly taxed, that is, taxed at the same percentage. *Powder River County v. State*, 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (citing *Hilger v. Moore*, 56 Mont. 146, 170, 182 P. 477, 481-482 (1919)).
- A tax classification under the rational basis test will be upheld if it is reasonable and not arbitrary and if it applies equally to all who fall within the same classification. A classification is not reasonable and violates equal protection if it confers particular privileges or imposes particular disabilities on a class of persons arbitrarily selected from a larger number of persons, all of whom stand in the same relation to privileges conferred or disabilities imposed. *Kottel v. State*, 2002 MT 278, 312 Mont. 387, 60 P.3d 403 (2002).