



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

Require Commercial Property Tax Owners to Provide Income and Expense Information if They Wish to Appeal Property Taxes August 2010

INTRODUCTION

At the April 2010 meeting of the Revenue and Transportation Interim Committee (RTIC), the Committee was interested in ways to increase the capacity of the Department to use the income model of valuation for commercial property valuation. The income model is considered to be the preferred valuation method by the International Association of Assessing Officers (IAAO).

This brief report is intended to provide background for the RTIC in response to the inquiry and information request at the April meeting. This memorandum is informational in nature and does not constitute a policy recommendation of the Department.

BACKGROUND

The Department currently mails forms to a subset of the commercial property owners in each county, requesting income and expense information for their properties (see example form attached). This information is used in the development of income models, which are used in conjunction with cost models and comparative sales models used in appraising commercial property.

LAW CHANGE FOR CONSIDERATION

This potential change would require that, if a commercial property owner had received a request for income and expense information, and wishes to appeal property valuation by the Department, the taxpayer must return the form and provide the requested information to the Department.

REASON TO CONSIDER THIS CHANGE

Currently, only a small percentage, approximately 15%, (see Exhibit 2 for data details) of commercial property owners in Montana return the forms with the requested income and expense information. The potential change would give taxpayers an incentive for providing the requested information. The additional information would provide the data required to expand the use of the Department's income model of valuation, and would assist both the Department and the individual property owner in the preparation for and evaluation of any subsequent appeal.

EXAMPLES FROM OTHER STATES

KANSAS: The Board of Tax Appeals requires that, if commercial real property is leased, the owner must provide income/expense information (up to 3 years) or the county's value is presumed to be correct.

NEW JERSEY: Taxing jurisdictions, including towns, can request income and expense information from owners of commercial property. The owners are not required to respond. However if the owner fails to respond timely, and then files an appeal, the law permits that taxing jurisdiction to request dismissal of the appeal for failure to supply the information. The owner will then be required to pay the taxes in full for the revaluation year and will have to wait until the following year to appeal. In addition, the owner will not be able to recapture any overpayment made in the revaluation year.

NEW YORK: In New York City, all owners of income producing properties are required to file an eight-page Real Property Income and Expense statement (RPIE's) with the New York City Department of Finance.

PENNSYLVANIA: The city of Philadelphia requires that, prior to appealing assessments, owners and lessors of commercial and industrial properties must provide extensive income and expense information, along with photographs, plans, etc. The ordinance also strongly suggests that an appraisal by a certified appraiser should be provided.

FLORIDA: Florida statutes and rules do not expressly require that commercial property owners provide income and expense information when appealing their property values. However, the burden of proof required for a property owner to be successful in his appeal is such that, in the absence of income and expense information, it is unlikely that the appeal will be successful.

WORKLOAD IMPACTS

The Department's overall workload would not be significantly affected by this change. The data input workload would be increased somewhat because of the increased amount of information. The data analysis workload, however, could actually be decreased by this change, because, with more data from across Montana, the current process of combining data from different areas to obtain satisfactory sample sizes would be simplified.

For the commercial property owner, providing this information does take time and effort. However, if the property owner wishes to appeal the property value, having this information will help in the preparation for the appeal.

STATUTES AND RULES CHANGES THAT WOULD BE REQUIRED

Title 15, Chapter 7, Part 1, MCA. (Appraisal) General Methods

15-7-102(3), MCA. Notice of classification and appraisal to owners – appeals

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

- (a) the taxpayer has submitted an objection in writing; **and**
- (b) the department has stated its reason in writing for making the adjustment; **and**
- (c) in the case of income-producing real property, if the department has requested income and expense information under ARM 42.20.108 (3) and the taxpayer has responded to and provided this income and expense on the form provided by the department.

Title 15, Chapter 15, MCA. (Property Tax Appeals) County Tax Appeal Board

15-15-103. Examination of applicant -- failure to hear application (add new section 4)

(4) in the case of income-producing real property, if the department has requested income and expense information under ARM 42.20.108 (3) and the taxpayer has responded to and provided this income and expense on the form provided by the department.

The following is a comprehensive list of all statutes and rules that might require changes in order to accomplish the objective.

- Title 15, Chapter 15, MCA. Property Tax Appeals
- Title 15, Chapter 15, Part 1, MCA. County Tax Appeal Board
- Title 15, Chapter 2, MCA. State Tax Appeal Board
- Title 15, Chapter 16, Part 6, MCA. Refunds
- 15-1-201, MCA. Administration of revenue laws
- 15-1-211, MCA. Uniform dispute review procedure -- notice -- appeal
- 15-1-216, MCA. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions -- uniform provision for interest on overpayments
- Title 15, Chapter 1, Part 3, MCA. Investigations and Hearings
- Title 15, Chapter 1, Part 4, MCA. Protest Payments, Actions to Recover, and Alternative Remedies
- 15-7-102, MCA. Notice of classification and appraisal to owners -- appeals
- 15-7-111, MCA. Periodic revaluation of certain taxable property
- 15-8- 113, MCA. Appeal from percentage assignment
- Title 15, Chapter 8, Part 6, MCA. Assessment Revision
- ARM 42.20.108 INCOME APPROACH

EXHIBITS ATTACHED:

Example of Current Income and Expense Form

Number of I&E forms returned by commercial property owners (by model area, property type and county)

**EXHIBIT 2
NUMBER OF INCOME AND EXPENSE FORMS COMPLETED AND RETURNED
LAST TWO YEARS**

Model Area	Office	Retail	Warehouse	Mini Warehouse	Apartment	Mobile Court	Hotel	Restaurant	Total
Butte-Silver Bow	57	55	39	15	187		3		356
Great Falls	129	166	210	20	513	18	17	23	1,096
Billings	379	374	528	24	1,019	37	39	91	2,491
Missoula	236	113	99	23	355	45	12	33	916
Helena	102	125	193	16	467	22	21	18	964
Bozeman	105	84	120	35	204	19	42	21	630
Kalispell	139	161	101	27	265	19	18	26	756
Counties 9-56	756	964	687	178	1,104	260	132	154	4,235
Total	1,903	2,042	1,977	338	4,114	420	284	366	11,444

NUMBER OF INCOME AND EXPENSE FORMS MAILED TO MONTANA BUSINESSES	75,000
RETURN RATE	15%

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 Tax Policy and Research
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