Litigation and Appeals

The Supreme Court in *Puget Sound Energy v. State DOR* reversed a district court determination that the State Tax Appeal Board could not determine a value higher than the assessment issued by the Department of Revenue. The decision remands to the District Court for consideration of the underlying case in light of the holding that STAB is authorized to determine fair market value, even if that value exceeds the original assessment by DOR. The underlying case raises the same issues as the PacifiCorp cases for which the Department's assessments were upheld. Because Puget is a co-owner of the same assets in Montana as PacifCorp and Puget used the same attorney and litigation strategy, no difference in result between Puget and PacifiCorp would be expected.

In the Fallon county case, Fallon challenged the Department's refusal to certify an expansive TIFD in the county. The county raised several issues, initially contending that the Department had no authority to determine the legality of the district. Fallon's position was that the Department was required to certify a base and increment value for the district without consideration of the legality of the formation, purpose and operation of the district. As a fallback position, Fallon argued that the Department was estopped to consider the several deficiencies in the description, formation and legal requisites for the district and the plan because the Department had not previously conducted such inquiries when it certified the base and increment of TIF Districts in other counties. The District Court in Fallon County rejected all these arguments. The court held that Fallon could not reasonably expect continued benign neglect of the illegality in the formation, purpose and operation of the district.

In TracFone, the issue was whether the prepaid telephony services that were provided by TracFone, but sold through third parties, via the sale of prepaid cellular cards, was subject to the Montana Retail Telecommunications Excise Tax ("RTET"), 15-53-101 et seq. , MCA. TracFone was paying the RTET on its direct sales of prepaid telephony to its customers. TracFone claimed that its third party sales of prepaid cellular cards met an exemption to the RTET for services prepaid as a prepaid calling card. The Department assessed TracFone for its failure to pay the RTET on the sale of its prepaid cellular cards, for tax periods fourth quarter 2004 through the first quarter of 2009. TracFone appealed the case to the State Tax Appeal Board ("STAB"). STAB ruled in favor of TracFone based on what it viewed as the plain language of the statute because TracFone's prepaid cellular cards were held to meet the definition of prepaid calling cards. No refund was issued as TracFone had not paid the tax prior to the appeal.