

MONTANA TAXPAYER



MONTANA TAXPAYERS ASSOCIATION

HELENA, MONTANA

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Upcoming Meetings

Wed., May 27 – [Legislative Council](#)

Assignment of interim study resolutions to interim committees and Appointment of members to the National Conference of Commissioners on Uniform State Laws

Thurs. and Fri. May 28-29 – [EQC](#)

Tues., June 2 – Children, Families, Health and Human Services

Friday, June 12 – DOR discussion on the default percentage of intangible personal property for telecommunication property - Room 152, State Capitol, 8:30am. If you plan to attend, contact Sarah Blaney at (406)444-9287 or sblaney@mt.gov

Monday, June 15 – Legislative Finance

Wed, June 17 – Energy and Telecomm Interim

Thursday, June 25 or Friday, June 26 – State Admin and Veterans Affairs

Friday, June 26 – Revenue and Transportation

Monday, June 29 – State Tribal Relations (tent)

Thurs. July 9 – Water Policy Committee (Helena)

Friday, July 10 – Education and Local Government (tent)

Thursday, July 16 – Energy and Telecommunications

Some of these meetings are tentative. Please check our website [calendar](#) or the [Legislative Calendar](#) for updates.

2009 Legislative Session

The 2009 Session adjourned sine die April 28th, the 90th Legislative Day. Thanks to the combined effort of many of the business associations, we were able to table all of the same targeted legislation we have seen for the last three sessions. These proposals would have radically changed and added complication to Montana tax code. The business associations were also successful supporting legislation that gives the Department of Revenue even more tools to increase and assist in compliance. These bills were straightforward, did not add complexity for taxpayers and brought balanced and proven solutions for addressing the administration's claims regarding compliance.

During the course of the Session we reviewed each of the 1,316 bills that were introduced; tracked 407 bills and testified on over 100 bills. The bills we tracked covered a multitude of categories such as state and local government operations, budget, fees, education and school funding, and in particular taxation.

Highlights on some of the most significant of the bills we followed through the process begin on page 4.

2009 Reappraisal Mitigation

A solution on how to deal with the increase in property values due to the 2009 Reappraisal was finally resolved in the final days of the session. HB658 (Jopek) took on a new look after going through significant changes on its way through the Chambers. In fact, language in the original bill was struck and replaced with language from a bill sponsored by Representative Hoven and Senator Tutvedt (HB673). The bill went to a free conference committee where more amendments were added.

In the end, the Legislative solution used similar procedures from prior Sessions to mitigate increases in property values. Through a combination of phasing in values over a six year time period, reducing taxable value rates and providing some additional targeted relief, the 2009 Reappraisal is estimated to be revenue neutral statewide.

Although the bill didn't change materially from what we reported in our March newsletter, there are some new twists, so we are including a complete summary.

The main features of the new law are:

- 2009 reappraisal values for class three, four and ten property will be phased-in over six years. This means that 16.66% of the difference between the 2008 value and the new value will be added each until the full value is reached in 2014;
- Increases the exemptions for residential (homestead) and commercial (comstead) real property over the six year period;
- Decreases the tax rates for Class 3, 4 and 10;
- Continues the existing property tax assistance programs for elderly, low income and certain veterans and the elderly homeowner and renter income tax credit.

Montana Taxpayer

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Wood Products – Henry Ricklefs, Whitefish

- Provides additional relief for households that experience large increases in value.

Homestead/Comstead Exemptions

The bill provides for an increase in the portion of residential and commercial improvements that will be exempt from taxation over the six year phase-in:

	TY 2009	TY 2010	TY 2011	TY 2012	TY 2013	TY 2014
Residential*	36.8%	39.5%	41.8%	44.0%	45.5%	47.0%
Commercial	14.2%	15.9%	15.9%	17.5%	20.3%	21.5%

*For residential property the exemption only applies to the first \$1.5 million of market value. This is the first time the Legislature has limited the amount of homestead exemption a residential property could receive.

Tax Rate Reductions

In addition, the bill reduces the tax rates for each of the classes of property:

	TY 2009	TY 2010	TY 2011	TY 2012	TY 2013	TY 2014
Class 3	2.93%	2.82%	2.72%	2.63%	2.54%	2.47%
Class 4	2.93%	2.82%	2.72%	2.63%	2.54%	2.47%
Class10	0.34%	0.33%	0.32%	0.31%	0.30%	0.29%

As we reported in our March newsletter, the Department of Revenue estimated the statewide increase in value for residential class 4 property will increase by 55%; commercial class 4 property by 34%; agricultural class 3 by 29% and forestland class 10 property by 52%.

Based upon calculations made by the Department of Revenue when the 2009 reappraisal values are fully phased-in in 2014, 49.3% (158,704 households) of

residential property owners' taxes would see a decrease in their property tax liability. 41.9% (134,155 households) would have an increase of \$300/ year or less, and 8.8% (28,830 households) would have an increase of more than \$300. These estimated changes in tax liabilities are based solely upon the change in valuations from reappraisal and do not reflect any changes in mill levies or increase in valuation due to new construction. A complete set of graphs showing the estimated change in tax liabilities, statewide and county-by-county, from the mitigated reappraisal is available on the Department's website, under [Reappraisal](#).

It's Still Greek to Me

We didn't say it was a simple fix, just that the fix is intended to be revenue neutral statewide for each year of the phase-in.

Let's assume your property increased by exactly the state average, or 55 percent. Following is an example of how the value for residential property having a value of \$160,000 in 2008 (the last year of the phase-in from 2003 – 2008) and a new reappraised value of \$248,000.

The taxable value for 2008 for this property would have been \$3,178 (\$160,000 X (1 - .34%) X 3.01).

Increase in value after 2008 reappraisal of 55% -statewide percentage							
2009 Full Reappraisal		\$248,000					
2008 Value before Reappraisal		<u>\$160,000</u>					
		\$88,000					
Year	Phase-in %	Phase-in \$	Phased In Market Value	Home-stead Exemption	Market Value after Exemption	Tax Rate Class 4	Taxable Value
2009	16.66%	\$14,661	\$174,661	36.80%	\$110,386	2.93%	\$3,234
2010	33.32%	\$29,322	\$189,322	39.50%	\$114,540	2.82%	\$3,230
2011	49.98%	\$43,982	\$203,982	41.80%	\$118,718	2.72%	\$3,229
2012	66.64%	\$58,643	\$218,643	44.00%	\$122,440	2.63%	\$3,220
2013	83.30%	\$73,304	\$233,304	45.50%	\$127,151	2.54%	\$3,230
2014	100.00%	\$88,000	\$248,000	47.00%	\$131,440	2.47%	\$3,247

As you can see from the chart, the increase in the exemption, coupled with the decrease in the tax rate keeps the taxable value fairly steady throughout the phase-in. Keep in mind the mill levies for the local jurisdiction in which the property is located would be multiplied times the taxable value to determine the tax. If you use the statewide average mill of 539 the taxes for the six year period

Where does my property fit in?

Property owners need to remember that the mitigation strategy discussed above is based upon statewide averages. How the mitigation will affect individual properties is dependent upon whether or not the value for each piece of reappraised property is above or below

the 55% statewide average increase in value. For properties below the average they may see a smaller increase in taxable value of their property. Likewise properties that increase more than the statewide average will see an increase in taxable value over the phase-in period. For those properties that experience an extraordinary increase in market value they may be eligible for additional relief. Finally, any property that has a decrease in value there will no phase-in, the value decrease will be fully implemented in 2009.

To review the estimated change in property taxes paid as a result of 2008 reappraisal on a county by county basis go to:

www.mt.gov/revenue/forindividuals/property/reappraisal/HB%20658%20Analysis-2.pdf

Montana needs to take a more long-term look at property reappraisal in the future. While the bill continues the overly complex system of mitigating the effects of reappraisal and continues the shifting of taxes from class 4 to the annually appraised property in Montana, we understand that this solution was the most politically feasible approach.

This can be further illustrated by reviewing the enclosed charts titled "Market Value and Taxes Paid – TY08 vs. TY 09" (pages 7-8).

You can see the market value of class 4 residential property before the 2008 reappraisal is \$48,660,363,005 and the market value after the reappraisal is \$75,402,827,391. This is an increase in the market value of class 4 residential property of nearly \$27,000,000,000 or 55% without any mitigation. Class 4 residential property is the only class of property showing this magnitude of increase in the value in the class. This growth is due to the increase in property values for real estate in Montana and the growth that occurred as result of new homes being built. No other class of property has seen anywhere near this significant of increase in value.

The same charts show for the TY 2008 the full market value of class 4 is 58.7% of the market for all property tax classes in Montana and after the reappraisal the market value of class 4 has increased to 64.2% of the market value of all property tax classes. Despite this significantly "larger piece of the market value pie" the taxes paid by class 4 would remain at 47%.

Based upon calculations prepared by Jim Standaert of the Montana Legislative Fiscal Division, the effective property tax rate for residential class 4 property will drop from 1.07% in 2008 to 0.70% in 2014 when the 2008 reappraisal is fully phased-in. As the effective tax rate for residential class 4 property continues to drop, voters will be more likely to pass additional mill levies for local government and schools. This compares to the effective tax rates for business personal tax rates remaining the same at 1.61% in 2008 and 2014, and the

effective tax rate for electric utilities at 6.46% for 2008 and 2014.

Other Statutory Changes Contained in the Reappraisal Bill

In addition to the above, the bill provides for the following changes to current law:

- The Department of Revenue is required to provide a notice of availability for the property tax assistance programs for veterans, the elderly and low income and the elderly homeowner and renter income tax credit on the assessment notices when they are mailed. The same information is required to be placed on the tax bills.
- For irrigated ag land, total allowable costs may not exceed \$50 and include the per-acre labor costs, energy costs of irrigation, and a base water cost of \$15 per acre. Labor costs are \$5 per acre for pivot sprinklers, \$10/ acre for tow lines, side roll and lateral sprinkler irrigation systems; and \$15/ acre for hand-moved or flood irrigated land. The base crop for irrigated land is alfalfa hay adjusted to 80% of the sales price. For non-irrigated land, the base crop is spring wheat. The base unit for valuation of grazing lands is animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a 1,000 pound cow with a calf or its equivalent.
- The bill establishes a forest lands taxation advisory committee to study forestland productivity and other issues surrounding the valuation of forestland for property tax purposes. It also establishes the capitalization rate to be used for forestland at no less than 8% for tax years 2009 through 2014.
- The Department of Revenue is to provide to the Revenue and Transportation Interim Committee in second and fourth years of the six reappraisal cycle a sales assessment ratio study to apprise the committee of housing market and value trends. The RTIC could then make recommended changes for mitigating the 2009 reappraisal to the 2011 and/or 2013 Legislatures if warranted.
- The statutory deadlines relating to the assessment and collection of property taxes, including the appeal process are extended for the 2009 tax year.
- The statutory deadline for the property tax assistance programs for certain veterans, elderly and low income are extended until July 15, 2009.
- Changes the way the value of newly constructed property is determined for local government mill levy authority. (We will be monitoring this calculation to determine the ultimate effect on the tax bills).

- The Revenue and Transportation Interim Committee is to review methods of providing assistance to property taxpayers, including circuit breaker programs and assistance to low-income, veteran, and elderly property owners and whether the assistance should be accomplished through income tax or property taxation means.

Other Legislative Action

Following are summaries of some of the legislative bills that MonTax supported:

HB 24 - Sponsored by Representative Penny Morgan by the request of the Revenue and Interim Committee recodified several sections of the tax code related to individual income tax and combined several sections of the individual income tax law to make easier for filers and practitioners to use and under the code.

SB 43 – Sponsored by Senator Christine Kaufman – specifies the countries that are considered tax havens for corporate income tax purposes.

HB 487 – Sponsored by Representative Walter McNutt exempts farm implements of farm implement dealers and construction equipment of construction equipment dealers that are rented under purchase incentive rental programs from property taxation by defining these implements and equipment as exempt business inventory. Purchase incentive rental program is defined as a program operated by a dealer of farm implements or construction equipment, where the farm implement or construction equipment is owned by the dealer for sale, and rented to a single user of the implement or equipment as an incentive to buy. The bill applies to implements and equipment brought into the state under these same incentive rental programs.

HB 562 – Sponsored by Representative Jill Cohenour allows a school district that has pending tax protests to waive the district’s right to receive its portion protested property taxes upon settlement of the tax protest. If a district waives its right to receive its portion of protested property, it will have its “Guaranteed Tax Base” aid determined based upon the property value without the value of the protested property included. This bill gives those school districts where there are appeals that are a significant portion of the district’s the option to not wait on the final resolution of appeal.

HB 657 – Sponsored by Representative Wayne Stahl provides for the Revenue and Transportation Interim Committee to conduct a study on the classification, valuation, and taxation of oil and natural gas property. The study could include what should or shouldn’t be centrally assessed, a review of DOR policies, procedures and practices related to local assessment versus central assessment, an inventory of the ownership of oil and natural gas property subject to central assessment or local assessment and develop a tax policy that balance

needs of taxing jurisdictions and equitable taxation of oil and natural gas property.

HB 670 – Sponsored by Representative Chas Vincent allows local governments, including cities and towns, and school districts the discretion to abate property taxes on commercial and industrial real and personal property within the taxing jurisdiction. This law provides for up to a 95% reduction of the taxable value for commercial and industrial property that has not been operated for at least 6 months preceding the request for reduction, and the owner does not intend to use the property for at 6 months after the reduction. The purpose of the bill is to discourage property owners from removing property from a taxing jurisdiction that is temporarily not being used or is idled. The bill requires joint approval by all the affected governing bodies and does not apply to the 101 statewide mills.

SB 181 – Sponsored by Senator John Esp requires a 1099S be filed with the Department of Revenue for sales of real estate sold in Montana. The 1099S will provide the necessary information to the Department of Revenue to follow-up with non-resident sellers of real estate who do not file a Montana return. For the past three sessions, the Department proposed legislation that would have implemented a complicated withholding mechanism, adding even more costs and uncertainty in real estate transactions.

SB 198 – Sponsored by Senator Dave Lewis provides that biomass electric generation facilities up to 25 mega watts will be classified in class fourteen for property tax purposes and taxed at 3%.

SB 260 - Sponsored by Senator Kim Gillan clarifies the tax treatment for publicly traded partnerships (PTPs) and provides how the recapture of depreciation and depletion will be accomplished for sales of interests by a nonresident in a PTP doing business in Montana.

SB 280 – Sponsored by Senator Kelly Gebhardt exempts personal property owned by a business that is rented on a monthly or semimonthly basis. This mainly applies to businesses who do “rent-to-own” types of rentals for household items like refrigerators, TV’s, furniture, etc.

SB 370 – Sponsored by Senator Gary Perry exempts sand and gravel from the Resource Indemnity Trust and Ground Water Assessment Tax (RIGWAT) and establishes a fee for sand and gravel at 2.5 cents per yard for material mined.

SB 418 – Sponsored by Senator Gary Branae limits the deduction for federal income taxes paid on trusts and estates to \$5,000, the same limitation as individuals can claim on the individual income tax return for federal income taxes paid. This limitation was an oversight when Senate Bill 407 was passed in the 2003 Legislative Session which limited the amount individuals could deduct on their individual income tax returns.

The bill also increases the income that a dependent who is not a qualifying child may earn and still be a dependent (parent or other relative who is elderly or disabled) from \$800 to the personal exemption amount.

Finally this bill changes the practice of when a taxpayer files a late income tax return claiming a refund and then being paid interest on the amount refunded from the date the return was originally due. This bill would make interest payable from the date the return was filed. This will reduce the amount of interest paid from the general fund in cases where the department has identified non-filers, brought them into compliance, and they turn out to be due a refund.

SB 430 – Sponsored by Senator Bradley Hamlett revises administrative provisions relating to DOR for coal, oil and natural gas, bentonite, wholesale electric generation tax and changing appeals of cigarette taxes.

SB 460 - Sponsored by Senator Bob Story would establish a Federal Economic Stimulus Oversight Commission to oversee various aspects of federal stimulus would be spent. This bill was vetoed after the Legislature adjourned. **Vetoed by the Governor.**

SB 465 – Sponsored by Senator Bradley Hamlett addresses two important issues to Montana landowners and streambed users. For entities that may own structures within the low water mark of navigable streams (ie. irrigation diversions, municipal withdrawal points, utility structures etc.) the legislation insures that these historic structures will remain the property of the party that built the structure, or their predecessor. Secondly, if the land under navigable waters is state trust land, which a district court has ruled, the bill sets forth the value to be removed from the tax rolls. SB465 passed both houses but was returned with an amendatory veto by the Governor. Neither house adopted the amendments. The bill was signed by the Governor on May 6. *(Summary provided by John Youngberg – Montana Farm Bureau).*

SB 489 – Sponsored by Senator Jeff Essmann defines gathering and flowlines for oil and natural gas pipelines, clarifies what oil and natural gas pipeline property is assessed locally and taxed in class 8 at 3% and clarifies what oil and natural gas pipelines will be centrally assessed and classified in class 9 and taxed at 12 percent of market value.

The Governor let the bill become law without a signature, but added "My objection to Senate Bill 489, as passed by the 61st Legislature, is that while it restores the majority of the traditional tax base to local governments and schools that existed prior to Omimex, I do not believe that the approach adopted in the legislation reflects sound tax policy. Most problematic is that, as fashioned with its fine-tuned definitions, the bill would allow companies to manipulate their ownership

interests in gas lines to avoid the payment of taxes. Also troubling is that the concept of "regulation" has for the first time been added to the inquiry of whether a pipeline is centrally assessed - which is particularly 'troubling in these post-deregulation years.

Equally troubling is that, although the bill resolves a significant portion of the fiscal problems that resulted from the Omimex decision, there nonetheless remains a high degree of uncertainty as to the effect of the bill's provisions. This uncertainty was highlighted by the testimony of at least one county official testifying in favor of the bill, who based his support on the premise that a particular company would be centrally assessed. However, during the same hearing a representative of the very company referred to by the county official testified as a proponent of the bill based on the exact opposite premise, claiming that the company would not be centrally assessed.

Other legislative testimony on Senate Bill 489 demonstrated uncertainty as to whether, under the bill's definitions, three of the largest integrated natural gas companies in Montana would be centrally assessed and classified as class 9 properties, or locally assessed and classified as class 8 properties, making the prospect of litigation as to the determination highly probable. The uncertainties as to the classification of these oil and natural gas transport pipelines and affiliated properties should have been avoided."

SB 491 – Sponsored by Senator Dave Lewis clarifies when local jurisdictions can use mill levies to pay for health contributions and when the levies can exceed the limits in 15-10-420, provides more guidance on what these levies can be used for and allows for a transition period for local jurisdictions to come into conformity with the law.

SB 503 – Sponsored by Senator Jeff Essmann establishes a 5% credit on a taxpayer's net capital gain from the sale of a qualifying business or a portion of a qualifying business. To qualify for the tax credit allowed, the business must have been started or its principal business location must have been established in Montana between January 1, 2009, and January 1, 2012, and the principal business location must have remained in Montana until the qualifying sale. **Vetoed by the Governor.**

The tax credit is allowed for the sale of the assets of a qualified business that was held for a minimum of 10 years, or the sale of an ownership interest by a partner, shareholder, manager, member, or other owner of a qualified business if 60% of the qualifying business employees are located in Montana for a minimum of 10 years prior to the date of the sale.

SB 507 – Sponsored by Senator Bob Story addresses three points that arose out of the PPL v. State of

Montana decision. The district court held that land under navigable streams belonged to the Montana School Trust and had to receive fair market value for its use. The case is currently being appealed to the Montana Supreme Court. First the bill clarifies which streams are navigable for title purpose. Under this legislation only streams that have had the meander surveyed at statehood or have been adjudicated by a court of competent jurisdiction qualify as navigable streams. Secondly the bill sets up a process for streambed users to get a lease, license or easement on the state land for their historic structures. Lastly it sets up a process for future leases, licenses or easements. The bill passed both houses, the Governor put an amendatory veto on that both houses accepted. The Governor signed the bill on May 6. *(Information provided by John Youngberg – Montana Farm Bureau).*

SB 509 – Sponsored by Senator Kelly Gebhardt allows for the contract sales price for coal mined underground in Montana to be reduced for any washing or cleaning of the coal that might occur. This reduction in contract sales does not apply to surface mined coal. Coal washing is defined to be any treatment to remove impurities from underground mined coal. Coal washing may include operations such as flotation, air water, or heavy media separation, drying and related handling.

Statutory Interim Studies

In addition to the interim studies discussed above the following studies were enacted as law:

HB 659 – Sponsored by Representative Don Roberts directs the State Administration and Veterans Affairs Interim Committee to examine and recommend to the next Legislature funding and benefit changes to the Public Employees and Teachers' Retirement systems.

SB 22 - Sponsored by Senator Terry Murphy establishes a Water Policy Committee to study issues related to water policy.

SB 290 - Sponsored by Senator Verdell Jackson directs the Energy and Telecommunications Interim Committee to review state energy policy. The committee is to examine a broad spectrum of issues including the following:

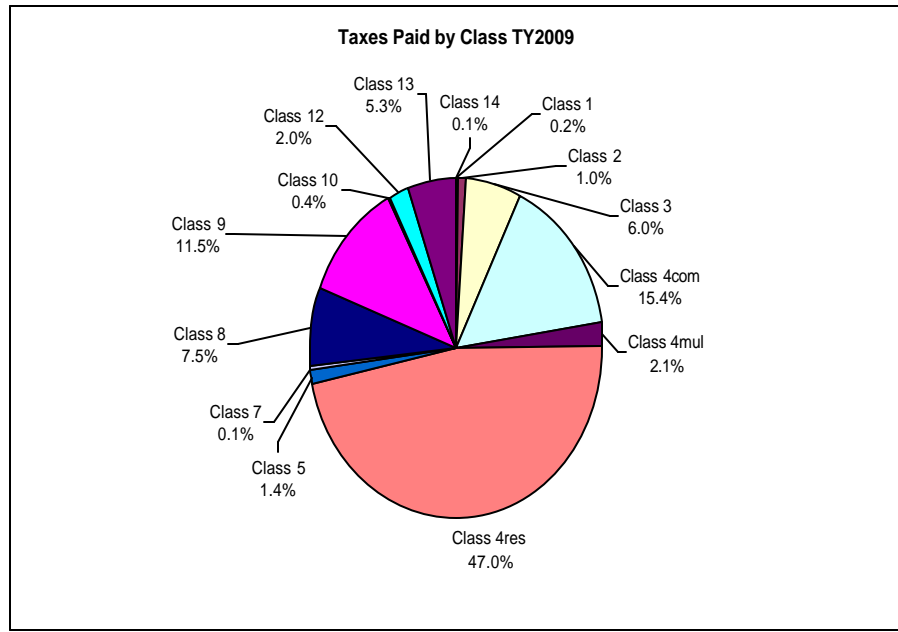
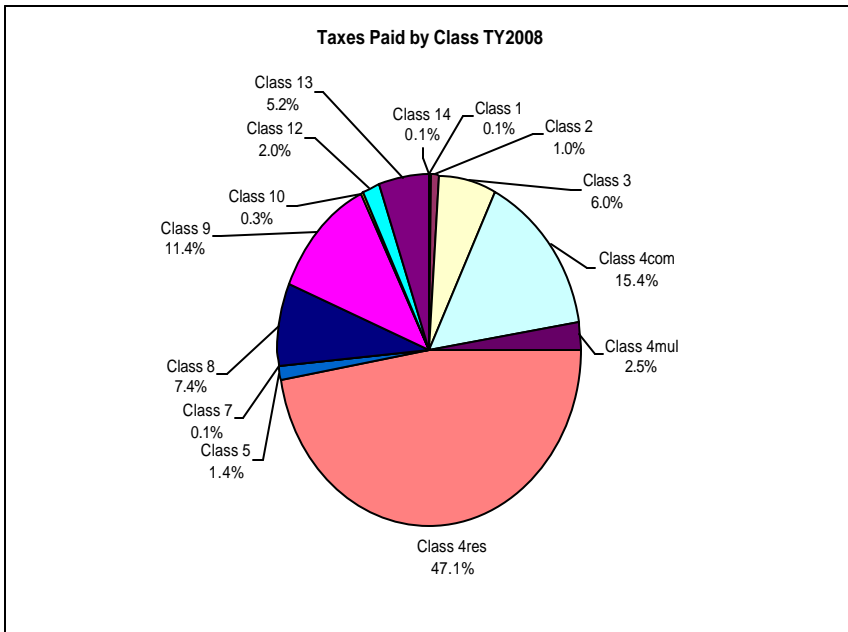
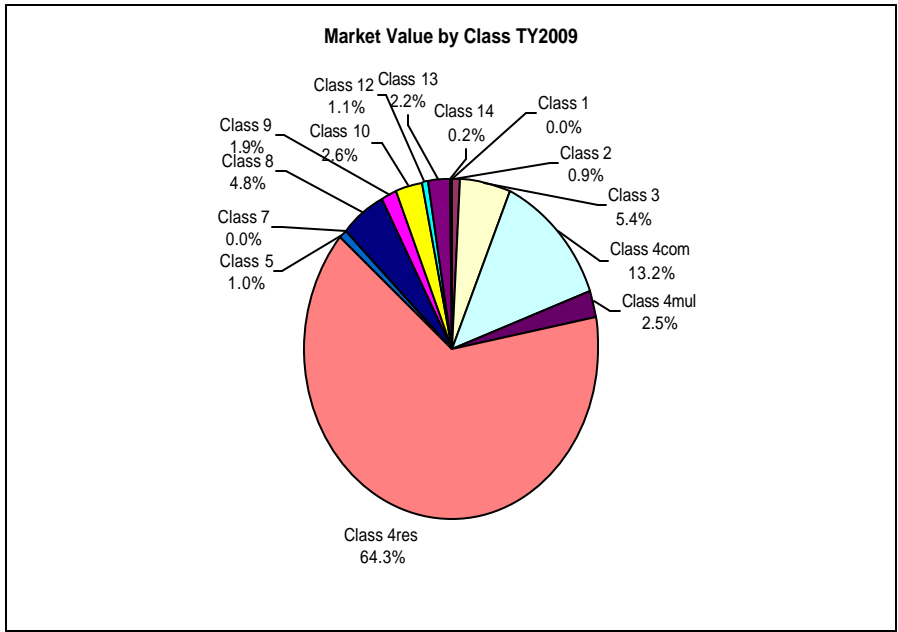
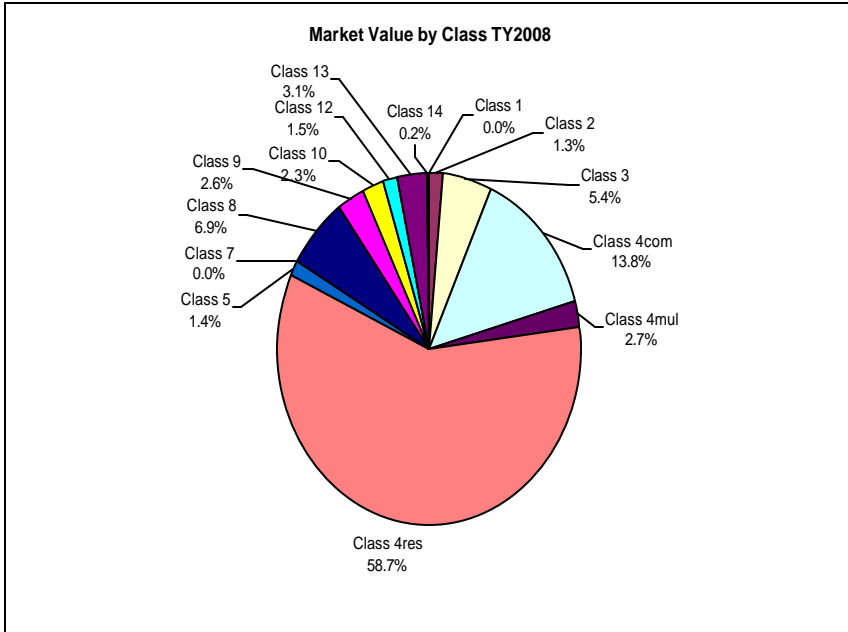
- increasing the supply of low-cost electricity with coal-fired generation;
- rebuilding and extending electric transmission lines;
- maximizing state land use for energy generation;
- increasing energy efficiency standards for new construction;
- promoting conservation;
- promoting energy efficiency incentives;
- promoting alternative energy systems;
- reducing regulations that increase ratepayers' energy costs; and
- integrating wind energy.

Other Interim Work

While there was no law enacted or a resolution adopted the House Taxation Committee wrote a letter to the Revenue and Transportation Committee requesting the study several topics related to taxation. These are:

- Evaluate whether various individual income tax exclusions, exemptions, deductions, credits, and filing statuses enacted to encourage a desired behavior or to provide relief to a particular class of taxpayers achieve their intended goal;
- Natural resource taxes should be examined for fairness, incidence, effective tax rates, efficiency, stability, and accountability and including interstate comparisons;
- Monitor the effects reappraisal and consider property tax mitigation strategies;
- Study the tax gap – the difference between tax liability and tax payments.

Market Value and Taxes Paid – TY08 vs. TY09



county	(All)
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taxclass2	FullMV08	FullMV09-grth	2008 Taxes Paid	Total 2009 taxes
1.0	4,013,187	4,013,187	1,651,993	1,726,385
2.0	1,067,306,017	1,067,306,017	11,635,440	11,701,247
3.0	4,447,626,296	6,323,955,850	68,999,892	68,181,863
4com	11,466,355,621	15,437,523,322	175,559,011	176,243,838
4mul	2,225,755,518	2,962,975,551	28,436,888	24,463,803
4res	48,660,363,005	75,402,827,391	537,931,155	536,908,765
5.0	1,173,196,288	1,173,196,288	16,319,730	16,478,703
7.0	15,179,491	15,179,491	734,870	796,839
8.0	5,685,495,989	5,685,495,989	84,319,187	85,606,569
9.0	2,193,812,254	2,193,812,254	130,113,785	131,766,064
10.0	1,947,342,765	2,999,858,721	3,242,141	4,123,210
12.0	1,266,493,553	1,266,493,553	22,501,200	22,796,342
13.0	2,583,796,284	2,583,796,284	59,594,056	60,249,226
14.0	196,252,299	196,252,299	1,175,095	1,171,588
Grand Total	82,932,988,567	117,312,686,197	1,142,214,442	1,142,214,442