

MONTANA TAXPAYER



MONTANA TAXPAYERS ASSOCIATION

HELENA, MONTANA

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Upcoming Meetings

Wednesday, July 1 – [Revenue and Transportation](#)
Wednesday, July 8 – [Economic Affairs](#)
Thursday, July 9 – [Water Policy Committee \(Helena\)](#)
Friday, July 10 – [Energy and Telecommunications](#)
Monday, August 3 – [Law and Justice](#)
Thursday & Friday, September 10 & 11 – [Environmental Quality Council](#)
Monday, September 21 – [Children, Families, Health & Human Services](#)
Thursday, September 24 – [Energy & Telecommunications](#)
Thursday & Friday, September 24 & 25 – [Legislative Finance](#)

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

2009 Reappraisal

Notices

Assessment notices for all residential, commercial and industrial land and improvements, agriculture land and forest land are scheduled to be mailed between July 13 and August 7 (the personal property attached to these properties will be included). Assessment notices for centrally assessed properties are scheduled for mailing on July 1.

For additional information on the implementation of the 2009 reappraisal please refer to the April/May issue of the [Montana Taxpayer](#).

For any questions on the assessment or appeal process or property tax relief programs contact the [local Department of Revenue office](#), or call the department's Customer Service Center in Helena at toll-free 1-866-859-2254 or in Helena 444-6900.

Appeal

The Department of Revenue field offices provide an informal property review process. This allows the taxpayer an opportunity to have questions answered concerning the value placed on the property. The informal review is started by filling out an [AB-26 form](#), available from the local field office or online on the department's website. The form must be completed and filed *within thirty days of receipt of the assessment*

notice, or the first Monday in June, whichever is later. The taxpayer will be provided with a written decision on the assessment concern(s).

If the taxpayer is not satisfied with the decision on the AB-26 review, they may appeal the value to the County Tax Appeal Board. This appeal must be filed within thirty days of the receipt of the AB-26 decision.

If the taxpayer is not satisfied with the County Tax Appeal Board's decision, they may appeal to the State Tax Appeal Board. Appeals to be heard by the State Tax Appeal Board must be filed within thirty days of receiving the County Tax Appeal Board's decision. The decision of the State Tax Appeal Board is final unless district court action is pursued.

If the taxpayer has an AB-26 review or appeal pending, the *law requires the taxpayer to pay the taxes under protest* in order to receive any refund and accrued interest. This must be done before the taxes become delinquent. The protest must be in writing, specifying the grounds for protest and listing the amount of the taxes being paid under protest.

The next steps in the appeal process after the State Tax Appeal Board are District Court and then, if necessary, the State Supreme Court.

Relief

Montana property owners can have their property taxes reduced under the Property Tax Assistance Program, [15-6-134, MCA](#) if they meet certain qualifications. [Form PPB-8](#) must be filed with the local Department of Revenue office in the county where the property is located. The owner must apply for the reduction before April 15 of each year. *For 2009 the deadline has been extended to July 15.*

The home or mobile home must be owned or under contract for deed and be occupied for at least seven months as their primary residence. The owner's total federal adjusted gross income must be less than \$19,944

Montana Taxpayer

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Farm & Ranch – Nancy Schlepp, Bozeman	Technology – Ernie Kindt, Butte
Gas & Electric – John Fitzpatrick, Helena	Telecommunications – David Gibson, Helena
Healthcare – Mike Foster, Billings	Utilities – Tom Ebzery, Billings
Ind. Power Producers - David Hoffman, Helena	Wood Products – Henry Ricklefs, Whitefish

for a single person, or \$26,592 for a married couple or a person filing as "head of household."

If a taxpayer is not required to file a federal income tax return, they will need to determine and provide evidence of what their federal adjusted gross income would have been had these been required to file. The tax rate applied to the market value of the property is reduced depending on the owner's income.

Another program, the [Extended Property Tax Assistance, 15-6-193, MCA](#) program is available to certain residential property owners whose values increased by at least 24 percent from the 2003 to the 2009 reappraisal and who meet certain income requirements. The Department identifies potentially eligible taxpayers the first year after a reappraisal and mails them application forms. The deadline for filing applications is April 15 each year. (Estimated mailing in August) *The deadline for 2009 has been extended to the due date preprinted on the application form.*

The program offers a reduction to the tax rate on the specific residences and up to five acres of appurtenant land for only those persons or entities who meet the following four specific initial criteria:

- Taxable value of the property must have increased by more than 24% as a result of the 2009 reappraisal;
- Property tax liability must have the potential to increase by \$250 or more (based on use of the 2008 mill levy);

- Property owner must have owned the residence as of December 31, 2008, and;
- Owners' total household income may not exceed \$75,000.

The department will mail new applications each year of the reappraisal. Taxpayers must re-file this application each year to qualify. They may not re-qualify if any of the following situations occur:

- The residential property which was owned on December 31, 2008 is sold or transferred to some other party, or
- New construction or remodeling of the residential improvements (buildings) occurs that increases the market value of the improvements by more than 25%, or
- The market value of the appurtenant land increases by more than 25%.

There are also programs available for disabled veterans, or the surviving spouse of a deceased disabled veteran, [15-6-211, MCA](#) if certain criteria is met. [Form PPB-8A](#) must be completed and submitted to the [local Department of Revenue office](#) by April 15. *For 2009 the deadline has been extended to July 15.*

Montana Public Employee Pension Systems

(Curt Nichols, Montana Taxpayers Association)

In the December [Montana Taxpayer](#) we warned the reduced value of investments of the public employee retirement systems would likely lead to increased taxes in the 2011 legislative session. No substantive action was proposed by the administration for the 2009 Legislature. The gap between expected investment growth and actual values had exceeded \$1 billion in fiscal year 2008 and we anticipated the fiscal year 2009 gap could easily exceed \$1.4 billion.

Unfortunately investments have performed poorly; the November low in markets we observed in December has been replaced by a March low and the recovery in values since, though good by historical standards, is likely to leave the funds at fiscal year end, June 30th, with a gap closer to \$1.9 billion than the \$1.4 billion discussed previously. The cumulative \$3 billion gap incurred in fiscal years 2008 and 2009 may lead to a more than doubling in the employer (taxpayer) contributions as these losses are phased into retirement fund calculations over the next four years. The impact also depends on future investment returns and benefit reductions. Employer contributions in fiscal year 2008 totaled \$154 million for the Public Employees' and Teachers' retirement systems.

If investments and net contributions are inadequate to amortize the unfunded liabilities of the pension funds within a 30 year period for two consecutive actuarial reviews the administering boards will request adjustments in benefits and/or employer (taxpayer)

contributions. We anticipate the Teachers' Retirement System to report their second consecutive shortfall late this summer while the Public Employees' System would report their first this summer with their second coming late in the summer of 2010. Requests from both major public employee retirement systems would be presented to the 2011 legislature.

Funding of the employer contribution varies by governmental entity and the particular retirement system. For the largest two retirement systems, Public Employees' and Teachers', employer contributions for state, city and county employees is budgeted as a part of the cost of employee compensation and paid from the funding sources that pay the salary and other benefits. For most school district employees, employer contributions are separately funded from mandatory county property levies and state equalization aid. Increases in employer contributions for the state, cities and counties involve budget trade-offs between expenditure reductions and increased taxes while for school districts the costs are primarily passed directly to the taxpayer through the mandatory county levy. Retirement contributions for federally funded employees of the state, cities and counties are paid with federal funds. School districts charge the cost of some federally funded employees to the county levy.

In the 2009 session several bills were introduced to expand coverage to additional employees (HB31), increase benefits for current or future retirees (HB83, HB463) or increase state funding while reducing federal funding for employer contributions (HB87, HB305). While these bills were not enacted their consideration during a time when retirement funds are facing significant shortfalls demonstrates the challenge faced in restraining the growth of taxpayer obligations for these plans.

The 2009 Legislature did pass HB659 which requires the State Administration and Veterans' Affairs interim committee to examine and recommend changes in the funding and benefits of public employees' and teachers' retirement plans. This study will review many of the assumptions underlying the operations of these systems such as: how much income replacement is appropriate for a career employee; how much of an employee's retirement income should be generated from retirement plans, deferred compensation, social security and personal savings and investments; should market risk be shared between employee and employer; and how do retirement benefits act in combination with salary and health benefits to attract and retain employees.

The SAVA committee at its initial meeting last week discussed their work plan and approach to the study required by HB659. The committee decided to conduct research with in-house staff and rely on actuaries for the state pension systems for actuarial analysis. Comments

and suggestions were provided by staff of the two major state pension systems, the teachers and state employees union (MEA/MFT), the association of school administrators and the Board of Investments. No actions were taken relative to specific options or analysis considerations. The next meeting is tentatively scheduled for September 16th.

The Montana Taxpayers Association will be monitoring this study.

Nexus Issues

On June 22, 2009 the United States Supreme Court declined to review the decision of the Supreme Judicial Court of Massachusetts in Capital One Bank v. Commissioner of Revenue, 899 N.E.2d 76 (Mass. 2009).

? Summary of issue:

- In Quill Corp. v. North Dakota, 504 U.S. 298 (1992), the U.S. Supreme Court held that the Commerce Clause requires a physical presence in a state before the state may impose *sales or use tax* on an out-of-state business.
- States in recent years have increasingly sought to bypass the constraints of Quill by limiting the ruling to sales and use taxes and assessing *income taxes* on out-of-state businesses that have sales but no physical presence in the taxing state.

? Summary of case:

- On January 8, 2009, the Supreme Judicial Court of Massachusetts (the "SJC") joined a handful of state supreme courts in holding that the states may impose income tax or other business activity taxes on out-of-state corporations that have no physical presence in the state.
- The SJC held that Quill has a narrow focus on sales and use taxes, and that the physical presence nexus requirement does not apply to the imposition of other types of state taxes on non-resident businesses. Therefore, it upheld the imposition of the financial institution excise tax on Capital One Bank, despite the fact that Capital One Bank had no-in state physical presence (*i.e.*, no property, no employees and no independent contractors or agents in the state).

? Implications of Denial of Certiorari:

- The U.S. Supreme Court denial of a petition for certiorari does not mean that the Court agrees with the decision of the lower court. The Court has limited resources and denies the vast majority of petitions - it has a grant rate of approximately 1.1%.
- As occurred immediately following the Court's denial of certiorari in the last business activity tax

nexus case to petition for review (FIA Card Services NA (fka MBNA America) v. West Virginia Tax Commissioner, cert. denied 6/18/07), it is expected that state legislatures and tax administrators will increase efforts to raise revenue from out-of-state businesses by imposing income tax or other business activity taxes on such businesses that do not have a physical presence. Without the Court's review, or action by Congress, the states will be emboldened to enact any nexus legislation or policies affecting interstate commerce that generate revenue for their state, without concern for the national impact or the constitutional validity of such laws and policies.

- The ruling from the SJC further confuses the Constitutional nexus standard that applies to taxpayers. The differing and vague nexus standards approved by the state courts and legislators have increased the uncertainty for taxpayers regarding when and where they are constitutionally subject to a tax other than sales and use tax.
- Barring action from Congress, the resulting heavy burdens on interstate commerce and disincentives for interstate economic activity will continue to worsen. The burdens will be particularly heavy for small businesses, which are the foundation of this country's economy.

? Summary of the Business Activity Tax Simplification Act:

- In Quill, the U.S. Supreme Court expressly recognized that Congress has plenary power under the Commerce Clause of the U.S. Constitution to regulate state taxation of interstate commerce and, in fact, noted that Congress is better qualified than the courts to resolve such issues.

- BATSA was introduced in the House on February 13, 2009 by Reps. Rick Boucher (D-VA) and Robert Goodlatte (R-VA). The bill has broad bipartisan support.

- BATSA clarifies the constitutional requirement for a physical presence nexus standard governing state assessment of corporate income taxes and comparable taxes on a business. Specifically, the bill:

- (1) articulates a bright-line physical presence nexus standard that includes owning or leasing any real or tangible property, or assigning one or more employees to perform certain activities in the state for more than fifteen days in a taxable year; and
- (2) modernizes P.L. 86-272 - which prohibits states from assessing net income taxes against a business if its only contact with the state involves the solicitation of orders for tangible personal property - such that it applies to intangible property and services and that it covers taxes that have replaced net income taxes.

- Enactment of BATSA is required to ensure that Commerce Clause principles, as outlined by the Court in Quill, are not flouted by revenue-greedy states to the detriment of interstate business activities and, ultimately, the national economy.

- The lack of a bright-line physical presence standard encourages each state to act in its own self interest by taking action to maximize its revenues regardless of the potential double taxation that results from having a hodge-podge of constitutional standards. By enacting BATSA, Congress will ensure certainty, predictability and fairness of state taxation of large and small multistate businesses.

? More background information is available at www.batcoalition.org.