SUMMARY OF MAJOR CENTRALLY ASSESSED CASES HANDED OUT BY THE DEPARTMENT OF REVENUE TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE DURING THE SEPTEMBER 2011 MEETING

Prepared for the Revenue and Transportation Interim Committee
by
Jaret Coles, Legislative Staff Attorney
December 2011

NOTE: This is only a summary and a variety of contentions are not presented. Direct quotations from the courts were utilized to the extent possible in order to present the information in an accurate manner. Citations to Montana Supreme Court opinions are to the actual paragraph, while citations to the opinions of the other courts are to the pages in the blue case book that was handed out to the committee by the Department of Revenue (often referred to as DOR or Department).

1. **Dept. of Revenue v. PPL Mont., LLC, 2007 MT 310, 340 Mont. 124, 172 P3d 1241.**
   a. **Montana Supreme Court – December 4, 2007. (24 page opinion).**
      i. **Appeal from District Court of the Eighth Judicial District, Cascade County.**

BRIEF FACTS:

PPL Montana, LLC (PPLM) acquired most of the Montana Power Company's (MPC's) electric generation assets in 1999 as part of Montana's deregulation of its electric power industry. PPLM paid approximately $ 769,746,000 for 11 hydroelectric generation plants, a reservoir, the J.E. Corette Electric Generating plant, and partial interests in three coal-fired power plants, known as Colstrip units 1, 2, and 3. (¶ 5). DOR centrally assessed PPLM's newly acquired property using the unit method of valuation, and it combined three valuation methods: the cost method, the income method, and the market method. (¶¶ 6, 9). For 2000, DOR relied solely on the cost approach using independently audited financial statements and PPLM's purchase price information. (¶ 10). For 2001, DOR raised its appraisal based on a sale and lease-back transaction. (¶ 12). For 2002, DOR complied 10% of the income value approach with 90% of the cost approach. (¶ 13). "PPLM pointed out that DOR had appraised other utilities--specifically Avista and Puget Sound Electric (PSE)--less on their comparable electric generation facilities." (¶ 14).

ISSUES:

1. "Did DOR's property tax assessment deprive PPLM of constitutional equal protection?" (¶ 3).
2. "Did the District Court correctly affirm STAB's decision to lower DOR's appraisal of PPLM's property?" (¶ 4).

HOLDINGS:

1. No. "We conclude that the District Court correctly determined that PPLM has failed to establish that DOR's use of the unit method of valuation deprives PPLM of constitutional equal protection." (¶ 41).
2. Yes. "We decline to second guess the District Court on tax accounting details, however, that it never had a fair chance to consider." (¶ 49).

REASONING FOR HOLDINGS:

1. "We find nothing constitutionally significant in the bare fact that DOR appraises the fair market value of the same electric generation assets differently when those assets are owned by different utilities." (¶ 31).

a. “DOR considered the price that PPLM paid for its assets, the income that PPLM earned from its assets, and what similar assets might sell for on the open market.” (¶ 39).
b. “[S]imilar pieces of property likely will be valued differently under the unit method of valuation in light of the fact that DOR values an individual property based on the total market value of the system in which that property operates.” (¶ 40).

2. “We defer to STAB's findings unless they are clearly erroneous.” (¶ 45).

RELEVANT LAW:

- “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.” Mont. Const. art. II, § 4. (*see* ¶ 21).
- “We have drawn no distinction between the protections offered by *Article II, Section 4 of the Montana Constitution* and those offered by the *Equal Protection Clause of the United States Constitution* when analyzing alleged discrimination between similarly situated taxpayers.” (¶ 29 (citations omitted)).
- “The basic rule of equal protection ‘is that persons similarly situated with respect to a legitimate governmental purpose of the law must receive like treatment.’" (¶ 33 (citation omitted)).
- “We have held that ‘the first prerequisite to a meritorious claim under the *equal protection clause* is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.’” (¶ 33 (citation omitted)).
- “Courts long have considered the constitutional validity of the unit method of valuation as settled law. *Western Union, 91 Mont at 325, 7 P.2d at 554*.” (¶ 41).
- “We previously have stated that ‘[t]ax appeal boards are particularly suited for settling disputes over the appropriate valuation of a given piece of property, and the judiciary cannot properly interfere with that function.’ It is not our function ‘to act as an authority on taxation matters.’ *Dept. of Revenue v. Grouse Mt. Development, 218 Mont. 353, 355, 707 P.2d 1113, 1115 (1985)*.” (¶ 45).

2. ***Pacificorp v. Dept. of Revenue,* 2011 MT 93, 360 Mont. 259, 253 P.3d 847.**
    a. **Montana Supreme Court – May 4, 2011 (29 page opinion).**
        i. **Appeal from District Court of the First Judicial District, In and For the County of Lewis & Clark.**

BRIEF FACTS:

PacifiCorp is a regulated electric utility company that owns electric generation property in Montana and nine western states. The parent corporation of PacifiCorp announced on May 24, 2005, that it would sell all of its common stock to another parent company. The purchase price was $5.1 billion plus $4.3 billion of debt for a total sales price of $9.4 billion. The Department centrally assessed PacifiCorp's operating property in 2005 according to the unit method of valuation. The Department used four methods to calculate a correlated unit value for PacifiCorp's properties, including: (1) original cost less depreciation ($8,581,317,664 with a 50% weight), (2) direct capitalization of net operating income ($7,359,184,623 with a 40% weight), (3) direct capitalization of gross cash flow (5% weight), and (4) yield capitalization (5% weight). PacifiCorp did not raise any issues with the Department's calculations under the direct-capitalization-of-gross-cash-flow method or the yield-capitalization method. (¶¶ 6 – 8). The Department reached a $7,837,244,000 correlated unit value and reduced it by 10% to take non-taxable intangibles into account.

ISSUES:

1. "Does substantial evidence demonstrate common acceptance of the Department's direct capitalization method that derives earnings-to-price ratios from an industry-wide analysis?" (¶ 3).
2. "Does substantial evidence support STAB's conclusion that additional obsolescence did not exist to warrant consideration of further adjustments to PacifiCorp's taxable value?" (¶ 4).

HOLDINGS:

1. "The Department's lay and expert witness testimony, expert reports, and trial exhibits comprise substantial evidence to uphold STAB's conclusion that the Department's earnings-to-price ratios method of valuation has been commonly accepted in the appraisal community." (¶ 36). "Substantial evidence supports the Department's use of earnings-to-price ratios in its direct capitalization approach." (¶ 59).
2. "We hold that *§ 15-8-111(2)(b), MCA*, does not require the Department to conduct a separate, additional obsolescence study when no evidence suggests that obsolescence exists that has not been accounted for in the taxpayer's FERC Form 1 filing. We further hold that STAB correctly determined that the actual $9.4 billion sales price of PacifiCorp

verified that the Department's $7.1 billion assessment had not overvalued PacifiCorp's properties." (¶ 60).

REASONING FOR HOLDINGS:

1. The Department's expert testified that the "earnings-to-price ratios method has been used widely to appraise centrally-assessed companies" (¶ 26). The expert "confirmed that the [National Conference of Unit Value States] NCUVS standards provide the basis for using earnings-to-price ratios in appraising property owned by centrally assessed companies". "STAB sat in the best position to draw a conclusion from conflicting evidence." ¶ 36.
2. "Though PacifiCorp suggests that other methods remained available to measure obsolescence, it failed to present evidence of such alternative methods or any other evidence of additional obsolescence. PacifiCorp failed its burden of showing that the Department's original-cost-less-depreciation method resulted in an overstated value of its properties." (¶ 48).

RELEVANT LAW:

- "The Department must assess all of a company's taxable property at 100% of its market value. *Section 15-8-111(1), MCA*. For the 2005 tax year, the Department centrally assessed PacifiCorp's value according to the unit method of valuation. *Section 15-23-101, MCA*; Admin. R. M. 42.22.102 to 42.22.111." (¶ 17).
- "The unit method of valuation calculates the value of a business's entire operating system as a going concern and as a single entity, including all tangible and intangible operating assets of the company. Admin. R. M. 42.22.101(30)-(31)." (¶ 17).
- "The unit method authorizes the appraiser to consider cost, income, and market approaches to determine a business's market value. Admin. R. M. 42.22.111(1). The appraiser then applies correlation percentages to the different approaches to establish an overall system market value. Admin. R. M. 42.22.111(2)-(3)." (¶ 17).
- "The Department must make its tax assessment according to commonly accepted methods and techniques for determining market value. Admin. R. M. 42.22.111(1)." (¶ 18).
- "*Section 15-8-111(2)(b), MCA*, requires that the Department 'shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.'" (¶ 57).

3. ***Qwest Corporation v. Dept. of Revenue,* STAB No. SPT-2008-2.**
   a. **State Tax Appeal Board – November 30, 2009 (35 page opinion).**

BRIEF FACTS:

"Qwest is an Incumbent Local Exchange Carrier (ILEC) that operates in a 14-state region". (p. 3, ¶ 7). It is regulated by the Federal Communications Commission (FCC) and individual public utility commissions, including the Montana Public Service Commission. (p. 3,¶¶ 8-10). Quest faces competition from many sources, including cable companies. (p. 4, ¶¶ 13-15). Assigned customer lines decreased between 2001 and 2007, but the amount of access lines increased. (pp. 4-5, ¶ 16). The Department arrived at a 2007 correlated unit value for Quest of $21.5 billion before a deduction for intangible personal property and $18.3 billion after the deduction for intangible personal property. (p. 5, ¶ 6). The Department used seven indicators of value: " original cost less depreciation (OCLD), direct capitalization of net operating income (NOI), direct capitalization of gross cash flow, yield capitalization of future cash flows, and three stock and debt approaches." (pp. 6-7, ¶ 28). "The DOR gave 40 percent weight to the OCLD indicator, 25 percent weight to the direct capitalization of NOI and 35 percent weight to the stock and debt Approach 1." (p. 8, ¶ 34).

ISSUES:

1. "The main issue presented in this matter is whether the DOR properly determined a taxable value for Qwest's telecommunication operating property as of January 1, 2007. In order to decide this matter, the Board considered four separate issues." (p. 1).
   a. "Has the Department of Revenue properly valued Qwest's telecommunication operating property on a system unit basis as of January 1, 2007?" (p. 2).
   b. "Did the Department of Revenue consider adequate obsolescence when valuing Qwest's property?" (p. 2).
   c. "Are the intangible values identified by Kane Reece properly deductible from the system unit value?" (p. 2).
   d. "Does Qwest have a valid Constitutional discrimination claim?" (p. 2).

HOLDINGS:

1. "In the Board's opinion, the Department has come to an appraisal within the reasonable range for valuation of this entity." (p. 35).
   a. "Qwest provides no additional legal arguments that persuade us the unitary system is inappropriate, only that using the cost method saves them money. Merely arguing for a lower taxable value is insufficient to overcome long-standing legal structure." (p. 23).
   b. "We have previously held that there "is an increased reliability" in a cost approach valuation for a rate-regulated entity when the figures used are derived from rate regulation filings. *See Pacificorp v. DOR, CT-2005-3*. Thus, we find no evidence that indicate additional obsolescence not recognized by the Department." (p. 24).

c. "It appears as if all of Qwest's valuations look for the most-tax advantaged value for each asset of the company without regard for the fundamental fair market value. This is, of course, likely due to the efforts to look for lower taxable value. . . . For this and other reasons stated, we question the KR methodology and we discount the valuation set in the appraisal." (p. 32).
d. "We find the taxpayer has failed to present facts which raise a constitutional issue for the Courts to consider." (p. 35).

REASONING:

a. "The concept of unitary assessment for appraising interstate properties has been approved by the Montana Supreme Court for over 50 years. (p. 22 (citations omitted).
b. "The stock prices indicate that Qwest's overall value did increase substantially from 2006 to 2007." (p. 24). "Qwest's own witnesses indicate that the company does not suffer from economic obsolescence." (p. 24).
c. "The intangible personal property statute does not include the terms customer relationships, intellectual property or marketing rights. While not prohibited by statute from included, there is no evidence which demonstrates those items should be properly included as intangible personal property." (pp. 30-31). "The general terms customer relationships, intellectual property, and marketing rights are too nebulous in this instance to be properly considered personal property that can be exempted from unit valuation. Qwest failed to provide the Department or this Board with credible data that would support such wide-ranging claims for deduction of intangible personal property." (p. 31).
d. "Qwest did not present evidence detailing or quantifying the alleged disparate treatment or showing the [cable] companies are similar and comparable." (p. 34).

RELEVANT LAW:

- "The Department is granted some discretion in determining which approaches to value should be used 'to secure a fair, just, and equitable valuation of all taxable property.'" (p. 22 (citations omitted)).
- "By administrative rule, the Department makes a standard reduction in value to account for intangible personal property. Rule 42.22.110(1), ARM. For centrally assessed telecommunication companies, the standard is a 15 percent reduction for each indicator of value. A taxpayer may propose alternative methodology or information to argue the amount of intangible personal property is greater than fifteen percent "during the appraisal process." *See* Rule 42.22.110(2), ARM." (p. 27).
- "The Montana Constitution requires that 'persons similarly situated with respect to a legitimate governmental purpose of the law must receive like treatment.'" (p. 32 (citation omitted)).

- “The Montana Supreme Court will uphold a tax classification if there is a rational basis for it, that is: (1) the tax classification is reasonable, not arbitrary; and (2) the statute applies equally to all who fall within the same classification. Further, a classification is reasonable if any reasonably conceivable set of facts provides a rational basis for it. A classification is not reasonable if it ‘confers particular privileges or imposes peculiar disabilities upon [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.’” (p. 33 (citation omitted)).
- “The Montana Supreme Court has adopted six criteria which must be shown to establish disparate taxation. *Mont. Dept. of Rev. v. St. Tax App. Bd.,* 188 Mont. 244, 250; 613 P.2d 691, 695*(1980).* The taxpayer must show (1) there are several other properties within a reasonable area similar and comparable to the subject property; (2) the amount of assessments on these properties; (3) the actual values of the comparable properties; (4) the actual value of the taxpayer’s property; (5) the assessment complained of; and (6) by a comparison the taxpayer’s property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties. While this test focuses on disparate valuation rather than classification, it makes clear the burden of producing the specific and detailed information showing similarly situated property enjoys favorable tax treatment rests with the taxpayer.” (p. 34).

4. ***PacfiCorp v. Dept. of Revenue,*** **STAB Nos. CT-2006-5, CT-2007-7**
    a. **State Tax Appeal Board – January 13, 2011 (75 page opinion).**
        i. **This case was appealed the District Court of the First Judicial District, In and For the County of Lewis & Clark on March 9, 2011 under Cause No. DDV-2011-266.**

BRIEF FACTS:

PacifiCorp is a regulated electricity company serving customers in five states, although it does not have any customers in Montana. PacifiCorp challenged the Department's assessment of operating property for tax years 2006 and 2007. (p. 2). The Department's calculations were based on data provided by PacifiCorp as well as data from federal regulatory filings. (p. 6). The Department developed seven indicators of value and placed weight on five indicators. (p. 6). PacifiCorp's experts challenged the value derived by the Department using multiple theories (see issues).

"Some" of the ISSUES:

1. "[W]hether the DOR set the proper value for PacifiCorp for tax years 2006 and 2007." (p. 34).
    a. "PacifiCorp argues that the Montana DOR is authorized by statute to determine only the value of the 'taxable property' owned by PacifiCorp, and that selecting the entire company of PacifiCorp as its valuation unit is inappropriate because the DOR failed to properly remove non-taxable items from its assessments." (p. 35).
    b. Whether the unadjusted sale price paid for PacifiCorp's common stock in 2006 validated the Department's unit value for 2006. (p. 40).
    c. Whether the "DOR failed to make any adjustments to account for intangible properties, non-operating utility properties, and any other appropriate adjustments associated with the stock purchase." (p. 45).
    d. Whether the Department's use of capitalization studies is specific enough to PacifiCorp to be used in its valuation. (p. 46).
    e. Whether it was proper for the Department to use P/E ratios. (pp. 47-48).
    f. Whether it was permissible for the Department to use the stock and debt valuation method. (p. 52).
    g. Whether the Department's cost approach to value is erroneous and excessive because it failed to account for all forms of obsolescence. (p. 56).
    h. Whether the Department was justified in placing 45% reliance on the original cost less depreciation (OCLD) cost approach to derive its valuation estimate. (p. 66).

HOLDINGS:

1. "We find that PacifiCorp has not borne its burden of proof that the DOR calculations and methods are incorrect. Based on the evidence presented and for all of the reasons discussed above we reject the value asserted by PacifiCorp, and uphold the Department's values for 2006 and 2007." (p. 67).
    a. "The Taxpayer's goal at every step is to deny unit valuation, or any methodology that achieves it." (p. 39). "The law, however, is long-settled and straightforward.
    b. "As the Courts have repeatedly stated, the sale of the subject property is the most accurate valuation of the property. Thus, the material relating to valuation for sales purposes is especially relevant." (p. 44).
    c. The 10% deduction for intangibles was proper given the fact that PacifiCorp consistently requests the deduction. (p. 46).
    d. "[W]e find that PacifiCorp failed to bring sufficient evidence to show that the standard valuation methodologies did not work for valuing this particular company." (p. 47).
    e. "We find that this methodology is not unusual or uncommon and uphold the Department's use of this methodology." (p. 51).
    f. "We find the use of common stock from other electric utility companies to be acceptable methodology in developing ratios for valuing electric utility companies." (p. 54).
    g. "We find that the company does not suffer from economic obsolescence." (p. 63).
    h. "As we have previously written, the sale price is the clearest indication of fair market value and sufficient information was available on January 1, 2006 to make the method reliable, so we find it unfortunate that the Department's appraiser did not utilize that indicator of value, but we find that her appraiser judgment was not so unreasonable as to warrant overturning her decision." (p. 67).

REASONING:

1.
    a. "Using solely a cost-based methodology for valuation, as PacifiCorp argues in this case, was discounted by the Montana Supreme Court thirty five years ago in *DOR v. Pacific Power and Light,* 171 Mont. 334; 558 P.2d 454, 458 (1976)." (p. 36).
    b. "[PacfiCorp's expert] would have this Board believe that MEHC (which is wholly owned by Berkshire Hathaway) paid nearly $3 billion dollars in excess of market value for PacifiCorp. Such an assertion is illogical on its face and was not supported by any evidence presented." (p. 42).
    c. "PacifiCorp did not challenge the use of the 10% default deduction during the appraisal process and brought no evidence to the Department that the deduction

failed to properly remove the intangible personal property from the appraisal." (p. 46).

d. "The Department must value all electric utility companies in a consistent and fair manner, and using standard capitalization rates for the industry is one method to do this." (p. 47).
e. "[A] fact to which we give great weight, the Western States Association of Tax Administrators9 and the National Conference of Unit Valuation States, which includes 35 states, recommend the use of the P/E ratios in their courses and materials." (p. 48). "Commonly accepted‖ does not mean a practice must be universally mandated."
f. "The stock and debt approach serves as a substitute for the sales comparison approach and is used when there are no sales of comparable properties from which to extract market data. Calculating a company's value by totaling the value of its own stock and debt has been upheld as an appropriate valuation technique . . . ." (p. 52).
g. "[T]here is absolutely no empirical evidence of economic obsolescence in this case." (p. 56).
h. "The cost approach, while not the preferred method to determine market value, is a stable indicator of value and useful in determining a conservative estimate of market value." (p. 66).

RELEVANT LAW:

- "The Department's assessment is entitled to a presumption of correctness provided its assessments are in accordance with Montana statutes, administrative rules and regulations, and those statues, rules, and regulations are not arbitrary, capricious, or otherwise unlawful. *Department of Revenue v. Burlington Northern, Inc.*, 169 Mont. 202, 545 P.2d 1083 (1976)." (p. 34).
- "Under Montana law, the starting point of any competent tax valuation of a complex, multi-jurisdictional company is the overall value of the company. From that figure, the assets not subject to tax (including intangible assets) are subtracted and the value is then apportioned to Montana." (p. 35).
- "Section 15-6-218(2), MCA, defines intangible personal property which is exempt from taxation in Montana. By administrative rule, the DOR makes a standard deduction in value to account for intangible personal property unless the taxpayer can prove a greater amount. Rule 42.22.110(1), ARM." (p. 45).
- "By rule, the DOR is required to 'use commonly accepted methods and techniques of appraisal to determine market value.' Rule 42.22.111(1) ARM." (p. 48).
- Section15-8-111(2)(b), MCA, requires the DOR to 'fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.'" (p. 56).

    - "Economic or external obsolescence is defined as a temporary or permanent impairment of the utility or salability of an improvement or property due to negative influences outside the property." (p. 57).
- "The weight assigned to a particular appraisal method during the correlation process is based on appraisal judgment. *See, e.g., PPL v. DOR*, ¶ 9. *See also* Rule 42.22.111(2), ARM." (p. 66).

5. ***Puget Sound Energy, Inc. v. Dept. of Revenue,* 2011 MT 141, *361 Mont. 39*, *255 P.3d 171*.**
   a. **Montana Supreme Court – June 21, 2011 (17 page opinion).**
      i. **Appeal from District Court of the Thirteenth Judicial District, In and For the County of Yellowstone**

BRIEF FACTS:

"The Department centrally assessed Puget's value according to the unit method of valuation [for tax years 2005, 2006, and 2007]. The unit method of valuation calculates the value of a business's entire operating system as a going concern and as a single entity. This calculation includes all tangible and intangible operating assets of the company." (¶¶ 5, 18 (citations omitted)). "Puget's petition to STAB contended that "[t]he Department has over-valued [Puget's] Montana property for all years at issue." (¶ 6 (alterations in original)). STAB adopted values higher than the Department's initial appraisal and higher than the Department's expert witness. (¶ 12).

ISSUES:

1. "Did the District Court correctly conclude that STAB may not assess Puget's market value in an amount that exceeds the Department's original assessment?" (¶ 3).

HOLDINGS:

1. "We reverse the District Court. STAB has the constitutional and statutory duty to hear Puget's appeal and make an independent determination of Puget's market value even if STAB's assessment exceeds the Department's original assessment." (¶ 43).

REASONING:

1. "A direct appeal under *§ 15-2-302, MCA*, like Puget's, requires STAB to serve a fact-finding function. STAB could not possibly serve as an appellate body over direct appeals under *§ 15-2-302, MCA*, when no record, like that developed in the CTABs, ever has been created. The legislature would have constructed *§ 15-2-302, MCA*, similar to *§ 15-2-301, MCA*, or the judicial review provisions at *§§ 2-4-701 to -711, MCA*, had it not intended for STAB to serve as a fact-finding tribunal over direct appeals." (¶ 29) " The statutory mandate that all property "must be assessed at 100% of its market value" applies equally to the Department and to STAB. *Section 15-8-111(1), MCA*." (¶ 37).

RELEVANT LAW:

- "We defer to STAB's findings unless they are clearly erroneous, because STAB is particularly suited for settling disputes over the appropriate valuation of property. *PacifiCorp, ¶ 15*." (¶ 16).
- "Montana law requires the Department to assess taxable property at 100% of its market value. *Section 15-8-111(1), MCA. Section 15-8-111(2)(a), MCA*, defines market value as 'the value at which property would change hands between a willing buyer and a willing seller.'" (¶ 18).
- "The Montana Constitution requires an 'independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization and taxes.' *Mont. Const. art. VIII, § 7. Section 15-2-201(1)(d), MCA*, authorizes STAB to 'hear appeals from decisions' of the Department in regard to property assessments." (¶ 25).

6. ***Gold Creek Cellular, d/b/a Verizon Wireless, v. Dept. of Revenue,*** **CDV-2010-358 (May 3, 2011).**
    a. **Montana District Court of the First Judicial District, In and For the County of Lewis and Clark**

BRIEF FACTS:

Verizon is a wireless communications company that operates throughout Montana and other states. Some of Verizon's personal property includes radio transmission equipment used to provide telecommunication services. Prior to 2007, Verizon's property was assessed as class four and class eight. In tax year 2007, the Department determined to classify Verizon's property, including radio transmission equipment, as a centrally assessed telecommunications company (class thirteen). (p. 3).

ISSUE:

1. Did STAB correctly conclude that all of Verizon's equipment should be classified as class thirteen property and taxed at six percent of its market value pursuant to Section 15-6-156(4), MCA? (pp. 3-4).
    a. Verizon conceded that it is a class thirteen centrally assessed telecommunications company, but argued that its radio transmitting equipment should be taxed as class eight property, which is generally taxed at three percent of its market value. (p. 4).

HOLDING:

1. Affirmed. "The STAB Order affirmed the Department's determination which put Verizon's property in the tax class that best describes its entire operation." (p. 8).

REASONING:

1. In interpreting a statute, courts look first to the plain meaning of the words used. The statutory language "'radio and television broadcasting and transmission equipment' in Section 15-6-138(1)(j), MCA, is most accurately construed as relating to a one-way broadcast system as the STAB Order states, not a two-way telephonic transmission system." (p. 6).

RELEVANT LAW:

- Section 15-23-101, MCA, indicates the properties which are to be centrally assessed include "(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state . . . ." (p. 4).

- Section 15-6-156(1)(d), MCA, defines class thirteen property to include “allocations of centrally assessed telecommunications services companies”. (p. 4).
- Section 15-6-138(1)(j), MCA, defines class eight property to include “radio and television broadcasting and transmitting equipment”. (p. 4).
- Courts “determine the intention of the Legislature first from the plain meaning of the words used, and if interpretation of the statute can be so determined, [courts] may not go further and apply any other means of interpretation”. (p. 7 (citations omitted)).
- The Montana Supreme Court has recognized the need to pay deference to the expertise of STAB. (pp. 7-8).

Cl0425 1347JCQA.docx