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SHIRLEY E. FAUST, CLERK
By _____ Deputy

**MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY**

**TRIPLE M PROP MANAGEMENT;
BILL WYCKMAN; RANDY
STEMPLE (HELLGATE TOOLE
LLC); JOLYN MONTGOMERY;
SIRKEL INC.; MYRON HEITZMAN
(KINGS RD PROP); LOVELLA
TORP; WWW INVEST LLC;
TREASURE STATE END LLC;
4M FAMILY LTD PART.; and
APAK LLC,**

Plaintiffs,

v.

**DEPARTMENT OF REVENUE,
STATE OF MONTANA,**

Defendant.

Cause No.: DV-18-113

Dept. No.: 1

Leslie Hallinan

**COMPLAINT FOR
DECLARATORY JUDGMENT**

COMPLAINT

Plaintiffs Triple M Prop Management, Bill Wyckman, Randy Stemple (Hellgate Toole LLC), Jolyn Montgomery, Sirkel Inc., Myron Heitzman (Kings Rd Prop), Lovella Torp, WWW Invest LLC, Treasure State End LLC; 4mFamily Ltd Partnership, and Apak, LLC, state for their Complaint against Defendant Department of Revenue, State of Montana (DOR), as follows:

INTRODUCTION

1. This is a class action for a declaratory judgment, pursuant to MONT. CODE ANN. § 15-1-406, seeking a declaration that method or procedure of assessment used by DOR In Missoula, County, Montana, is illegal or improper.

2. This Court, as a court of general jurisdiction and under MONT. CODE ANN. § 15-1-406, has authority to adjudicate the claim alleged in this action.

3. This County, as the site of subject real property, as well as the wrongful conduct alleged herein, is a proper venue for this action.

PARTIES

4. Plaintiff Triple M Property Management brings this action on behalf of itself, and as putative class representative for those similarly situated.

5. Jolyn Montgomery brings this action on behalf of herself, and as putative class representative for those similarly situated.

6. Plaintiff WWW Invest LLC brings this action on behalf of itself, and as putative class representative for those similarly situated.

7. Plaintiff Bill Wyckman brings this action on behalf of himself, and as putative class representative for those similarly situated.

8. Plaintiffs Randy Stemple and Hellgate Toole, LLC, bring this action on behalf of themselves, and as putative class representatives for those similarly situated.

9. Plaintiff Lovella Torp brings this action on behalf of herself, and as putative class representative for those similarly situated.

10. Plaintiff Sirkel, Inc., brings this action on behalf of itself, and as putative class representative for those similarly situated.

11. Plaintiffs Myron Heitzman and Kings Road Properties bring this action on behalf of themselves, and as putative class representatives for those similarly situated.

12. Plaintiff Treasure State End, LLC, brings this action on behalf of itself, and as putative class representative for those similarly situated.

13. Plaintiff 4M Family Ltd. Partnership, brings this action on behalf of itself, and as putative class representative for those similarly situated.

14. Plaintiff APAK, LLC, brings this action on behalf of itself, and as putative class representative for those similarly situated.

15. DOR has been delegated, under MONT. CODE ANN. § 15-8-101, to have full charge of assessing all property in Missoula County, Montana, subject to taxation and of equalizing values as required by Montana law, and is the proper party to defend the claims and causes of action stated in the Complaint.

GENERAL ALLEGATIONS

16. Plaintiffs, and each of them, are all owners of commercial real property in Missoula County, Montana, who paid their property taxes under protest in the second half of 2017.

17. “The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.” Mont. Const. art. VIII, § 3.

18. “The state of Montana's reliance on the **taxation of property** to support education and local government has placed **an unreasonable burden** on the owners of all classes of property described in Title 15, chapter 6, part 1.” MONT. CODE ANN. § 15-10-401(1) (emphasis added).

19. “In order to reduce **volatility** in property taxation and in order to reduce taxpayer **uncertainty**, it is the policy of the legislature to develop

alternatives to market value for purposes of taxation.” MONT. CODE ANN. § 15-10-401(2) (emphasis added).

20. “It is the policy of the state of Montana to provide for equitable assessment of taxable property in the state and to provide for the reappraisal of taxable property in a manner that is *fair to all* taxpayers.” MONT. CODE ANN. § 15-7-131 (emphasis added).

21. DOR’s method of appraisal and assessment “must be used in each county of the state so that comparable properties with similar full market values and subject to taxation in Montana have substantially equal taxable values in the tax year....” MONT. CODE ANN. § 15-7-112.

22. In valuing residential and commercial property, MDOR “shall conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation.” MONT. CODE ANN. § 15-8-111.

23. In 2014, DOR certified the market value of real property in Missoula County as \$7,336,658,562.

24. In 2017, DOR certified that the market value of real property in Missoula County had grown to \$13,499,809,110.

25. Thus, in a span of three years, according to DOR, the value of

real property in Missoula County, Montana, grew by 84%.

26. Overall inflation for the period from 2014 to 2017, as measured by the U.S. Government's Consumer Price Index, was 3.4%. Thus, by DOR's estimate for the period, value of real property in Missoula County accelerated 25 times faster than overall inflation.

27. In 2016, DOR estimated market value for land owned by Plaintiff Jolyn Montgomery to be \$240,159. In 2017, DOR estimated the same land to have increased by \$866,411, for a new market value of \$1,106,570. This is a single-year increase in market value of 461%

28. Similarly, in 2016, DOR appraised land owned by Plaintiff Myron Heitzman \$243,216. In 2017, DOR fixed the market value for the same land \$1,104,772, for an increase of \$861,556. This is a single-year increase in market value of 454%.

29. The range of increase in DOR estimates of market value for land owned by other Plaintiffs is from 80 to 304%. (Ex. A.)

30. Overall inflation for the period from 2016 to 2017, as measured by the U.S. Government's Consumer Price Index, was under 2%.

31. Other Missoula County taxpayers who owned similar commercial property have had their lands been evaluated by DOR, and it has estimated their value as less than 100%, and some DOR estimates of

the land even fell.

32. DOR estimates of market value for building and for total market value in Missoula County demonstrates similarly extreme and inexplicable variations without any basis or justification in the realities of the real estate market place.

33. DOR's 2017 appraised values of commercial property are materially inaccurate estimates of market value.

34. In appraising Missoula County commercial property in the period from 2016 to 2017, MDOR failed to follow the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation, in violation of MONT. CODE ANN. § 15-8-111.

35. DOR's materially different estimates of market value for similarly situated commercial property in Missoula County violates equal protection of the laws in that it imposes a disproportionate tax burden on tax payers in an indiscriminate, arbitrary and capricious manner.

36. DOR's materially different estimates of market value for similarly situated commercial property in Missoula County violates the state's constitutional duty to appraise, assess, and equalize the valuation of all property for the purposes of taxation.

37. DOR's grossly inaccurate estimates of market value in Missoula County violates taxpayers' due process rights.

CLASS ALLEGATIONS

38. Pursuant to Montana Rule of Civil Procedure Rule 23, Plaintiffs bring this action on behalf of themselves and members of the following proposed class: taxpayers in Missoula County, Montana, who have had their commercial real property appraised pursuant to the changes implemented under MONT. CODE ANN. § 15-7-111, as amended by Laws 2015, ch. 361, § 16, eff. April 29, 2015, and who paid their property taxes under protest in the second half of 2017.

39. Plaintiffs reserve the right to modify or amend the class definitions as appropriate after class discovery is completed and before the Court determines whether certification is appropriate.

40. Class certification is appropriate for the benefit of the Plaintiffs and Class members under Montana Rule of Civil Procedure 23.

41. Members of the respective classes are so numerous and dispersed that joinder of all members is impractical. Tens of thousands of taxpayers were subject to DOR's mass appraisal procedures in Missoula County during the relevant time frame, and scores paid their taxes under protest.

42. There are numerous questions of law and fact common to the classes and such questions predominate over questions affecting individual members. The common legal and factual questions include, but are not limited to, the following: whether DOR's mass appraisal of Missoula County since January 1, 2016, and afterward, complied with USPAP mass appraisal standards, with Montana statutes, with the Montana Constitution and with the U.S. Constitution.

43. The claims and questions of law or fact common to the members of the classes predominate over any questions affecting only individual members, including legal and factual issues relating to the declaratory judgment requested in this action. The claims of the class members and class representative depend on a common contention that is of such a nature that it is capable of class-wide resolution. Namely, the resolution of the above mentioned legal and factual questions will resolve all of the class members' claims.

44. Plaintiffs are members of the class. Plaintiffs' claims are typical of the claims of the class members. There are no conflicts as between the named Plaintiffs and other members of the classes with respect to this action, or with respect to the claims for relief set forth herein.

45. As class representatives, Plaintiffs will fairly and adequately

protect the interests of the class members because it is in their best interest to prosecute the claims alleged herein to obtain full compensation due to them for the unfair and illegal conduct of which they complain.

46. As putative class representatives, Plaintiffs have retained counsel who are competent and experienced in the prosecution of employment and class action litigation. Plaintiffs are willing and prepared to serve the Court and the class members in a representative capacity with all of the obligations and duties material thereto and determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for class members.

47. Prosecution of separate actions by individual members of the classes would create a risk of inconsistent and varying adjudications, establishing incompatible standards of conduct for DOR.

48. Defendant has acted on grounds that apply generally to the class, so that final relief is appropriate respecting each class as a whole.

49. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The classes are readily definable and ones for which DOR has records. Prosecution as a class action will eliminate the possibility of repetitious litigation. Treatment of this case as a class action will permit a large number of similarly situated

persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would produce. Class treatment will also permit the adjudication of relatively small claims by many class members who otherwise could not afford to litigate the claims such as are asserted in this complaint. This class action does not present any difficulties of management that would preclude its maintenance as a class action.

REQUEST FOR RELIEF

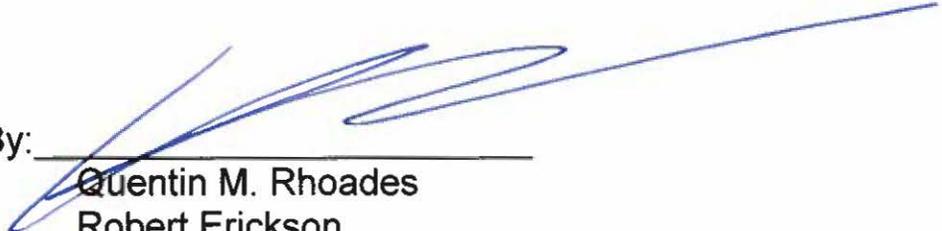
Accordingly, Plaintiffs respectfully request the Court enter judgment:

1. Declaring that Missoula County method or procedure of assessment used by DOC for real values since January 1, 2016, are illegal or improper for Plaintiffs as well as for all similarly situated taxpayers;
2. Recalculation of Plaintiffs and the class members taxes paid under protest;
2. Awarding Plaintiffs their reasonable attorneys fees incurred in bringing the action;
3. Awarding Plaintiffs cost of suit; and
4. Entering such other and further relief as may be justified in the circumstances.

DATED this 29th day of January, 2018.

Respectfully Submitted,
RHOADES SIEFERT & ERICKSON PLLC

By: _____



Quentin M. Rhoades
Robert Erickson

MISSOULA AREA TAXPAYERS ACTION GROUP

PROP TYPE	GEOCODE	ST. NO	STREET	BLDG NAME	TAX YEAR 2017				TAX YEAR 2016				MARKET LAND INFO				CHANGE IN VALUES			TAX YEAR 2017 LAND VALUE / SQFT	OWNER	TIF NO
					TOTAL VALUE	LAND VALUE	BLDG VALUE	METHOD	TOTAL VALUE	LAND VALUE	BLDG VALUE	METHOD	AREA	UNITS	LAND APPRAISAL TYPE	METH	TOTAL VALUE	LAND VALUE	BLDG VALUE			
2	RU	04-2200-11-3-04-06-00	3116 Old Pond Rd	(residence)	\$ 800,145	\$ 254,865	\$ 545,280	Cost	\$ 602,500	\$ 97,118	\$ 505,382	Mkt	31,742	SqFt	1 - Primary Site	SqFt	133%	262%	108%	\$ 8.03	Torp, Lovella	PropTxAssist
3	RU	04-2200-11-3-04-05-00	"	(vacant lot)	\$ 224,737	\$ 221,027	\$ 3,710	Cost	\$ 102,886	\$ 98,746	\$ 4,140	Cost	26,055	SqFt	1 - Primary Site	SqFt	218%	224%	90%	\$ 8.48	Torp, Lovella	na
4	CR	04-2200-16-2-03-02-00	1301 Scott St	(warehouses)	\$ 3,143,358	\$ 517,928	\$ 2,625,430	Cost	\$ 3,001,876	\$ 448,276	\$ 2,553,600	Cost	87,120	SqFt	8 - Other	Acre	105%	116%	103%	\$ 5.94	WWW Invest LLC	04-0583M
1	CU	04-2200-17-2-01-03-00	1609 W. Broadway	Broadway Inn	\$ 3,443,000	\$ 624,068	\$ 2,818,932	Income	\$ 2,621,200	\$ 541,395	\$ 2,079,805	Income	144,619	SqFt	1 - Primary Site	SqFt	131%	115%	136%	\$ 4.32	Triple M Prop Mgmt	na
6	CU	04-2200-22-2-32-08-00	330 N. Higgins Ave	Wyckman Bldg	\$ 3,424,000	\$ 471,953	\$ 2,952,047	Income	\$ 3,100,900	\$ 122,027	\$ 3,078,873	Income	8,985	SqFt	FR1 - Fronting Category 1	Acre	110%	387%	96%	\$ 52.53	Wyckman, Bill	na
9	CU	04-2200-29-3-47-21-00	2006 North Ave W	Heligate Tool Repair	\$ 489,400	\$ 139,809	\$ 349,591	Income	\$ 469,900	\$ 145,459	\$ 324,441	Income	16,637	SqFt	8 - Other	SqFt	104%	96%	108%	\$ 8.40	Stemple, Randy(Heliga	na
10	CU	04-2200-29-4-63-64-00	1931 Kensington	Heligate Tool Repair	\$ 213,958	\$ 213,958	\$ -	Cost	\$ 91,880	\$ 91,880	\$ -	Cost	6,350	SqFt	1 - Primary Site	SqFt	233%	233%	-	\$ 33.69	Stemple, Randy(Heliga	na
11	CU	04-2200-30-1-31-05-00	1211 S Reserve St	Office Bldg - low-rise	\$ 3,255,900	\$ 1,106,570	\$ 2,149,330	Income	\$ 2,229,639	\$ 240,159	\$ 1,989,480	Cost	50,094	SqFt	FR1 - Fronting Category 1	Acre	146%	461%	108%	\$ 22.09	Montgomery, Jolyn	na
12	CU	04-2200-32-3-11-40-00	3621 Brooks St	Paradise Falls	\$ 1,999,200	\$ 1,112,683	\$ 886,517	Income	\$ 1,369,750	\$ 489,860	\$ 879,890	Cost	51,575	SqFt	FR1 - Fronting Category 1	Acre	146%	227%	101%	\$ 21.57	Sirkel Inc	04TUD1
13	IMP U	04-2200-32-2-51-01-00	2610 S Reserve St	The Living Room	\$ 2,396,100	\$ 1,104,772	\$ 1,291,328	Income	\$ 1,707,900	\$ 243,216	\$ 1,464,684	Income	49,658	SqFt	FR1 - Fronting Category 1	Acre	140%	454%	88%	\$ 22.25	Heltzman, Myron(King	na
14	CR	04-2325-21-4-02-07-00	8800 Truck Stop Rd	(fuel storage tank)	\$ 2,172,000	\$ 695,031	\$ 1,476,969	Income	\$ 1,706,241	\$ 542,461	\$ 1,163,780	Cost	334,976	SqFt	8 - Other	Acre	127%	128%	127%	\$ 2.07	Treas State Ende LLC	na
15	CR	04-2325-21-4-02-17-00	8600 Truck Stop Rd	Days Inn - Missa Airport	\$ 3,693,600	\$ 570,070	\$ 3,123,530	Income	\$ 1,781,191	\$ 252,771	\$ 1,528,920	Cost	274,428	SqFt	8 - Other	Acre	207%	226%	204%	\$ 2.08	4M Family Ltd Part.	na
16	CR	04-2325-28-2-02-25-00	7509 Alta Dr	(vacant land)	\$ 839,770	\$ 839,770	\$ -	Cost	\$ 303,481	\$ 303,481	\$ -	Cost	405,108	SqFt	8 - Other	Acre	277%	277%	-	\$ 2.07	APAK LLC	na

