

## Webinar 4: Carrier & Utility Property Assessments

*Hosted by Wayne Miller, Professor at the University of Arkansas System Division of Agriculture and presented by Sarah Bradshaw, Director of the Tax Division of the Arkansas Public Service Commission on July 27, 2018*

**[Wayne Miller]** Good morning and welcome to the utility and Carrier Property Assessment Webinar. I'm Wayne Miller, Professor with the Community Economic Development program of the University of Arkansas System Division of Agriculture.

Today's webinar is the fourth in the series of webinars on property assessments in Arkansas. And it's part of our local government program and we're doing this in collaboration with the Tax Division of the Arkansas Public Service Commission and the Arkansas Assessment Coordination Department.

As we've talked about and discussed in the previous webinars, the property tax is a local tax supporting local services. And all the money generated from the property tax goes to support our K through 12 schools, our county and city roads and bridges, our local police and fire departments, and many other services, including libraries, recreation facilities, and programs, agricultural, health care services and many more.

Today's topic is utility and carrier property assessments and if you look at the pie chart on your screen, you will see that utility assessments are approximately 9% of total personal and real property assessments in Arkansas. And in dollar terms, this is equivalent to about \$4.3 billion. This was in 2017.

And if you multiply that by the average millage, or the tax rate in the counties, which includes the counties, schools and cities, millage will average about 47 mills. If you multiply the 47 mills by the \$4.3 billion, you'll get over \$200 million of property tax revenue generated from utility property assessments, and so this is quite a substantial part of the revenue. And this goes, again, to support your local schools, counties and cities.

As we saw from the previous screen, utility assessments are quite substantial portion of property assessments in Arkansas. But just what utility and carriers are assessed, and how are they assessed, and how are the assessments divided amongst the 75 Arkansas counties?

To answer these and more questions, we have with us today Sarah Bradshaw, and Sarah is and has been the Director of the Tax Division of the Arkansas Public Service Commission for the past 18 years.

As a director, she oversees the assessments of utility, railroad and other transportation companies that operate in the state of Arkansas. She is a member of the planning committee for the annual Wichita appraisal for ad valorem taxation of communications, energy and transportation properties program. She has attended the Western States Association of Tax Administrators. Unitary Appraisal School and the Tea Garden Associates Public Utility Basic Appraisal course.

Ms. Bradshaw has a Bachelor of Science degree in education from Arkansas State University and a Juris Doctorate degree from the University of Arkansas. Welcome Sarah, and we look forward to your presentation.

**[Sarah Bradshaw]** Thank You. Good morning. I am the director of a division that does a very specialized type of property tax assessments and it's one that very few people know about and most people don't understand. We are the part of the [Arkansas] Public Service Commission that does not regulate public utilities.

Most people, if they know anything about the Arkansas Public Service Commission associate it with utility rates, construction of generation plants, or sometimes a big controversy is if a power line is coming through your backyard. Those are all things that are one part of Public Service Commission does, but we are a separate division of the Commission, we were made a part of the Commission by Arkansas Code Annotated section 26-24-101, but we have existed for a lot longer than the actual Public Service Commission.

The initial Tax Division was a part of the Railroad Commission in the early 1900s. We have 15 employees and the Tax Division, as opposed to the overall Commission, which has over 100, so we're very tiny section of the Commission, and most people in the Commission don't know what we do either.

But we do property tax assessments on specific industries, they don't have to be regulated by the Public Service Commission. They're listed, by statute, which ones come under our jurisdiction. We assess electric generation companies, railroads, cable TV companies, gas distribution companies, telephone companies, including cell phone companies, and we assess pipelines, whether they are carrying natural gas, crude oil, or in one case, we have an anhydrous ammonia pipeline in the state of Arkansas.

We also assess motor carriers, buses, private cars, airlines and barge lines. And if you don't know what a private car is, and it's something I did not know until I started doing this job, [a] private car is a car that's attached to the locomotive hauling goods on the railroad. They are owned usually by the companies that provide the goods. So if you see a tanker car, it's probably owned by someone other than the railroad. [For example,] you have car carriers that that carry cars from Detroit.

We assess approximately 390 utilities and railroads and I know it sounds strange that utility and railroad numbers actually change, but they do. They go up, they go down. We have mergers, acquisitions we'll have fewer cable companies one year than we had the previous year.

And we also assess approximately 29,000 motor carriers, airlines, barge lines and private car companies. In 2017, as Wayne referred to, our assessed value was over \$4.2 billion and that results in about \$201 million in taxes collected by the counties to support school districts, counties, and cities. In 2017, we also had an assessed value on the airlines, barge lines, motor carriers of \$520 million, which is about \$24 million in taxes. And I will explain to you that there is a difference in the way that those are done as we get further into this.

What we do is called "unit valuation." Some of the county assessors think it's probably voodoo: we throw in numbers and come out with something. We do this annually. We do not do local assessment, we don't walk around buildings, we don't measure square footage, we don't have any value on a particular building. So if you asked me what the value is of the SWEPCO Turk coal fired plant, I don't know. I know how much value we have on company SWEPCO.

In doing this we send out, every year, tax report forms two companies in January. Each of the forms is tailored to specific industry that has to fill it out. Generally what we ask for is a balance sheet, income statement, information on the cost of their debt. But we have, for motor carriers, because you can tell that there are 29,000 companies, it's a slightly different process that we do. Their forms only ask for things like the value of their equipment and the miles traveled. Barge lines are similar to that to.

The goal in unit appraisal is to get the fair market value of the company. And strangely enough, opinion of fair market value differs a lot between us and the companies. We value all the property of the company, whether all or only part of it's in the state of Arkansas, and we value the tangible and the intangible property.

And that also is a distinction between central assessment, unit valuation, and local county assessment, because the local county cannot pick up intangible values. We do. And we have companies like cell phone companies that have less real physical property and more intangible property, because their value is really in the licenses that they have from the SEC to operate. So, those things are included in our evaluations and they're assessed on that.

We calculate the value using the cost approach, which is historical cost less depreciation. A stock and debt approach, which is the value of all of their stock and long term debt, and a capitalized income approach. On most companies will put a value on all three of those, and then we weight those approaches to get to an actual final total unit value.

So for telecommunications companies, the cost approaches weighted 40%, stock and debt 10%, income 50%. For electric companies and gas distribution companies and pipeline companies, we generally use cost 30%, stock and debt 10%, and the income at 60%. We do also have some companies, like small local telephone companies and electric co-ops that we value solely on a cost approach because we can't get the information we would need to do anything further, because they're small, and a lot of times, with the local telecommunications companies and landline companies, they're very closely held corporations.

Once we have the unit value, the fair market value of the entire company, we have to allocate that value to state. We have companies that are 100% within the state of Arkansas and then we have some that have less, less than 1% of their property is actually in the state of Arkansas.

If you look at the pie, if you think about a company like Entergy Arkansas, the whole pie, with just a small slice removed, would represent Entergy because over 90% of Entergy Arkansas' appropriately is in Arkansas. But, we also assess Entergy Mississippi Entergy Louisiana and Entergy New Orleans. Those companies all own a portion of a generation facility in the state of Arkansas. So their value is represented, more likely, by the slice of pie, because it's a much smaller percentage in the state of Arkansas.

We have some companies like railroads: the major railroads in Arkansas don't have huge percentages of the property in the state, but they have very large values, so the assessments on those companies, even though the percentages are small, are fairly sizable. We use factors such as percentage of gross and net property, percentage of gross and net income, we use miles of pipeline, miles of tractor car and locomotive miles.

There's some companies that we don't, you know, you can't get all the statistics for because, if you have a pipeline, those pipelines don't really have Arkansas income, so we can't use that factor. They don't stop and collect anything in the state of Arkansas, so they don't have an income number.

So for those we use things like gross and net property and miles of pipe. The railroads we use multiple factors on, that include things like miles of track system-wide in state. We try to use at least two factors to determine the allocation to the state of Arkansas. In some cases the allocation factor alone is one of the questions or one of the bones of contention between us and the utility companies and the railroads, because that small change in the allocation factor can make a large change in your Arkansas assessed value.

Once we have determined the unit and an Arkansas assessment, the companies receive preliminary assessment worksheets. Sometimes we usually send those out around May, because the forms come back in in March. Actually March through April. We start getting the forms back in from the companies and we have to process those pretty quickly. So, we will

send, if they request it, they get a preliminary assessment worksheet and they are entitled to, if they request in writing, a pre-assessment hearing. To make it easier on them, there's just a checkbox on the form that says: "Do you want a pre-assessment hearing? Yes or no." We consider that to be written request.

The pre-assessment hearing is not really a formal hearing, it's a meeting, with those of us in the Tax Division who do the utility and railroad assessments. So there are four of us, generally, that they will meet with. The companies will come in with errors that we might have made where somebody put the wrong number in. Or, general disagreements over the income stream that was capitalized, the capitalization rate that we used. There are any number of small things that we will deal with with them and we negotiate a value. Normally it's agreeable to both parties. And what our goal, and their goal, is that we don't want to have appeals because they're fairly costly and they don't want to do that, we don't want to do that, unless we have to.

Once we have those values for the state, we have to have them approved by the two commissions that we report to. The Arkansas Public Service Commission approves the assessed values for all the utilities and then we send, the railroad assessments are approved by the highway department, or actually the transportation department now. Their name was changed, I think two years ago in the legislative session.

After we have those approvals we send notices assessments to the utilities and the railroads. They have a 30 day period to appeal. And as I said, most of these are agreed upon, especially the large companies where we come to an agreement. We don't have a lot of appeals come out of Arkansas. We do have some. We've had the same pipeline appeal for four years running, so I generally know who's going to appeal before it ever happens.

The appeals are filed with either Public Service Commission or the Arkansas Department of Transportation. The Department of Transportation gets the railroad appeals and the carrier appeals, and then the Public Service Commission would get the utility appeals. But there is some distinction that can be made if it is an equalization question. Then the Commission would hear that because they are, by law, the Board of Equalization for utilities and railroads. As opposed to a County Board of Equalization, the Public Service Commission is the Board of Equalization for utilities and railroads. So there are some instances when a railroad would file an appeal with the Public Service Commission.

During an appeal, which is a formal process of a hearing before the Commission, an order from the Commission, then an appeal. Then you can take it up if they're still dissatisfied, or we're dissatisfied, we can take it up to the Pulaski County Circuit Court. From the Circuit Court it then goes up to the Arkansas Supreme Court or to the Court of Appeals.

So during that time period, generally, their property taxes will come due while the appeal is pending. They have to tell the county, in writing, that they're protesting the tax bill. So this is the county collector who gets this. This is after we have done the assessments and the county collector has sent the bills. They have to send, in writing, the notification that they are paying a specific portion of the bill under protest. And they cannot say, as we had one company try, "We're protesting it all," because they're not.

The disputed portion of the bill, when it's collected, has to be placed in the Ad Valorem Tax Protest Fund, which is established by the counties where the utility is located that's appealing assessment. And that fund stays until such time as all the litigation is completed, and it is either distributed back to the utility if they prevail, in part to the utility if they prevail in part, or all of it goes back to the county if we prevail.

Once we have a state value, we have to allocate it back to the counties where the utility or railroad has property. To do this we get forms, at the same time we get the report forms in, we get what are called distribution schedules. The distribution schedules have to give us the location of all of the utility and railroad property, by county, by city, by school district. They have to specify exactly where all of those things are located.

We utilize their information: we are not responsible for finding the location of their property. That actually was the subject of a case that's fondly referred to as the damn dam case, which is Arkansas County v. Desha County, where two counties were disputing the location of the hydroelectric facility and each one of them wanted it to be assessed for their county and not for the other county. There were some question as to whether we were responsible for saying where it was located, and the Arkansas Supreme Court, thankfully, said we were not. It is the responsibility of the utility or the railroad to tell us exactly where their properties located and we utilize the information they give us.

The values are certified out to the counties based upon a percentage. We have to do this by July the 15th of every year, and the certification is based upon the percentage of tangible property that a utility or railroad has in the county. The tax on the assessed value is then billed and collected by the counties based upon the local millage rates. I can give approximations because we have a statewide average millage rate, but I don't know what any specific [county] millage rates are.

[Find your county's millage rates in the Assessment Coordination Department's *Millage Book 2017*, which can be downloaded from <http://www.arkansas.gov/acd/publications.html>.]

So, it is the local millage rate that applies to whatever school district the property is in and the city, the county where the property is located. And this money does, as Wayne said, go towards the schools, the cities and the counties.

The other companies we assess, the motor carriers, airlines, barge lines and private car companies are slightly different. We do not certify their personal property assessments back to the counties. So we're not under the same deadline, of July the 15th—and this only applies to their personal property. If a trucking company or an airline has real property in the state of Arkansas, that real property assessment is then certified to the county where it's located.

At one point Southwest Airlines had a fairly large building and outside of the airport in Little Rock where they had a call center. And so, Pulaski County got the assessed value of that call center. It was included in the assessments that we certified to them. The call center no longer exists and the building is not there, so the assessment went away.

But the personal property that they have is treated differently and we don't have the same time constraints. So their notices of assessment are generally sent out during the fall. The assessed values have to be approved by the Arkansas Transportation Department. They also have a 30 day appeal period from those notices. But the assessments and the taxes are certified to DFA in February of the year after the assessment.

The taxes are calculated based on a statewide average millage rate. We do a survey every year to find out what the millage rate will be. And then we apply that. So that's the only one where I actually know what the taxes are. I don't know whether they are paid, we don't get that far. I refer to it as theoretical money. We have an idea what the taxes are, but we don't actually receive them. These taxes collected by DFA actually go into the Ad Valorem Tax Fund, and it supports the counties and municipalities section of Legislative Audit, the Assessment Coordination Department and the Tax Division. Legislative audit gets 80%, Assessment Coordination gets 15% and we get 5%. And that 5% funds our budget, in order to make the assessments on the utilities, the railroads and the carriers.

So it is actually, and this has been also one of those things that was subject to litigation back in the 1960s, it is still being—it's collected by the state, but it is utilized to the benefit of the counties. There's also another portion of the property tax on these companies. If the barge line assessments yield taxes over \$2.5 million, the excess over the \$2.5 million goes into a grants program for the waterways commission to fund their port improvement projects.

And it is a deal, nobody really likes to have property taxes and nobody really likes to pay taxes period, but we all do get the advantage of the improvements that come from having property taxes.

And these are some of the statutes and cases and an online link. The 26-24-101 through 123 are the statutes that made [the Tax Division] a part of the Commission, specifies Commission jurisdiction and 123 actually covers the appeal process. 1601 through 1616 are the details of how we assess the property: sending out the forms, how the forms are developed and the

actual technical thing about how the assessments are done are all in 1601-1616. 1701 through 1707 covers private cars. 1801-1803 defines cable television.

The Arco Auto Carriers [court case] is one I was referring to that was an early case that said that, [tax revenue collection by the state] is constitutional, it is being used for the counties. And then, of course, Arkansas County versus Desha County.

And last is the website for the Arkansas Public Service Commission, and if you go over to the little tab and it says tax that's where we are. And under that we have all the forms that we send out annually to the carriers and to the utilities. There are copies of all of those available online. Also a copy of our biannual report to the governor is in there that has all the statistics on the size of the assessments that we do every year. And it also has a chart in the back that will show you which counties over that year have had their assessments go up or down on the utilities and railroads. And those do change depending on the property in those counties.

And thank you very much for your time and attention this morning.

**[Wayne Miller]** First question we have is, do other states assess and collect personal property revenue from utilities and carriers? And if so, how do their assessment methods compare to Arkansas'?

**[Sarah Bradshaw]** Well, the unit appraisal process, it's also called central assessment, there are 36 different states that do that around the country, that are similar to what we do. All of us have some differences in the way that we do the assessments. We also have some differences in what companies are specifically assessed.

We assess cable TV, a lot of other states do not. We assess cellular telephones, that's something that a lot of other states do not have jurisdiction to do. There are some other states that centrally assess mining operations—Wyoming, Utah—we don't do that. So they are different variations. The concept of unit valuation and central assessment is fairly common, but the individual specifics are controlled by state laws and they all vary slightly. The Northeast states generally do not use central assessment and the towns will do the valuation of the utility properties and carrier properties in those towns.

**[Wayne Miller]** Another question. You mentioned that you assist telecommunications companies. Many of those companies has changed the mix of services they provide in the recent years. Do you assess all telecommunications companies?

**[Sarah Bradshaw]** We do if we know who they are. That has become more of an issue because the Commission doesn't have quite the same jurisdiction over telecommunications companies



that they used to have. But, we assess all the services that they provide. If you have an AT&T, they're providing cable, internet, telephone. Then Comcast provides cable, internet, telephone. So, we assess all those services provided by those companies. We assess them on a fairly equal basis between cable and telephone companies, but yes, we try to pick up all of the services they're providing that are considered utility services.

**[Wayne Miller]** One final question for Sarah. How do you identify all the truck and bus companies that travel through the state of Arkansas?

**[Sarah Bradshaw]** With great difficulty. There used to be a system that was called a single state registration plan, which, a trucking company registered for the different states that they were going to travel through. We could use the single state registration format to send out annual report to different carriers because they said they would travel to Arkansas.

That doesn't mean they actually did, but we give them the opportunity to say "no, we didn't have any miles in Arkansas this year." They changed that a few years ago, and it's not a single state registration it is a generic registration for the entire country. So every couple of years, we look for new companies that we do not have on our system.

And we also look at where they're located. If they're in Alaska, we probably don't send them a report form because we don't figure they're going to travel here. So, we kind of try to look at the vicinity where they are and whether it's likely that they would travel through the state of Arkansas. And then we send them out a data request form and that data request form asks for: Do you ever travel through the state of Arkansas? Like all of the other filings, it's a trust thing because this is self-reporting.

There are things with the utilities and railroads that we can look at, like their 10Ks, their Federal Energy Regulatory report forms, Surface Transportation Board report forms that are filled out by those companies and the information matches up with what we get.

With the motor carriers, it's purely trust. We're just, if they tell us that came through Arkansas, yes. We do have occasions when the highway police will stop a trucker, and when they do, they will check and see whether they have assessed and whether they have paid taxes, and those are ways that we also pick up companies.