

Fiscal Note Request SB0516, As Introduced - Revised

(continued)

- property as determined by the department is more than 40 percent greater than the final value determined by STAB, the total amount of refund from all taxing entities must be increased by 3 percent. The state treasurer on behalf of all taxing jurisdictions involved in the dispute would pay this penalty.
5. Under the bill, when a decision of a county tax appeal board (CTAB) is appealed to STAB, the state board will provide notice of acceptance or rejection of the appeal within 15 calendar days from the receipt of the appeal. Once STAB hears an appeal on the record, they would have 120 calendar days after the hearing to make their determination, or completion of the transcripts of the appeal, whichever is later.
 6. Under the bill, for an appeal to STAB by an owner of centrally assessed property; property classified as new industrial property; or property under one ownership that is non-centrally assessed, is located in more than one county and has an assessed value exceeding \$5 million; the board must respond to the parties with their decision to accept or reject the appeal within 15 days of receipt of the notification of appeal. Once an appeal on properties described in this assumption has been accepted, STAB must conduct a hearing on the appeal within one year of the date of receiving notification of the appeal, and must make a final decision on the appeal within 120 days of the date of the hearing, or upon completion of the transcripts of the appeal, whichever is later.
 7. Under the bill, either the Department of Revenue or the appellant may request a six-month extension. The board may grant only one request for an extension by each party for each appeal. If the decision of the board is adverse to the party requesting the extension, the penalty provisions outlined in assumptions #3 and #4 may be applied.
 8. Under the bill, either party may file a petition for interlocutory adjudication within 15 days of filing an answer to an appeal before STAB. The court granting the petition will hold a hearing on the adjudication within 90 days of receiving the non-petitioning party's response to the petition.
 9. A search of the department's records for the last three years does not show any decisions or circumstances that would require payment of the penalty under the provisions of the bill. There is no estimate of the impact to the state general fund from the penalties provided for in the bill.
 10. In order to comply with the provisions of this bill, the department will hire one hearings examiner and one attorney, both grade 17, at a cost of \$98,278 in FY 2006, and \$97,944 in FY 2007.
 11. One half-time, grade 10 administrative assistant, will support these positions, at a cost of \$ 14,386 in FY 2006 and \$14,341 in FY 2007.
 12. Operating expenses for the three employees are \$8,294 for each year of the biennium.
 13. Under the proposal, the equipment costs are \$5,800 in FY2006 for cubicles and computer equipment.
 14. Additional staff will be needed in Business and Income to comply with the shortened time frames for resolving disputes: one grade 15 industrial/centrally assessed property appraiser at a cost of \$41,718 in FY 2006 and \$41,780 in FY 2007, one business tax auditor and one individual tax auditor both at a grade 16, and a cost of \$90,430 in FY 2006 and \$90,126 in FY 2007.
 15. Each of these positions will be required to travel, both in state and out of state, a minimum of four (4) weeks per year to resolve disputes in a timely fashion at a cost of \$11,430 per year.
 16. Operating expenses associated with these positions total \$17,982 for each year of the biennium, and equipment costs are \$17,400 in FY 2006.
 17. The department will use more expert witnesses to assist in complying with the terms of the proposal and are anticipated to cost \$100,000 per year.
 18. This bill is effective on July 1, 2005 and applies to tax appeals and proceedings occurring after June 30, 2005.

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FISCAL IMPACT:

	<u>FY 2006</u> <u>Difference</u>	<u>FY 2007</u> <u>Difference</u>
FTE	4.50	4.50
<u>Expenditures:</u>		
Personal Services	\$244,812	\$243,992
Operating Expenses	137,706	137,706
Equipment	<u>23,200</u>	<u>0</u>
TOTAL	\$405,718	\$381,698
<u>Funding of Expenditures:</u>		
General Fund (01)	\$405,718	\$381,698
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
General Fund (01)	(\$405,718)	(\$381,698)

TECHNICAL NOTES:

1. Section 4, new section (b) discusses properties that may appeal directly to the state tax appeal board (STAB). There are many businesses in the state that have the same name, i.e. Staples, Wal-Mart, Super 8, etc. In many cases these businesses have the same SSN/FEIN identifying them for tax purposes. The sum total of all of these businesses in the state (across county lines) may exceed \$5,000,000 and they may be eligible to appeal their property tax values directly to STAB without going through the county tax appeal process. Some clarity is needed when considering “under one ownership that is located in more than one county.”
2. Some properties that have a value greater than \$5,000,000, but are not centrally assessed and the properties do not cross county lines. Stone Container in Missoula County is the principal example. It would appear that the rights of these properties are diminished simply because of who conducts the appraisal and the location of the property.
3. Section 5 of the bill provides certain timeframes for holding an interlocutory adjudication hearing. Courts may find these terms violate the “separation of powers” clause of the Montana Constitution.
4. Section 7 provides an applicability to “tax appeals and to proceedings occurring after June 30, 2005.” As written, it would impose the time limits in the bill to appeals that are already underway. This may create problems. For instance, an appeal was filed July 15, 2004. Applying the bill to this proceeding would require STAB to hold a hearing by July 15, 2005, whether the parties were prepared or not. An amendment could be offered to make the bill applicable to tax appeals commenced after June 30, 2005.
5. Section 1 of the bill requires that all proceedings before the Office of Dispute Resolution (ODR) be decided within 60 days of the referral. Proceedings before the ODR are MAPA-type hearings involving the presentation of witnesses and exhibits in accordance with the Montana Rules of Civil Procedure and Evidence. Decisions are written decisions, often between 10 and 30 pages in length. These proceedings cannot be completed within 60 days.
6. Section 1 of the bill applies to all taxes administered by the department except residential and commercial property. Section 1 will require ODR to hold hearings and issue written decisions in corporation license tax, individual income tax, coal severance and other natural resource taxes, and centrally assessed property tax disputes within 60 days. This is not possible.
7. Subsection (4)(f) of Section 1 of the bill requires both parties to share the cost of mediation. Currently, the department pays those costs. Additionally, given the 60 day time limit for holding hearings and

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issuing written decisions, there will not be sufficient time to conduct mediation. The unavailability of mediation will increase the litigation costs of the department and the taxpayer, as the 60 day time limit forces the parties to litigate rather than mediate disputes.

8. Section 2 of the bill provides a penalty for either party in which 1) the parties value is 40 percent over or under the final value determined through litigation, and 2) the party requested a 6 month extension of time from the 1 year time limit in Section 4 of the bill. Because of the penalty, and because often taxpayers protest multiple years of taxes making it impractical from a time perspective, the department will not seek any extensions of the 1 year time limit.
9. Section 3 of the bill applies to appeals from the county tax appeal board (CTAB) to the state tax appeal board (STAB). This statute deals with appeals of residential and commercial property, and, in some instances, industrial property. Unlike Section 4 of the bill, there is no 1 year time limit in which STAB must hold a hearing on an appeal. It is likely that resolution of these residential and commercial property tax appeals will be delayed further than is currently the case because the department and STAB are required by Section 4 to hear corporation license tax, individual income tax, natural resource taxes, and centrally assessed property tax disputes within 1 year, requiring prioritizing these appeals at the expense of residential and commercial property taxpayers.
10. Subsection (5) of Section 4 of the bill requires STAB to conduct hearings in corporation license tax, individual income tax, coal and natural resource tax and centrally assessed property tax appeals within one year. While the bill permits a party to request a 6 month extension, as already noted such an extension is not practical. Consequently, all of these various tax appeals will be subject to a 1 year process in which to conduct discovery, seek documents, identify witnesses, depose witnesses and prepare prehearing briefs. While such a time frame might be sufficient in residential and commercial property tax cases [which do not have any time requirement] this short timeframe in the complex tax cases that Section 4 applies to will seriously impair the department's ability to litigate large tax dollar cases. The result will be that the department's case will not be as strong, encourage the department to settle cases at a lower value, and, if litigated, result in property values lower than if the department were able to fully litigate these cases. While it is difficult to predict the fiscal impact of this artificial time limit, it is anticipated that property values will be reduced by 25 –30 percent from their current values.
11. Because this artificial time limit will place resource constraints on the department, in some instances the department will be forced to decide whether to litigate a property tax case primarily involving local government taxes or a tax case involving 100 percent state general fund money.
12. Because of the one year time constraint, the department will not be able to consolidate multiple tax years as is currently the practice, nor will the department be able to hold later tax year protests in abeyance pending the outcome of an earlier tax year case. The advantage of litigating multiple years is that the department can expend more resources in attorney time and expert witness fees than it can expend for a single tax year. The advantage of holding later tax year protests in abeyance is that the parties can resolve legal issues in the prior years and often settle the later years based upon court rulings in the earlier year cases. Section 4 will require the department to litigate each year, at a cumulative cost to both the department and the taxpayer in excess of the current practice.

As an example, PPL Montana protested their taxes for tax years 2000, 2001, 2002, 2003 and 2004. The parties agreed to consolidate the first three years, and held the last two years in abeyance. The department invested \$750,000 in expert costs for the litigation involving the first three years. Because this bill requires the department to litigate every year under protest separately, the department would have two choices. One, to spend \$750,000 each year, for a total of 2 ¼ million dollars, to put on a good case, or two, to spend \$250,000 each year and put on a poor case. Because the department does not have any line item in its budget for expert costs, and the money for this

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expense has to come out of the department's operating budget, the department would be forced without additional funding to litigate the case for the lesser amount, thereby reducing the likelihood of a successful outcome to the litigation.

13. Because of the reduction in property values that results from the inability of the department to effectively litigate property tax cases, there will be a reduction in property taxes available from large taxpayers available to fund schools and local government services, and will likely result in an increase in mill levies in the counties, thereby increasing proportionately the property tax burden on residential and commercial taxpayers and lessening the property tax burden on larger industrial taxpayers.