

SENATE BILL NO. 492

INTRODUCED BY G. PERRY

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A BILL FOR AN ACT ENTITLED: "AN ACT SEEKING TO ENSURE FAIRNESS IN LITIGATION BY PROVIDING THAT IN MOST CIVIL ACTIONS, A PARTY TO WHOM COSTS ARE AWARDED IS ENTITLED TO REASONABLE ATTORNEY FEES; AMENDING SECTIONS 15-1-222, 25-10-201, 25-10-711, 46-18-232, AND 72-12-206, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-222, MCA, is amended to read:

"15-1-222. Taxpayer bill of rights. The department of revenue shall in the course of performing its duties in the administration and collection of the state's taxes ensure that:

(1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other representatives of the department;

(2) the taxpayer has the right to hire a representative of the taxpayer's choice to represent the taxpayer's interests before the department or any tax appeal board. The taxpayer has a right to obtain a representative at any time, except that the selection of a representative may not be used to unreasonably delay a field audit that is in progress. The representative must have written authorization from the taxpayer to receive from the department confidential information concerning the taxpayer. The department shall provide copies to the authorized representative of all information sent to the taxpayer and shall notify the authorized representative concerning contacts with the taxpayer.

(3) except as provided in subsection (5), the taxpayer has the right to be treated by the department in a similar manner as all similarly situated taxpayers regarding the administration and collection of taxes, imposition of penalties and interest, and available taxpayer remedies unless there is a rational basis for the department to distinguish them;

(4) the taxpayer has the right to obtain tax advice from the department. The taxpayer has a right to the waiver of penalties and interest, but not taxes, when the taxpayer has relied on written advice provided to the taxpayer by an employee of the department.

(5) at the discretion of the department, upon consideration of all facts relevant to the specific taxpayer,



1 the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection
 2 applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

3 (6) the taxpayer has the right to a complete and accurate written description of the basis for any
 4 additional tax assessed by the department;

5 (7) the taxpayer has the right to a review by management level employees of the department for any
 6 additional taxes assessed by the department;

7 (8) the taxpayer has the right to a full explanation of the available procedures for review and appeal of
 8 additional tax assessments;

9 (9) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have
 10 the state tax appeal board or a court, or both, review any final decision of the department assessing an additional
 11 tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney
 12 fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

13 (10) the taxpayer has the right to expect that the department will adhere to the same tax appeal deadlines
 14 as are required of the taxpayer unless otherwise provided by law;

15 (11) the taxpayer has the right to a full explanation of the department's authority to collect delinquent
 16 taxes, including the procedures and notices that are required to protect the taxpayer;

17 (12) the taxpayer has the right to have certain property exempt from levy and seizure as provided in Title
 18 25, chapter 13, part 6, and any other applicable provisions in Montana law;

19 (13) the taxpayer has the right to the immediate release of any lien the department has placed on
 20 property when the tax is paid or when the lien is the result of an error by the department;

21 (14) the taxpayer has the right to assistance from the department in complying with state and local tax
 22 laws that the department administers; and

23 (15) the taxpayer has the right to be guaranteed that an employee of the department is not paid,
 24 promoted, or in any way rewarded on the basis of assessments or collections from taxpayers."

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26 **Section 2.** Section 25-10-201, MCA, is amended to read:

27 "**25-10-201. Costs generally allowable.** A (1) Except as provided in subsection (2), a party to whom
 28 costs are awarded in an action is entitled to include in ~~his~~ the bill of costs ~~his~~ the party's necessary
 29 disbursements, as follows:

30 ~~(+)(a)~~ (a) the legal fees of witnesses, including mileage, or referees and other officers;

- 1 ~~(2)~~(b) the expenses of taking depositions;
- 2 ~~(3)~~(c) the legal fees for publication when publication is directed;
- 3 ~~(4)~~(d) the legal fees paid for filing and recording papers and certified copies ~~thereof~~ of papers necessarily
- 4 used in the action or ~~on~~ in the trial;
- 5 ~~(5)~~(e) the legal fees paid stenographers for per diem or for copies;
- 6 ~~(6)~~(f) the reasonable expenses of printing papers for a hearing when required by a rule of court;
- 7 ~~(7)~~(g) the reasonable expenses of making transcript for the supreme court;
- 8 ~~(8)~~(h) the reasonable expenses for making a map or maps if required and necessary to be used on trial
- 9 or hearing; ~~and~~
- 10 (i) reasonable attorney fees as determined by the court; and
- 11 ~~(9)~~(j) ~~such~~ other reasonable and necessary expenses ~~as~~ that are taxable according to the course and
- 12 practice of the court or by express provision of law.

13 (2) (a) A party who admits liability on a claim before trial may not be ordered to pay the costs that the

14 other party incurs in relation to that claim after the date of the admission if there is a trial solely to determine the

15 amount of damages.

16 (b) Subsection (1) is not intended to and may not be construed to conflict with Rule 68, Montana Rules

17 of Civil Procedure."

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19 **Section 3.** Section 25-10-711, MCA, is amended to read:

20 **"25-10-711. Award of costs against governmental entity when suit or defense is frivolous or**

21 **pursued in bad faith.** (1) In any civil action brought by or against the state, a political subdivision, or an agency

22 of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs

23 enumerated in 25-10-201 ~~and reasonable attorney's fees as determined by the court~~ if:

- 24 (a) ~~he~~ the opposing party prevails against the state, political subdivision, or agency; and
- 25 (b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or
- 26 defended the action was frivolous or pursued in bad faith.

27 (2) Costs may be granted pursuant to subsection (1) notwithstanding any other provision of the law to

28 the contrary."

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30 **Section 4.** Section 46-18-232, MCA, is amended to read:

