

1 HOUSE BILL NO. 463

2 INTRODUCED BY S. REICHNER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE BURDEN OF PROOF IS ON THE
5 DEPARTMENT OF REVENUE RELATED TO AN APPEAL OF THE MARKET VALUE OF CLASS FOUR
6 RESIDENTIAL AND COMMERCIAL PROPERTY OR THE APPEAL OF THE PRODUCTIVE CAPACITY VALUE
7 OF CLASS THREE AGRICULTURAL LAND OR THE PRODUCTIVITY VALUE OF CLASS TEN FOREST LAND;
8 AMENDING SECTIONS 15-1-303, 15-2-301, 15-7-102, 15-7-111, AND 15-15-101, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 15-1-303, MCA, is amended to read:
14 **"15-1-303. Penalty for refusal to furnish information.** (1) If a person refuses to allow inspection of any
15 books or records when requested by the department or refuses or neglects to furnish any information called for
16 by the department in the performance of its official duties relating to the assessment and taxation of property, the
17 department shall make a determination and assessment of the property that in its judgment appears to be just
18 and equitable and may add to the assessment an amount not to exceed 20% of the assessment as a penalty for
19 the refusal or neglect. The department shall immediately notify the person assessed of its action, either by mail
20 or by personal service of the notice.

21 (2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following
22 remedies:

23 (a) Within 30 days after receipt of the assessment, the taxpayer may request an informal conference with
24 the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of the failure
25 to supply the information requested by the department. Within 10 days after the conference, the department shall
26 notify the taxpayer by mail whether the assessment will be modified. The department may modify the penalty if
27 the taxpayer presents sufficient evidence in mitigation or extenuation of the failure to supply the information
28 sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

29 (b) If the taxpayer is aggrieved as a result of the informal conference, the taxpayer may appeal to the
30 county tax appeal board within 30 days after receipt of the decision of the department. The county tax appeal

1 board has the authority to modify the:

2 (i) assessment, subject to the provisions of 15-7-102(6)(b), only if it finds that the assessment exceeds
3 100% of the value of the property specified in 15-8-111; and

4 (ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation
5 of the failure to supply the information that the department sought.

6 (c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce
7 the penalty to less than 20% of the assessment or, if the assessment is modified pursuant to subsection (2)(b)(i),
8 to less than 20% of the modified assessment.

9 (3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the
10 state tax appeal board within 30 calendar days after receipt of the county tax appeal board's decision. When
11 deciding an appeal brought under this subsection, the state tax appeal board shall follow the provisions of
12 subsections (2)(b) and (2)(c).

13 (4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial
14 review pursuant to 15-2-303."
15

16 **Section 2.** Section 15-2-301, MCA, is amended to read:

17 **"15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail
18 a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If
19 the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the
20 state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state
21 board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the
22 decision of the county board. The notice must specify the action complained of and the reasons assigned for the
23 complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax
24 appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat
25 as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest.
26 The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place
27 of the hearing.

28 (2) At the time of giving notice of acceptance of an appeal, the state board may require the county board
29 to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its
30 proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a

1 copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear
 2 further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its
 3 members or to a designated hearings officer. The board member or hearings officer may exercise all the powers
 4 of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings,
 5 together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the
 6 appeal on the record.

7 (3) On all hearings at county seats throughout the state, the state board or the member or hearings
 8 officer designated to conduct a hearing may employ a competent person to electronically record the testimony
 9 received. The cost of electronically recording testimony may be paid out of the general appropriation for the
 10 board.

11 (4) In connection with any appeal under this section, the state board is not bound by common law and
 12 statutory rules of evidence or rules of discovery and may, subject to the provisions of 15-7-102(6)(b), affirm,
 13 reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative
 14 Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any
 15 administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless
 16 the board finds a rule arbitrary, capricious, or otherwise unlawful.

17 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
 18 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board
 19 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the
 20 extent that it does not conflict with 15-2-303.

21 (6) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing
 22 an order to change the valuation of property."
 23

24 **Section 3.** Section 15-7-102, MCA, is amended to read:

25 **"15-7-102. Notice of classification and appraisal to owners -- appeals -- burden of proof.** (1) (a)
 26 Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed
 27 a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the
 28 land only if one or more of the following changes pertaining to the land or improvements have been made since
 29 the last notice:

30 (i) change in ownership;

- 1 (ii) change in classification;
- 2 (iii) except as provided in subsection (1)(b), change in valuation; or
- 3 (iv) addition or subtraction of personal property affixed to the land.
- 4 (b) After the first year, the department is not required to mail the notice provided for in subsection
- 5 (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the
- 6 phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an
- 7 incremental change in the tax rate.
- 8 (c) The notice must include the following for the taxpayer's informational purposes:
- 9 (i) a notice of the availability of all the property tax assistance programs available to property taxpayers,
- 10 including the property tax assistance program under 15-6-134, the extended property tax assistance program
- 11 under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211, and the residential
- 12 property tax credit for the elderly under 15-30-2337 through 15-30-2341;
- 13 (ii) the total amount of mills levied against the property in the prior year; and
- 14 (iii) a statement that the notice is not a tax bill.
- 15 (d) Any misinformation provided in the information required by subsection (1)(c) does not affect the
- 16 validity of the notice and may not be used as a basis for a challenge of the legality of the notice.
- 17 (2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the
- 18 correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a
- 19 standardized form, adopted by the department, containing sufficient information in a comprehensible manner
- 20 designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over
- 21 the prior tax year.
- 22 (b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal
- 23 of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.
- 24 (c) The department is not required to mail the notice of classification and appraisal to a new owner or
- 25 purchaser under contract for deed unless the department has received the transfer certificate from the clerk and
- 26 recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection
- 27 (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.
- 28 (3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market
- 29 value of the property as determined by the department or with the classification of the land or improvements, the
- 30 owner may request an assessment review by submitting an objection in writing to the department, on forms

1 provided by the department for that purpose, within 30 days after receiving the notice of classification and
2 appraisal from the department. The review must be conducted informally and is not subject to the contested case
3 procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider
4 the actual selling price of the property, independent appraisals of the property, and other relevant information
5 presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The
6 department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the
7 department shall determine the correct appraisal and classification of the land or improvements and notify the
8 taxpayer of its determination. In the notification, the department shall state its reasons for revising the
9 classification or appraisal. When the proper appraisal and classification have been determined, the land must be
10 classified and the improvements appraised in the manner ordered by the department.

11 (4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an
12 appraisal or classification upon the taxpayer's objection unless:

13 (a) the taxpayer has submitted an objection in writing; and

14 (b) the department has stated its reason in writing for making the adjustment.

15 (5) A taxpayer's written objection to a classification or appraisal and the department's notification to the
16 taxpayer of its determination and the reason for that determination are public records. The department shall make
17 the records available for inspection during regular office hours.

18 (6) (a) If any property owner feels aggrieved by the classification or appraisal made by the department
19 after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax
20 appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the
21 courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's
22 determination is mailed to the taxpayer. A Subject to subsection (6)(b), a county tax appeal board or the state tax
23 appeal board may consider the actual selling price of the property, independent appraisals of the property, and
24 other relevant information presented by the taxpayer as evidence of the market value of the property. If the county
25 tax appeal board or the state tax appeal board determines that an adjustment should be made, the department
26 shall adjust the base value of the property in accordance with the board's order.

27 (b) When a taxpayer appeals to a county tax appeal board or the state tax appeal board the department's
28 estimate of the market value, productive capacity value, or productivity value of property subject to revaluation
29 under 15-7-111(1)(a), the burden of proof of the market value, productive capacity value, or productivity value
30 is on the department."

1

2 **Section 4.** Section 15-7-111, MCA, is amended to read:

3 **"15-7-111. Periodic revaluation of certain taxable property.** (1) (a) The department shall administer
4 and supervise a program for the revaluation of all taxable property within class three under 15-6-133, class four
5 under 15-6-134, and class ten under 15-6-143.

6 (b) All other property must be revalued annually.

7 (2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified
8 property in a manner consistent with the valuation within the same class and the values established pursuant to
9 subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of
10 new, remodeled, or reclassified property within the same class.

11 (3) The revaluation of class three, four, and ten property is complete on December 31, 2008. The amount
12 of the change in valuation from the 2002 base year for each property in classes three, four, and ten must be
13 phased in each year at the rate of 16.66% of the change in valuation.

14 (4) During the end of the second and fourth year of each revaluation cycle, the department shall provide
15 the revenue and transportation interim committee with a sales assessment ratio study of residences to be used
16 to allow the committee to be apprised of the housing market and value trends.

17 (5) The department shall administer and supervise a program for the revaluation of all taxable property
18 within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the
19 department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county
20 is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding 6 years. The resulting
21 valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each
22 year is not established, then the percentage of phasein for each year is 16.66%."

23

24 **Section 5.** Section 15-15-101, MCA, is amended to read:

25 **"15-15-101. County tax appeal board -- meetings and compensation -- appeals -- notification.** (1)

26 The board of county commissioners of each county shall appoint a three-member county tax appeal board, with
27 the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be
28 residents of the county in which they serve. The members receive compensation of \$45 a day and travel
29 expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board meets to hear
30 taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax

1 appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal
2 board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other
3 incidental expenses must be paid from the appropriation of the state tax appeal board.

4 (2) The county tax appeal board shall hold an organizational meeting each year on the date of its first
5 scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled.
6 It shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear
7 protests concerning assessments made by the department until the business of hearing protests is disposed of
8 and, as provided in 15-2-201, may meet after December 31.

9 (3) In connection with an appeal, the county tax appeal board may change any assessment or fix the
10 assessment at some other level. An appeal of the valuation of property described in 15-7-111(1)(a) is subject to
11 the provisions of 15-7-102(6)(b).

12 (4) Upon notification by the county tax appeal board, the county clerk and recorder shall publish a notice
13 to taxpayers, giving the time the county tax appeal board will be in session to hear scheduled protests concerning
14 assessments and the latest date the county tax appeal board may take applications for the hearings. The notice
15 must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county
16 tax appeal board directs. The notice must be published by May 15 of the current tax year.

17 ~~(4)~~(5) Challenges to a department rule governing the assessment of property or to an assessment
18 procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers
19 unless an action is brought in the district court as provided in 15-1-406."
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21 NEW SECTION. Section 6. Saving clause. [This act] does not affect rights and duties that matured,
22 penalties that were incurred, or proceedings that were begun before January 1, 2011.
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24 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.
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26 NEW SECTION. Section 8. Retroactive applicability. [This act] applies retroactively, within the
27 meaning of 1-2-109, to property tax appeals of valuations made after December 31, 2010.
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