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MEMORANDUM

To: Revenue and Transportation Interim Committee

From: Dan Whyte, Deputy Chief Legal Counsel 

Date: September 30, 2013

Subject: Department of Revenue Informal Review and Appeal Process

Informal review procedures are available to customers of the Department of Revenue for all processes that the Department oversees. Both the Montana Code Annotated and the Administrative Rules of Montana advocate informal resolution of disputes between the Department and Montana taxpayers. Depending on the type of dispute, there are several informal and formal processes for appealing a department appraisal, audit, decision, or collection. These include the informal review process for property appeals, informal and formal appeal processes for most other tax types with the Office of Dispute Resolution, and a general taxpayer appeal process through the Office of Taxpayer Assistance.

INFORMAL REVIEW FOR PROPERTY APPRAISAL

Under § 15-7-102, MCA, the Department is charged with providing a notice of classification and appraisal of property to all property owners. The Department's notice must provide information related to the classification of the property, an estimate of value, and appeal rights available to the property owner. According to §15-7-102(1)(c), MCA, the notice must include the following for the taxpayer's informational purposes:

- (i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341;
- (ii) the total amount of mills levied against the property in the prior year; and
- (iii) a statement that the notice is not a tax bill.

If a property owner is dissatisfied with the appraisal, the owner may request an assessment review with Department representatives. Section 15-7-102(3), MCA. A taxpayer may seek review of a property appraisal valuation, current year phase-in value, total amount of mills levied against the property in a prior year, or the amount of appraised value exempt from taxation. ARM 42.20.505. The property owner submits a Request for Informal Assessment Review, also known as Form AB-26. This review takes place for issues related to assessment of Class 3 property (agricultural), Class 4 property (residential), Class 8 property (business equipment, livestock, etc.), or Class 10 property (timber), but not for centrally assessed property. Class 3,

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4, and 10 property owners may appeal once during the six-year cycle. It should be noted that industrial properties also have available this review process, but those property owners may appeal annually, since industrial properties are appraised annually.

For this informal review, the taxpayer must specify the grounds of the protest and pay the taxes disputed under protest. At any stage of the review, the taxpayer may represent themselves or be represented by a tax specialist or attorney.

Once the AB-26 has been filed, the taxpayer may request a meeting with a Department representative to discuss the issues raised. As part of the review, the Department may consider the actual selling price of the property, independent appraisals of the property, or other relevant information provided by the property owner. The Department representative, with the potential assistance of a supervisor, may agree with the taxpayer's objections, determine to uphold the Department's appraisal of value, or compromise as necessary. If the taxpayer is dissatisfied with the Department's informal review decision, the taxpayer may appeal the values to the county tax appeal board (CTAB) in the county where the property is located. If either party is dissatisfied with the CTAB decision, they may appeal the appraisal of value to the State Tax Appeal Board (STAB), a district court, and the Supreme Court, where appropriate.

OFFICE OF DISPUTE RESOLUTION

The Legislature has created an informal process for review of many of the Department's assessments and taxes. Section 15-1-211, MCA. This is known as the uniform dispute review procedure. The Legislature intended that the Department's review process include "all issues arising from the administration of the department", with the exception of estate taxes, property assessments and taxes listed above, or employee-employer disputes. Issues regarding estate taxes are determined under federal law and Title 72 of the Montana Code Annotated. Property taxes that are not subject to unit valuation have the separate review process described previously. Therefore, the uniform dispute review procedure is for property subject to unit valuation, income taxes, oil and gas production taxes, corporate license or income tax, retail telecommunications excise tax, and many more.

In § 15-1-211(2)(a), MCA, the Legislature defined the rights of persons who have a dispute with the Department:

Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

It is the purpose of § 15-1-211, MCA, and the rules that follow that the Department and the taxpayer attempt to resolve any issue informally. Furthermore, it is clear that at the beginning of the process, the review of the dispute must be with the Department representative who made the initial decision. For instance, if an auditor notifies a taxpayer that they have failed to properly file their income tax return, any dispute related to the audit should first be given the opportunity for resolution with the auditor directly. If the dispute cannot be resolved at that level, the taxpayer is entitled to review by a Department supervisor. This is consistent with the philosophy that throughout the dispute resolution process, it is anticipated that the Department will make the process as unthreatening and as easy to understand and negotiate as possible for the taxpayer. As part of this process, the Department must exercise its discretion to determine the level of formality of the proceedings and accommodate disputes based on the sophistication of the person bringing the dispute. ARM 42.2.616.

If the taxpayer and the Department are not able to resolve the dispute informally, the matter can be referred to the Office of Dispute Resolution (ODR). That office was established by the Department for hearing complaints, pursuant to § 15-1-211(2)(b), MCA. As required by the statute, the Department has:

- (a) develop[ed] guidelines that must be followed by employees of the department in dispute resolution matters;
- (b) develop[ed] policies concerning the authority of an employee to resolve disputes; and
- (c) establish[ed] procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

The ODR is in place for providing a forum for disputes that require review subsequent to a discussion between the taxpayer and Department auditors or appraisers. The purposes of the ODR are further described in ARM 42.2.613 through 621.

To ensure that a person who has a dispute with the Department is fully informed, written notice must be provided to the person who has been referred to the ODR. The written notice, as described in § 15-1-221(4), MCA, must include the following:

- (a) a summary of the department's position regarding the dispute;
- (b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;
- (c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;
- (d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and
- (e) the right to have the department consider alternative dispute resolution methods, including mediation.

Properties subject to unit valuation under Title 15, chapter 23, MCA, also known as central assessment, may be reviewed by the ODR. Centrally assessed property dispute review provisions are described in ARM 42.2.511. As with other properties, centrally assessed property owners may ask for informal review of the assessment with the Department representative who assessed the property (Form CAB-8). If the appraisal is disputed, objections to the appraisal report must be made within 15 days of the date on the report. While extensions can be agreed to at any time, the Department must respond to the objections within 15 days of the objections by either agreeing with the objections and issuing a final assessment notice or explaining why the Department disagrees with the customer and issuing a revised appraisal report. If the revised appraisal report is issued, the Department notifies the customer of the dispute resolution procedures available to the customer.

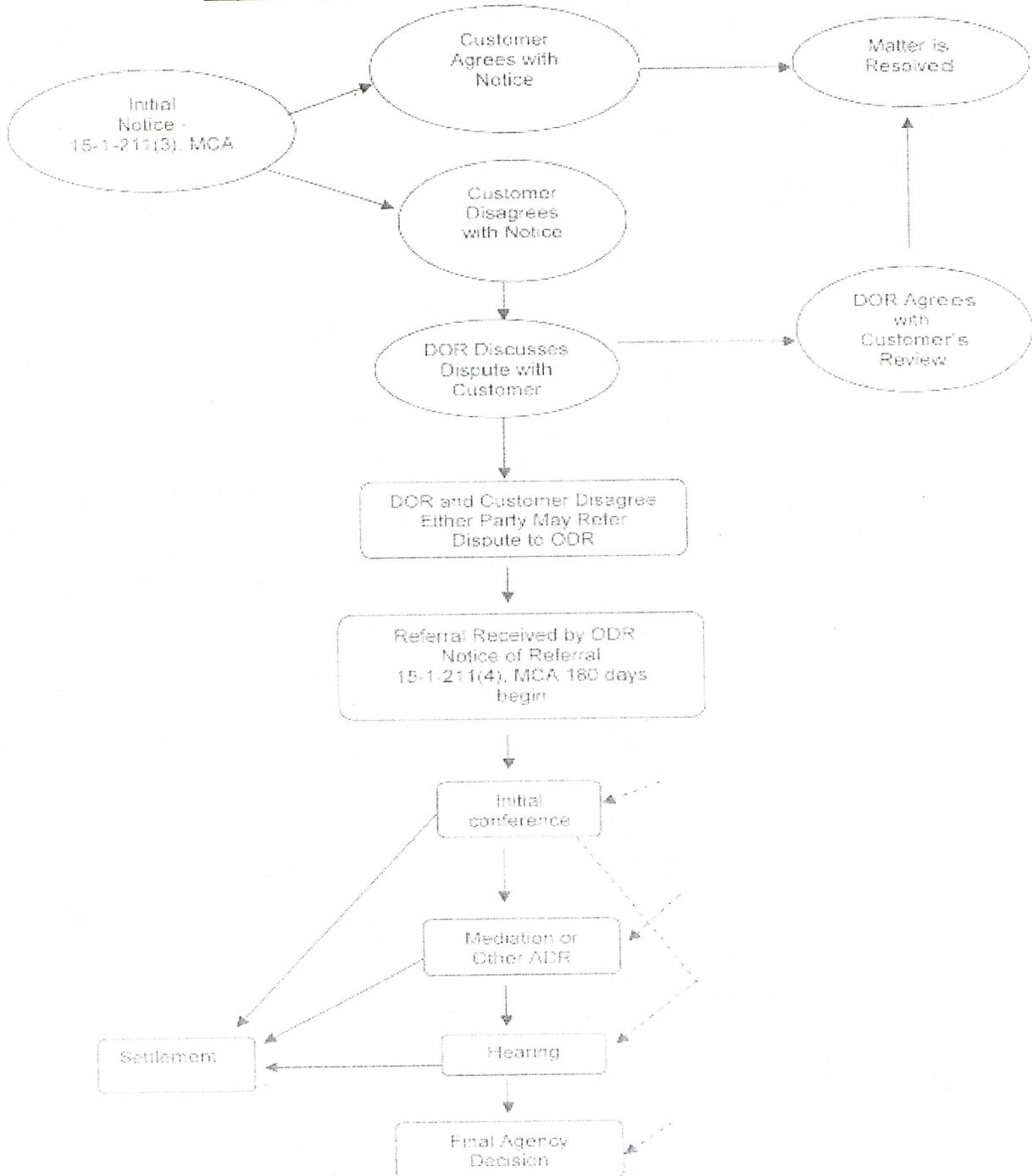
If the taxpayer is dissatisfied with the final assessment or revised appraisal report, the taxpayer may appeal the Department's decision to the ODR or, upon mutual agreement of the parties, the matter may be appealed directly to the State Tax Appeal Board (STAB).

If the dispute is referred to the ODR, the hearing examiner for the ODR holds an initial conference with the taxpayer and the Department representatives to review all matters pertaining to the dispute, including the best course of action deemed appropriate by all parties.

The initial conference may result in settlement, an agreement to pursue nonbinding mediation, or a course for discovery and hearing.

The potential courses of action before the Office of Dispute Resolution are shown below:

Department of Revenue - Dispute Resolution Flow Chart



Generally, if the parties agree to mediation, it may be conducted by the hearing examiner or by a mediator outside of the Department. For centrally assessed and industrial properties, the mediation must be conducted by a person who is not a public employee and must take place at a privately owned facility. Section 15-1-212, MCA; *see also* ARM 42.2.620. The intent is to ensure that the mediator can provide an objective view of the dispute, assisting the parties with an understanding of both the strengths and weaknesses of their cases, and helping to resolve the matter without hearing, if possible. Mediation is voluntary and nonbinding on the parties. If mediation efforts are unsuccessful, the parties will move towards a hearing. It is also important to note that the parties may agree to forgo the hearing before the ODR and appeal directly to STAB.

If a hearing is held under the auspices of the ODR, the hearing examiner who conducted the mediation may not preside over the hearing. The hearing examiner who presides over the hearing is the finder of fact and he or she has the discretion to make the hearing informal or formal. The appearance of legal counsel to represent the parties often drives the formality of the proceedings and as the formality escalates, the hearing examiner may impose the rules of civil procedure and rules of evidence as deemed necessary.

As part of the hearing process, each party will have the opportunity to present evidence in written or oral form. At the discretion of the hearing examiner, or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and pre-file the testimony. The parties also have the opportunity to submit written statements addressing factual and legal arguments, including cites of legal authority. ARM 42.2.618, 619.

After hearing, the hearing examiner issues a final agency decision that is appealable to the State Tax Appeal Board.

OFFICE OF TAXPAYER ASSISTANCE

Also available to a taxpayer is the Office of Taxpayer Assistance (OTA). Section 15-1-223, MCA; ARM 42.2.1001 through .1003. This office is designed to assist taxpayers with:

- 1) easily understandable tax information with respect to audits and corrections and review procedures of the Department;
 - 2) easily understandable information and appeal procedures;
 - 3) answering questions regarding preparing and filing of returns and reports;
- and
- 4) locating documents or payments submitted to the Department.

The OTA also receives complaints related to improper or abusive behavior or inefficient service provided by Department employees, monitors the Department's compliance with the taxpayer bill of rights, and monitors the Department's collection activities. The taxpayer bill of rights can be found at § 15-1-222, MCA, and indicates generally that the taxpayer is entitled to be informed and must be provided a clear understanding of his or her rights with respect to taxes owed, rights of review by the Department, rights of appeal, and the right to be treated fairly and equally. The OTA assists in assuring that the taxpayer bill of rights is followed.

The OTA intercedes on behalf of taxpayers when the Department's normal procedures and communications with taxpayers break down. Consistent with other forms of informal dispute review, the Department attempts to resolve issues at early stages with the staff

responsible for the decisions made, whether through audits, appraisals, record maintenance, or collections. If necessary, these disputes may be referred to division supervisors or specialists, and if the dispute is not resolved at that level, then a referral can be made to the Office of Taxpayer Assistance. The OTA works with division representatives and the taxpayer to resolve these disputes.

The functions of the OTA are distinguished from the Office of Dispute Resolution because the ODR is an adjudicatory office considering and resolving issues of fact and law for matters under the department's jurisdiction and finalizes the department's decisions on contested matters. The OTA, on the other hand, is in place to provide guidance to the taxpayer for informal disputes.