

SENATE BILL NO. 137

INTRODUCED BY D. ANKNEY, F. THOMAS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TAXPAYER DISPUTE RESOLUTION PROCEDURES;
5 ~~ESTABLISHING A SMALL TAX CASE ELECTION FOR CASES REVIEWED BY THE STATE TAX APPEAL~~
6 ~~BOARD; ESTABLISHING SMALL TAX CASE REQUIREMENTS; PROVIDING A TAXPAYER OPTION TO~~
7 ~~BYPASS THE DEPARTMENT OF REVENUE'S DISPUTE RESOLUTION OFFICE; REQUIRING INFORMAL~~
8 ~~DISCOVERY IN CERTAIN CASES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS~~
9 ~~15-1-211, 15-2-201, AND 15-2-302, 15-2-303, 15-2-304, AND 15-2-305, MCA; AND PROVIDING AN~~
10 ~~APPLICABILITY DATE."~~

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

13
14 ~~NEW SECTION. Section 1. Small tax case election -- informal procedure -- finality of decision.~~

15 ~~(1) (a) Except as provided in subsection (2), at the time of filing an appeal a taxpayer may elect small tax case~~
16 ~~status:~~

17 ~~(b) Subject to subsection (1)(c), the department or the taxpayer may request that the state tax appeal~~
18 ~~board remove the small tax case designation.~~

19 ~~(c) If good cause is shown, the state tax appeal board may issue an order directing that the small tax~~
20 ~~case designation be removed. A case that is removed from the small tax case docket is converted to a regular~~
21 ~~case before the state tax appeal board.~~

22 ~~(2) (a) Small tax case status is limited to review of decisions of the department of revenue regarding~~
23 ~~income taxes imposed under Title 15, chapter 30, and any associated penalties or interest.~~

24 ~~(b) Small tax case status may not be utilized to hear appeals for which the total amount of the tax~~
25 ~~deficiencies and claimed refunds in controversy exceeds \$25,000 for all tax years in dispute, exclusive of interest~~
26 ~~and penalties:~~

27 ~~(3) The department of revenue must be represented by an authorized representative in all small tax case~~
28 ~~proceedings:~~

29 ~~(4) (a) A small tax case hearing must be conducted as informally as possible consistent with orderly~~
30 ~~procedure and is not subject to the contested case provisions of the Montana Administrative Procedure Act.~~



1 ~~_____ (b) The state tax appeal board is not bound by common law and statutory rules of evidence or rules of~~
 2 ~~discovery and may receive evidence as the board considers appropriate for determination of the case. Testimony~~
 3 ~~must be given under oath or affirmation.~~

4 ~~_____ (c) A party is not required to file briefs or make oral arguments unless directed by the state tax appeal~~
 5 ~~board.~~

6 ~~_____ (5) At any time prior to entry of judgment, a taxpayer may dismiss a small tax case proceeding by~~
 7 ~~notifying the state tax appeal board in writing. The dismissal is with prejudice and does not have the effect of~~
 8 ~~revoking the small tax case election.~~

9 ~~_____ (6) A small tax case judgment is final and binding upon all interested parties, may not be appealed, and~~
 10 ~~may not be considered as precedent in any other case, hearing, or proceeding.~~

11 ~~_____ (7) The provisions of this chapter apply to small tax case proceedings unless expressly inapplicable or~~
 12 ~~inconsistent with the provisions of this section.~~

13

14 **Section 1.** Section 15-1-211, MCA, is amended to read:

15 **"15-1-211. Uniform dispute review procedure -- notice -- appeal.** (1) The department shall provide
 16 a uniform dispute review procedure for all persons or other entities, except as provided in subsection (1)(a).

17 (a) The department's dispute review procedure must be adopted by administrative rule and applies to
 18 all matters administered by the department and to all issues arising from the administration of the department,
 19 except estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between
 20 the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30,
 21 part 25, or whether the employment relationship was that of an independent contractor. The procedure applies
 22 to assessments of centrally assessed property taxed pursuant to chapter 23.

23 (b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar
 24 enterprises.

25 (ii) The term "person" as used in this section includes all individuals.

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

29 (b) The department shall establish a dispute resolution office to resolve disputes between the department
 30 and persons or other entities. When a case is transferred to the dispute resolution office, the parties shall attempt

1 to attain the objectives of discovery through informal consultation or communication. Formal discovery procedures
2 may not be utilized by a taxpayer or the department unless reasonable informal efforts to obtain the needed
3 information have not been successful.

4 (c) Once a case is transferred to the dispute resolution office, a person or entity may elect to bypass
5 review by the dispute resolution office and receive a final department decision within 30 days of receiving the
6 election.

7 ~~(e)~~(d) Disputes must be resolved by a final department decision within 180 days of the referral to the
8 dispute resolution office, unless extended by mutual consent of the parties.

9 (e) If a final department decision is not issued within the required time period, the remedy is an appeal
10 to the appropriate forum as provided by law.

11 (3) (a) The department shall provide written notice to a person or other entity advising the person or
12 entity of a dispute over matters administered by the department.

13 (b) The person or other entity shall have the opportunity to resolve the dispute with the department
14 employee who is responsible for the notice, as indicated on the notice.

15 (c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to
16 the dispute resolution office.

17 (d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the
18 person responsible for the notice and their right to refer the dispute to the dispute resolution office.

19 (4) Written notice must be sent to the persons or other entities involved in a dispute with the department
20 indicating that the matter has been referred to the dispute resolution office. The written notice must include:

21 (a) a summary of the department's position regarding the dispute;

22 (b) an explanation of the right to the resolution of the dispute with a clear description of all procedures
23 and options available;

24 (c) the right to obtain a final department decision within 180 days of the date that the dispute was referred
25 to the dispute resolution office;

26 (d) the right to obtain a final department decision within 30 days of the date that the department receives
27 an election to bypass review by the dispute resolution office;

28 ~~(d)~~(e) the right to appeal should the department fail to meet the required deadline for issuing a final
29 department decision; and

30 ~~(e)~~(f) the right to request alternative dispute resolution methods, including mediation.

1 (5) The department shall:

2 (a) develop guidelines that must be followed by employees of the department in dispute resolution
3 matters;

4 (b) develop policies concerning the authority of an employee to resolve disputes; and

5 (c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute
6 resolution office.

7 (6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with
8 a person or other entity relating to a matter administered by the department.

9 (ii) The director or the director's designee has no authority to bind a future legislature through the terms
10 of an agreement.

11 (b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and
12 conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

13 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,
14 employee, or agent of this state; and

15 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection,
16 payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be
17 annulled, modified, set aside, or disregarded."

18

19 ~~Section 3. Section 15-2-201, MCA, is amended to read:~~

20 ~~"15-2-201. Powers and duties. (1) It is the duty of the state tax appeal board to:~~

21 ~~(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties~~
22 ~~and for this purpose may schedule meetings of county tax appeal boards, and it is the duty of all invited county~~
23 ~~tax appeal board members to attend if possible, and the cost of their attendance must be paid from the~~
24 ~~appropriation of the state tax appeal board;~~

25 ~~(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because~~
26 ~~of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided~~
27 ~~for in 15-15-101(4) to hear an appeal;~~

28 ~~(c) hear appeals from decisions of the county tax appeal boards;~~

29 ~~(d) hear appeals from decisions of the department of revenue in regard to business licenses, property~~
30 ~~assessments, taxes, except determinations that an employer-employee relationship existed between the taxpayer~~

1 and individuals subjecting the taxpayer to the requirements of chapter 30, part 25, and penalties;
 2 ~~—— (e) establish an informal small tax case status for taxpayers as provided in [section 1].~~
 3 ~~—— (2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a~~
 4 ~~member of the board or the member's agent. If a witness does not obey a summons to appear before the board~~
 5 ~~or refuses to testify or answer any material questions or to produce records, books, papers, or documents when~~
 6 ~~required to do so, that failure or refusal must be reported to the attorney general, who shall thereupon institute~~
 7 ~~proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies~~
 8 ~~falsely in any material matter under consideration by the board is guilty of perjury and punished accordingly.~~
 9 ~~Witnesses attending shall receive the same compensation as witnesses in the district court. The compensation~~
 10 ~~must be charged to the proper appropriation for the board.~~
 11 ~~—— (3) The state tax appeal board also has the duties of an appeal board relating to other matters as may~~
 12 ~~be provided by law."~~

13
 14 **Section 2.** Section 15-2-302, MCA, is amended to read:

15 **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) (a) An
 16 appeal of a final decision of the department of revenue involving one of the matters provided for in subsection
 17 (1)(b) must be made to the state tax appeal board.

18 (b) Final decisions of the department for which appeals are provided in subsection (1)(a) are final
 19 decisions involving:

- 20 (i) property centrally assessed under chapter 23;
- 21 (ii) classification of property as new industrial property;
- 22 (iii) any other tax, other than the property tax, imposed under this title; or
- 23 (iv) any other matter in which the appeal is provided by law.

24 (2) A person may appeal the department's annual assessment of an industrial property to the state board
 25 as provided in this section or to the county tax appeal board for the county in which the property is located as
 26 provided in Title 15, chapter 15, part 1.

27 (3) The appeal is made by filing a complaint with the state board within 30 days following receipt of notice
 28 of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief
 29 demanded. The state board shall immediately transmit a copy of the complaint to the department.

30 (4) The department shall file with the state board an answer within 30 days following filing of a complaint.

1 (5) The state board shall conduct the appeal in accordance with the contested case provisions of the
 2 Montana Administrative Procedure Act. Parties to an appeal shall attempt to attain the objectives of discovery
 3 through informal consultation or communication before utilizing formal discovery procedures. Formal discovery
 4 procedures may not be utilized by a taxpayer or the department unless reasonable informal efforts to obtain the
 5 needed information have not been successful.

6 (6) The decision of the state board is final and binding upon all interested parties unless reversed or
 7 modified by judicial review. Proceedings for judicial review of a decision of the state board under this section are
 8 subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not
 9 conflict with 15-2-303. A small tax case may not be appealed as provided in [section 1]."

10
 11 ~~Section 5. Section 15-2-303, MCA, is amended to read:~~

12 ~~"15-2-303. Judicial review. (1) Any Except as provided in [section 1], a party to an appeal before the~~
 13 ~~state tax appeal board who is aggrieved by a final decision is entitled to judicial review under this part.~~

14 ~~(2) Proceedings for review must be instituted by filing a petition in district court in the county in which the~~
 15 ~~taxable property or some portion of it is located, except the taxpayer has the option to file in the district court of~~
 16 ~~the first judicial district. A petition for judicial review must be filed within 60 days after service of the final decision~~
 17 ~~of the state tax appeal board or, if a rehearing is requested, within 60 days after service of the final decision.~~
 18 ~~Copies of the petition must be promptly served on all parties of record. The department of revenue shall promptly~~
 19 ~~notify the state tax appeal board, in writing, of any judicial review, but failure to do so has no effect on the judicial~~
 20 ~~review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings~~
 21 ~~and documents.~~

22 ~~(3) If the judicial review involves a taxpayer who is seeking a refund of taxes paid under protest, the~~
 23 ~~appealing party shall provide a copy of the petition to the treasurer of the county in which the taxable property~~
 24 ~~or some portion of it is located, but failure to do so has no effect on the judicial review.~~

25 ~~(4) Proceedings for review of a decision by the state tax appeal board by a company under the~~
 26 ~~jurisdiction of the public service commission must be instituted in the district court of the first judicial district.~~

27 ~~(5) Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional~~
 28 ~~evidence to be introduced."~~

29
 30 ~~Section 6. Section 15-2-304, MCA, is amended to read:~~

1 ~~—————"15-2-304. Petition for interlocutory adjudication. (1) (a) Either party, within 30 days of the filing of~~
 2 ~~an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication~~
 3 ~~under 15-2-305. The petition may be filed with the district court:~~

4 ~~————(i) in the first judicial district;~~

5 ~~————(ii) in the county in which the taxable property is located; or~~

6 ~~————(iii) in cases not involving property taxes, in the county where the taxpayer resides or has the taxpayer's~~
 7 ~~principal place of business in the state.~~

8 ~~————(b) The petition may raise any question involving procedure, the admissibility of evidence, or a~~
 9 ~~substantive question of law raised by the pleadings within 30 days of filing an answer to the appeal with the state~~
 10 ~~tax appeal board.~~

11 ~~————(c) A nonpetitioning party shall respond to the petition within 30 days after service of the petition. The~~
 12 ~~response may raise any question not raised in the petition involving procedure, the admissibility of evidence, or~~
 13 ~~a substantive question of law.~~

14 ~~————(2) After the 30-day period specified in subsection (1)(b) but before arguments have been heard, the~~
 15 ~~parties to the proceeding may jointly petition a district court to make an interlocutory adjudication as provided~~
 16 ~~under 15-2-305. A petition for an adjudication must be signed by each party to the proceeding.~~

17 ~~————(3) In a petition under subsection (1) or (2), one party must be designated as the petitioner and every~~
 18 ~~other party must be designated a respondent. The court may in its discretion grant a petition if it appears that the~~
 19 ~~issues presented involve procedure, the admissibility of evidence, or a substantive question of law and do not~~
 20 ~~require the determination of questions of fact and that the controversy would be more expeditiously resolved by~~
 21 ~~an adjudication. If the court grants a petition, it shall rule on all issues presented in the petition and the response,~~
 22 ~~regardless of whether a ruling on less than all of the issues is dispositive of the case.~~

23 ~~————(4) This section does not apply to small tax cases provided for in [section 1]."~~

24

25 ~~————Section 7 Section 15-2-305, MCA, is amended to read:~~

26 ~~————"15-2-305. Jurisdiction to make interlocutory adjudication. (1) A Except as provided in subsection~~
 27 ~~(2), a district court may make an interlocutory adjudication of an issue pending before the state tax appeal board~~
 28 ~~if that issue involves procedure, the admissibility of evidence, or a substantive question of law and does not~~
 29 ~~require the determination of a question of fact. If the petition is granted, the district court shall rule on all issues~~
 30 ~~presented in the petition and the response, regardless of whether a ruling on less than all of the issues is~~

1 ~~dispositive of the case. Appeals from the ruling of the court may be appealed as in other civil actions.~~

2 ~~——— (2) This section does not apply to small tax cases provided for in [section 1]."~~

3

4 ~~——— **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an~~
5 ~~integral part of Title 15, chapter 2, and the provisions of Title 15, chapter 2, apply to [section 1].~~

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7 **NEW SECTION. Section 3. Saving clause.** [This act] does not affect rights and duties that matured,
8 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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10 **NEW SECTION. Section 4. Applicability.** [This act] applies to proceedings commenced on or after
11 January 1, 2018.

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