

HOUSE BILL NO. 394

INTRODUCED BY G. HERTZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROPERTY TAX APPRAISAL PROCESS AND
5 PROPERTY TAX APPEALS; PROVIDING FOR THE ASSESSMENT OF ATTORNEY FEES AGAINST THE
6 DEPARTMENT OF REVENUE WHEN A TAXPAYER PREVAILS IN A PROPERTY TAX DISPUTE; REQUIRING
7 THE DEPARTMENT OF REVENUE TO JUSTIFY USAGE OF THE COST APPROACH WHEN VALUING
8 RESIDENTIAL CLASS FOUR PROPERTY; CLARIFYING THAT A TAXPAYER MAY REFUSE TO ALLOW THE
9 DEPARTMENT TO ENTER INTO CERTAIN STRUCTURES DURING AN APPRAISAL; AMENDING SECTIONS
10 15-1-222, 15-2-201, 15-2-306, 15-7-102, 15-7-139, AND 15-8-111, MCA; AND PROVIDING AN APPLICABILITY
11 DATE."

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

14
15 **Section 1.** Section 15-1-222, MCA, is amended to read:

16 **"15-1-222. Taxpayer bill of rights.** The department of revenue shall in the course of performing its
17 duties in the administration and collection of the state's taxes ensure that:

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

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

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

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

4 (5) at the discretion of the department, upon consideration of all facts relevant to the specific taxpayer,
5 the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection
6 applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

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

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

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

13 (9) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have
14 the state tax appeal board or a court, or both, review any final decision of the department assessing an additional
15 tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney
16 fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711, and lawsuits pertaining to
17 a property tax appeal in which the taxpayer prevails, as provided in 15-2-306.

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

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

22 (12) the taxpayer has the right to have certain property exempt from levy and seizure as provided in Title
23 25, chapter 13, part 6, and any other applicable provisions in Montana law;

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

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

28 (15) the taxpayer has the right to be guaranteed that an employee of the department is not paid,
29 promoted, or in any way rewarded on the basis of assessments or collections from taxpayers."
30

1 **Section 2.** Section 15-2-201, MCA, is amended to read:

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

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

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

10 (c) hear appeals from decisions of the county tax appeal boards and assess attorney fees against the
11 department when a taxpayer prevails on the merits of a property tax appeal;

12 (d) hear appeals from decisions of the department of revenue in regard to business licenses, property
13 assessments, taxes, except determinations that an employer-employee relationship existed between the taxpayer
14 and individuals subjecting the taxpayer to the requirements of chapter 30, part 25, and penalties.

15 (2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a
16 member of the board or the member's agent. If a witness does not obey a summons to appear before the board
17 or refuses to testify or answer any material questions or to produce records, books, papers, or documents when
18 required to do so, that failure or refusal must be reported to the attorney general, who shall thereupon institute
19 proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies
20 falsely in any material matter under consideration by the board is guilty of perjury and punished accordingly.
21 Witnesses attending shall receive the same compensation as witnesses in the district court. The compensation
22 must be charged to the proper appropriation for the board.

23 (3) The state tax appeal board also has the duties of an appeal board relating to other matters as may
24 be provided by law."
25

26 **Section 3.** Section 15-2-306, MCA, is amended to read:

27 **"15-2-306. Board may order refund and attorney fees.** (1) In any appeal before the state tax appeal
28 board when a taxpayer has paid property taxes or fees under written protest and the taxes or fees are held by
29 the treasurer of a unit of local government in a protest fund, the state tax appeal board shall enter judgment,
30 exclusive of costs, if the board finds that the property taxes or fees should be refunded.

1 (2) In addition to costs and attorney fees permitted under 25-10-711, the board may award costs and
 2 reasonable attorney fees as determined by the board from the department to a taxpayer that prevails on the
 3 merits of a property tax appeal.

4 ~~(2)~~(3) The state tax appeal board's judgment issued pursuant to ~~subsection~~ subsections (1) and (2) must
 5 be held in abeyance:

6 (a) until the time period for appeal has passed; or

7 (b) if the final decision of the state tax appeal board has been appealed in accordance with 15-2-303."
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9 **Section 4.** Section 15-7-102, MCA, is amended to read:

10 **"15-7-102. Notice of classification, market value, and taxable value to owners -- appeals.** (1) (a)

11 Except as provided in 15-7-138, the department shall mail or provide electronically to each owner or purchaser
 12 under contract for deed a notice that includes the land classification, market value, and taxable value of the land
 13 and improvements owned or being purchased. A notice must be mailed to the owner only if one or more of the
 14 following changes pertaining to the land or improvements have been made since the last notice:

15 (i) change in ownership;

16 (ii) change in classification;

17 (iii) change in valuation; or

18 (iv) addition or subtraction of personal property affixed to the land.

19 (b) The notice must include the following for the taxpayer's informational purposes:

20 (i) a notice of the availability of all the property tax assistance programs available to property taxpayers,
 21 including the intangible land value assistance program provided for in 15-6-240, the property tax assistance
 22 programs provided for in Title 15, chapter 6, part 3, and the residential property tax credit for the elderly provided
 23 for in 15-30-2337 through 15-30-2341;

24 (ii) the total amount of mills levied against the property in the prior year; and

25 (iii) a statement that the notice is not a tax bill.

26 (c) When the department uses an appraisal method that values land and improvements as a unit,
 27 including the sales comparison approach for residential condominiums or the income approach for commercial
 28 property, the notice must contain a combined appraised value of land and improvements.

29 (d) Any misinformation provided in the information required by subsection (1)(b) does not affect the
 30 validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

1 (2) (a) Except as provided in subsection (2)(c), the department shall assign each classification and
2 appraisal to the correct owner or purchaser under contract for deed and mail or provide electronically the notice
3 in written or electronic form, adopted by the department, containing sufficient information in a comprehensible
4 manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes
5 over the prior tax year.

6 (b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal
7 of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

8 (c) The department is not required to mail or provide electronically the notice to a new owner or
9 purchaser under contract for deed unless the department has received the realty transfer certificate from the clerk
10 and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection
11 (2)(a) are mailed or provided electronically. The department shall notify the county tax appeal board of the date
12 of the mailing or the date when the taxpayer is informed the information is available electronically.

13 (3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the
14 market value of the property as determined by the department or with the classification of the land or
15 improvements, the owner may request an informal classification and appraisal review by submitting an objection
16 on written or electronic forms provided by the department for that purpose.

17 (i) For property other than class three property described in 15-6-133, class four property described in
18 15-6-134, and class ten property described in 15-6-143, the objection must be submitted within 30 days from the
19 date on the notice.

20 (ii) For class three property described in 15-6-133 and class four property described in 15-6-134, the
21 objection may be made only once each valuation cycle. An objection must be made in writing within 30 days from
22 the date on the classification and appraisal notice for a reduction in the appraised value to be considered for both
23 years of the 2-year valuation cycle. An objection made more than 30 days from the date of the classification and
24 appraisal notice will be applicable only for the second year of the 2-year valuation cycle. For an objection to apply
25 to the second year of the valuation cycle, the taxpayer must make the objection in writing no later than June 1
26 of the second year of the valuation cycle or, if a classification and appraisal notice is received in the second year
27 of the valuation cycle, within 30 days from the date on the notice.

28 (iii) For class ten property described in 15-6-143, the objection may be made at any time but only once
29 each valuation cycle. An objection must be made in writing within 30 days from the date on the classification and
30 appraisal notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle.

1 An objection made more than 30 days after the date of the classification and appraisal notice applies only for the
2 subsequent remaining years of the 6-year reappraisal cycle. For an objection to apply to any subsequent year
3 of the valuation cycle, the taxpayer must make the objection in writing no later than June 1 of the year for which
4 the value is being appealed or, if a classification and appraisal notice is received after the first year of the
5 valuation cycle, within 30 days from the date on the notice.

6 (b) If the objection relates to residential or commercial property and the objector agrees to the
7 confidentiality requirements, the department shall provide to the objector, by posted mail or electronically, within
8 8 weeks of submission of the objection, the following information:

9 (i) the methodology and sources of data used by the department in the valuation of the property; and

10 (ii) if the department uses a blend of evaluations developed from various sources, the reasons that the
11 methodology was used.

12 (c) At the request of the objector, and only if the objector signs a written or electronic confidentiality
13 agreement, the department shall provide in written or electronic form:

14 (i) comparable sales data used by the department to value the property; ~~and~~

15 (ii) sales data used by the department to value residential property in the property taxpayer's market
16 model area; and

17 (iii) if the cost approach was used by the department to value residential property, the documentation
18 required by 15-8-111(3) regarding why the comparable sales approach was not reliable.

19 (d) For properties valued using the income approach as one approximation of market value, notice must
20 be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of
21 all aggregate model output that the department used in the valuation model for the property.

22 (e) The review must be conducted informally and is not subject to the contested case procedures of the
23 Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling
24 price of the property and other relevant information presented by the taxpayer in support of the taxpayer's opinion
25 as to the market value of the property. The department shall consider an independent appraisal provided by the
26 taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal
27 was completed within 6 months of the valuation date pursuant to 15-8-201. If the department does not use the
28 appraisal provided by the taxpayer in conducting the appeal, the department must provide to the taxpayer the
29 reason for not using the appraisal. The department shall give reasonable notice to the taxpayer of the time and
30 place of the review.

1 (f) After the review, the department shall determine the correct appraisal and classification of the land
2 or improvements and notify the taxpayer of its determination by mail or electronically. The department may not
3 determine an appraised value that is higher than the value that was the subject of the objection unless the reason
4 for an increase was the result of a physical change in the property or caused by an error in the description of the
5 property or data available for the property that is kept by the department and used for calculating the appraised
6 value. In the notification, the department shall state its reasons for revising the classification or appraisal. When
7 the proper appraisal and classification have been determined, the land must be classified and the improvements
8 appraised in the manner ordered by the department.

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

11 (a) the taxpayer has submitted an objection on written or electronic forms provided by the department;
12 and

13 (b) the department has provided to the objector by mail or electronically its stated reason in writing for
14 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) If a property owner feels aggrieved by the classification or appraisal made by the department after
19 the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal
20 board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts.
21 The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on
22 the notice of the department's determination. A county tax appeal board or the state tax appeal board may
23 consider the actual selling price of the property, independent appraisals of the property, and other relevant
24 information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal
25 board or the state tax appeal board determines that an adjustment should be made, the department shall adjust
26 the base value of the property in accordance with the board's order.

27 (7) For the purposes of this section, a representative of the objecting taxpayer is entitled to receive
28 confidential information subject to the same restrictions as the objector."

29

30 **Section 5.** Section 15-7-139, MCA, is amended to read:

1 **"15-7-139. Requirements for entry on property by property valuation staff employed by**
2 **department -- authority to estimate value of property not entered -- rules.** (1) Subject to the conditions and
3 restriction of this section, the provisions of 45-6-203 do not apply to property valuation staff employed by the
4 department and acting within the course and scope of the employees' official duties.

5 (2) A person qualified under subsection (1) may enter private land to appraise or audit property for
6 property tax purposes.

7 (3) (a) No later than November 30 of each year, the department shall publish in a newspaper of general
8 circulation in each county a notice that the department may enter property for the purpose of appraising or
9 auditing property.

10 (b) The published notice must indicate:

11 (i) that a landowner may require that the landowner or the landowner's agent be present when the person
12 qualified in subsection (1) enters the land to appraise or audit property;

13 (ii) that the landowner shall notify the department in writing of the landowner's requirement that the
14 landowner or landowner's agent be present; and

15 (iii) that the landowner's written notice must be mailed to the department at an address specified and be
16 postmarked not more than 30 days following the date of publication of the notice. The department may grant a
17 reasonable extension of time for returning the written notice.

18 (4) The written notice described in subsection (3)(b)(ii) must be legible and include:

19 (a) the landowner's full name;

20 (b) the mailing address and property address; and

21 (c) a telephone number at which an appraiser may contact the landowner during normal business hours.

22 (5) When the department receives a written notice as described in subsection (4), the department shall
23 contact the landowner or the landowner's agent to establish a date and time for entering the land to appraise or
24 audit the property.

25 (6) If a landowner or the landowner's agent prevents a person qualified under subsection (1) from
26 entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land
27 pursuant to subsection (5), the department shall estimate the value of the real and personal property located on
28 the land.

29 (7) (a) A Subject to subsection (7)(b), a county tax appeal board and the state tax appeal board may not
30 adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner

1 or the landowner's agent:

2 ~~(a)(i)~~ gives permission to the department to enter the land to appraise or audit the property; or

3 ~~(b)(ii)~~ provides to the department and files with the county tax appeal board or the state tax appeal board
4 an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate
5 appraisers. The appraisal must be conducted in accordance with current uniform standards of professional
6 appraisal practice established for certified real estate appraisers under 37-54-403. The appraisal must be
7 conducted within 1 year of the reappraisal valuation date provided for in 15-7-103(6) and must establish a
8 separate market value for each improvement and the land.

9 (b) A county tax appeal board and the state tax appeal board may not use a denial of permission to enter
10 into improvements, personal property, buildings, or structures as a basis to not adjust the estimated value of the
11 real or personal property when permission is limited to entering the land and conducting an exterior inspection
12 of the improvements, personal property, buildings, or structures.

13 (8) A person qualified under subsection (1) who enters land pursuant to this section shall carry on the
14 person identification sufficient to identify the person and the person's employer and shall present the identification
15 upon request.

16 (9) The authority granted by this section does not authorize entry into improvements, personal property,
17 or buildings or structures without the permission of the owner or the owner's agent.

18 (10) Vehicular access to perform appraisals and audits is limited to established roads and trails, unless
19 approval for other vehicular access is granted by the landowner.

20 (11) The department shall adopt rules that are necessary to implement 15-7-140 and this section. The
21 rules must, at a minimum, establish procedures for granting a reasonable extension of time for landowners to
22 respond to notices from the department."

23

24 **Section 6.** Section 15-8-111, MCA, is amended to read:

25 **"15-8-111. Appraisal -- market value standard -- exceptions.** (1) All taxable property must be
26 appraised at 100% of its market value except as otherwise provided.

27 (2) (a) Market value is the value at which property would change hands between a willing buyer and a
28 willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of
29 relevant facts.

30 (b) If the department uses the cost approach as one approximation of market value, the department shall

1 fully consider reduction in value caused by depreciation, whether through physical depreciation, functional
2 obsolescence, or economic obsolescence.

3 (c) If the department uses the income approach as one approximation of market value and sufficient,
4 relevant information on comparable sales and construction cost exists, the department shall rely upon the two
5 methods that provide a similar market value as the better indicators of market value.

6 (d) Except as provided in subsection (4), the market value of special mobile equipment and agricultural
7 tools, implements, and machinery is the average wholesale value shown in national appraisal guides and
8 manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules
9 showing the average wholesale value when a national appraisal guide does not exist.

10 (3) In valuing class four residential and commercial property described in 15-6-134, the department shall
11 conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass
12 appraisal promulgated by the appraisal standards board of the appraisal foundation. In valuing the property, the
13 department shall use information available from any source considered reliable. Comparable properties used for
14 valuation must represent similar properties within an acceptable proximity of the property being valued. The
15 department shall use the same valuation method to value residential properties in the same neighborhood or
16 subdivision unless there is a compelling reason to use a different approach. When valuing residential property
17 under the cost approach, the department shall document why the comparable sales model does not support
18 usage of the comparable sales approach, including an analysis of whether the cost approach is used for other
19 class four residential property the market area.

20 (4) The department may not adopt a lower or different standard of value from market value in making
21 the official assessment and appraisal of the value of property, except:

22 (a) the market value for agricultural implements and machinery is the average wholesale value category
23 as provided in published national agricultural and implement valuation guides. The valuation guide must provide
24 average wholesale values specific to the state of Montana or a region that includes the state of Montana. The
25 department shall adopt by rule the valuation guides used as provided in this subsection (4)(a). If the average
26 wholesale value category is unavailable, the department shall use a comparable wholesale value category.

27 (b) for agricultural implements and machinery not listed in an official guide, the department shall prepare
28 a supplemental manual in which the values reflect the same depreciation as those found in the official guide;

29 (c) (i) for condominium property, the department shall establish the value as provided in subsection (5);

30 and

1 (ii) for a townhome or townhouse, as defined in 70-23-102, the department shall determine the value in
2 a manner established by the department by rule; and

3 (d) as otherwise authorized in Titles 15 and 61.

4 (5) (a) Subject to subsection (5)(c), if sufficient, relevant information on comparable sales is available,
5 the department shall use the sales comparison approach to appraise residential condominium units. Because
6 the undivided interest in common elements is included in the sales price of the condominium units, the
7 department is not required to separately allocate the value of the common elements to the individual units being
8 valued.

9 (b) Subject to subsection (5)(c), if sufficient, relevant information on income is made available to the
10 department, the department shall use the income approach to appraise commercial condominium units. Because
11 the undivided interest in common elements contributes directly to the income-producing capability of the individual
12 units, the department is not required to separately allocate the value of the common elements to the individual
13 units being valued.

14 (c) If sufficient, relevant information on comparable sales is not available for residential condominium
15 units or if sufficient, relevant information on income is not made available for commercial condominium units, the
16 department shall value condominiums using the cost approach. When using the cost approach, the department
17 shall determine the value of the entire condominium project and allocate a percentage of the total value to each
18 individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit
19 as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed
20 in the declaration conforms to market value.

21 (6) For purposes of taxation, assessed value is the same as appraised value.

22 (7) The taxable value for all property is the market value multiplied by the tax rate for each class of
23 property.

24 (8) The market value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

25 (a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after
26 deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515,
27 15-23-516, 15-23-517, or 15-23-518.

28 (b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

29 (c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the
30 lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as

1 agricultural lands for tax purposes.

2 (d) Properties in 15-6-134, under class four, are assessed at 100% of market value.

3 (e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the
4 land when valued as forest land.

5 (f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described
6 in 15-23-205.

7 (9) Land and the improvements on the land are separately assessed when any of the following
8 conditions occur:

9 (a) ownership of the improvements is different from ownership of the land;

10 (b) the taxpayer makes a written request; or

11 (c) the land is outside an incorporated city or town."
12

13 **NEW SECTION. Section 7. Applicability.** [This act] applies to state tax appeal board proceedings filed
14 after [the effective date of this act] and appraisals performed by the department of revenue after [the effective date
15 of this act].

16 - END -