

Comparison of ABA Model Act and Montana Tax Appeal Process

Model Act	Code Section	Comments
<p>Section 1. Statement of Purpose</p> <p>The Purpose of the Model Act is to “increase public confidence in the fairness of the State tax system, the State shall provide an independent agency with tax expertise to resolve disputes between the government [department of revenue] and taxpayers.”</p>		<p>Article VIII, Section 7, Montana Constitution says: “The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.” §2-15-1015 created the Tax Appeal Board</p>
<p>Section 2. Tax Tribunal: Establishment</p> <p>(a) Establishes a tax tribunal</p> <p>(b) Separate from the Department of Revenue</p> <p>(c) Has a seal</p> <p>(d) Date of creation of tribunal</p>	<p>YES §15-2-101</p> <p>YES §15-2-102(1)</p> <p>YES §15-2-106</p> <p>1979</p>	<p>Attached to Dept. of Administration</p>
<p>Section 3. Judges: Number; Appointment; Term of Office; Removal</p> <p>(a) At least one full-time judge</p> <p>(b) Appointed by Governor w/advice and consent of the Senate for 10 year staggered terms</p>	<p>YES §15-2-101</p> <p>YES §15-2-101</p>	<p>STAB has three full-time members</p> <p>STAB members have six year staggered terms</p>

(c) Salary no less than state trial court judges	NO §15-2-102	Set as other state employees
(d) Serve until term ends and successor appointed	YES §15-2-101	
(e) Vacancies filled by Governor's appointment	YES §15-2-101	
(f) Governor appoints chief Judge	YES §15-2-103	
(g) Governor may remove judge for cause w/o advice and consent of Senate	NO	
(h) Governor may appoint judges <i>pro tempore</i> as needed	NO	
(i) A judge may disqualify him or herself in any matter	YES	
Section 4. Judges: Qualifications; Prohibition Against Other Gainful Employment		
(a) Position requires substantial knowledge of tax law and experience making the record in a tax case	YES §15-2-102	Requires knowledge and skill in matters of taxation
(b) Oath of office required	YES Art III, §3 Montana Constitution	May not hold any other position of outside trust or profit or engage in business that interferes or is inconsistent with duties
(c) Judges must devote full-time to the job with no employment	YES §15-2-102	
Section 5. Principal Offices Locations; Facilities		
(a) Office shall be in state capital or other city	YES §15-2-105	Office shall be in Helena
(b) Hearings shall be held in tribunal's principal office or other locations for convenience of taxpayers	YES §15-2-103	

(c) Tribunal office shall be separate from DOR and hearings shall not be held in DOR facilities	NO/YES	Although not in statute, STAB has always been administratively separate and always maintained separate offices and hearing rooms
(d) The state shall provide facilities as needed	YES §15-2-103	
Section 6. Appointment of Clerk and Reporter; Expenditures of the Tax Tribunal		
(a) Tribunal shall have a clerk and reporter, library, publications and equipment	YES §15-2-104 §15-2-301(3)	
(b) Reporter shall be subject to court reporter law	NO	
(c) No Tribunal employee shall represent another in a tax matter in this state	YES §15-2-102	
(d) Tribunal employees can be removed for cause	YES §2-16-503	General HR authority
(e) Tribunal may contract reporting of proceedings	YES §15-2-104	
Section 7. Jurisdiction of the Tax Tribunal		
(a) Tribunal shall have exclusive jurisdiction of law and fact findings and final authority in tax cases	YES §15-2-301(5) §15-2-302(5)	Appeals of property tax cases from CTAB all other direct appeals from DOR decisions
(b) No tax case can be filed in any other court	YES/NO §15-2-305	However, interlocutory appeals can be filed in district court on procedural, evidentiary or substantive law questions
(c) Hearing should be prior to payment of tax	NO §15-1-402	Taxes must be paid under protest prior to appeal and hearing
(d) If taxes are paid in advance, appeal shall be treated	YES §15-2-306	

as a claim for refund		
(e) The Tribunal shall decide the constitutionality of statutes as applied to the taxpayer but not declare the statute unconstitutional on its face	NO	Case law allows STAB to consider the constitutional questions when mixed with questions of fact
Section 8. Opportunity to Resolve Tax disputes Informally Prior to Commencing a Proceeding in the Tax Tribunal		
(a) Taxpayers should have an informal review by an independent administrative appeal function	YES/NO §15-7-102(3)	Informal but not independent review by the Department Revenue by filing a DOR AB-26 form
(b) The independent administrative review must meet a 12-part test	Unknown	Regulations and personnel are under DOR, not STAB
Section 9. Pleadings		
(a) Taxpayer may challenge tax liability by filing an Appeal within 90 days of DOR final determination	YES §15-15-102	Allows appeal of a DOR final decision within 30 days or by the first Monday in June
	§15-2-301	Allows 30 days to appeal from a CTAB decision
	§15-2-302	Allows 30 days to appeal directly to STAB from a DOR decision
(b) DOR shall have 75 days to respond	YES/NO §15-2-302(3)	Allows DOR 30 days to respond but no response is required in CTAB hearings
(c) Taxpayer shall have 30 days to reply	YES/NO	MAPA applies to direct appeals but not CTAB appeals
(d) Pleadings may be freely amended	NO	

<p>Section 10. Fees</p> <p>(a) Permits a filing fee to be charged</p> <p>(b) Permits fees for transcripts and copies</p>	<p>NO</p> <p>YES §2-4-614(2)</p>	<p>There is no charge for filing a petition</p> <p>Standard state rates are charged for copies</p>
<p>Section 11. discovery and Stipulation</p> <p>(a) Informal discovery is encouraged</p> <p>(b) Parties shall stipulate all relevant matters to fullest extent possible</p> <p>(c) Parties may use traditional forms of discovery hearings may be closed if necessary to protect confidential information from disclosure</p> <p>(d) Tribunal shall have subpoena power</p> <p>(e) Judge or designated employee may administer oaths</p> <p>(f) Witnesses shall receive standard fees, mileage</p> <p>(g) Tribunal may enforce discovery orders by, among other means, deciding issues against offending party</p>	<p>NO</p> <p>NO</p> <p>YES §15-2-302(4) YES Art II, §§ 9,10 Montana Constitution</p> <p>YES §2-4-612</p> <p>YES §2-4-612(4) and §15-2-201(2)</p> <p>YES §15-2-201(2)</p> <p>NO §15-2-201(2)</p>	<p>Direct appeals are governed by MAPA Constitution requires open meetings which may be closed if personal privacy requires</p> <p>Failure to obey summons or produce documents reported to the Attorney General who shall institute proceedings</p>
<p>Section 12. Hearings</p> <p>(a) Cases before the Tribunal are tried <i>de novo</i> and without a jury</p> <p>(b) Tribunal shall take evidence, conduct hearings issue final decisions</p>	<p>YES §15-2-301(2) §15-2-301</p> <p>YES §15-2-301, §15-2-302(4)</p>	<p>CTAB appeals are <i>de novo</i> but STAB can consider CTAB record</p> <p>Direct appeals are <i>de novo</i></p>

<p>(c) Hearings shall be open to the public unless closed for good cause, privileged information</p> <p>(d) Tribunal is not bound by rules of evidence in civil Cases</p> <p>(e) Testimony may only be given on oath or Affirmation</p> <p>(f) Petition shall be deemed to conform to the proof</p> <p>(g) Taxpayer has the burden of persuasion by a preponderance of the evidence</p> <p>(h) Tribunal proceedings shall be officially reported</p>	<p>YES Art II, §§9, 10 Montana Constitution</p> <p>YES/NO §15-2-301(4) §15-2-302(4)</p> <p>YES §15-2-201(2), §15-15-103</p> <p>NO</p> <p>NO</p> <p>YES</p>	<p>Appeals from CTAB rulings are informal Direct appeals are covered by MAPA but parties may jointly waive formal proceeding and choose informal proceedings §§2-4-603(2), 604</p> <p>Case law controls</p> <p>Proceedings are reported on STAB website and research sites</p>
<p>Section 13. Decisions</p> <p>(a) Tribunal decisions shall be in writing, including a statement of facts and conclusions of law</p> <p>(b) Decisions shall be rendered no later than six months With additional 30-day extension for good cause After final briefs are submitted</p> <p>(c) If Tribunal fails to decide within time allowed, either party may institute an action in a trial court to compel issuance of the decision</p>	<p>YES §2-4-623</p> <p>YES/NO §2-4-623</p> <p>NO</p>	<p>Decision must be rendered within 90 days but no time limit on CTAB appeals.</p>

(d) Tribunal decision is final unless appealed	YES §15-2-302(5)	Yes if not appealed. Appeal is to a district court but only on the law, no new trial is held.
(e) Tribunal decision shall have the same force and effect as a decision of a trial court	YES/NO	
(f) Statutory interpretations by the Tribunal in one case shall be followed in subsequent cases	NO	
Section 14. Small Claims Division: Establishment; Jurisdiction		
(a) Establishes a Small Claims Division of the tribunal	YES §15-15-101	Creates County Tax Appeal Boards to hear property tax appeals in each county
(b) Tribunal judges sit as judges in Small Claims Div	NO §15-15-101	Three-member boards are appointed by County Commissioners for three-year terms. Members must be county residents
(c) Taxpayer can elect small claims hearing if amount contested is less than \$25,000	NO §15-15-102	Not elective. All property tax cases, except for centrally assessed, are first heard by the County Tax Appeal Board
(d) Taxpayer must file an appeal within 90 days	NO §15-15-102	Appeal must be filed within 30 days of a final decision or before the first Monday in June
(e) DOR must file an answer within 30 days	YES/NO	Yes in direct appeals under MAPA, not in CTAB appeals
(f) Taxpayer may dismiss the appeal any time prior to decision	YES	

(g) Hearings shall be informal and testimony shall be given under oath	YES §15-15-103	
(h) Judgments are conclusive and may not be appealed	NO §15-15-104(1)	County Board decisions are appealable to the State Tax Appeal Board
(i) All Model Act provisions apply in Small Claims	NO	
Section 15. Appeals		
(a) Either party may obtain judicial review of a Tribunal decision, except for decisions of the Small Claims Division	YES/NO §15-2-303	State Tax Appeal Board decisions are appealable and County Board decisions can be appealed to the State Board
(b) The record on judicial review shall include the decision, transcript, pleadings and exhibits	YES §15-2-301(2)	
Section 16. Representation		
(a) Taxpayer may be represented by him/herself, accountant or enrolled agent before the IRS	YES/NO §2-4-105	Taxpayer may be represented by an attorney at any time. Taxpayer may have an authorized to practice designated agent in County Board hearing
(b) The DOR shall be represented by an authorized representative in all proceedings	YES/NO	See above
Section 17. Publication of Decisions		
The Tribunal shall index, publish and make permanently Available its final decisions for public convenience		All decisions are published.

<p>Section 18. Service of Process, etc.</p> <p>(a) Mailing by first class or certified or registered mail to taxpayer or taxpayer's representative</p> <p>(b) Service shall occur on the date of mailing</p>	<p>YES §2-4-106</p> <p>YES</p>	<p>As prescribed for civil actions in district court</p>
<p>Section 19. Rules and Forms</p> <p>The Tribunal is authorized to promulgate rules and forms as necessary</p>	<p>YES §15-2-104</p>	
<p>Section 20. Effective Dates</p> <p>Not Applicable</p>		