

Decision Tool for the SJR 23 Study of the Taxpayer Appeal Process
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 For the Revenue and Transportation Interim Committee
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The Revenue and Transportation Interim Committee is specifically asked by Senate Joint Resolution No. 23 (SJR 23) to consider State Tax Appeal Board member qualifications, implementation of a tax court, and implementation of a rotating district court judge to handle centrally assessed and large industrial property appeals. The committee has also received recommendations for other changes to the taxpayer appeal process. This decision tool provides background information, summarizes testimony on the topics, and provides options and considerations to assist committee members in deciding whether to recommend changes to the taxpayer appeal process.

State Tax Appeal Board Member Qualifications

- Should there be education, experience, and/or continuing education requirements for State Tax Appeal Board members?

Background

Section [15-2-102](#) contains the current requirement that State Tax Appeal Board members “possess knowledge of the subject of taxation and skill in matters relating to taxation.”

Testimony

Recommendation	Received From
Members should have tax experience and be attorneys or CPAs	John Myers, CPA with Houston, Helseth & Myers
One board member should be a certified member of the International Association of Assessing Officers, American Society of Appraisers, or Appraisal Institute	Dave Galt, Montana Petroleum Association
One board member should have experience appraising refining properties	Dave Galt, Montana Petroleum Association
More formal member qualifications might reduce appeals of State Tax Appeal Board decisions	Bob Story, Montana Taxpayers Association
If a policy change allows direct appeal of State Tax Appeal Board decisions to the Supreme Court, one or more board members should have the qualifications of a district court judge	Karen Powell, Chair of State Tax Appeal Board
Board members should be lawyers and members of the Montana State Bar and have “substantial knowledge of tax law and substantial experience in making the record in a tax case suitable for judicial review” ¹	Tom Ebzery, Attorney with centrally assessed clients

¹ Quoted material is from American Bar Association, “[Model State Administrative Tax Tribunal Act](#),” p. 3.

Considerations

The following questions may help committee members think about whether to make changes to the education and experience of State Tax Appeal Board members.

- Do decisions of the State Tax Appeal Board reflect an understanding of the applicable laws and appraisal procedures?
- Should there be a requirement to appoint board members with certain expertise? If yes, which expertise is desired?
- Are State Tax Appeal Board decisions often overturned by a district court or the Montana Supreme Court?
- Are the due process rights of the parties protected?

Options

1. Recommend education, experience, and/or continuing education requirements by requesting committee legislation to amend the requirements in section [15-2-102](#). Specify what education and/or experience should be included in the draft bill.
2. If the committee thinks there should not be changes to the requirements, include a finding in the SJR 23 final report indicating that the current knowledge requirements are sufficient.
3. If the committee recommends a restructuring of the tax appeal system that eliminates the State Tax Appeal Board, these considerations could be applied to whatever entity or entities preside over the recommended tax appeal system.

Tax Court

- Should there be a tax court system to resolve tax appeals?

Background

The current tax appeal system is composed of the State Tax Appeal Board and 56 county tax appeal boards. The county tax appeal boards hear property tax appeals (except for centrally assessed property appeals) and the State Tax Appeal Board hears appeals of county tax appeal board decisions and direct appeals of final decisions of the Department of Revenue.

The board of county commissioners in each county appoints at least three members to the county tax appeal board. The governor appoints the three members of the State Tax Appeal Board with the advice and consent of the Senate. Board members are administrative law judges. The State Tax Appeal Board is independent of the Department of Revenue and administratively attached to the Department of Administration. The State Tax Appeal Board is the court of record for and its decisions may be appealed to district court.

Testimony

Recommendation	Received From
<p>Create a tax court with the following characteristics for taxpayers classified as centrally assessed and large industrial properties:</p> <ul style="list-style-type: none"> • one chief tax judge who is an attorney and member of the Montana State Bar with “substantial knowledge of tax law and substantial experience in making the record in a tax case suitable for judicial review” • appointed by Chief Justice of Montana Supreme Court from list provided by Judicial Nominating Commission, advice and consent of Senate required • provide for appointment of associate tax judge if approved by Legislature and warranted by case load • 6-year term with a two-term limit • judge receives same pay and benefits as a district court judge • court has jurisdiction of property valuation appeals as well as income and excise tax appeals for centrally assessed and large industrial property taxpayers • encourage informal dispute resolution and mandatory mediation prior to filing an appeal with the tax court • allow large industrial properties to first appeal to the county tax appeal board • discovery procedures similar to State Tax Appeal Board: Montana Rules of Civil Procedure and encouragement of pre-filed testimony • filing fees similar to district court • appeals heard by Montana Supreme Court 	<p>Tom Ebzery, Attorney with centrally assessed clients²</p>
<p>Create a three person tax tribunal or tax court:</p> <ul style="list-style-type: none"> • replace State Tax Appeal Board or limit it to review of county tax appeal board decisions • members are attorneys and members of the Montana State Bar • governor appoints to 6-year terms with advice and consent of Senate • members receive same pay/benefits as a district court judge • chief judge selected by members and rotates every 2 years • authorized to hire attorneys to serve as magistrates and assist in mediation • jurisdiction over all tax matters including income, property, and excise taxes • appeals heard by Montana Supreme Court 	<p>Tom Ebzery, Attorney with centrally assessed clients³</p>
<p>Create a tax court similar to the Water Court and Workers’ Compensation Court:</p> <ul style="list-style-type: none"> • tax court judge who is equivalent of a district court judge to make findings of fact, conclusions of law, and valuations of property • appeals heard by Montana Supreme Court • eliminate State Tax Appeal Board 	<p>Terry Cosgrove, Attorney, Gough, Shanahan, Johnson & Waterman⁴</p>
<p>Complete restructuring of tax appeal process is unnecessary</p>	<p>Dan Whyte, Deputy Chief Legal Counsel, Department of Revenue</p>

² Mr. Ebzery offered three different recommendation packages. See [“Testimony of Tom Ebzery,”](#) p. 5.

³ Mr. Ebzery offered three different recommendation packages. See [“Testimony of Tom Ebzery,”](#) p. 6.

⁴ [Letter to Revenue and Transportation Interim Committee](#), Feb. 18, 2014.

Considerations

The following questions are posed to assist committee members in thinking through whether to recommend a tax court system. The questions are based on the goals of a “fair, time efficient, and equitable” tax appeal system as expressed in the study resolution.

- Is the current tax appeal process fair and equitable?
 - Do taxpayers and the Department of Revenue have appropriate access to the tax appeal system?
 - Are decisions based on the evidence presented?
 - Are county tax appeal board decisions often overturned by the State Tax Appeal Board, a district court, or the Montana Supreme Court?
 - Are State Tax Appeal Board decisions often overturned by a district court or the Montana Supreme Court?
- Are tax appeals timely?
 - If not, are there delays for all appeals or certain types of appeals?
 - How long should it take to resolve tax appeals?
 - Who is affected by lengthy appeals and what are the effects?
 - Would a tax court system speed up the time for resolution of appeals?
- Could changes to the current system resolve any issues identified above?
- Could a tax court system resolve any issues identified above?

Options

1. If the committee recommends a tax court system, consideration of the following questions may aid in developing a committee recommendation. Legislative changes would be necessary.
 - a. Organization within state government
 - i. How does the tax court fit in the current process?
 - ii. Does the tax court replace the State Tax Appeal board or complement the State Board?
 - iii. Are there changes to the county tax appeal boards?
 - iv. Does the tax court hear all tax appeals?
 - v. Can a tax court decision be appealed?
 1. If so, who hears the appeal?
 - vi. Is the tax court part of the judicial system (like the Water Court) or a quasi-judicial entity administratively attached to a state agency (like the Workers' Compensation Court)?
 - b. Judge(s)
 - i. How many judges are part of the tax court?
 - ii. How are the judges selected?
 - iii. What are the qualifications?
 - iv. What is the term of office?

c. Court operations

- i. If there is more than one judge, do the judges hear cases individually or as a panel?
- ii. Are there filing fees to access the tax court?
- iii. Do all cases follow the same procedures?
 - 1. Are there formal and informal procedures?
 - 2. Is there a small claims option?
- 2. If the committee does not wish to recommend a tax court, the committee could include a finding in the SJR 23 final report indicating that the committee considered a tax court but does not recommend that option and the reasons for not recommending a tax court.
- 3. If the committee identified issues that could be resolved with changes to the current tax appeal system, the committee could request draft legislation to amend the current tax appeal system.

Rotating District Court Judge

➤ Should a rotating district court judge handle direct appeals from centrally assessed and large industrial facility properties?

Background

Centrally assessed property valuation appeals are heard by the State Tax Appeal Board. Large industrial property valuation appeals are heard by the county tax appeal board and the county board decision may be appealed to the State Tax Appeal Board. State Tax Appeal Board decisions may be appealed to district court and then the Montana Supreme Court.

Testimony

Recommendation	Received From
Advise against placing a complicated civil case type on one trial court judge (even if that responsibility rotates)	Beth McLaughlin, Court Administrator, on behalf of the Supreme Court of Montana

Considerations

- What are the advantages and disadvantages of designating a rotating judge?
- How would designating a rotating judge affect the timeliness of appeals?
- How would designating a rotating judge affect the workload of the designated judge and other judges?

Options

1. Recommend use of a rotating judge to handle direct appeals from centrally assessed and large industrial facility properties by requesting draft legislation.
2. If the committee does not wish to recommend use of a rotating court judge, include in the SJR 23 final report a finding that the committee does not endorse the use of a rotating court judge.

Miscellaneous Other Considerations

The following considerations posed in question format were compiled from public comment received as part of the taxpayer appeal study. Only topics on which more than one entity commented are included in the list.

- Should the tax appeal process be revised by removing one or more step in the process for some or all taxpayers?

Testimony

Recommendation	Received From
Taxpayers should be permitted to appeal directly to district court and not have to first appeal to the State Tax Appeal Board.	Dave Galt, Montana Petroleum Association
Industrial property valuation appeals are complex and could be resolved more quickly if these taxpayers had the option of appealing directly to the State Tax Appeal Board.	Karen Powell, Chair, State Tax Appeal Board
Taxpayers with property in multiple counties (not centrally assessed property) should have the option of appealing directly to the State Tax Appeal Board.	Wiley Barker, Attorney, Crowley Fleck
A taxpayer should have the option of bypassing the county tax appeal board.	Bob Story, Montana Taxpayers Association

The idea of removing the district court judicial review step was generally discussed by presenters and committee members but was not made as a stand-alone recommendation.

The committee already informally requested a [bill draft](#) to allow industrial property taxpayers to appeal directly to the State Tax Appeal Board.

Considerations

- Should a step in the current tax appeal process be removed?
 - If yes, which step?
 - Should this step be removed for all taxpayers or only certain taxpayers?
 - What are the benefits to removing this step?
 - Are there drawbacks to removing this step and, if so, can these drawbacks be remedied?
- Should taxpayers with property in multiple counties be permitted to appeal directly to the State Tax Appeal Board?
 - Should the Department of Revenue have to agree to this course of action?
- Should taxpayers with property of a certain value be permitted to appeal directly to the State Tax Appeal Board?
 - Should the Department of Revenue have to agree to this course of action?
- Should any property taxpayer wishing to access the State Tax Appeal Board directly be permitted to do so?
 - Should the Department of Revenue have to agree to this course of action?

Options

1. Recommend removal of one or more step in the process for one or more taxpayer type by requesting draft legislation.
2. If no changes are recommended, include a finding in the SJR 23 final report indicating why the current process should be retained.

➤ Should the timeframe for filing an appeal with the county tax appeal board be revised?

Background

Section [15-15-102](#) requires the filing of an appeal by the later of the first Monday in June or 30 days after receiving a notice of classification and appraisal or a Department of Revenue determination after an assessment review.

Testimony

Public comment from Wiley Barker, an attorney from Crowley Fleck, and Kevin Nelson, from Billings, both expressed concern that taxpayers may miss the appeal window because they may not understand the implications of a valuation change without reviewing the tax bill. These comments did not seem to be recommendations for a course of action but identification of a possible area for committee attention. Sample property assessment notices and sample property tax bills were presented at the February committee meeting to follow up on the concerns expressed.

Considerations

- Do taxpayers miss the deadline for filing property tax appeals because they do not understand the assessment notice?
- Would moving the deadline for filing property tax appeals affect the local government budgeting process?
- Is there a way to address concerns about meeting filing deadlines for property tax appeals that does not involve moving the filing deadline?

Options

1. Request draft legislation to move the deadline for filing a property tax appeal.
2. Request draft legislation to address the concern about missing filing deadlines in another way.
3. Include a finding in the SJR 23 final report indicating the committee's position.

➤ Should a certified public accountant be permitted to represent a taxpayer before the State Tax Appeal Board?

Background

The issue of representation before the State Tax Appeal Board will be covered at the May 6 meeting.

Testimony

John Myers, a certified public accountant with Houston, Helseth & Myers, recommended in a [letter](#) to the committee that certified public accountants should be authorized to practice before the State Tax Appeal Board. There is likely to be additional testimony on this issue at the May committee meeting.

Considerations

- What are the advantages and disadvantages of allowing certified public accountants to practice at the State Tax Appeal Board?

Options

1. Request draft legislation to allow certified public accounts to practice at the State Tax Appeal Board.
2. Include a recommendation in the SJR 23 final report indicating that the committee considered allowing certified public accounts to practice before the State Tax Appeal Board and the reasons for not advancing such a proposal.

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