

Background Report on the Taxpayer Appeal Process
For the Senate Joint Resolution No. 23 Study

Prepared for the Revenue and Transportation Interim Committee
by Megan Moore, Legislative Research Analyst
Legislative Services Divisions

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The Senate Joint Resolution No. 23 (SJR 23) study provides for a study of Montana's taxpayer appeal process and consideration of options available for streamlining and improving the appeal process. This background report provides an overview of the independent tax appeal process in Montana.

The document gives an overview of the constitutional and statutory provisions creating the taxpayer appeal process, identifying the taxes that are covered by this appeal process, and providing for appeal procedures.

CREATION AND ORGANIZATION OF THE INDEPENDENT TAXPAYER APPEAL SYSTEM

Article VIII, section 7, of the Montana Constitution requires that the Legislature create an independent taxpayer appeal procedure that includes a review procedure at the local level:

Section 7. Tax appeals. 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.

State Tax Appeal Board

The State Tax Appeal Board (State Board), established in section 2-15-1015, is the entity charged with administering the independent taxpayer appeal process. Title 15, chapter 2, outlines details regarding the State Board, including appointment of members, terms of office, qualifications, compensation, and organization. Section 15-2-102(1) provides that the State Board is administratively allocated to the Department of Administration (DOA). Article VI, section 7, of the Montana Constitution limits executive and administrative offices to 20 departments, so this administrative "attachment" is not uncommon.

Attachment to the Department of Administration allows the State Board to remain independent from the Department of Revenue, which is a party to many of the cases brought before the State Board. Section 2-15-121 provides details about allocation for administrative purposes, which entails, in relevant part:

- the independent exercise of quasi-judicial functions without approval or control of DOA;
- submission of budgetary requests through DOA;
- supervision of budgeting, recordkeeping, reporting, and related administrative and clerical functions; and
- allocation of office space to the agency.

The agency to which an entity is administratively allocated is also required to provide staff for the agency unless otherwise provided. Section 15-2-102 contains an exemption for the State Board, allowing it to hire its own personnel.

Appointment

As provided in section 15-2-101, there are three State Board members appointed by the Governor with the advice and consent of the Senate. The term of office is 6 years, and there is no limit on the number of terms a member may serve.

Qualifications

The qualifications and compensation for the State Board members are contained in section 15-2-102. Members “shall possess knowledge of the subject of taxation and skill in matters relating to taxation.” The statute also prohibits a member from holding any other state or government office and requires the member to devote “the entire time to the duties of the office” and “not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the person’s duties.”

Compensation

DOA is tasked with determining the appropriate occupation and pay band for the State Board members as provided in section 15-2-102(3). The Governor then sets the salaries of members within the band established by DOA. The chair of the State Board receives an additional 5% in salary. All the State Board members also receive travel expenses when away from Helena on official business.

Organization and Sessions

Section 15-2-105 requires the State Board to have its office in Helena, and section 15-2-103 provides that the State Board is in continuous session and open every day except Saturday, Sunday, and legal holidays. A majority of the members constitutes a quorum. Section 15-2-103 also allows the State Board to conduct hearings in places other than Helena “when considered necessary to facilitate the performance of its duties or to accommodate the parties in interest.”

Employees

Section 15-2-104 allows the State Board to employ a secretary and other employees necessary to perform its assigned duties. The State Board currently employs two support staff.

Rulemaking

Section 15-2-104 also allows the State Board to adopt rules “for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it.”

County Tax Appeal Boards

For most property taxpayers, the independent appeal procedure begins with a county tax appeal board (county board), which is provided for in section 15-15-101. This is the review procedure at the local

government level as required in Article VIII, section 7, of the Montana Constitution. Each board of county commissioners is required to appoint a county board of at least three members who serve staggered terms of 3 years each. The members must be residents of the county in which they serve.

If a board of county commissioners appoints more than three board members, only three members hear each appeal. The presiding officer chooses which three members hear each appeal.

One of the State Board's duties listed in section 15-2-201 is to prescribe rules for the county boards. The State Board also provides training to members of the county boards.

Budget and Compensation

The State Board budget covers many of the expenses of the county boards, including compensation for members of \$45 per day spent in hearings or in attending meetings called by the State Board and reimbursement for travel expenses. The county is required to provide office space and equipment for its county board.

Session

The session for county boards is July 1 through December 31 as provided in section 15-15-101(2). Each county board is required to hold an organizational meeting on the date of the first hearing, immediately before conducting the business of the hearing. The members choose a presiding officer at the organizational meeting.

Section 15-2-201 allows the State Board to "grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal."

TAX APPEAL BOARD JURISDICTION

The county tax appeal boards hear appeals related to property taxation, except for centrally assessed property appeals. Section 15-15-101(4) allows a county tax appeal board to "change any assessment or fix the assessment at some other level." This includes assessments related to local option taxes on light vehicles or fees in lieu of taxes assessed against a motor vehicle imposed by the Department of Justice as provided in section 15-15-201.

The State Board's powers and duties, included in section 15-2-201, provide an overview of the types of appeals heard by the State Board, which include the following:

- appeals of county board decisions; and
- appeals from DOR decisions regarding business licenses, property assessments, taxes (except determining whether an employer-employee relationship existed), and penalties.

The State Board also has the duties of an appeal board relating to other matters as provided by law, which is discussed later in this briefing.

Section 15-2-302 provides for direct appeal from a DOR decision to the State Board involving:

- property centrally assessed;
- classification of property as new industrial property;
- any other tax, other than property tax, imposed under Title 15; and
- any other matter in which the appeal is provided by law.

The taxes other than the property tax imposed under Title 15 include the individual income tax, the corporate income tax, the coal severance tax, the oil and gas production tax, mining license taxes, the bentonite tax, the public contractor's tax, the electrical energy producer's license tax, the retail telecommunications excise tax, the license tax on producers and importers of gypsum and cement, the lodging facility use tax, the electrical generation tax, and the sales tax on lodging and rental cars.

The "other matters as provided by law" are summarized below:

- the 9-1-1 fee on telephone service provided for in section 10-4-201 is treated as a tax for purposes of appeals to the State Board [10-4-212];
- the certification, classification, and valuation of air and water pollution control equipment. Appeals on the property certification name the Department of Environmental Quality as the respondent, and appeals on classification or valuation name DOR [15-6-135].
- an action taken by DOR to revise an individual income tax return within the 5-year statute of limitations [15-30-2607];
- DOR's decision to revoke a seller's permit, which is required of a person engaging in the business of renting accommodations, campgrounds, or vehicles (such rentals are subject to a sales tax) [15-68-405];
- DOR's decision to recommend that the secretary of state revoke a corporate license if a corporation is required to collect sales tax and fails to comply with the provisions of Title 15, chapter 68, or DOR rules [15-68-805];
- a final order of DOR related to the enforcement of tobacco tax provisions (except the revocation of a license)¹ [16-11-149]; and
- the special assessment on telecommunication services provided for in section 53-19-311 and used to provide telecommunication services for disabled persons is treated as a tax for purposes of appeals to the State Board [53-19-319].

THE APPEAL PROCESS AND TIMELINE

As discussed above, the State Board has authority in three general areas:

- hearing appeals of property tax cases that originate with a county board;
- hearing appeals of DOR final decisions and other taxes as provided by law; and
- acting as an appeal board for "other matters as may be provided by law" as provided in section 15-2-201(3).

¹ An appeal of a DOR decision to revoke a license related to the tobacco tax is appealed directly to district court as provided in section 16-11-144.

The appeal process and timeline is different depending on whether the appeal is a property tax appeal originating with a county board, whether the appeal is for one of the other taxes that can be appealed to the State Board, or whether the State Board is acting as an appeal board.

Property Tax Appeals

Property tax appeals, except for centrally assessed property appeals, are heard by the county board for the county in which the property is located. Section 15-15-101(3) grants a county board the authority to hear protests concerning assessments made by the department. This section also requires the county clerk and recorder to publish a notice upon notification of the county board giving the time the county board will be in session and the latest date on which application may be made to request a hearing. The notice must be published by May 15 in a newspaper if one is printed in the county.

Application Process

Section 15-15-102 addresses the county board application procedure. The taxpayer or the taxpayer's agent must submit a written application requesting a reduction in valuation to the county clerk and recorder. The taxpayer must submit the application on or before the latter of the first Monday in June or 30 days after receiving either a notice of classification and appraisal or a decision from DOR following an informal review provided for in 15-7-102(3).² If the DOR determination is not made in time for a taxpayer to apply for an appeal to the county board during the current tax year, the appeal will be reviewed in the next tax year but the decision is effective for the year in which the taxpayer filed a request for informal review with DOR.

By law, the application for a county board hearing must include the post-office address of the applicant, a description of the property for which review is sought, and the facts supporting the claim for reduction. A standardized application form is used in all the counties. The form includes a space for the county board to enter its decision and the reason for the decision. A taxpayer wishing to appeal the county board decision then uses the same form to apply to the State Board.

Hearing Procedures

Many of the procedures for the county boards are set by the State Board. Section 15-15-103 addresses procedural requirements for county board hearings. This section of law provides that the county board may not reduce the value of property unless a person applies for a county board hearing and the person or the person's agent attends the hearing. The county board may waive the attendance requirement upon written request from the person and concurrence of DOR.

The county board is required to "examine on oath the person or agent making the application with regard to the value of the property of the person." The testimony of all witnesses must be recorded and preserved for 1 year. The minutes of the hearing must also contain the date of the hearing, the proceedings before the county board, and the decision of the county board. The county board must

² The DOR informal review in this case is often referred to as an AB-26 review, named after the form on which a taxpayer requests the informal review.

notify the applicant of its decision by mail within 3 days of signing the decision. In addition, section 15-2-301 requires a county board to mail a copy of its decision to the taxpayer and the property assessment division of DOR.

With two exceptions, a timely application for a reduction in valuation is considered granted the day after the county board's final meeting of the year if the county board refuses or fails to hold a hearing. Exceptions are not automatically granted for appeals listed in section 15-2-302, which provides for direct appeals from a DOR decision to the State Board, and for appeals filed following a final DOR determination that were not received in time to meet the application deadline provided for in section 15-15-102.

Appealing a County Tax Appeal Board Decision

Sections 15-2-301 and 15-15-104 address appeals of county board decisions. Section 15-15-104 provides that, if the appearance provisions of section 15-15-103(1) have been met, the taxpayer or the DOR "on behalf of the state, or any municipal corporation aggrieved by the action of the county tax appeal board" may appeal to the State Board. Section 15-2-301 provides that this appeal must be filed within 30 calendar days after "receipt of the decision of the county board." The State Board must notify the county board of acceptance of the appeal. The appeal may be heard in Helena or the in the county seat. The appellant and the respondent must be given a minimum of 15 days' notice of the time and place of the hearing.

An appeal automatically granted under section 15-15-103(2) because a county board refused or failed to hear a timely filed application may also be appealed to the State Board.

Section 15-15-103 provides that if a decision of the county board is appealed, the record of the proceedings must be forwarded to the State Board. The record includes the electronic recording of testimony and all exhibits. In addition, section 15-2-301 allows the State Board to have the county board "certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with the proceedings."

There is some flexibility in section 15-2-301 as to how the State Board conducts an appeal of a county board decision. The options include the following:

- determining the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn testimony;
- holding a new hearing; or
- referring an appeal to one State Board member or a hearings officer for the purposes of expediting the State Board's work. In this case, the member or hearings officer conducts a hearing and reports the proceedings and a transcript or recording of the hearing to the State Board, which then determines the appeal on the record.

As provided in section 15-2-301, the State Board is “not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.” If the provisions of section 15-2-301 conflict with the Montana Administrative Procedure Act (MAPA), that section supersedes MAPA. In practice, this means that property tax appeals cases are less formal than court proceedings and more accessible to taxpayers who wish to represent themselves.

Section 15-2-301(5) provides that a decision of the State Board is “final and binding upon all interested parties unless reversed or modified by judicial review.” Section 15-2-303 addresses judicial review of State Board decisions. An appeal must be filed in the district court in the county in which the property or a portion of the property is located or in the first judicial district (which includes Helena). A petition for judicial review must be filed within 60 days after service of the final decision of the state tax appeal board. See the next section of this briefing for additional details about judicial review.

Appeals That Originate With the State Tax Appeal Board

This section focuses on appeals that originate with the State Board. Appeals of county board decisions are discussed in the previous section of this briefing, and cases in which the State Board acts as an appeal board are discussed in the next section. Title 15, chapter 2, part 3, addresses the appeal procedure for appeals before the State Board.

Timeline for Filing an Appeal

Section 15-2-302 begins by discussing direct appeals of a DOR decision to the State Board. The section then specifies that an appeal is made to the State Board by filing a complaint within 30 days following the receipt of notice of DOR’s final decision. The complaint “must set forth the grounds for relief and the nature of relief demanded.” The State Board is required to immediately provide DOR with a copy of the complaint. DOR has 30 days to file an answer to the complaint with the State Board.

Standards for Conducting the Appeal

According to section 15-2-302, the State Board is required to conduct appeals that originate with the State Board in accordance with the contested case provisions of MAPA. Those provisions are contained in Title 2, chapter 4, part 6. The contested case provisions to which the State Board is subject in cases of original jurisdiction differ from the procedures for appeals of county board decisions specified in section 15-2-301(4). The contested case provisions can be thought of as guidelines for those who appear before the State Board. The guidelines address admissible types of evidence, testimony, cross examination, what constitutes the record, and how and when final orders must be submitted. In addition, the State Board has issued a document detailing the procedures for attorneys practicing before the State Board.

Interlocutory Adjudication

Section 15-2-305 allows a district court to make an interlocutory adjudication of issues pending before the State Board if the issue “involves procedure, the admissibility of evidence, or a substantive question of law and does not require the determination of a question of fact.” If the petition for interlocutory adjudication is granted, the court must rule on all issues regardless of whether a ruling on all issues is required to dispose of the case. Appeals of the ruling can be appealed as in other civil cases.

The procedure for filing an interlocutory petition is outlined in section 15-2-304. Either party may file a petition within 30 days of the filing of an answer to an appeal before the State Board. The petition can be filed in the first judicial district, in the county in which the taxable property is located, or, for cases not involving property, in the county where the taxpayer resides or primarily conducts business. The nonpetitioning party must respond to the petition within 30 days after service of the petition. If 30 days have passed since the filing of an answer to the appeal but arguments have not yet been heard before the State Board, the parties may jointly petition a district court to make an interlocutory adjudication.

Appealing a State Tax Appeal Board Decision

According to section 2-4-623, a final decision in a contested case must be issued within 90 days unless “for good cause shown, the period is extended for an additional time not to exceed 30 days.”

A party aggrieved by a final decision of the State Board is entitled to judicial review as provided in section 15-2-303. The aggrieved party initiates judicial review by filing a petition within 60 days of the final decision of the State Board in the district court of the first judicial district or the district court in the county in which taxable property is located.

Judicial review of contested cases is provided for in Title 2, chapter 4, part 7, and the standards of review are contained in section 2-4-704. This section specifies that the review is conducted by the court without a jury and must be confined to the record. However, section 15-2-303(5) allows the court “for good cause shown” to permit additional evidence to be introduced. The court may hear oral arguments and receive written briefs upon request.

District court decisions may be appealed to the Montana Supreme Court. Section 3-2-203 provides that the appellate jurisdiction of the Supreme Court “extends to all cases at law and in equity.” Supreme Court Rule of Procedure 4(5)(a) provides that a notice of appeal in which the State of Montana or any political subdivision is a party must be filed within 60 days of the entry of judgment.

State Board as an Appeal Board

Section 15-2-201(3) provides that the State Board may act as an appeal board for “other matters as may be provided by law.” The distinction between acting as an appeal board and the appeals discussed in the previous section is that when the State Board acts as an appeal board, it reviews a case rather than holding a new hearing or collecting additional testimony.

Section 15-70-111 provides for judicial review of a decision of the director of the Department of Transportation related to the gasoline and vehicle fuels taxes. That section allows such a decision to be appealed to the State Board, which may affirm, modify, or reverse the decision based on the record of the Department of Transportation hearing.

An aggrieved party may appeal the State Board decision to district court by filing a petition in the first judicial district, and the district court decision may be appealed to the Supreme Court.

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