

## DRAFT Authority and Statement of Reason

This rule is proposed to Implement SB 133, which delegates to the Montana Tax Appeal Board (MTAB) the duty to assess attorney fees against the Department of Revenue when a taxpayer substantially prevails on the merits of an appeal of the value of class four residential property. Before SB 133, attorneys' fees were only available under Mont. Code Ann. § 15-1-222 when the Department acted frivolously or in bad faith. This process will create a central and uniform procedure for MTAB to assess and order reasonable fees to be paid to the Taxpayer.

### 2.51.404 Assessing attorney's fees when a taxpayer substantially prevails on class four property dispute.

(1) Whenever a decision is issued by this Board where the Department appealed the decision of the County Tax Appeal Board and the Taxpayer substantially prevails on the merits of the appeal of class four property, as provided in 15-2-306, MCA, the Taxpayer is entitled to costs and attorney fees. The Board will determine and assess reasonable costs and attorney fees for each case.

(2) Once the Board has issued its decision on the merits by our order and stated in the decision the Taxpayer has substantially prevailed on their appeal, the following must be submitted in support of the award of costs and attorney fees:

(a) an affidavit setting forth in detail all costs and expenses including attorney fees reasonably incurred for or in connection with the person's participation in the proceedings;

(b) receipts or other evidence of such costs and expenses; and

(c) where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation, and ability of the individual or individuals performing the services.

(3) When the Board has issued its decision and stated the Taxpayer has substantially prevailed in the appeal, supporting documentation for costs and attorney fees must be filed within 30 days of receipt of the decision. Failure to timely submit supporting documentation may constitute a waiver of the right to such an award.

(4) Any documents submitted in support of cost and attorney fees must also be submitted to the Department. The Department shall have 21 days from service of the supporting documents within which to file an answer.

(5) upon a showing of compelling circumstances by either party or by a motion of the Board, a hearing may be ordered to determine reasonable costs and attorney fees:

(a) Hearings may be conducted in person or upon agreement of the parties hearing may be conducted by telephone or video conference unless the rights of any party may unfairly prejudice the rights of any parties;

(b) notice and the time and place for a hearing shall be given to the parties, or their representatives on file, not less than 14 days prior to the day fixed for such proceedings;

(c) A party may request a continuance of a hearing. The party seeking a continuation shall indicate whether the request is opposed. If the request for continuance is contested, the requesting party shall provide the basis for the request; and

(d) Testimony at hearings shall be given under oath.

(6) When the Department appeals a County Tax Appeal Board decision and the Taxpayer substantially prevails on the appeal, the Board's final decision will be the determination of costs and attorney fees order. If no final

order for cost and attorney fees is issued, the Board's decision is the final order once the right to collect cost and attorney fees has been waived under this section.

History: Sec 15-2-201, 15-2-306, MCA; IMP, 15-2-201, MCA

The parties right of appeal of the Boards final decision under 15-2-303(2), MCA, does not start until cost and attorney fees have been ordered by the Board or the right has been waived under this section.