

Summary of Comments on Taxpayer Appeal Process
For the Senate Joint Resolution No. 23 Study

Prepared for the Revenue and Transportation Interim Committee
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At its December 2013 meeting, the Revenue and Transportation Interim Committee invited interested parties to provide public comment on the taxpayer appeal process as part of the Senate Joint Resolution No. 23 (SJR 23) study.

Before the December meeting, committee staff sent a message to the committee's e-mail list inviting public comment on nonproperty tax appeals and on property tax appeals for properties other than those centrally assessed. In addition, staff made phone calls to representatives of groups identified as potentially having an interest in the study to notify them of the opportunity to comment. This document summarizes the comments received to assist the committee in focusing its efforts.

Nine interested parties commented on the SJR 23 study at the December meeting:

- Karen Powell, Chair of the State Tax Appeal Board;
- Dwaine Iverson, a certified public accountant from Shelby;
- Dave Galt, executive director of the Montana Petroleum Association;
- Wiley Barker, attorney at Crowley Fleck;
- Kevin Nelson of Billings;
- Joe Roberts with the Montana Association of Realtors;
- Dan Whyte, deputy chief legal counsel for the Department of Revenue;
- Bob Story, president, Montana Taxpayers Association; and
- Bob Vogel with the Montana School Boards Association.

There were also three written comments from:

- Ron Clark of Lakeside;
- John Myers, a certified public accountant with Houston, Helseth & Myers; and
- Beth McLaughlin, the court administrator of the Montana Supreme Court.

Income Tax Appeal Comments

John Myers was the only interested party who provided comments on nonproperty tax appeals, and his written comments focused on his experience with income tax appeals as a certified public accountant. Many of Mr. Myers' comments addressed the internal audit and appeal procedures at the Department of Revenue rather than the independent appeal procedure that is the focus of the SJR 23 study. Mr. Myers did write about an "insensitivity of the [State Tax

Appeal] Board to my client's appeal rights."

Mr. Myers made the following two recommendations related to the independent appeal procedure:

- CPAs should be authorized to practice before the State Tax Appeal Board because the costs of hiring an attorney have a chilling effect on appeals.
- State Tax Appeal Board members should have tax experience and be attorneys or CPAs.

Property Tax Appeal Comments (Excluding Centrally Assessed Property)

All of the interested parties appearing at the RTIC meeting and two of the written comments focused on property tax appeals. The comments and recommendations are grouped below into subject areas.

Initiating an Appeal

Both Wiley Barker, an attorney from the Crowley Fleck law firm, and Kevin Nelson from Billings commented on the timeline for filing an appeal with the county tax appeal board. Section 15-15-102, MCA, 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 DOR determination after an assessment review. Mr. Barker and Mr. Nelson 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.

Bob Story, president of the Montana Taxpayers Association, also commented on the appeal timeline and how local government budgeting necessitates appeals before receipt of the November tax bill. Mr. Story suggested that assessment notices include a provision informing taxpayers of the appeal deadline.

A February agenda item focuses on reviewing an assessment notice and a property tax bill to help the committee consider these recommendations.

County Tax Appeal Board

Dwaine Iverson from Shelby indicated that, in his experience with appeals of commercial property assessments, the county tax appeal board only reduced an assessment by half of the amount by which the assessment should have been reduced because then the Department of Revenue will not appeal the case to the State Tax Appeal Board. He suggested the county tax appeal board reduce appealed assessments by the full amount.

Dave Galt of the Montana Petroleum Association discussed his belief that the county tax appeal board is the forum for a taxpayer to appeal the property valuation and that he does not believe the Department of Revenue should appeal county board decisions.

Joe Roberts, representing the Montana Association of Realtors, commented that the local

review is a critical part of the process, especially for residential and commercial property taxpayers. He believes the appeals data show that many issues are resolved at the local level and asked the committee to respect the local process as changes are contemplated.

Length of Appeals

A common theme among those who commented was the notion that appeals can be a drawn-out, lengthy process, and there were a number of ideas for addressing this concern.

Karen Powell, chair of the State Tax Appeal Board, suggested that industrial property cases could be appealed directly to the State Board, skipping the county tax appeal board step. Industrial property cases are often complex and involve large dollar amounts, and many county tax appeal board decisions on industrial property appeals are further appealed to the State Board.

Others had different ideas about shortening the process; removing a step in the process was a common suggestion:

- Dave Galt suggested that the taxpayer should have the option of appealing directly to District Court and not have to first appeal to the State Board.
- Wiley Barker discussed his belief that the county tax appeal board is a good option for residential taxpayers and pointed out that it is constitutionally required. Mr. Barker, however, suggested that taxpayers with property in multiple counties (but whose property is not centrally assessed) should have the option of appealing directly to the State Tax Appeal Board because appealing in each county is cost prohibitive.
- Dan Whyte with the Department of Revenue addressed Mr. Barker's comments by suggesting that if taxpayers with property in multiple counties and the Department of Revenue agree, the appeal should be heard first by the State Tax Appeal Board. Mr. Whyte also seemed amenable to consolidating the State Tax Appeal Board and District Court step and mentioned the Workers' Compensation Court as a model. (The February agenda includes additional information about the Workers' Compensation Court.)
- Bob Story suggested that the taxpayer have the option of bypassing the county tax appeal board because it should not matter to the Department of Revenue where the appeal starts.

District Court Workload

State Tax Appeal Board Chair Powell pointed out that a factor contributing to the length of appeals is the District Court step, which usually takes about 2 years. She cited the priorities that District Court judges must follow in balancing their workload.

Beth McLaughlin, court administrator for the Supreme Court of Montana, also discussed court workload in her written comments. Ms. McLaughlin explained that tax appeal cases account for a "tiny fraction" of District Court cases and advised against an alternate process mentioned in the SJR 23 study resolution: implementing a rotating district judge to handle direct appeals

from centrally assessed and large industrial facility properties. Ms. McLaughlin mentioned the constitutional and statutory mandates of District Courts. The following cases have priority over any other case type, including tax appeals: criminal, juvenile, involuntary commitments, child abuse and neglect, and family law cases involving children. She concludes, "Placing the burden of a complicated civil case type on one judge does not take away the judge's caseload, it merely means the judge is juggling even more work that should be evenly spread across the state. It could result in delay not only in tax appeal cases but in other cases."

State Tax Appeal Board Member Qualifications

A number of interested parties commented on the qualifications required of State Tax Appeal Board members, which are currently "possess[ion of] knowledge of the subject of taxation and skill in matters relating to taxation."

Chair Powell commented that, if the Legislature chooses to allow direct appeal of State Tax Appeal Board cases to the Supreme Court, some or all State Tax Appeal Board members should have the same qualifications as a District Court judge to protect the due process rights of the parties.

Dave Galt suggested that at least one State Tax Appeal Board member should be a certified member of the International Association of Assessing Officers, the American Society of Appraisers, or the Appraisal Institute. Mr. Galt also suggested having a seat for a member with experience appraising refining properties.

Bob Story suggested that more formal qualifications might reduce appeals of State Board decisions as the taxpayer may feel less of a need to appeal further. He also commented that the State Tax Appeal Board needs appropriate staff and funding to operate properly.

If the committee is interested in exploring qualifications for State Tax Appeal Board members, the committee could request additional information on the qualifications required of tax tribunal members in other states and/or consider the qualifications of previous State Tax Appeal Board members.

Other

The following comments do not fall in a category with other comments and are grouped by the person making the comment.

Dave Galt of the Montana Petroleum Association additionally suggested:

- that the Revenue and Transportation Interim Committee retain an impartial, outside party with expertise in refining to advise the committee;
- that, if a county tax appeal board decision is appealed, a third-party appraiser should be retained to present an appraisal to the State Tax Appeal Board and the cost of the appraiser should be paid by the appellant;

- that the committee consider requiring that industrial properties be valued by a third party with experience in valuing large industrial refining properties; and
- strengthening attorney fee provisions because current law allows awarding attorney fees only in the case of bad faith or frivolous action.

Wiley Barker suggested there should be a limit on how long the Department of Revenue has to consider an informal appeal. He mentioned that the Department's Office of Dispute Resolution operates under a 180-day time limit (the parties can agree to extend it) and that might be appropriate.

Kevin Nelson suggested that taxpayers should be able to appeal their property taxes, not just their property value.

Dan Whyte asked the committee to consider narrowing the study to problematic appeals such as those for centrally assessed and larger industrial and commercial properties. He also suggested the statute be made clearer on what constitutes the record at the county tax appeal board and at the State Tax Appeal Board, specifically relating to whether new evidence may be introduced at the State Tax Appeal Board.

Bob Vogel with the Montana School Boards Association discussed how protested taxes affect school districts. Appeals resolved after November do not allow for rebalancing of the school board budget, and the district has to decide whether to access protested taxes. Mr. Vogel suggested the state has a role and could create a trust fund that allows a local government to access funds needed to fill its budget when taxes are protested. Once an appeal is resolved, the funds would flow back to the trust fund rather than the local government. The February agenda includes a discussion of protested taxes.

Ron Clark of Lakeside wrote that "the tax appeal board process is a total farce and an absolute waste of a taxpayer's time." He also expressed concern that many taxpayers cannot afford the expense of an attorney and appear without counsel before the State Tax Appeal Board.

Next Steps

The February meeting includes an agenda item to receive input on centrally assessed property tax appeals. Staff will compile comments from that agenda item and provide a verbal summary to the committee during the scheduled work session for the SJR 23 study. Together with the verbal summary of comments related to centrally assessed taxpayers, this summary is aimed at helping the committee identify topics about which the committee would like to request additional research or presentations for the May meeting.

One of the ideas the committee is asked to consider in the SJR 23 study resolution is the idea of implementing a tax court system. So far, interested parties have not suggested the committee move in that direction.

The May meeting will include an agenda item devoted to exploring the implementation of Senate Bill No. 280, which provided for mediation of valuation disputes. In addition, staff will provide a decision tool in May to assist the committee in deciding what action, if any, to take regarding the study.

At or before the July meeting, the committee should develop findings and/or recommendations for the final report and request any desired draft legislation. This will allow staff to draft any requested legislation for the September meeting, at which time the committee can receive input from stakeholders and the public and decide whether to formally request legislation.

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