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## Montana's Tax Appeals Process: A Guide through the Maze

David W. Woodgerd

*Chief Legal Counsel for the Department of Revenue*

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# MONTANA'S TAX APPEALS PROCESS: A GUIDE THROUGH THE MAZE

David W. Woodgerd\*

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## I. INTRODUCTION

The vast majority of Montana attorneys have not formally studied state and local taxation. Although this article is no substitute for such studies, it provides a general understanding of the state tax appeals process. It also points out some basic problems with the current system.

The Department of Revenue ("Department") exercises general supervision over state taxes.<sup>1</sup> It has authority to adopt administra-

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\* Chief Legal Counsel, Montana Department of Revenue, Helena, Montana; B.A., University of Montana, 1974; J.D., University of Montana School of Law, 1977. All views expressed herein are solely the author's and not necessarily those of the Montana Department of Revenue or the State of Montana.

1. MONT. CODE ANN. § 2-15-1301 (1971) created the Department of Revenue. 1971 Mont. Laws 272. In 1973, the Department took over the administrative functions of the defunct State Board of Equalization. 1973 Mont. Laws 405. The Department's State Tax Appeal Board received the appellate powers of the former board. See Department of Revenue, *Annual Report to the Legislature*, Mont. 202, 209, 548-51 (1976).

tive rules for the regulation and enforcement of tax laws.<sup>2</sup> The Department is organized into divisions, bureaus, and sections generally corresponding to the taxes administered.<sup>3</sup>

Frequently in a tax controversy, the administrative aspects of a case overshadow the substantive legal issues. The taxpayer's failure to follow the administrative process may result in a procedural loss. No one method of assessment and appeals applies to all taxes; each separate tax has its unique procedures. This is part of the problem faced by taxpayers and attorneys in this area of law. The State Tax Appeal Board ("STAB"), however, which receives special treatment at the end of the article, functions in much the same way regardless of the tax assessment appealed.<sup>4</sup> The following pages examine general assessment and appeals methods used for the most important state taxes. Finally, this article outlines alternatives to the administrative procedures.

## II. TAX ASSESSMENT AND ADMINISTRATIVE PROCEDURE

Although the Department follows different assessment and administrative procedural patterns for each major tax, many similarities exist in these patterns. As the state's Individual Income Tax and Corporate License Tax<sup>5</sup> are two of the more common taxes, they provide a useful illustration of different departmental procedures.

### A. Overview of Income Taxes

Montana's Individual Income Tax parallels the federal personal income tax in most respects. The differences between the two, however, require a careful reading of Montana's statutes and

2. MONT. CODE ANN. § 15-1-201 (1989).

3. MONT. CODE ANN. § 2-15-1301 (1989). An organization chart for the Department and each division appears in the ADMINISTRATIVE RULES OF MONTANA under the Department's "organizational rule." ADMIN. R. MONT. § 42.1.101 (1988). For example, the Property Assessment Division administers the property tax; the Natural Resource and Corporation License Tax Division administers the corporate license tax and the various taxes on natural resources; the Income and Miscellaneous Tax Division administers the individual income tax; and the Motor Fuels Tax Division administers the gasoline and diesel taxes. Although the organizational rule sometimes becomes out of date because of publishing delays, it should be consulted regularly.

4. Procedurally, all appeals can advance beyond the Department into the judicial system. However, full treatment of judicial remedies is beyond the scope of this article. See *infra* notes 76-81 and accompanying text for an overview of judicial review, and *infra* notes 82-98 and accompanying text for an overview of alternatives to administrative procedures.

5. As a practical matter the corporate tax is an income tax. See *infra* notes 27-31 and

administrative rules.<sup>6</sup> Major differences include income exemptions and a few minor deductions. Although the Department depends heavily on Internal Revenue Service ("IRS") tax return audits, it also has auditors on staff.<sup>7</sup> To administer the state personal income tax, the Department divides the Income Tax Division into two bureaus, the Examining Bureau<sup>8</sup> and the Administrative Services Bureau.<sup>9</sup>

Montana provides for two different corporate income taxes. One directly taxes a corporation's income,<sup>10</sup> and the other is a license fee determined by the corporation's income.<sup>11</sup> The Department rarely levies the income tax, for it applies only to cases in which taxation of the privilege of engaging in business is unconstitutional.<sup>12</sup> Because the license tax, like the direct tax, reflects a corporation's income, however, the Department procedurally treats both the corporate income tax and the corporate license tax as income taxes.<sup>13</sup> The Corporate Tax Bureau of the Natural Resource

6. The state law uses the federal definition of gross income. MONT. CODE ANN. § 15-30-101(7) (1989). It also uses federal adjusted gross income as a starting point for state adjusted gross income. MONT. CODE ANN. § 15-30-111(1) (1989).

7. The Department, like other states' revenue departments, has an agreement with the IRS to share information, including confidential information. MONT. CODE ANN. § 15-30-303(6) (1989). Based upon the experiences of the author and his communications with Division personnel, the Department receives Internal Revenue Agent Reports and other information from the IRS concerning Montana taxpayers.

8. The Examining Bureau consists of the following: the Income Tax Office Examining Section, the Income Tax Field Examining Section, the Withholding Office Examining Section, the Withholding Field Examining and Policy Section, and the Tax Compliance Section. ADMIN. R. MONT. § 42.1.101(5) (1988). However, based upon the personal knowledge of the author, the Division is being reorganized to move the Tax Compliance Section to the Administrative Services Bureau and to create an Inheritance Tax Section in the Examining Bureau.

9. The Administrative Services Bureau consists of the following: the Control and Data Section, the Records Section, and the Collection Section. ADMIN. R. MONT. § 42.1.101(5) (1988).

10. MONT. CODE ANN. § 15-31-401(1) (1989).

11. MONT. CODE ANN. § 15-31-101 to -143 (1989). For further explanation of the significance of this distinction, see *Schwinden v. Burlington N., Inc.*, 213 Mont. 382, 691 P.2d 1351 (1984).

12. Those instances are now very rare in light of the United States Supreme Court's liberalization of the standards that apply to taxation of interstate commerce. See *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1976).

13. In the corporate area many changes have occurred, mainly a result of the federal judiciary's view on taxation of interstate commerce by states. See Note, *An Evolving Definition of Business Income*, 39 MONT. L. REV. 313 (1978) (authored by Richard Baskett); *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959).

The definitions of corporate gross and net income follow the INTERNAL REVENUE CODE definitions. MONT. CODE ANN. § 15-31-113 (1989). See also *Lazy JD Cattle Co. v. State Bd. of Equalization*, 161 Mont. 40, 504 P.2d 287 (1972). The practitioner should read the statutes and ADMINISTRATIVE RULES OF MONTANA carefully to understand these definitions. Further, the practitioner should consult the Annotations to MONTANA CODE ANNOTATED for the

and Corporation License Tax Division of the Department administers and audits all corporate taxes.<sup>14</sup>

## B. Audits and Protests

### 1. Personal Income Taxes

Procedurally, a Montana Department of Revenue audit is similar to a federal audit. The Department may conduct either a field or an office audit. An office audit is simply a review of the tax return without examination of all underlying records and verification of all information. In the office audit, the Department may request the taxpayer to provide additional information or records for the tax year in question. In the field audit, Department personnel conduct an actual on-site examination or audit of the taxpayer's records. If the Department then determines an individual or corporate taxpayer owes additional income taxes, it sends the taxpayer<sup>15</sup> a notice of adjustment or assessment indicating an additional liability.

The individual taxpayer who disputes the additional tax liability must request the Department to reconsider its assessments within sixty days of the notice of adjustment or assessment.<sup>16</sup> If the taxpayer makes such a request, then the Department must reconsider its assessments. Upon Department reconsideration, the taxpayer has the opportunity to present a case at an informal con-

judicial interpretation of corporate gross income and net income. The Montana Supreme Court held that the incorporation by reference of the INTERNAL REVENUE CODE in MONT. CODE ANN. § 15-31-113(3) (1989) means that all deductions allowed by the INTERNAL REVENUE CODE are allowed in computing net income for purposes of the Montana tax unless specifically prohibited. *Baker Bancorporation, Inc. v. Department of Revenue*, 202 Mont. 94, 657 P.2d 89 (1982).

For corporations operating both inside and outside the state, the income taxable by Montana is determined by allocation and apportionment under MONT. CODE ANN. §§ 15-31-301 to -326 (1989). These sections determine the income earned in Montana. Although sometimes mistakenly referred to as the "unitary tax," the statutes are actually a formula to divide a corporation's taxable income equitably among states where it operates. If the corporation is engaged in a unitary business within and without the state, net income is apportioned based upon a three-factor formula. MONT. CODE ANN. § 15-31-301 (1989).

14. The Department has a large audit staff for the Corporation License Tax. Montana also is a member of the Multistate Tax Commission, which conducts audits of large corporations to determine whether they are properly splitting their income among the states.

15. In the case of a corporation, the notification is a preliminary decision that additional taxes are owed. MONT. CODE ANN. § 15-31-503 (1989).

16. ADMIN. R. MONT. § 42.16.102 (1988). Note, however, that a contradiction appears in the Administrative Rules. ADMIN. R. MONT. § 42.16.111(1) (1988) provides, "Taxpayers may request reconsideration of income tax and withholding assessments made by the department. The request should be made within 30 days after the notice of adjustment is mailed to the taxpayer." However, the Department in practice only applies the 30-day deadline to withholding assessments.

ference.<sup>17</sup> After the informal conference, the Department's representative notifies the taxpayer of the Department's decision.<sup>18</sup> If the taxpayer disagrees with the Department's decision, the taxpayer has thirty days to request a formal hearing.<sup>19</sup> This request must be in writing and clearly set forth the factual and legal basis for the assessment challenge.<sup>20</sup>

When a taxpayer requests a formal hearing, the Department appoints a hearings examiner to hear the evidence.<sup>21</sup> If no factual dispute exists, the taxpayer may waive oral argument and submit the case on briefs.<sup>22</sup> After the hearing, the examiner issues a proposed decision.<sup>23</sup> Exceptions to the proposed decision may be filed with the Director. After reviewing the proposed decision and any exceptions, and listening to oral argument (if requested), the Director issues a final decision.<sup>24</sup> The Department then notifies the taxpayer of the final decision, and of the taxpayer's right to a hearing before STAB.<sup>25</sup> The taxpayer must file an appeal with STAB within thirty days of service of the Department's decision.<sup>26</sup>

## 2. *Corporate Income Taxes*

When a Department audit concludes that a corporation owes additional taxes, the Department sends written notification to the corporation of a preliminary decision that additional taxes are due.<sup>27</sup> This notice also explains why the Department believes the corporation owes additional taxes. The notice letter gives the taxpayer a specified time to file a protest and to request an informal

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17. The taxpayer may make a written waiver of the informal conference and allow the Department to issue its decision. Receipt of the Department's decision then allows the taxpayer to proceed to the formal appeal. ADMIN. R. MONT. § 42.16.111(1) (1988). Neither the MONTANA RULES OF EVIDENCE nor the MONTANA ADMINISTRATIVE PROCEDURE ACT applies to the informal conference. *W. R. Grace & Co. v. Department of Revenue*, 173 Mont. 339, 567 P.2d 913 (1977).

18. ADMIN. R. MONT. § 42.16.111(2) (1988).

19. ADMIN. R. MONT. § 42.16.111(3) (1988).

20. ADMIN. R. MONT. § 42.16.114(1) (1988).

21. ADMIN. R. MONT. § 42.16.116(1) (1988). Based upon the author's personal knowledge of the Department's policy, the Director may hear the evidence, but historically has appointed a Hearings Examiner. In addition, the formal hearing may be waived with the mutual consent of the taxpayer and the Department. The taxpayer then may proceed directly to STAB.

22. ADMIN. R. MONT. § 42.16.118 (1988).

23. ADMIN. R. MONT. § 42.16.119 (1988).

24. MONT. CODE ANN. § 2-4-621 (1989).

25. MONT. CODE ANN. § 2-4-623(5) (1989). This information also is based upon the personal knowledge of the author.

26. MONT. CODE ANN. § 15-2-302(2) (1989).

27. MONT. CODE ANN. § 15-31-503 (1989).

conference concerning the audit.<sup>28</sup> The Division Administrator or his designee will hear these protests.

During the conference, the corporation can allege audit errors and present any additional facts and arguments. Neither the Montana Rules of Evidence nor the Montana Administrative Procedure Act applies to this informal conference.<sup>29</sup> After consideration of the facts and arguments presented at the informal conference, the Division will issue a final decision.<sup>30</sup> The taxpayer then has thirty days within which to appeal this final decision to STAB.<sup>31</sup>

### C. Property Taxes<sup>32</sup>

Like property taxes in other states,<sup>33</sup> the current property taxes<sup>34</sup> raise more revenue in Montana than any other source.<sup>35</sup> The property tax represents the largest revenue source for local government and schools. Although the collection of property tax takes place at the local level, the state is responsible for appraising, assessing and equalizing all property subject to tax.<sup>36</sup>

28. MONT. CODE ANN. § 15-31-503(1) (1989).

29. *W. R. Grace & Co. v. Department of Revenue*, 173 Mont. 339, 343, 567 P.2d 913, 916 (1977). See *supra* note 17.

30. MONT. CODE ANN. § 15-31-503 (1989).

31. MONT. CODE ANN. § 15-2-302 (1989).

32. The statutes concerning the property tax are found in MONT. CODE ANN. §§ 15-6-101 to 15-24-1902 (1989). The administrative rules are found in the ADMIN. R. MONT. §§ 42.18.101 to 42.21.1104 (1988).

33. See J. HELLERSTEIN, *STATE TAXATION, CORPORATE INCOME AND FRANCHISE TAXES* 13 (1983).

34. Included in this discussion as property taxes are the Mineral Proceeds Taxes. MONT. CODE ANN. §§ 15-23-501 to -807 (1989). However, other natural resource taxes such as the Severance Taxes are not discussed in detail in this article.

The Natural Resource and Corporation License Tax Division regulates the natural resource taxes. These taxes include the Coal Severance Tax (MONT. CODE ANN. §§ 15-35-101 to -205 (1989)), the Oil and Gas Severance Tax (MONT. CODE ANN. §§ 15-36-101 to -122 (1989)), Mining License Taxes (MONT. CODE ANN. §§ 15-37-101 to -221 (1989)), the Resource Indemnity Trust Tax (MONT. CODE ANN. §§ 15-38-101 to -203 (1989)), the Electric Energy Producers' License Tax (MONT. CODE ANN. §§ 15-51-101 to -114 (1989)), the Coal Retailers' License Tax (MONT. CODE ANN. §§ 15-58-101 to -126 (1989)), and Cement Taxes (MONT. CODE ANN. §§ 15-59-101 to -221 (1989)).

The proceeds taxes include the Mines Net Proceeds Tax (MONT. CODE ANN. §§ 15-23-501 to -523 (1989)), the Oil and Gas Net Proceeds Tax (MONT. CODE ANN. §§ 15-23-601 to -631 (1989)), the Coal Gross Proceeds Tax (MONT. CODE ANN. §§ 15-23-701 to -704 (1989)), and the Metal Mines Gross Proceeds Tax (MONT. CODE ANN. §§ 15-23-801 to -807 (1989)).

35. Nationally, the property tax produces more revenue than any other tax levied except the federal income tax. See J. HELLERSTEIN, *supra* note 33, at 13.

36. MONT. CONST. art. VIII, § 3.

## 1. Administration

County appraisers determine valuation for most properties.<sup>37</sup> However, the Department's Helena staff appraises "centrally assessed" properties such as railroads and utilities,<sup>38</sup> as well as large industrial properties around the state. The Department certifies the values of the centrally assessed and industrial properties and forwards them to the county assessor<sup>39</sup> for the county in which the property is located.<sup>40</sup> After valuation, a mill levy<sup>41</sup> is applied to the property value. The county treasurer then notifies each taxpayer of the total property-tax liability.

## 2. Protests

If a taxpayer disputes<sup>42</sup> a property valuation, the taxpayer must file an application with the local County Tax Appeal Board<sup>43</sup> to request a reduction in the valuation of property.<sup>44</sup> The taxpayer must file the valuation appeal before the first Monday in June or fifteen days after receiving notice of classification and appraisal, whichever is later.<sup>45</sup> In the meantime, the taxpayer must pay the

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37. Based upon the author's personal knowledge, county appraisers determine the market value of real property (except centrally assessed and industrial property as explained *infra*, note 38 and accompanying text) in the taxing jurisdiction and present the taxable value to the county assessor.

38. Centrally assessed properties include the "operating property" of railroads, and "single and continuous property operated in more than one county" such as: public utilities, pipelines, telephone lines, and "all property of scheduled airlines." MONT. CODE ANN. § 15-23-101 (1989). See also *Department of Revenue v. Soo Lines, Inc.*, 172 Mont. 1, 6, 560 P.2d 512, 514 (1977).

39. The county assessor thus receives the values of real property from the county appraiser and the Department appraiser. The assessor then determines the total taxable value for the jurisdiction and certifies this value to the county commissioners. See generally MONT. CODE ANN. §§ 15-8-101 to -710 (1989).

40. In determining a value for centrally assessed property located in more than one county, the Department appraiser considers the property as one unit and values it as a single entity. Once a unit value is determined, the Department apportions the value to the various counties. MONT. CODE ANN. § 15-23-105 (1989). See also *Yellowstone Pipe Line Co. v. State Bd. of Equalization*, 138 Mont. 603, 358 P.2d 55 (1960). See generally MONT. CODE ANN. §§ 15-23-101 to -807 (1989) for an explanation of assessing centrally assessed property.

41. A mill levy is the number of mills (one mill equals 1/10 cent) that the county or other taxing unit applies to the total taxable value of that unit. MONT. CODE ANN. §§ 15-10-201; 7-6-2321; and 7-6-4232 (1989). The total millage is a combination of mill levies for all taxing units, including counties, cities, school districts, fire districts, etc.

42. The Department may revise a property-value assessment. MONT. CODE ANN. § 15-8-601 (1989). This section provides for an informal conference and appeal to the County Tax Appeal Board (unless the property is centrally assessed).

43. MONT. CODE ANN. § 15-1-402 (1989). The taxpayer appeals centrally assessed property valuations directly to the State Tax Appeal Board. MONT. CODE ANN. § 15-2-302 (1989).

44. MONT. CODE ANN. § 15-15-102 (1989).

45. *Id.* The taxpayer must file centrally assessed property appeals within 30 days of



tax when due "under protest."<sup>46</sup> The Department and counties strictly enforce these requirements.

The Montana Supreme Court has established clear guidelines for County Tax Appeal Boards to examine the merits of a property tax-valuation appeal:

In order to obtain relief upon the ground that his [or her] property is assessed inequitably, it is essential that the taxpayer prove (1) that there are several other properties within a reasonable area similar and comparable to [the taxpayer's]; (2) the amount of the assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his [or her] property; (5) the assessment complained of; (6) that by comparison his [or her] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations.<sup>47</sup>

To prevail in a valuation contest, the taxpayer must produce this evidence<sup>48</sup> before the County Tax Appeal Board.

Both the taxpayer and a Department representative, usually the appraiser who originally valued the property,<sup>49</sup> appear at the County Tax Appeal Board hearing. In fact, the County Tax Appeal Board cannot grant any value reduction unless the property owner or an agent of the taxpayer appears before the board to answer questions.<sup>50</sup>

notification by the Department. MONT. CODE ANN. § 15-2-302 (1989).

46. MONT. CODE ANN. § 15-1-402 (1989). Payment "under protest" results in the county's holding the disputed tax in a protest fund. The various taxing jurisdictions may not use these taxes, except under certain conditions.

47. Department of Revenue v. State Tax Appeal Bd., 188 Mont. 244, 250, 613 P.2d 691, 694-95 (1980) (quoting Maxwell v. Shivers, 257 Iowa 575, 579-580, 133 N.W.2d 709, 711 (1965)). See also Northwest Land and Dev. of Montana, Inc. v. State Tax Appeal Bd., 203 Mont. 313, 661 P.2d 44 (1983).

48. The Montana Supreme Court has indicated that realty transfer certificates (MONT. CODE ANN. §§ 15-7-301 to -311 (1989)), even though they are statutorily confidential (MONT. CODE ANN. § 15-7-308 (1989)), should be available to taxpayers appealing an assessment. DeVoe v. Department of Revenue, 233 Mont. 190, 197, 759 P.2d 991, 995 (1988); O'Neill v. Department of Revenue, 227 Mont. 226, 234, 739 P.2d 456, 461 (1987). However, the court will close any hearings and seal all written evidence on this material to maintain the confidentiality of these documents. O'Neill, 227 Mont. at 234-35, 739 P.2d at 461.

49. Based upon the author's personal knowledge of the Department's policy, legal counsel normally does not represent the Department at either the county board or State Tax Appeal Board unless the case raises a significant legal issue.

50. MONT. CODE ANN. § 15-15-103(1) (1989).

III. APPEALS<sup>51</sup>

## A. County Tax Appeal Boards

The Montana Constitution requires the legislature to provide an independent appeals procedure for taxpayer grievances.<sup>52</sup> Each county must establish a County Tax Appeal Board consisting of three county residents<sup>53</sup> to hear tax protests by county property owners involving only locally assessed taxes.<sup>54</sup> The county commissioners appoint the members of the County Tax Appeal Board to serve three-year terms.<sup>55</sup> The members serve part-time, receiving a daily salary and expenses for each day they meet. Each board must meet on the third Monday of April and any other time needed to hear appeals.<sup>56</sup> The boards have sixty days after the Department mails notices of appeals to dispose of all timely filed protests.

The taxpayer may appeal final decisions of the county board to the State Tax Appeal Board.<sup>57</sup> As well as adjudicating appeals

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51. Although Montana imposes many other taxes, the appeals process for some of them are poorly defined. For example, the Lodging Facilities Use Tax contains no specific appeals provisions, while the Dangerous Drug Tax Act references the Telephone License Tax appeals procedure. MONT. CODE ANN. § 15-25-113 (1989); ADMIN. R. MONT. §§ 42.34.101 to .111 (1988).

The Telephone Company License Tax (MONT. CODE ANN. § 15-53-105 (1989)) provides for an informal conference and a 30-day period in which to file a protest and request an oral hearing. The Department must hold the informal conference and then issue a final decision, appealable to the State Tax Appeal Board.

Both the Public Contractors License Tax (MONT. CODE ANN. § 15-2-302 (1989); ADMIN. R. MONT. §§ 42.15.503 and 42.31.2101 to .2143 (1988)) and the Freight Line Company License Tax (MONT. CODE ANN. § 15-55-106 (1989); ADMIN. R. MONT. §§ 42.2.501 and 42.3.101 to .114 (1988)) are vague about how to appeal. However, it is clear that in each case the taxpayer has a right to appeal to the State Tax Appeal Board any final decision of the Department concerning additional taxes.

The Store Licenses Tax does not have any specific provisions involving appeals. Clearly, however, a right to appeal to the State Tax Appeal Board exists. MONT. CODE ANN. § 15-2-302 (1989). Whether a right to a contested case hearing before the Department exists is an unanswered question.

Although Montana law does not specifically require the Department to hold an informal hearing in every case, the Department will consider the taxpayer's request.

52. MONT. CONST. art. VIII, § 7. This grievance appeals procedure must exist at both state and local levels. *Id.*

53. MONT. CODE ANN. § 15-15-101 (1989). Subsection (1) of this statute sets the compensation of the members, as well as the terms of office and other matters. Subsections (2) and (3) describe members' duties. *Id.*

54. 41 Op. Att'y Gen. 31 (1985). The County Board may revise the departmentally issued assessment for property taxes, the county assessors' assessment. If an assessment challenge also questions a Department rule, the resulting decision will not apply to similarly situated taxpayers unless an action is brought in district court. MONT. CODE ANN. § 15-15-101(4) (1989).

55. MONT. CODE ANN. § 15-15-101(1) (1989).

56. MONT. CODE ANN. § 15-15-101(2) (1989).

57. MONT. CODE ANN. § 15-15-104 (1989).

of locally assessed property tax protests, STAB hears appeals of the Department's final decisions concerning income-tax adjustments,<sup>58</sup> as well as other Montana state taxes, except inheritance taxes.<sup>59</sup>

### B. The State Tax Appeal Board

STAB consists of three full-time members<sup>60</sup> who serve six-year terms.<sup>61</sup> The governor appoints the members, who then are confirmed by the Montana State Senate.<sup>62</sup> They have staggered terms, with one member designated by the governor serving as chairperson. STAB is attached administratively to the Department of Administration, but it is independent of executive-branch control.<sup>63</sup> STAB frequently hears appeals at its offices in Helena, but it also holds hearings throughout the state.<sup>64</sup>

To govern procedure, STAB has adopted the Montana Attorney General's Model Rules,<sup>65</sup> which incorporate most civil procedure discovery rules.<sup>66</sup> The Montana Administrative Procedure Act applies to STAB reviews of Department decisions as well.<sup>67</sup> However, when reviewing a county-board decision, STAB is bound neither by the rules of evidence nor by the Montana Administrative Procedure Act.<sup>68</sup> Thus, STAB not only may examine prior hearing records, but it also may receive additional testimony and sworn statements.<sup>69</sup> All STAB reviews are thus *de novo*.<sup>70</sup> While STAB may affirm, reverse, or modify County Tax Appeal Board decisions, it is without power to remand the case to either the

58. MONT. CODE ANN. § 15-2-302 (1989).

59. MONT. CODE ANN. §§ 15-2-201 and 72-16-403 (1989).

60. Members may not hold any other position that conflicts with their duties. MONT. CODE ANN. § 15-2-102(1) (1989). The same statute sets members' annual salaries. MONT. CODE ANN. § 15-2-102(2) (1989).

61. MONT. CODE ANN. § 15-2-101 (1989).

62. *Id.*

63. MONT. CODE ANN. § 2-15-1015 (1989) and ADMIN. R. MONT. § 2.51.101 (1988). The Department has no authority over either county boards or the State Tax Appeal Board.

64. STAB normally travels to each county to hear county board decision appeals.

65. ADMIN. R. MONT. § 2.51.201 (1988).

66. ADMIN. R. MONT. § 1.3.217 (1988). The MONTANA ADMINISTRATIVE PROCEDURE ACT provides that common law and statutory rules of evidence apply "unless otherwise provided by statute relating directly to an agency." MONT. CODE ANN. § 2-4-612(2) (1989).

67. MONT. CODE ANN. § 15-2-302(4) (1989). Therefore, the MONTANA RULES OF EVIDENCE also apply to review of Department decisions.

68. *Id.*

69. MONT. CODE ANN. § 15-2-301(2) (1989).

70. Department of Revenue v. Burlington N. Inc., 169 Mont. 202, 213, 545 P.2d 1083, 1090 (1976). STAB may determine the appeal of a county board on the record if all parties receive a copy of the transcript and can submit additional sworn statements. MONT. CODE ANN. § 15-2-301(2) (1989).

county board or the Department.<sup>71</sup> As for substantive issues, STAB must give any Department rule full effect unless it finds the rule to be "arbitrary, capricious, or otherwise unlawful."<sup>72</sup>

In addition to deciding complex factual and legal questions, STAB has the difficult task of maintaining adequate records of all hearings.<sup>73</sup> STAB must consider all information and evidence offered by the parties and indicate the reasons behind its acceptance or rejection.<sup>74</sup>

Unfortunately for Montana practitioners, STAB decisions are not published or indexed, and therefore they are difficult to find.<sup>75</sup> The Montana Legislative Council has provided tremendous assistance by including some STAB decisions in the Annotations to the MONTANA CODE ANNOTATED. The only way, however, to obtain a copy of a particular decision is to ask STAB directly.

### C. Judicial Review

Any party can petition for judicial review of a decision of the State Tax Appeal Board.<sup>76</sup> The party files the petition in either the

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71. Department of Revenue v. Countryside Village, 205 Mont. 51, 64-65, 667 P.2d 936, 942 (1983).

72. MONT. CODE ANN. § 15-2-301(4) (1989). STAB does not qualify as a quasi-judicial board because it does not have an attorney as a member. MONT. CODE ANN. § 2-15-124(1) (1989). However, it is authorized to and does perform quasi-judicial functions. *Burlington N.*, 169 Mont. at 212, 545 P.2d at 1089.

73. This requirement presents a time-consuming task. STAB's current workload is burdensome. STAB's members are hard-working, dedicated individuals, but more financial support is required to help them perform this difficult task.

74. See *infra* note 81 and Department of Revenue v. Paxson, 205 Mont. 194, 198, 666 P.2d 768, 770 (1983); DeVoe v. Department of Revenue, 233 Mont. 190, 193, 759 P.2d 991, 993 (1988).

75. STAB does make decisions available to LEXIS and WESTLAW. However, the extent to which these services publish the decisions is unknown.

76. MONT. CODE ANN. § 15-2-303 (1989). The MONTANA ADMINISTRATIVE PROCEDURE ACT also provides for judicial review. MONT. CODE ANN. § 2-4-702 (1989). The judicial-review provisions of Title 15 of MONTANA CODE ANNOTATED regarding tax-appeal procedures seem to contradict the general provisions of the MONTANA ADMINISTRATIVE PROCEDURE ACT. The Montana Supreme Court has held that, in the case of inconsistencies, the more specific provisions of Title 15 control. Department of Revenue v. Davidson Cattle Co., 190 Mont. 326, 329, 620 P.2d 1232, 1234 (1980).

Two inconsistencies most likely will confuse the practitioner. First, the appeal-filing deadlines of MONT. CODE ANN. § 15-2-303(2) (1989) allow a taxpayer to appeal "within 60 days after service of the final decision of the state tax appeal board . . ." Second, MONT. CODE ANN. § 15-2-303(4) (1989) permits the court, in tax cases, to allow "additional evidence to be introduced." See also O'Neill v. Department of Revenue, 227 Mont. 226, 739 P.2d 456 (1987) (if a court does permit additional evidence, it must also make additional findings of fact and conclusions of law regarding that evidence). *Id.* at 231, 739 P.2d at 459. See also Hi-Line Radio Fellowship v. Department of Revenue, 227 Mont. 150, 154, 737 P.2d 886, 888 (1987) (the district court may require a showing of good cause before permitting supplemental evidence).

county where the property is located or the First Judicial District.<sup>77</sup> However, if the taxpayer is an entity under the jurisdiction of the Public Service Commission, then the taxpayer must file the petition in the First Judicial District.<sup>78</sup> Petitions must be filed and served upon the opposing party within sixty days of the decision.<sup>79</sup>

Administrative tax cases are subject to the same standard of judicial review as other administrative decisions.<sup>80</sup> The Montana Supreme Court has stated that a court may reverse, modify, or remand a STAB decision "if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are clearly erroneous in view of the reliable, probative and substantial evidence of the whole record or are arbitrary, capricious or characterized by an abuse of discretion."<sup>81</sup>

#### D. Alternative Remedies

Although the preferred remedy for an aggrieved taxpayer, after exhausting administrative remedies, is an appeal to district court for judicial review of a final decision by STAB, some alternative remedies are available. Under limited circumstances, a taxpayer may obtain a declaratory judgment, an injunction, an interlocutory adjudication, or a refund authorized by the county commissioner.<sup>82</sup>

##### 1. Declaratory Judgments<sup>83</sup>

Two statutes specifically provide for declaratory judgments in

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77. MONT. CODE ANN. § 15-2-303(2) (1989).

78. MONT. CODE ANN. § 15-2-303(3) (1989).

79. MONT. CODE ANN. § 15-2-303(4) (1989).

80. Northwest Land and Dev. of Montana, Inc. v. State Tax Appeal Bd., 203 Mont. 313, 317, 661 P.2d 44, 47 (1983). Additionally, the Montana Supreme Court has indicated that STAB, rather than the judiciary, is authoritative on tax matters; the courts should not interfere with STAB's function in setting appropriate property valuations. Department of Revenue v. Grouse Mountain Dev., 218 Mont. 353, 355, 707 P.2d 1113, 1115 (1985).

81. *Grouse Mountain*, 218 Mont. at 355, 707 P.2d at 1115 (quoting MONT. CODE ANN. § 2-4-704) (1983). In *DeVoe v. Department of Revenue*, 233 Mont. 193, 759 P.2d 991 (1988), the court reiterated this standard, adding that a STAB decision may be reversed or modified if "substantial rights of the appellant have been prejudiced 'because findings of fact, upon issues essential to the decision, were not made although requested.'" *Id.* at 196, 759 P.2d at 995 (quoting MONT. CODE ANN. § 2-4-704(2)(g) (1987)).

82. Counsel should consider these remedies cautiously. If the particular facts of a case are inappropriate to the remedy, a court may reject a petition upon procedural grounds alone. *Jefferson v. Big Horn County*, \_\_\_ Mont. \_\_\_, 766 P.2d 244 (1988).

83. Of course, any individual taxpayer may request a declaratory ruling by the Department. See ADMIN. R. MONT. §§ 42.2.101 and 1.3.226-29 (1988) for the procedure to petition a declaratory ruling. These rulings appear in the administrative register, published by the Secretary of State. These rulings also are subject to judicial review. MONT. CODE ANN. § 2-4-

tax cases, permitting the taxpayer to circumvent STAB administrative appeals.<sup>84</sup> These declaratory judgments are available only when the taxpayer challenges as illegal or unconstitutional the statute under which the tax is imposed.<sup>85</sup> Although the Montana Supreme Court has not interpreted these statutes directly, it has indicated that a taxpayer alleging the illegality of a tax may proceed directly to court without exhausting administrative remedies.<sup>86</sup> When resorting to either of these two specialized declaratory judgment remedies, the taxpayer first must pay the tax imposed.<sup>87</sup>

## 2. Injunctions

Before appeal to STAB or exhaustion of other administrative remedies, a taxpayer may seek an injunction for relief from the tax. Unless a court finds that existing remedies are inadequate, however, an equitable injunction generally will not apply to statutorily governed situations such as taxation.<sup>88</sup> Moreover, state law prohibits injunctions from restraining tax collection unless the tax

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501 (1989). In addition, based upon the personal knowledge of the author, the Department will issue informal opinions on most subjects requested by a taxpayer.

84. MONT. CODE ANN. § 15-1-406 (1989) allows an aggrieved taxpayer to seek a declaration that a tax "was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax." This appeal takes the place of an appeal under MONT. CODE ANN. § 15-1-402 (1989). MONT. CODE ANN. § 15-2-307 (1989) allows a taxpayer to seek "a declaration that a method or procedure of assessment of property adopted or utilized by the Department of Revenue is illegal or improper." The appeal provided by this statute is in lieu of an application for reduction in valuation under MONT. CODE ANN. § 15-15-102 (1989).

85. In *The Porter House, Inc. v. Montana*, No. DV 87-50, slip op. at 2, 3 (13th Judicial Dist., Mont., Mar. 18, 1987), the district court held that the alternative remedy was not available for a case concerning only valuation. In *Turner v. Montana*, No. DV 88-111, slip op. at 5 (13th Judicial Dist., Mont., July 7, 1988), the district court held that the alternative remedy was not available for a case concerning only classification.

86. *United States Nat'l Bank of Red Lodge v. Department of Revenue*, 175 Mont. 205, 573 P.2d 188 (1977); *Larson v. Montana*, 166 Mont. 449, 534 P.2d 854 (1975). However, the court decided both cases before the enactment of MONT. CODE ANN. § 15-1-406 (1989) in 1981.

87. MONT. CODE ANN. §§ 15-2-307 and 15-1-406 (1989). This is an important distinction between these actions and a declaratory judgment action under the UNIFORM DECLARATORY JUDGMENTS ACT, MONT. CODE ANN. §§ 27-8-101 to -313 (1989) (allowing an aggrieved party to stay an administrative agency action). See also MONT. CODE ANN. §§ 15-1-407 and 15-2-308 (1989).

88. MONT. CODE ANN. § 15-1-404 (1989) provides that statutory remedies supersede all other remedies, including an injunction, "except in unusual cases where the remedies hereby provided are deemed by the court to be inadequate." In *Montana Ore Purchasing Co. v. Maher*, 32 Mont. 480, 490, 81 P. 13, 16 (1905), the court indicated that the predecessor to this statute prohibited an injunction only when there was an irregularity by the assessor. The statute did not prevent the enjoining of a tax alleged to be illegal or void. Whether this case is still good law in light of amendments and other legislative action is an unresolved issue. See *Larson v. Montana*, 166 Mont. 449, 534 P.2d 854 (1975).

is illegal or is applied to exempt property.<sup>89</sup> The Montana Supreme Court has held that no injunction is available for incorrect assessments.<sup>90</sup> The court also has required the taxpayer to show irreparable injury before a district court may grant an injunction in any other situation.<sup>91</sup>

### 3. *Interlocutory Adjudication*

In limited circumstances, a district court may make an interlocutory adjudication of an issue pending before STAB.<sup>92</sup> The district court, however, may hear issues involving only an interpretation of a constitutional provision, statute or rule,<sup>93</sup> and may not hear any evidence.<sup>94</sup> Acceptance of jurisdiction is discretionary with the court.<sup>95</sup> Because the action is interlocutory in nature, STAB retains actual jurisdiction; however, STAB must conform its decision to the district court's ruling on the adjudicated issues.

### 4. *Refunds Authorized by the County Commissioner*

Montana law allows the board of county commissioners to refund taxes "paid more than once or erroneously or illegally collected."<sup>96</sup> Although many conflicts have arisen regarding this statute,<sup>97</sup> the Montana Supreme Court has held that in cases involving

89. MONT. CODE ANN. § 15-1-405 (1989).

90. Cobban v. Meagher, 42 Mont. 399, 113 P. 290 (1911).

91. Montana *ex rel.* Keast v. Krieg, 145 Mont. 521, 402 P.2d 405 (1965).

92. MONT. CODE ANN. § 15-2-304 (1989) provides for two types of petitions. Either party may bring the first type of petition without consent of the opposing party. MONT. CODE ANN. § 15-2-304(1) (1989). The parties must jointly seek the interlocutory adjudication provided for by MONT. CODE ANN. § 15-2-304(2) (1989).

93. The taxpayer's petition must raise *all* questions regarding the interpretation of a constitutional provision, statute, or rule, or face possible dismissal. Courts have strictly enforced this requirement. *Ideal Basic Indus., Inc. v. Department of Revenue*, No. ADV-87-753, slip op. at 2-4 (1st Judicial Dist., Mont., Nov. 23, 1987); *United States Gypsum Co. v. Department of Revenue*, No. ADV-87-1083, slip op. at 3 (1st Judicial Dist., Mont., June 8, 1988).

94. MONT. CODE ANN. § 15-2-305 (1989).

95. MONT. CODE ANN. § 15-2-305 (1989) uses the permissive term "may," and MONT. CODE ANN. § 15-2-304(3) (1989) specifically provides that the granting of a petition is discretionary.

96. MONT. CODE ANN. § 15-16-601 (1989).

97. In 1929, the Montana Supreme Court found that the legislature had impliedly repealed the portion of this statute dealing with illegally collected taxes because of a conflict with what is now MONT. CODE ANN. § 15-1-402 (1989). *First Nat'l Bank of Plains v. Sanders County*, 85 Mont. 450, 460-61, 279 P. 247, 251 (1929). The legislature reacted by enacting what is now MONT. CODE ANN. § 15-16-602 (1989), which states that MONT. CODE ANN. § 15-16-601 (1989) shall be considered to be a concurrent remedy.

In *North Butte Mining Co. v. Silver Bow County*, 118 Mont. 618, 169 P.2d 339 (1946), the Montana Supreme Court held that MONT. CODE ANN. § 15-16-601 did not authorize a

mistakes made in property assessment, a taxpayer first should request a refund from the county commissioners and then appeal to the tax appeal boards.<sup>98</sup>

#### IV. CONCLUSION

Montana's tax and revenue system is extremely complex.<sup>99</sup> This article has oversimplified state tax issues and has barely scratched the surface in briefly describing the most important tax appeal provisions. Each major tax has its own specific appeal process. The current statutory system contains ambiguous and contradictory language, as well as hidden procedural pitfalls, which can deprive taxpayers of the opportunity to have their cases heard on the merits. Reformation and additional financial support of the taxation and appeals process would benefit Montana and allow the State Tax Appeal Board to perform in a manner that Montana's citizens deserve.

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refund when taxes were voluntarily paid under a mistake of law. *Id.* at 621, 169 P.2d at 341. However, the authority of this case is questionable since the decision in *Department of Revenue v. Jarrett*, 216 Mont. 189, 700 P.2d 985 (1985). In *Jarrett*, the court determined that MONT. CODE ANN. § 15-16-601 authorizes a refund for a taxpayer who had received an incorrect assessment and has overpaid taxes. *Id.* at 195, 700 P.2d at 989.

98. *Jarrett*, 216 Mont. at 194, 700 P.2d at 988. The court did not distinguish mistakes of fact from other cases involving mistakes of law. The court simply stated that:

Clearly, [MONT. CODE ANN. § 15-16-601 (1989)] was not meant to be used in lieu of the [MONT. CODE ANN. § 15-1-402] requirements of paying under protest, but when the recourse of [MONT. CODE ANN. § 15-1-402] is not available, a taxpayer can obtain a refund under [MONT. CODE ANN. § 15-16-601].

*Id.*

99. The Department continually adopts new rules and amends existing rules. Most of the rules simply inform taxpayers of the Department's position regarding legal interpretations and administration. Any person wishing to receive notice of the Department's proposed rules can request to be placed on a mailing list. MONT. CODE ANN. § 2-4-302(2) (1989).