



# Property Appraisal Appeals

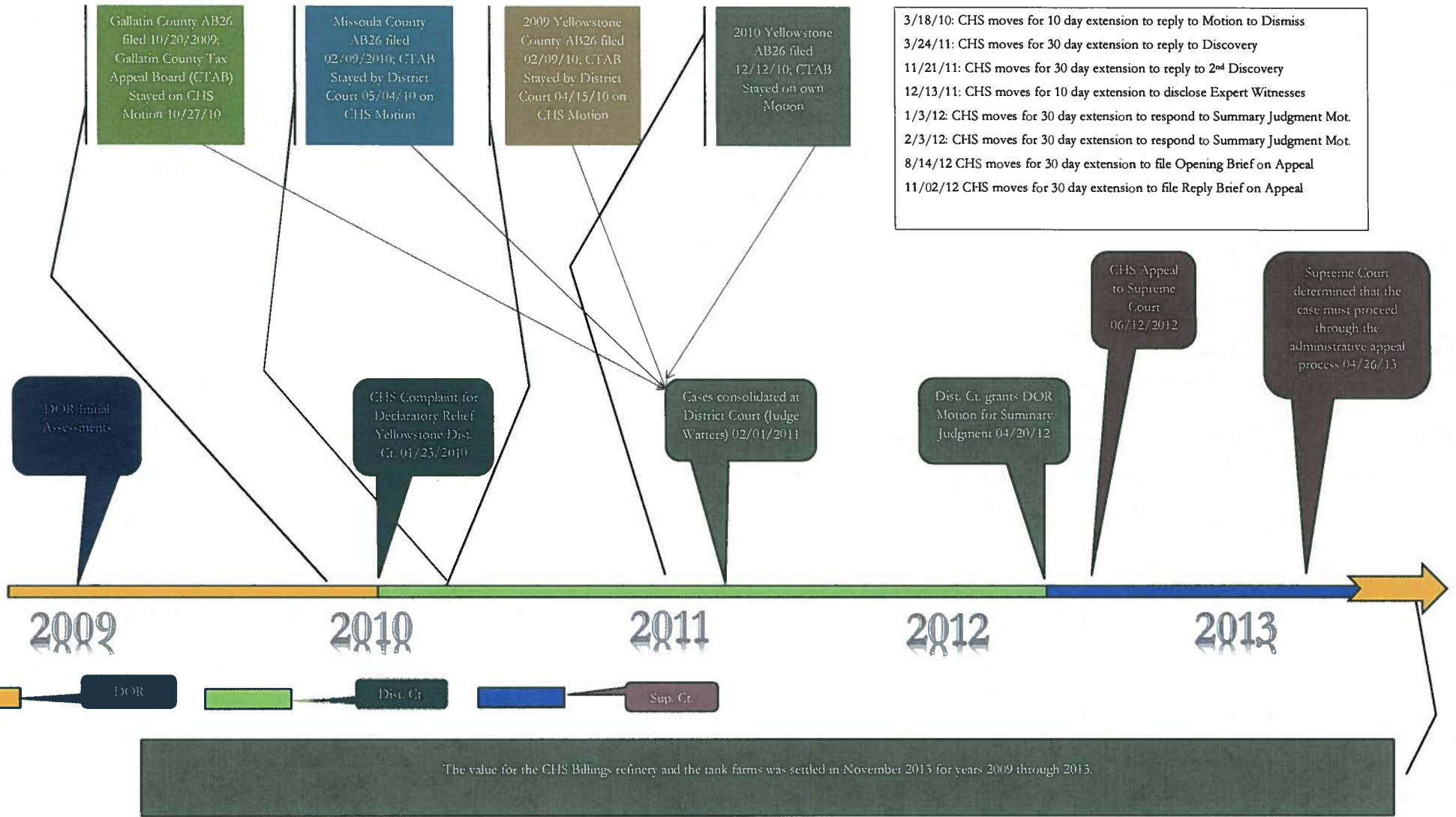
## Total Property Appeals for 2009 - 2013

Tax Year	AB26s	CTAB/ODR	STAB	District Court	Supreme Court	Total
2009	42,452	3,855	929	258	3	47,497
2010	12,520	979	45	102	2	13,648
2011	2,731	379	44	33	0	3,187
2012*	3,516	571	44	3	1	4,135
2013*	2,414	76	6	3	3	2,502
<b>Total</b>	<b>63,633</b>	<b>5,860</b>	<b>1068</b>	<b>399</b>	<b>9</b>	<b>70,969</b>

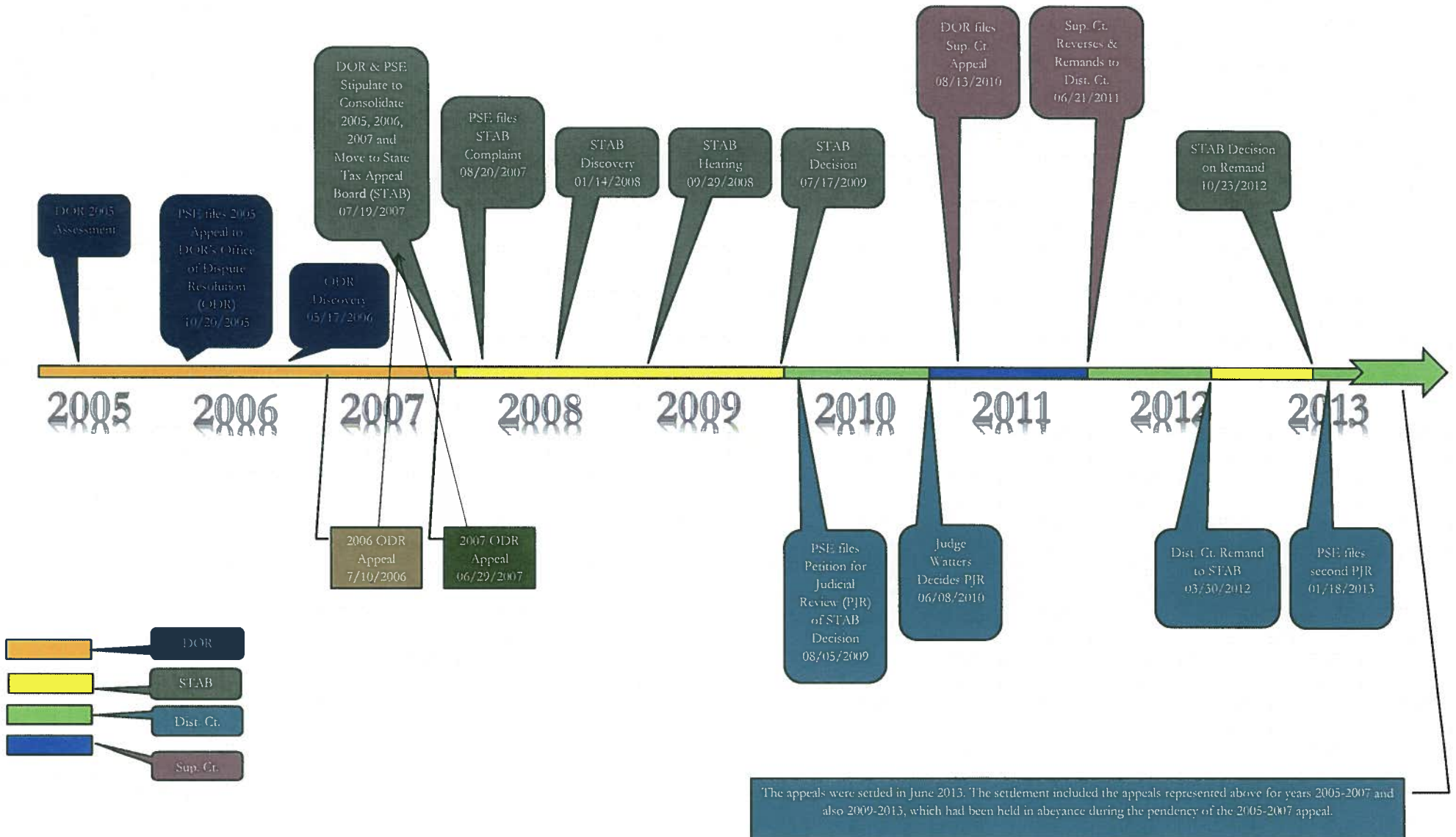
## Centrally Assessed and Industrial Appeals for 2012 -2013

Tax Year	# of Appraisals	AB26s	CTAB/ODR	STAB	District Court	Supreme Court	Total
2012	673	54	15	1	1	1	72
2013	697	59	10	2	2	3	76
<b>Total</b>	<b>1370</b>	<b>113</b>	<b>25</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>148</b>

# Cenex Harvest States Inc. (CHS) v. MDOR 2009-2010



# Puget Sound Energy (PSE) 2005-2007





**Mike Kadas**  
Director

# Montana Department of Revenue



**Steve Bullock**  
Governor

## Revenue and Transportation Interim Committee October 1, 2013 Information Requests

Submitted December 4, 2013

During the October 1, 2013 RTIC Meeting the Department of Revenue was asked to provide information on several topics. This memorandum is the response to those information requests.

### Basis of appeals

Generally, property appeals are filed for the following reasons:

Value is too high	90%
Mid-Cycle Review	5%
Example:	<i>Covenant</i> – mid-cycle value lower
2008 Value Inaccurate	4%
Examples:	Requests purchase price 2008 property record card data is incorrect
Other	1%
Examples:	Agricultural appeals Wrong classification Request income vs. cost method

Row Labels	Count of AppealReasonDesc
<b>2002</b>	<b>2277</b>
<b>AB26</b>	<b>2166</b>
01 Improvement Value too High	1046
02 Land Value too High	303
03 Total Property Value too High	443
04 Recent Purchase Price/Fee Appraisal for Property	40
05 Agricultural/Timber Classification	99
06 Denial of Tax Exemption	115
08 CTAB ruling arbitrary - not based on facts presented	8
09	57
11 VBR Improvement Value too High	4
12 VBR Land Value too High	2
13 VBR Total Property Value too High	37
14 VBR Recent Purchase Price/Fee Appraisal for Property	12
<b>CTAB - County Tax Appeal Board</b>	<b>108</b>
01 Improvement Value too High	11
02 Land Value too High	6
03 Total Property Value too High	32
04 Recent Purchase Price/Fee Appraisal for Property	35
05 Agricultural/Timber Classification	21
06 Denial of Tax Exemption	1
09	1



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## Revenue and Transportation Interim Committee

### Statutes Related to the Appeals Process

By

Dan Whyte, Deputy Chief Legal Counsel

December 4, 2013

**15-15-101. County tax appeal board -- meetings and compensation.** (1) The board of county commissioners of each county shall appoint a county tax appeal board, with a minimum of three members and with the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county in which they serve. The members receive compensation of \$45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board meets to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. At the organizational meeting, the members shall choose one member as the presiding officer of the board. The county tax appeal board shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear protests concerning assessments made by the department until the business of hearing protests is disposed of and, as provided in 15-2-201, may meet after December 31.

(3) In counties that have appointed more than three members to the county tax appeal board, only three members shall hear each appeal. The presiding officer shall select the three members hearing each appeal.

(4) **In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level.** Upon notification by the county tax appeal board, the county clerk and recorder shall publish a notice to taxpayers, giving the time the county tax appeal board will be in session to hear scheduled protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is



printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published by May 15 of the current tax year.

(5) Challenges to a department rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406.

**15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If the appearance provisions of 15-15-103 have been complied with, a person or the department 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 by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearings officer. The board member or hearings officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record.

(3) On all hearings at county seats throughout the state, the state board or the member or hearings officer designated to conduct a hearing may employ a competent person to electronically record the testimony received. The cost of electronically recording testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, 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. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the

provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

(6) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing an order to change the valuation of property.

**15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- (a) property centrally assessed under chapter 23;
- (b) classification of property as new industrial property;
- (c) any other tax, other than the property tax, imposed under this title; or
- (d) any other matter in which the appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file with the board an answer within 30 days following filing of a complaint.

(4) The board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

**15-2-303. Judicial review.** (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision is entitled to judicial review under this part.

(2) Proceedings for review must be instituted by filing a petition in district court in the county in which the taxable property or some portion of it is located, except the taxpayer has the option to file in the district court of the first judicial district. A petition for judicial review must be filed within 60 days after service of the final decision of the state tax appeal board or, if a rehearing is requested, within 60 days after service of the final decision. Copies of the petition must be promptly served on all parties of record. The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review, but failure to do so has no effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents.

(3) If the judicial review involves a taxpayer who is seeking a refund of taxes paid under protest, the appealing party shall provide a copy of the petition to the treasurer of the county in which the taxable property or some portion of it is located, but failure to do so has no effect on the judicial review.

(4) Proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission must be instituted in the district court of the first judicial district.



(5) Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced.

**15-2-304. Petition for interlocutory adjudication.** (1) (a) Either party, within 30 days of the filing of an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

- (i) in the first judicial district;
- (ii) in the county in which the taxable property is located; or
- (iii) in cases not involving property taxes, in the county where the taxpayer resides or has the taxpayer's principal place of business in the state.

(b) The petition may raise any question involving procedure, the admissibility of evidence, or a substantive question of law raised by the pleadings within 30 days of filing an answer to the appeal with the state tax appeal board.

(c) A nonpetitioning party shall respond to the petition within 30 days after service of the petition. The response may raise any question not raised in the petition involving procedure, the admissibility of evidence, or a substantive question of law.

(2) After the 30-day period specified in subsection (1)(b) but before arguments have been heard, the parties to the proceeding may jointly petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for an adjudication must be signed by each party to the proceeding.

(3) In a petition under subsection (1) or (2), one party must be designated as the petitioner and every other party must be designated a respondent. The court may in its discretion grant a petition if it appears that the issues presented involve procedure, the admissibility of evidence, or a substantive question of law and do not require the determination of questions of fact and that the controversy would be more expeditiously resolved by an adjudication. If the court grants a petition, it shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case.



**Mike Kadas**  
Director

# Montana Department of Revenue



**Steve Bullock**  
Governor

**Revenue and Transportation Interim Committee**  
**Comments on Informality of Office of Dispute Resolution**  
**Appeals Process**  
By  
**Dan Whyte, Deputy Chief Legal Counsel**  
**December 4, 2013**

#### **42.2.616 DISCRETION AS TO FORMALITY OF PROCEDURES**

(1) The department recognizes that a wide array of parties appears before the agency in connection with disputes. They range from large corporations employing professional tax counsel to individuals appearing on their own behalf contesting comparatively minimal amounts of tax, violation penalties, etc. It is the intent of the agency to accommodate all such disputes to the greatest extent possible. In particular, the agency seeks to conduct proceedings that are as unthreatening as possible. Persons who are not represented in disputes before the department should not feel apprehensive or dissuaded by procedural complexities, legalistic terms, or bewildering formalities. The hearing examiner will determine the level of formality and procedures appropriate for each dispute.

(2) In disputes where persons or other entities are not represented and are disputing smaller amounts of potential liability, it is understood that far less formal procedures may be used.

(3) In disputes where both parties are represented by counsel, applying rules of evidence and civil procedure as described or referred to in this chapter to provide structure to the process may be entirely warranted.

History: [15-1-201](#), [15-1-211](#), MCA; IMP, [15-1-211](#), MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.

#### **42.2.617 INITIAL CONFERENCES**

(1) Following the Office of Dispute Resolution's receipt of a person's or other entity's request for appeal in any dispute, a hearing examiner assigned to the case shall schedule an initial conference. The conference shall be scheduled as soon as practicable. Parties may participate at the initial conference either in person or through representatives, employees, or agents, as long as a requisite notice of appearance has been filed from an attorney or a written authorization to represent a party has been submitted from any other representative.

(2) Written notice of the conference shall be given at least 10 days prior to the date of the conference unless the parties waive notice. The initial conference may be conducted by telephone with the taxpayer and/or their representative.

(3) Any issue may be settled at the initial conference, including referring the dispute to mediation if both parties agree. In the course of the conference, the hearing examiner may take any appropriate action to settle, compromise, or reduce a deficiency subject to approval by the director or the director's designee. If the dispute cannot be settled at the conference, the hearing examiner shall set a time and date for subsequent mediation or a hearing which is as mutually satisfactory as possible to all concerned.

(4) Any discovery for the hearing may be discussed and the terms agreed upon at the initial conference.

(5) A party must exhaust their administrative remedies, whether by mediation or a hearing decision, prior to further appealing a matter. The parties may jointly stipulate to waiving a hearing.

(6) A record may not be kept of the initial conference. All such conference proceedings are considered confidential and privileged. Any matters raised do not constitute admissions against interest of any party participating in the conference.

(7) The hearing examiner conducting the initial conference shall not be the one presiding over the formal hearing if mediation occurs.

(8) Nothing in this rule may be construed as limiting a party's right to a hearing.

History: [15-1-201](#), [15-1-211](#), MCA; [IMP](#), [15-1-211](#), MCA; [NEW](#), 1999 MAR p. 2900, Eff. 12/17/99.

#### **42.2.618 MEDIATION PROCEDURES**

(1) The resolution of any matter in connection with a dispute may be pursued through mediation.

(2) Mediation may be requested at the initial conference. If both parties agree, mediation may also occur during the initial conference.

(a) The mediator may either be a hearing examiner from the Office of Dispute Resolution, or a mediator from outside the department. The mediator shall be chosen with the consent of both parties.

(b) If an outside mediator is selected, the cost of the mediator shall be paid by the "person" or "other entity" as defined in [ARM 42.2.613](#).

(3) It will be understood that any person appearing on behalf of a party shall have full settlement authority for the party they are representing.

(4) If mediation produces a settlement agreement the written agreement shall be prepared by the parties and if necessary, with the assistance of the mediator. The settlement shall be signed by the parties and the mediator and it shall be filed with the director or director's designee for approval.

(5) If mediation does not resolve all issues in a dispute, the parties shall prepare a stipulation that identifies the issues resolved and those that still remain in dispute. For the issues remaining unresolved, a hearing shall be scheduled before a hearing examiner.

History: [15-1-201](#), [15-1-211](#), MCA; [IMP](#), [15-1-211](#), MCA; [NEW](#), 1999 MAR p. 2900, Eff. 12/17/99.

#### **42.2.619 HEARING PROCEDURES**

(1) Except as provided herein, hearings shall be conducted in Helena, Montana.

(2) The location for hearings pertaining to liquor licensing matters are governed by [ARM 42.12.108](#).

(3) Upon request by either party, hearings may be telephonic. Such requests will be granted unless the hearing examiner determines that telephonic participation may unfairly prejudice the rights of any party. If telephonic participation is requested, the hearing examiner will place the call at the designated time to whatever telephone number is provided by the person or other entity.

(4) Upon a showing of compelling circumstances by either party, the hearings officer may order a hearing to be conducted at a location other than Helena, Montana.

(5) Notice of the time and place for a hearing shall be given to the parties concerned, or their representatives if legal authorization is on file, not less than 14 days prior to the day fixed for such proceedings.

(6) A party may be represented by legal counsel at the hearing, and/or at every stage of adjudication. However, failure to obtain legal representation cannot be cited as grounds for complaint at a later stage in the adjudicative process or for relief on appeal from an adverse decision.

(a) Legal counsel must enter a notice of appearance.

(b) Any representative other than legal counsel must submit a written, signed statement authorizing the representative to act on the party's behalf.

(c) All documents and information pertaining to the dispute will be directed to the party's representative. They may be transmitted by facsimile number, e-mail address, or other electronic means if such transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's address as shown in the original filing.

(7) Hearing proceedings shall be conducted, at all times, with due regard for the confidentiality requirements imposed by [15-30-303](#), [15-31-511](#), MCA, and any other confidentiality requirements currently set forth in Title 15, MCA, or at any future time.

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

History: [15-1-201](#), [15-1-211](#), MCA; [IMP](#), [15-1-211](#), MCA; [NEW](#), 1999 MAR p. 2900, Eff. 12/17/99; [AMD](#), 2002 MAR p. 3048, Eff. 11/1/02.

#### **42.2.620 INFORMATION OFFERED IN HEARINGS**

(1) The hearing examiner shall have the discretion to impose rules of civil procedure and/or rules of evidence as deemed necessary. Imposition of any rules governing hearings shall be done by written order.

(2) Every party at a hearing shall have the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(3) At the discretion of the hearing examiner, or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to pre-file the testimony.

(a) Pre-filed testimony may be placed in the record without being read into the record at a hearing if the opposing parties have had reasonable access to the testimony before it is presented.



(b) If a party intends to question a witness on pre-filed testimony, that party must file a notice of intent to do so within a time frame agreed upon by the parties.

(4) The hearing examiner shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the hearing.

(5) Any party appearing at a hearing may submit a written statement addressing factual or legal issues, including cites of legal authority, if deemed necessary by the hearing examiner for a full and informed consideration of all matters.

History: 15-1-201, 15-1-211, MCA; IMP, 15-1-211, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.

#### **42.2.621 FINAL AGENCY DECISION AND APPEAL**

(1) In accordance with the authority of the director as provided in 2-15-112, MCA, the director delegates the authority to issue Final Agency Decisions (FAD) to the Office of Dispute Resolution (ODR) for all matters except liquor license violations, revocations, and lapses.

(2) The delegation to issue a FAD applies only to matters referred to ODR and not excepted in (1).

(3) A liquor FAD issued by the director or the hearing examiner may be appealed to the appropriate district court for the state of Montana as provided in 16-4-411, MCA.

(4) A tax FAD issued by the hearing examiner shall be appealed to the State Tax Appeal Board (STAB) as provided in 15-2-302, MCA.

(5) If a person or other entity receives an adverse agency decision in a tax dispute, they shall have 30 days to submit an appeal from such decision to the State Tax Appeal Board.

(6) If no decision is rendered by the end of the 180-day period specified in 15-1-211, MCA, and ARM 42.2.616, the department shall issue a determination to the taxpayer. The determination shall inform them that the 180-day term has run without a decision and that they are therefore entitled to carry their appeal forward. The person or other entity shall then have 30 days to file a complaint with the appropriate reviewing authority.

History: 15-1-201, 15-1-211, 15-1-217, 16-1-303, MCA; IMP, 2-4-621, 2-4-623, 2-4-631, 2-15-112, 2-15-1302, 15-1-211, 15-2-302, 16-1-302, 16-4-411, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99; AMD, 2006 MAR p. 85, Eff. 1/13/06; AMD, 2007 MAR p. 477, Eff. 4/13/07.

**Corporation License Tax - Audit Appeals**

FY 2013											
Number of Field Audits Assessed	Not Appealed	Number appealed to Division	Settled at Divison Level	In progress at Division Level	Appealed to ODR	Settled at ODR	In Progress at ODR	Appealed to STAB	Settled Prior to Stab Hearing	TP did not appeal STAB decision	
12	6	6	3	3	0	0	0	0	0	0	
<i>Number of desk audit assessments</i>		<i>274</i>									

FY 2012											
Number of Field Audits Assessed	Not Appealed	Number appealed to Division	Settled at Divison Level	In progress at Division Level	Appealed to ODR	Settled at ODR	In Progress at ODR	Appealed to STAB	Settled Prior to Stab Hearing	TP did not appeal STAB decision	
20	12	8	7	1	0	0	0	0	0	0	
<i>Number of desk audit assessments</i>		<i>576</i>									

FY 2011											
Number of Field Audits Assessed	Not Appealed	Number appealed to Division	Settled at Divison Level	In progress at Division Level	Appealed to ODR	Settled at ODR	In Progress at ODR	Appealed to STAB	Settled Prior to Stab Hearing	TP did not appeal STAB decision	
17	8	9	7	0	2		1	1	1	0	
<i>Number of desk audit assessments</i>		<i>780</i>									

FY 2010											
Number of Field Audits Assessed	Not Appealed	Number appealed to Division	Settled at Divison Level	In progress at Division Level	Appealed to ODR	Settled at ODR	In Progress at ODR	Appealed to STAB	Settled Prior to Stab Hearing	TP did not appeal STAB decision	
22	8	14	12	1	1	0	0	1	0	1	
<i>Number of desk audit assessments</i>		<i>800</i>									

FY 2009											
Number of Field Audits Assessed	Not Appealed	Number appealed to Division	Settled at Divison Level	In progress at Division Level	Appealed to ODR	Settled at ODR	In Progress at ODR	Appealed to STAB	Settled Prior to Stab Hearing	TP did not appeal STAB decision	
11	5	6	4	0	2	2	0	0	0	0	
<i>Number of desk audit assessments</i>		<i>733</i>									

Summary - Total for FY 2009 through FY 2013											
Number of Field Audits Assessed	Not Appealed	Number appealed to Division	Settled at Divison Level	In progress at Division Level	Appealed to ODR	Settled at ODR	In Progress at ODR	Appealed to STAB	Settled Prior to Stab Hearing	TP did not appeal STAB decision	
82	39	43	33	5	5	2	1	2	1	1	
<i>Number of Desk Audit Assessments</i>		<i>3,163</i>									

Of the desk audits approximately 10 to 15 are appealed per month. Taxpayers agree to paying the tax and interest but are requesting a waiver of the late pay penalty. This is an automatic waiver and the appeal is over once the late pay penalty is waived.

An additional 10 additional appeals per month relating to the desk audit assessments and refund reductions that are either number adjustments or ones that we issue division final determination letters on. The majority of these taxpayers do not appeal to ODR - and just pay the assessment.

A small number of desk audit assessments that were appealed to ODR. Many of these we settle at the ODR level. We had maybe 4 or 5 of these appeals go to the hearing level and ODR has issued a decision in favor of the Division in these cases.