

## 1 SENATE BILL NO. 413

2 INTRODUCED BY E. ARNTZEN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN INFORMAL SMALL CLAIMS DIVISION WITHIN  
5 THE STATE TAX APPEAL BOARD; PROVIDING TAXPAYER REPRESENTATION BY INDIVIDUALS THAT ARE  
6 NOT ATTORNEYS IN CERTAIN TAX CASES; PROVIDING JURISDICTIONAL LIMITATIONS FOR THE SMALL  
7 CLAIMS DIVISION; ESTABLISHING CERTAIN ADMINISTRATIVE FEES; AMENDING SECTIONS 15-1-101,  
8 15-1-222, 15-2-302, 15-2-303, 15-2-304, 15-2-305, AND 37-61-201, MCA; AND PROVIDING AN APPLICABILITY  
9 DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 NEW SECTION. **Section 1. Small claims division -- establishment -- jurisdiction -- fees.** (1) There  
14 is a small claims division of the state tax appeal board.

15 (2) The members of the state tax appeal board shall sit as the members of the small claims division. The  
16 quorum requirements of 15-2-103 do not apply, and, at the discretion of the presiding officer provided for in  
17 15-2-103, any member may hold sessions, conduct hearings and investigations, and render decisions. If one  
18 member is utilized, the presiding officer may assign a case to any member.

19 (3) (a) Except as provided in subsection (3)(b), if the taxpayer timely elects, the small claims division has  
20 jurisdiction over any proceeding that the full state tax appeal board has jurisdiction over with respect to any  
21 calendar year for which the net amount of the tax deficiencies and claimed refunds in controversy does not  
22 exceed \$5,000, exclusive of interest and penalties.

23 (b) The small claims division does not have jurisdiction to hear appeals from decisions of the county tax  
24 appeal boards.

25 (4) A taxpayer may elect to proceed in the small claims division by filing a petition in the form prescribed  
26 by the board by the deadline established for a full state tax appeal board case. A taxpayer may not revoke an  
27 election to proceed in the small claims division.

28 (5) (a) The board may set a fee for the small claims division for:

29 (i) comparing or preparing and comparing a transcript of the record; or

30 (ii) copying any record, entry, or other paper.

1 (b) Fees may not be in excess of fees charged and collected by the clerk of the district court as provided  
2 in 25-1-201.

3 (c) Fees collected by the small claims division are not refundable and must be deposited in the state  
4 general fund.

5 (6) No later than 30 days after receipt of notice that the taxpayer has filed a petition in proper form or at  
6 another time that the small claims division may order, the department of revenue shall file with the small claims  
7 division an answer similar to that required in a full state tax appeal board case.

8 (7) At any time prior to entry of judgment, a taxpayer may dismiss a proceeding in the small claims  
9 division by notifying the clerk of the small claims division in writing. The dismissal is with prejudice and does not  
10 have the effect of revoking the election made in accordance with subsection (4).

11 (8) Hearings in the small claims division must be informal and are not subject to the contested case  
12 provisions of the Montana Administrative Procedure Act. The board or member may receive evidence as the  
13 board or member considers appropriate for determination of the case. Testimony must be given under oath or  
14 affirmation.

15 (9) A judgment of the small claims division is final and binding upon all interested parties and may not  
16 be appealed. A judgment of the small claims division may not be considered as precedent in any other case,  
17 hearing, or proceeding.

18 (10) The provisions of this chapter apply to proceedings in the small claims division unless expressly  
19 inapplicable or inconsistent with the provisions of this section.

20  
21 **NEW SECTION. Section 2. Small claims division -- representation.** (1) Appearances in proceedings  
22 conducted by the small claims division may be by:

23 (a) the taxpayer;

24 (b) an attorney admitted to practice in this state, including an attorney who is a partner of, a member of,  
25 or employed by an accounting firm or other professional services firm; or

26 (c) a certified public accountant licensed in this state or a nonresident certified public accountant with  
27 practice privileges under 37-50-325.

28 (2) The department of revenue must be represented by an authorized representative in all proceedings  
29 before the small claims division.

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1           **Section 3.** Section 15-1-101, MCA, is amended to read:

2           **"15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this  
3 section are used in connection with taxation, they are defined in the following manner:

4           (a) The term "agricultural" refers to:

5           (i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control  
6 insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or  
7 produced for commercial purposes; and

8           (ii) the raising of domestic animals and wildlife in domestication or a captive environment.

9           (b) The term "assessed value" means the value of property as defined in 15-8-111.

10           (c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit  
11 margin shown in national appraisal guides and manuals or the valuation schedules of the department.

12           (d) (i) The term "commercial", when used to describe property, means property used or owned by a  
13 business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property  
14 described in subsection (1)(d)(ii).

15           (ii) The following types of property are not commercial:

16           (A) agricultural lands;

17           (B) timberlands and forest lands;

18           (C) single-family residences and ancillary improvements and improvements necessary to the function  
19 of a bona fide farm, ranch, or stock operation;

20           (D) mobile homes and manufactured homes used exclusively as a residence except when held by a  
21 distributor or dealer as stock in trade; and

22           (E) all property described in 15-6-135.

23           (e) The term "comparable property" means property that:

24           (i) has similar use, function, and utility;

25           (ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

26           (iii) has the potential of a similar highest and best use.

27           (f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

28           (g) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue  
29 provided for in 2-15-1301.

30           (ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

1 (h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The  
2 terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas  
3 found in any coal formation.

4 (i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon,  
5 erected upon, or affixed to land. When the department determines that the permanency of location of a mobile  
6 home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or  
7 housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or  
8 housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot  
9 feasibly be relocated and only when the wheels are removed.

10 (j) The term "leasehold improvements" means improvements to mobile homes and mobile homes located  
11 on land owned by another person. This property is assessed under the appropriate classification, and the taxes  
12 are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements  
13 are a lien only on the leasehold improvements.

14 (k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison,  
15 ostriches, rheas, emus, and domestic ungulates.

16 (l) (i) The term "manufactured home" means a residential dwelling built in a factory in accordance with  
17 the United States department of housing and urban development code and the federal Manufactured Home  
18 Construction and Safety Standards.

19 (ii) A manufactured home does not include a mobile home, as defined in subsection (1)(m), or a mobile  
20 home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went  
21 into effect on June 15, 1976.

22 (m) The term "mobile home" means forms of housing known as "trailers", "housetrailer", or "trailer  
23 coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an  
24 independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet  
25 in length used as a principal residence.

26 (n) The term "personal property" includes everything that is the subject of ownership but that is not  
27 included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as  
28 that term is defined in 15-6-218.

29 (o) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in  
30 domestication to produce food or feathers.

1 (p) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and  
2 things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize  
3 the taxation of the stocks of a company or corporation when the property of the company or corporation  
4 represented by the stocks is within the state and has been taxed.

5 (q) The term "real estate" includes:

6 (i) the possession of, claim to, ownership of, or right to the possession of land;

7 (ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title  
8 15, chapter 23, part 8;

9 (iii) all timber belonging to individuals or corporations growing or being on the lands of the United States;  
10 and

11 (iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

12 (r) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and  
13 winter sports, including but not limited to skiing, skating, and snowmobiling.

14 (s) "Research and development firm" means an entity incorporated under the laws of this state or a  
15 foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical  
16 analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific  
17 and technical nature into practical application for experimental and demonstration purposes, including the  
18 experimental production and testing of models, devices, equipment, materials, and processes.

19 (t) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed  
20 by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent  
21 foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

22 (u) The term "taxable value" means the percentage of market or assessed value as provided for in Title  
23 15, chapter 6, part 1.

24 (2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city,  
25 incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or  
26 organized body authorized by law to establish tax levies for the purpose of raising public revenue.

27 (3) The term "small claims division" when used without other qualification means the small claims division  
28 of the state tax appeal board provided for in [section 1].

29 ~~(3)~~(4) The term "state board" or "board" when used without other qualification means the state tax appeal  
30 board."

- 1
- 2           **Section 4.** Section 15-1-222, MCA, is amended to read:
- 3           **"15-1-222. Taxpayer bill of rights.** The department of revenue shall in the course of performing its
- 4 duties in the administration and collection of the state's taxes ensure that:
- 5           (1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other
- 6 representatives of the department;
- 7           (2) the taxpayer has the right to hire a representative of the taxpayer's choice to represent the taxpayer's
- 8 interests before the department, ~~or any a county tax appeal board, or the small claims division, including but not~~
- 9 limited to an attorney admitted to practice in this state and a certified public accountant licensed in this state. The
- 10 taxpayer has a right to obtain a representative at any time, except that the selection of a representative may not
- 11 be used to unreasonably delay a field audit that is in progress. The representative must have written authorization
- 12 from the taxpayer to receive from the department confidential information concerning the taxpayer. The
- 13 department shall provide copies to the authorized representative of all information sent to the taxpayer and shall
- 14 notify the authorized representative concerning contacts with the taxpayer.
- 15           (3) except as provided in subsection (5), the taxpayer has the right to be treated by the department in
- 16 a similar manner as all similarly situated taxpayers regarding the administration and collection of taxes, imposition
- 17 of penalties and interest, and available taxpayer remedies unless there is a rational basis for the department to
- 18 distinguish them;
- 19           (4) the taxpayer has the right to obtain tax advice from the department. The taxpayer has a right to the
- 20 waiver of penalties and interest, but not taxes, when the taxpayer has relied on written advice provided to the
- 21 taxpayer by an employee of the department.
- 22           (5) at the discretion of the department, upon consideration of all facts relevant to the specific taxpayer,
- 23 the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection
- 24 applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.
- 25           (6) the taxpayer has the right to a complete and accurate written description of the basis for any
- 26 additional tax assessed by the department;
- 27           (7) the taxpayer has the right to a review by management level employees of the department for any
- 28 additional taxes assessed by the department;
- 29           (8) the taxpayer has the right to a full explanation of the available procedures for review and appeal of
- 30 additional tax assessments;

1 (9) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have  
 2 the state tax appeal board or a court, or both, review any final decision of the department assessing an additional  
 3 tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney  
 4 fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

5 (10) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have  
 6 the small claims division review a decision of the department assessing an additional tax within the jurisdictional  
 7 limits established in [section 1(3)]. The taxpayer shall seek a review in a timely manner.

8 ~~(10)~~(11) the taxpayer has the right to expect that the department will adhere to the same tax appeal  
 9 deadlines as are required of the taxpayer unless otherwise provided by law;

10 ~~(11)~~(12) the taxpayer has the right to a full explanation of the department's authority to collect delinquent  
 11 taxes, including the procedures and notices that are required to protect the taxpayer;

12 ~~(12)~~(13) the taxpayer has the right to have certain property exempt from levy and seizure as provided  
 13 in Title 25, chapter 13, part 6, and any other applicable provisions in Montana law;

14 ~~(13)~~(14) the taxpayer has the right to the immediate release of any lien the department has placed on  
 15 property when the tax is paid or when the lien is the result of an error by the department;

16 ~~(14)~~(15) the taxpayer has the right to assistance from the department in complying with state and local  
 17 tax laws that the department administers; and

18 ~~(15)~~(16) the taxpayer has the right to be guaranteed that an employee of the department is not paid,  
 19 promoted, or in any way rewarded on the basis of assessments or collections from taxpayers."

20

21 **Section 5.** Section 15-2-302, MCA, is amended to read:

22 **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A

23 person may appeal to the state tax appeal board a final decision of the department of revenue involving:

24 (a) property centrally assessed under chapter 23;

25 (b) classification of property as new industrial property;

26 (c) any other tax, other than the property tax, imposed under this title; or

27 (d) any other matter in which the appeal is provided by law.

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

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

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

4 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless  
5 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board  
6 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the  
7 extent that it does not conflict with 15-2-303. A decision of the small claims division may not be appealed as  
8 provided in [section 1(9)].

9

10 **Section 6.** Section 15-2-303, MCA, is amended to read:

11 **"15-2-303. Judicial review.** (1) ~~Any~~ Except as provided in [section 1(9)], a party to an appeal before the  
12 state tax appeal board who is aggrieved by a final decision is entitled to judicial review under this part.

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

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

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

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

28

29 **Section 7.** Section 15-2-304, MCA, is amended to read:

30 **"15-2-304. Petition for interlocutory adjudication.** (1) (a) Either party, within 30 days of the filing of



1 an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication  
2 under 15-2-305. The petition may be filed with the district court:

3 (i) in the first judicial district;

4 (ii) in the county in which the taxable property is located; or

5 (iii) in cases not involving property taxes, in the county where the taxpayer resides or has the taxpayer's  
6 principal place of business in the state.

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

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

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

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

22 (4) This section does not apply to cases that originate in the small claims division provided for in [section  
23 1]."

24  
25 **Section 8.** Section 15-2-305, MCA, is amended to read:

26 **"15-2-305. Jurisdiction to make interlocutory adjudication.** (1) ~~A~~ Except as provided in subsection  
27 (2), a district court may make an interlocutory adjudication of an issue pending before the state tax appeal board  
28 if that issue involves procedure, the admissibility of evidence, or a substantive question of law and does not  
29 require the determination of a question of fact. If the petition is granted, the district court shall rule on all issues  
30 presented in the petition and the response, regardless of whether a ruling on less than all of the issues is

1 dispositive of the case. Appeals from the ruling of the court may be appealed as in other civil actions.

2 (2) This section does not apply to cases that originate in the small claims division provided for in [section  
3 1]."

4  
5 **Section 9.** Section 37-61-201, MCA, is amended to read:

6 **"37-61-201. Who considered to be practicing law.** (1) Any Except as provided in subsection (2), any  
7 person who holds out to the public or advertises as an attorney or who appears in any court of record or before  
8 a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a  
9 court or who engages in the business and duties and performs acts, matters, and things that are usually done  
10 or performed by an attorney at law in the practice of that profession for the purposes of parts 1 through 3 of this  
11 chapter is considered to be practicing law.

12 (2) A person who is not an attorney that makes appearances in proceedings conducted by the  
13 department of revenue according to the uniform dispute review procedure in 15-1-211, a county tax appeal board  
14 as provided in 15-1-222, or the small claims division of the state tax appeal board provided for in [section 1], is  
15 not considered to be practicing law."

16  
17 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 and 2] are intended to be codified  
18 as an integral part of Title 15, chapter 2, and the provisions of Title 15, chapter 2, apply to [sections 1 and 2].

19  
20 **NEW SECTION. Section 11. Saving clause.** [This act] does not affect rights and duties that matured,  
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

22  
23 **NEW SECTION. Section 12. Applicability.** [This act] applies to proceedings commenced after June  
24 30, 2016.

25 - END -