

# Reference Guide and Steps to Take

## Payment Options

If you decide not to dispute the assessment, but you do not believe that you have the financial ability to pay the assessment, you can call our Citizen Services Call Center toll free at (866) 859-2254. They will direct you to a representative with the Accounts Receivable and Collection Bureau to discuss payment options.

## Representation

You are not required to hire a lawyer or other tax representative in order to participate in an appeal before the Department of Revenue. You may represent yourself or you may have someone represent you at every stage of the Department's appeal proceedings. If you appeal beyond the Department of Revenue you will have to represent yourself or hire an attorney to represent you. CPAs or other representatives who are not attorneys are not allowed at the State Tax Appeal Board or in District Court.

Use **Form POA**- Power of Attorney, to authorize one or more individuals to represent you before the Department of Revenue. This authorization allows your representative(s) to receive and inspect confidential tax information and to act on your behalf in matters before the Department. This power of attorney does not change the requirement that Department send all official mailings directly to you, the taxpayer.

## Constitutional Issues

As an administrative agency, the Department of Revenue cannot decide constitutional issues. Constitutional issues are usually decided by a Montana district court, on appeal from a State Tax Appeal Board decision or, when exhaustion of administrative remedies is not required, in an original action filed in district court for that purpose. However, constitutional issues still should be raised in Department appeals. There are a number of reasons for this, including that the Department and hearing examiner should understand all of a taxpayer's concerns. Also, constitutional issues often involve mixed questions of fact and law, and an appeals court may find that a taxpayer has failed to exhaust administrative remedies if facts related to a constitutional challenge are not established in the administrative proceedings.

## Appeals

If you disagree with a notice of assessment, notice of proposed disallowance of a claim for refund, or other determination or decision by the Department of Revenue, you may file a written appeal. We will work with you to resolve any outstanding issues, but cannot disregard Montana tax laws in order to settle a dispute.

## Step One – Informal Review:

If you object to your notice of assessment, refund reduction, or other determination or decision, you may appeal by requesting an Informal Review by the Department's Business and Income Taxes Division.

### How do you file an objection to request an informal review?

- Your **objection must be in writing** and filed within **30 days of the date** on the notice of the action that you are challenging. If you do not file an objection within 30 days, we will consider it to be your admission that you agree with the adjustment. For your convenience, **Form APLS101F** – Request for Informal Review, is available for you to complete and file your objection. Email your objection to [soaobjections@mt.gov](mailto:soaobjections@mt.gov) or mail the objection and documentation to: Montana Department of Revenue, PO Box 7149, Helena MT 59604-7149.
  - Whether you use Form APLS101F or send a separate written objection, any written objection should clearly state all of the following:
    - Your name and address;
    - Your Montana Account Number;
    - Your Social Security Number or Federal Employer Identification Number ;
    - Tax type, i.e. individual income tax, withholding tax, etc.;
    - Taxable period or periods in dispute;
    - A statement that you are appealing the notice of assessment, refund reduction, or other determination or decision; and
    - A factual statement for each disputed issue that supports your position.
- If you are requesting a waiver of penalties and/or interest, all of the following apply:
  - You need to establish reasonable cause for the waiver. Please see the discussion and rule on **reasonable cause**.
  - Reasonable cause for waiver of the late payment penalty automatically exists if you:
    - Pay all tax and interest due, and
    - Request the waiver in writing **within 30 days** of the date of your notice of an amount due.
    - If you meet both of these qualifications, please check the "Request for Waiver of Late Payment Penalty Only" box on Form APLS101F.
  - There is a \$100 limit per taxable period on the amount of interest that can be waived.

## **What happens after you file your objection with the Department?**

- The Business and Income Taxes Division will review your objection and determine whether it agrees or disagrees with your concerns. The Division will mail notice of determination to you advising you of the Division's determination within 30 days after receipt of your objection. If the Division fails to meet this deadline, the taxpayer may immediately refer the matter to the Office of Dispute Resolution.
- A unit manager or tax specialist will conduct the review. The auditor who issued the assessment may provide information but will not make the determination on behalf of the Business and Income Taxes Division.

**If the issue cannot be resolved at the division level, you may appeal to the Office of Dispute Resolution (see Step Two).**

## **Important Items to Note**

- **Interest and penalties will continue to accrue**, as applicable, **until the total tax due is paid in full**, even if you file a written objection or appeal. Please consider paying the total amount due, which will stop additional interest and penalties from accruing. Making a payment will not waive your appeal rights.
- **Once you submit a timely appeal/objection, if you wish to provide additional information** for the Department to consider during the Informal Review, you may request an informal review meeting. To allow this meeting and a review of the additional information to take place, the Department may need to extend the time it takes to issue its Informal Review determination.

## **Step Two – Office of Dispute Resolution (ODR):**

Consistent with most federal and state agencies, the Department of Revenue retains an independent adjudicatory office, called the Office of Dispute Resolution. Its purpose is to render fair, objective, and unbiased decisions in tax disputes free from agency influence or direction. The Hearing Examiner assigned to the office is not subject to performance ratings, promotions, demotions, or compensation based upon the number of times she or he decides in favor of the agency or the taxpayer. Along with all other agency hearing examiners, she or he assumes a unique status in state government. It is the Hearing Examiner's responsibility to render decisions based upon the record and evidence of each case. The decisions are expected to fully explain why one party or another prevails in any given dispute. The administrative rules pertaining to the Office of Dispute Resolution are **ARM 42.2.613 through 42.2.621**.

## **How can you file an appeal with the ODR?**

- Your appeal **must be in writing** and filed within **15 days of the date on the notice of determination** regarding your informal review that you received from the Business and Income Taxes Division, as outlined in **Step One** above. If you do not file an objection within 15 days, the Department will consider this an admission that you agree with the

adjustment. For your convenience, an optional **Form APLS102F** – Notice of Referral to the Office of Dispute Resolution, is available for you to complete and file your appeal. Email the appeal and documentation to [soaobjections@mt.gov](mailto:soaobjections@mt.gov) or mail to: Montana Department of Revenue, PO Box 7701, Helena, MT 59604-7701.

- Whether you use Form APLS102F or send a separate written appeal, any written appeal should clearly state all of the following:
  - Your name and address;
  - Your Montana Account Number;
  - Your Social Security Number or Federal Employer Identification Number;
  - Tax type, i.e. individual income tax, withholding tax, etc.;
  - Taxable period or periods in dispute;
  - A statement that you are appealing the notice of determination made by the Business and Income Taxes Division as a result of their informal review;
  - A factual statement for each disputed issue that supports your position. This may be accomplished by attaching a copy of the Form APLS101F initially submitted to the Business and Income Taxes Division and/or by completing the "Basis for Objection" section on the Form APLS102F.

## **What happens after you file your appeal with the ODR?**

### **1) Scheduling Conference**

In any matter before the Department of Revenue, you or your representative will be required to appear before the Office of Dispute Resolution in person, or by telephone, for a scheduling conference (identified as an "initial conference" in the applicable administrative rules). An order setting such a conference will be issued after an appeal is filed with the ODR. Conferences are held for the purposes of scheduling hearing and other relevant dates, clarifying issues, discussing evidence, reviewing the possibility of mediation, and expediting the proceedings in any way satisfactory to both parties. An order is issued from each conference confirming what was discussed and agreed upon, including a hearing, a decision on the record, or a mediation date.

### **2) Hearings**

The Hearing Examiner has the discretionary authority to determine the level of formality in tax hearings. Every effort is made to make such proceedings as least intimidating and inexpensive as possible for taxpayers. While taxpayers may be represented by a lawyer, accountant, or tax practitioner, such representation is entirely up to them. Individual taxpayers have often represented themselves very successfully. If both parties are represented by lawyers, and if larger amounts of liability are involved, applying rules of evidence and civil procedure may be warranted. Testimony at hearings is taken under oath. The parties can introduce evidence, and cross-examine opposing parties or witnesses on any testimony or evidence offered. By law, such hearings are either conducted in Helena or by telephone. All hearings are recorded, and a copy of the recording will be provided if requested.

Any ultimate tax decision issued from the Office of Dispute Resolution is a final agency decision. The Office of Dispute Resolution's decision may be appealed to the State Tax Appeal Board, as outlined in **Step Three**.

### **3) Mediation Process**

The Office of Dispute Resolution can also mediate disputes if both parties agree, and are both willing to make movement indicating that a mediated settlement is feasible. The parties may also agree to select a mediator outside the Office of Dispute Resolution, but must pay for the mediator.

The mediation process is intended to allow the parties to meet with a mediator who will facilitate the discussion. During this process, the parties can discuss all of the evidence that is available to that point and, with the assistance of the mediator, work toward a satisfactory settlement that may resolve the issues pending on appeal. If the parties settle and execute a settlement agreement, they are bound by the agreement.

**If you do not agree with the decision issued by the Office of Dispute Resolution, you may appeal to the State Tax Appeal Board (see Step Three).**

### **Step Three – State Tax Appeal Board (STAB):**

The State Tax Appeal Board is a three member independent review board, separate from the Department of Revenue. Members are appointed by the Governor for six-year terms.

An appeal to the State Tax Appeal Board must be made within **30 days** of a final department decision (see **Step Two**). When making such an appeal to this board, please be sure to include a copy of the final department decision and a copy of the hearing examiner's findings of fact and conclusions of law, if any. The complaint itself can be in the form of a letter containing a brief statement of the issue.

The board will issue a written decision after hearing the appeal. Either you or the Department may seek judicial review. Judicial review must be sought within 60 days of the date of the decision of the State Tax Appeal Board.

If you appeal beyond the Department of Revenue you will have to represent yourself or hire an attorney. No non-attorney representation is allowed at the State Tax Appeal Board or in District Court. A corporation is an entity and generally must have qualified representation.

You can learn more about the State Tax Appeal Board by visiting their **website**.

**If you do not agree with the decision issued by the State Tax Appeal Board, you may appeal to the Montana District Court (see Step Four).**

### **Step Four – Montana District Court:**

For information about the Montana District Court system, please visit their **website**.

**If you do not agree with the decision that the Montana District Court issues, you may appeal to the Montana Supreme Court (see Step Five).**

## **Step Five – Montana Supreme Court:**

For information about the Montana Supreme Court, please visit their [website](#).