

February 18, 2014

Transportation and Revenue Interim Committee
c/o Legislative Services Division
PO Box 201706
Helena, MT 59620-1706
Phone: (406)444-3064
FAX: (406)444-3036

RE: Centrally Assessed Tax Appeal Process

I appreciate the opportunity to provide my written comments to this Committee regarding the tax appeal process for centrally assessed properties.

The Montana Constitution of 1972 -- enacted in 1973 -- brought significant changes to Montana's tax arena. The Constitution eliminated the State Board of Equalization, replacing it with two newly created entities: the Montana Department of Revenue and the State Tax Appeal Board. It was during this time that I was employed as Counsel for the Department of Revenue.

Prior to 1973, the State Board of Equalization was a three-member Board, appointed by the Governor, with numerous duties. The Board was charged with equalizing the value of taxable property in the state, it over-saw the County Boards of Equalization, it made determinations on the assessment of railroads, telephone and telegraph lines, it supervised the administration of the tax laws involving property matters and it acted as the hearings office on all suspected cases of non-compliance. The drafters of the 1972 Constitution determined that the duties of administrating tax law would henceforth be assigned to the Montana Department of Revenue while the Montana State Tax Appeal Board would be responsible for determining if those tax assessments were correct. The existing members of the State Board of Equalization became the original members of the State Tax Appeal Board.

In my opinion, the 1972 Constitution properly created two different agencies charged with enforcement of the tax laws, one agency to assess taxable valuation and one agency to determine the accuracy of those assessments. In fact, recently there have been similar movements in many other states to adopt laws whereby an independent tribunal, separate from the taxing authority, is charged with hearing appeals of decisions made by the tax agency.

So the creation of the State Tax Appeal Board was an important step in creating an independent review of actions taken by the Montana Department of Revenue. But there are three major flaws in Montana's existing process. First, appeals do not go directly to the Montana Supreme Court, instead they are heard by a District Court. Second, the District Court is limited to the findings of fact and conclusions of law made by the State Tax Appeals Board. So the factual record of these cases is established in a quasi-judicial proceeding since there is no statute requiring the members of the State Tax Appeal Board to have legal backgrounds (although presently two of the three members are attorneys). And finally, the District Courts have ruled that it is not their province to determine value in these appeals, leaving that duty to the State Tax Appeal Board. So if the District Court determined that State Tax Appeal Board has made an error, the most likely remedy is for the District Court to remand the matter back to the State Tax Appeal Board to make findings consistent with the determination of the District Court. The result is often a time consuming, multi-appeal process by which the protested taxes remain in a protest fund and cannot be released to local jurisdictions as a result cities, counties and school districts can have tax payments tied up for years in the protest fund.

Since 1972, the Montana Legislature has determined that in some cases it is appropriate to create independent judicial tribunals to adjudicate specific types of matters. Presently, there is Water Court staffed with the equivalent of district court judges who hear only water law cases. Any appeal from the water court is taken directly to the Montana State Supreme Court. Similarly, there is a Workers Compensation Court, staffed also with the equivalent of a district court judge, and all appeals from that Court go directly to the Montana Supreme Court.

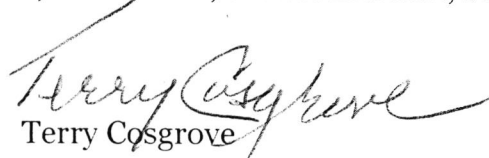
I believe that it would be in the best interest of all parties if legislation was considered creating a similar structure for tax proceedings. My suggestion is that in lieu of the State Tax Appeal Board, the Montana Legislature creates a true tax court similar to the Water Court and Workers Compensation Court. The tax court would have the equivalent of a district court judge who would make findings of fact, conclusions of law, and the ultimate valuation of centrally assessed property. Appeals from the tax court would be taken directly to the Montana Supreme Court. This process would reduce the time and cost of these cases which is in the best interests of all concerned parties. The cost of this new tax court would be offset by the elimination of the State Tax Appeal Board.

My comments are not made to disparage the members of the State Tax Appeal Board -- they work extremely hard to carry out their present duties. But under the present process these cases take longer, are more expensive, and the property taxes -- which must be paid under protest -- are held up longer than necessary from local governmental agencies. I believe this step would be consistent with the original intent of the framers of the 1972 Constitution, allowing a truly independent judicial process for appeals from the Department of Revenue.

I appreciate the opportunity to provide my comments.

Sincerely,

GOUGH, SHANAHAN, JOHNSON, & WATERMAN, PLLP


Terry Cosgrove