

**Unofficial Draft Copy**

As of: July 3, 2014 (12:17pm)

LC9905

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act expanding representation of taxpayers in proceedings by the state tax appeal board; allowing taxpayer representation by individuals not licensed to practice law; and amending sections 15-1-222 and 37-61-201, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Representation.** (1) Appearances in proceedings conducted by the state tax appeal board may be by:

- (a) the taxpayer;
- (b) an attorney admitted to the practice of law in Montana;
- (c) a certified public accountant licenced in Montana; or
- (d) an enrolled agent authorized to practice before the

Internal Revenue Service.

(2) "Attorney", as used in subsection (1), includes an attorney admitted to the practice of law in Montana that is a partner, member, or employee of an accounting or other professional services firm.

(3) The board may allow an attorney or certified public accountant authorized to practice or licensed in any other jurisdiction of the United States to appear and represent a taxpayer in proceedings before the state tax appeal board for a particular matter.

(4) The board may allow a taxpayer to be represented by an officer, employee, partner or member.

(5) The department of revenue must be represented by an authorized representative in all proceedings before the board.

(6) The board may adopt rules to administer and enforce the provisions of this section.

**Section 2.** Section 15-1-222, MCA, is amended to read:

**"15-1-222. Taxpayer bill of rights.** The department of revenue shall in the course of performing its duties in the administration and collection of the state's taxes ensure that:

(1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other representatives of the department;

(2) subject to [section 1], the taxpayer has the right to hire a representative of the taxpayer's choice to represent the taxpayer's interests before the department or any tax appeal board. The taxpayer has a right to obtain a representative at any time, except that the selection of a representative may not be used to unreasonably delay a field audit that is in progress. The representative must have written authorization from the taxpayer to receive from the department confidential information concerning the taxpayer. The department shall provide copies to the authorized representative of all information sent to the taxpayer and shall notify the authorized representative concerning contacts with the taxpayer.

(3) except as provided in subsection (5), the taxpayer has

the right to be treated by the department in a similar manner as all similarly situated taxpayers regarding the administration and collection of taxes, imposition of penalties and interest, and available taxpayer remedies unless there is a rational basis for the department to distinguish them;

(4) the taxpayer has the right to obtain tax advice from the department. The taxpayer has a right to the waiver of penalties and interest, but not taxes, when the taxpayer has relied on written advice provided to the taxpayer by an employee of the department.

(5) at the discretion of the department, upon consideration of all facts relevant to the specific taxpayer, the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

(6) the taxpayer has the right to a complete and accurate written description of the basis for any additional tax assessed by the department;

(7) the taxpayer has the right to a review by management level employees of the department for any additional taxes assessed by the department;

(8) the taxpayer has the right to a full explanation of the available procedures for review and appeal of additional tax assessments;

(9) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have the state tax

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appeal board or a court, or both, review any final decision of the department assessing an additional tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

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

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

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

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

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

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

{*Internal References to 15-1-222:*  
15-1-109x      15-1-221 \* x}

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**Section 3.** Section 37-61-201, MCA, is amended to read:

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

**(2) A person who is not an attorney that makes appearances**  
**in proceedings conducted by the state tax appeal board pursuant**  
**to [section 1] is not considered to be practicing law."**

{Internal References to 37-61-201: None.x}

**NEW SECTION. Section 4. {standard} Codification**  
**instruction.** [Section 1] is intended to be codified as an  
integral part of Title 15, chapter 2, part 3, and the provisions  
of Title 15, chapter 2, part 3, apply to [section 1].

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