

SENATE BILL NO. 307

INTRODUCED BY FULLER

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

February 2, 1985	Introduced and referred to Committee on Taxation.
February 21, 1985	Committee recommend bill do pass as amended. Report adopted.
February 22, 1985	Bill printed and placed on members' desks.
February 23, 1985	Second reading, do pass.
February 25, 1985	Considered correctly engrossed. Third reading, passed. Ayes, 47; Noes, 0. Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Taxation.
March 19, 1985	Committee recommend bill be concurred in. Report adopted.
March 22, 1985	Second reading, concurred in.
March 25, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

March 25, 1985	Received from House.
March 26, 1985	Sent to enrolling. Reported correctly enrolled.

1 *Senate* BILL NO. *307*
2 INTRODUCED BY *Fuller*

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE
6 JURISDICTION AND THE AUTHORITY OF THE COUNTY TAX APPEAL
7 BOARDS AND THE STATE TAX APPEAL BOARD; AMENDING SECTIONS
8 15-1-303, 15-10-304, AND 15-23-104, MCA; AND REPEALING
9 SECTION 15-8-305, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 15-1-303, MCA, is amended to read:

13 "15-1-303. Penalty for refusal to furnish information.

14 (1) If any person shall refuse inspection of any books or
15 records when requested by the department or its authorized
16 agent or shall refuse or neglect to furnish any information
17 called for by the department in the performance of its
18 official duties relating to the assessment and taxation of
19 property, the department shall make such determination and
20 assessment of his or its property as in its judgment appears
21 to be just and equitable and may add to its assessment thus
22 made not more than 20% thereof as a penalty for such refusal
23 or neglect. The department shall immediately notify the
24 person so assessed of its action, either by certified or
25 registered mail or by personal service of such notice.

1 ~~(2) Such action of the department and the assessment~~
2 ~~so made shall be final and conclusive unless the party so~~
3 ~~assessed shall:~~

4 ~~(a) within 20 days after receiving such notice, file~~
5 ~~an appeal with the state tax appeal board and show cause~~
6 ~~before the board why such assessment and penalty should be~~
7 ~~modified or annulled, when the board shall then, from all~~
8 ~~information presented to it or from its own investigation,~~
9 ~~make such assessment as to it seems just and equitable; or~~

10 ~~(b) within 60 days after receiving such notice, appeal~~
11 ~~to the district court of Lewis and Clark County from the~~
12 ~~action of the department in making such assessment and~~
13 ~~imposing such penalty by serving on the department and~~
14 ~~filing in the office of the clerk of said district court~~
15 ~~notice of appeal therefrom, together with a bond conditioned~~
16 ~~for the payment of such amount as the judgment of said court~~
17 ~~may require within 30 days after the entry of such judgment.~~

18 ~~(3) Upon the hearing of such appeal, the court or the~~
19 ~~state tax appeal board shall determine whether the~~
20 ~~department was entitled to inspect such books or records or~~
21 ~~was entitled to the information requested by the department.~~
22 ~~If the court or board shall find that the department was~~
23 ~~entitled to inspect such books or records or was entitled to~~
24 ~~the information requested by the department, the court or~~
25 ~~board shall not change or modify in any manner the~~



1 ~~assessment as made or the penalty added to such assessment~~
 2 ~~by the department, but if the court or board shall find that~~
 3 ~~the department was not entitled to inspect such books or~~
 4 ~~records or was not entitled to the information requested by~~
 5 ~~the department, then the court or board shall enter a~~
 6 ~~judgment changing and modifying the assessment made by the~~
 7 ~~department by striking out the penalty added thereto by the~~
 8 ~~department.~~

9 (2) Upon receiving an assessment made pursuant to
 10 subsection (1), the taxpayer has the following remedies:

11 (a) Within 15 days after receipt of the assessment, or
 12 by April 1, whichever is later, he may request an informal
 13 conference with the agent of the department. At the
 14 conference, the taxpayer may present evidence in mitigation
 15 or extenuation of his failure to supply the information
 16 requested by the department. Within 10 days after the
 17 conference, the agent of the department shall notify the
 18 taxpayer by certified mail whether the assessment will be
 19 modified. The department may modify the penalty if the
 20 taxpayer presents sufficient evidence in mitigation or
 21 extenuation of his failure to supply the information sought
 22 by the department and if it finds that the taxpayer did not
 23 willfully refuse to supply the information.

24 (b) If the taxpayer is aggrieved as a result of the
 25 informal conference, he may appeal to the county tax appeal

1 board within 20 days after receipt of the decision of the
 2 department. The county tax appeal board has the authority to
 3 modify the:

4 (i) assessment only if it finds that the assessment
 5 exceeds 100% of the value of the property specified in
 6 15-8-111; and

7 (ii) penalty if the taxpayer presents by a
 8 preponderance of the evidence facts in mitigation or
 9 extenuation of his failure to supply the information which
 10 the department sought.

11 (c) If the county tax appeal board modifies a penalty
 12 pursuant to subsection (2)(b)(ii), it may not reduce the
 13 penalty by more than 20% of the assessment, or if the
 14 assessment is modified pursuant to subsection (2)(b)(i), by
 15 more than 20% of the modified assessment.

16 (3) Either party aggrieved as a result of the decision
 17 of the county tax appeal board may appeal to the state tax
 18 appeal board within 20 days after receipt of the county tax
 19 appeal board's decision. When deciding an appeal brought
 20 under this subsection, the state tax appeal board must
 21 follow the provisions of subsections (2)(b) and (2)(c).

22 (4) Either party aggrieved as a result of the decision
 23 of the state tax appeal board may seek judicial review
 24 pursuant to 15-2-303."

25 Section 2. Section 15-10-304, MCA, is amended to read:

1 "15-10-304. County clerk and recorder to follow
 2 directions of department, county or state tax appeal boards.
 3 As soon as the county clerk and recorder receives from the
 4 department of revenue, county or state tax appeal board a
 5 statement of any change or changes made by the department or
 6 board in the assessment books of the county or in any
 7 assessment therein contained, he must make the corresponding
 8 change or changes in the assessment books by entering the
 9 same in a column provided with a proper heading in the
 10 assessment books, counting any fractional sum when more than
 11 50 cents as \$1 and omitting it when less than 50 cents so
 12 that the value of any separate assessment shall contain no
 13 fractions of a dollar; ~~but he must in all cases disregard~~
 14 ~~any action of the county tax appeal board which is~~
 15 ~~prohibited by 15-8-305~~; provided, however, that if such
 16 assessment books are not in the possession of the county
 17 clerk and recorder at the time he receives any such
 18 statement, he must immediately make a copy thereof,
 19 attesting the same with his seal of office, and deliver such
 20 attested copy to the county or state officer then having
 21 possession of such assessment books, and it shall be the
 22 duty of such county or state officer to immediately make the
 23 corresponding change or changes in such assessment in the
 24 manner herein provided."

25 Section 3. Section 15-23-104, MCA, is amended to read:

1 "15-23-104. Failure to file -- estimate by department
 2 -- penalty. If any person fails to file a report or return
 3 within the time established in 15-23-103 or by such later
 4 date as the department may approve, the department shall
 5 estimate the value of the property to have been reported on
 6 the basis of the best available information. In estimating
 7 the value of the net proceeds of mines, the department shall
 8 proceed under 15-23-506, and in estimating the value of the
 9 gross proceeds of coal mines, the department shall proceed
 10 under 15-35-107. In estimating the value of all other
 11 property subject to assessment under parts 2 through 4 of
 12 this chapter, the department shall proceed under 15-1-303.
 13 In estimating value under this section, the department may
 14 subpoena a person or his agent as specified in 15-1-302. An
 15 ~~assessment based on estimated value is subject to review~~
 16 ~~under 15-8-601~~. Each month or part of a month a report is
 17 delinquent, the department shall impose and collect a \$25
 18 penalty, the total not to exceed \$200, and shall deposit
 19 such penalty to the credit of the general fund. The
 20 department will also inform its agents in the counties of
 21 the delinquency, and the agents shall assess a penalty of 1%
 22 of the tax due for each month or part of a month the report
 23 is delinquent."

24 NEW SECTION. Section 4. Repealer. Section 15-8-305,
 25 MCA, is repealed.

-End-

APPROVED BY COMMITTEE
ON TAXATION

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 15 records when requested by the department or its authorized
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 18 official duties relating to the assessment and taxation of
 19 property, the department shall make such determination and
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~~assessment as made or the penalty added to such assessment by the department, but if the court or board shall find that the department was not entitled to inspect such books or records or was not entitled to the information requested by the department, then the court or board shall enter a judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department.~~

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, or by April 1, whichever is later, he may request an informal conference with the agent of the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of his failure to supply the information requested by the department. Within 10 days after the conference, the agent of the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of his failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, he may appeal to the county tax appeal

board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of his failure to supply the information which the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty by more TO LESS than 20% of the assessment, or if the assessment is modified pursuant to subsection (2)(b)(i), by more TO LESS than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 20 days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board must follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303."

Section 2. Section 15-10-304, MCA, is amended to read:

1 "15-10-304. County clerk and recorder to follow
 2 directions of department, county or state tax appeal boards.
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 12 that the value of any separate assessment shall contain no
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25 Section 3. Section 15-23-104, MCA, is amended to read:

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 2 -- penalty. If any person fails to file a report or return
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 9 gross proceeds of coal mines, the department shall proceed
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 11 property subject to assessment under parts 2 through 4 of
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 13 In estimating value under this section, the department may
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 16 ~~under 15-8-601;~~ AN ASSESSMENT PURSUANT TO PARTS 5 THROUGH 8
 17 OF THIS CHAPTER BASED ON ESTIMATED VALUE OR IMPUTED VALUE IS
 18 SUBJECT TO REVIEW UNDER 15-8-601. Each month or part of a
 19 month a report is delinquent, the department shall impose
 20 and collect a \$25 penalty, the total not to exceed \$200, and
 21 shall deposit such penalty to the credit of the general
 22 fund. The department will also inform its agents in the
 23 counties of the delinquency, and the agents shall assess a
 24 penalty of 1% of the tax due for each month or part of a
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SB 0307/02

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24 the-information-requested-by-the-department,--the--court--or
25 board---shall--not--change--or--modify--in--any--manner--the

~~assessment as made or the penalty added to such assessment by the department, but if the court or board shall find that the department was not entitled to inspect such books or records or was not entitled to the information requested by the department, then the court or board shall enter a judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department.~~

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, or by April 1, whichever is later, he may request an informal conference with the agent of the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of his failure to supply the information requested by the department. Within 10 days after the conference, the agent of the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of his failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, he may appeal to the county tax appeal

board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of his failure to supply the information which the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty by more TO LESS than 20% of the assessment, or if the assessment is modified pursuant to subsection (2)(b)(i), by more TO LESS than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 20 days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board must follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303."

Section 2. Section 15-10-304, MCA, is amended to read:

1 "15-10-304. County clerk and recorder to follow
 2 directions of department, county or state tax appeal boards.
 3 As soon as the county clerk and recorder receives from the
 4 department of revenue, county or state tax appeal board a
 5 statement of any change or changes made by the department or
 6 board in the assessment books of the county or in any
 7 assessment therein contained, he must make the corresponding
 8 change or changes in the assessment books by entering the
 9 same in a column provided with a proper heading in the
 10 assessment books, counting any fractional sum when more than
 11 50 cents as \$1 and omitting it when less than 50 cents so
 12 that the value of any separate assessment shall contain no
 13 fractions of a dollar; ~~but he must in all cases disregard~~
 14 ~~any action of the county tax appeal board which is~~
 15 ~~prohibited by 15-8-305;~~ provided, however, that if such
 16 assessment books are not in the possession of the county
 17 clerk and recorder at the time he receives any such
 18 statement, he must immediately make a copy thereof,
 19 attesting the same with his seal of office, and deliver such
 20 attested copy to the county or state officer then having
 21 possession of such assessment books, and it shall be the
 22 duty of such county or state officer to immediately make the
 23 corresponding change or changes in such assessment in the
 24 manner herein provided."

25 Section 3. Section 15-23-104, MCA, is amended to read:

1 "15-23-104. Failure to file -- estimate by department
 2 -- penalty. If any person fails to file a report or return
 3 within the time established in 15-23-103 or by such later
 4 date as the department may approve, the department shall
 5 estimate the value of the property to have been reported on
 6 the basis of the best available information. In estimating
 7 the value of the net proceeds of mines, the department shall
 8 proceed under 15-23-506, and in estimating the value of the
 9 gross proceeds of coal mines, the department shall proceed
 10 under 15-35-107. In estimating the value of all other
 11 property subject to assessment under parts 2 through 4 of
 12 this chapter, the department shall proceed under 15-1-303.
 13 In estimating value under this section, the department may
 14 subpoena a person or his agent as specified in 15-1-302. ~~An~~
 15 ~~assessment based on estimated value is subject to review~~
 16 ~~under 15-8-601.~~ AN ASSESSMENT PURSUANT TO PARTS 5 THROUGH 8
 17 OF THIS CHAPTER BASED ON ESTIMATED VALUE OR IMPUTED VALUE IS
 18 SUBJECT TO REVIEW UNDER 15-8-601. Each month or part of a
 19 month a report is delinquent, the department shall impose
 20 and collect a \$25 penalty, the total not to exceed \$200, and
 21 shall deposit such penalty to the credit of the general
 22 fund. The department will also inform its agents in the
 23 counties of the delinquency, and the agents shall assess a
 24 penalty of 1% of the tax due for each month or part of a
 25 month the report is delinquent."

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1 NEW SECTION. Section 4. Repealer. Section 15-8-305,
2 MCA, is repealed.

-End-