

SENATE BILL NO. 393

INTRODUCED BY AKLESTAD

BY REQUEST OF THE SENATE FINANCE AND CLAIMS COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REQUIREMENTS FOR BRINGING A CLASS ACTION FOR TAX REFUNDS; CLARIFYING THAT A MEMBER OF THE CLASS MUST HAVE PAID THE TAX UNDER PROTEST; AMENDING SECTIONS 15-1-406 AND 15-1-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 15-1-406, MCA, is amended to read:

"15-1-406. Declaratory judgment. (1) An aggrieved taxpayer may bring a declaratory judgment action in the district court seeking a declaration that:

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department of revenue is illegal or improper; or

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid under protest when due as a condition of continuing the action. Property taxes may be are paid under protest as provided in 15-1-402. All other taxes administered by the department, except inheritance and estate taxes, are paid under protest by filing timely claims for refund and by following the uniform tax review procedures of 15-1-211. Inheritance and estate taxes are paid under protest by following the procedures set forth in Title 72.

(4) The remedy authorized by this section may not be used to challenge the:

1 (a) market value of property under a property tax unless the challenge is to the legality of a  
2 particular methodology that is being applied to similarly situated taxpayers; or

3 (b) legality of a tax other than a property tax, inheritance tax, or estate tax unless the review  
4 pursuant to 15-1-211 has been completed.

5 (5) The remedy authorized by this section is the exclusive method of obtaining a declaratory  
6 judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this  
7 section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section  
8 does not affect actions for declaratory judgments under 2-4-506."

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10 **Section 2.** Section 15-1-407, MCA, is amended to read:

11 "**15-1-407. Alternative remedy -- procedure.** (1) Except as provided in subsection (2), an action  
12 pursuant to 15-1-406 is subject to the provisions of Title 27, chapter 8.

13 (2) In lieu of the requirement of 27-8-301, a party bringing an action under 15-1-406 may elect  
14 to use:

15 (a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action,  
16 Title 25, chapter 20, rule 23. This includes the requirement that to be a member of the class, a taxpayer  
17 must be similarly situated to the representative class member and must have paid the tax under protest as  
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19 (b) the procedure provided for in subsection (3).

20 (3) (a) A party bringing an action under 15-1-406 may elect to give notice as provided in this  
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1 (b) The court shall exclude a taxpayer from an action brought pursuant to 15-1-406 if the person  
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3 to be excluded by the date specified in the notice.

4 (c) An election to give notice under subsection (3) ~~of this section~~ does not prevent any party to  
5 the action from serving process on other interested parties.

6 (d) This section governs alternative notice. This section does not alter the requirement under Rule  
7 23, Montana Rules of Civil Procedure, that to be a member of the class, a taxpayer must have paid the tax  
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9 (4) In a proceeding under 15-1-406 all issues ~~shall~~ must be tried by the court."

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11 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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