

## FREQUENTLY ASKED TAX APPEAL QUESTIONS

**1. For appeals of class 3 and class 4 property (i.e. residential and commercial property) which are on a two-year appraisal cycle, does the new June 1 deadline apply to appeals in year one or year two? YEAR TWO.**

Mont. Code Ann. § 15-15-102, as to appeals to the county tax appeal board, states:

(3) One application for reduction may be submitted during each valuation cycle. The application must be submitted within the time periods provided for in 15-7-102(3)(a).

(4) A taxpayer who receives an informal review by the department of revenue as provided in 15-7-102(3) may appeal the decision of the department of revenue to the county tax appeal board as provided in 15-7-102(6). The taxpayer may not file a subsequent application for reduction for the same property with the county tax appeal board during the same valuation cycle.

Regarding timing and deadlines for class 3 and class 4 property appeals, Mont. Code Ann. § 15-7-102(3)(a) states:

- (ii) For class three property described in 15-6-133 and class four property described in 15-6-134, the objection may be made only once each valuation cycle. An objection must be made in writing within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for both years of the 2-year valuation cycle. An objection made more than 30 days from the date of the classification and appraisal notice will be applicable only for the second year of the 2-year valuation cycle. For an objection to apply to the second year of the valuation cycle, the taxpayer must make the objection in writing no later than June 1 of the second year of the valuation cycle or, if a classification and appraisal notice is received in the second year of the valuation cycle, within 30 days from the date on the notice.

Reviewing these statutes, the following deadlines apply for residential and commercial property (i.e. property on a two-year appraisal cycle):

1. If a taxpayer wants to appeal the DOR's assessment for the entire appraisal cycle, the taxpayer must either request an AB-26 review or appeal to the CTAB within 30 days from the date on the assessment notice.

2. If the taxpayer does not request an AB-26 review or appeal to the CTAB within 30 days from the date on the assessment notice, then the AB-26 review or the CTAB appeal will be limited to the second year of the two-year appraisal cycle.
3. If the taxpayer fails to request an AB-26 review or appeal to the CTAB within 30 days of the date on the notice or filed his or her appeal late and wishes to only challenge the second year of the appraisal cycle, the taxpayer has until June 1 of the year following the first year of the appraisal cycle to file the appeal. For example, in the current appraisal cycle, the taxpayer would have until June 1, 2018 to request an AB-26 review or file an appeal with the CTAB to challenge the second year of the appraisal cycle.

**2. Should a CTAB accept the appeal and hear it on timeliness and year two substance if it is filed thirty days after the date on the notice? YES.**

Reviewing Mont. Code Ann. § 15-7-102(3)(a) and the CTAB's duties under Mont. Code Ann. § 15-15-102, the most sensible process for the CTAB to follow would be to accept the late filed appeal and then hold a hearing to decide: (1) whether good cause exists to hear the late-filed appeal and thus review the substance of the appeal for the entire appraisal cycle; and (2) if no good cause exists for the hearing the late-filed appeal, the Board denies a review of the first year of the appraisal cycle but then hears the merits for the second year of the appraisal cycle. The CTABs will need to make clear findings as to timeliness and the scope of its final decisions as to the appraisal cycle.

**3. Can CTAB's grant a good cause exception to hear a late filed appeal? YES. What are some examples of good cause? SEE BELOW.**

The requirement to file an appeal "30 days from the date on the notice" or before "June 1" from the year in which the taxpayer received the notice is known as a period of limitation. "Periods of limitation are scattered throughout the Montana Code Annotated." *BNSF Ry. Co v. Cringle*, 2010 MT 290, ¶ 17, 359 Mont. 20, 24, 247 P.3d 706, 710. Periods of limitation exist to advance "the cause of justice by bringing predictability to [the legal] process." *Forsythe v. Leydon*, 2004 MT 327, ¶ 9, 324 Mont. 121, 102 P.3d 25. "Generally, a litigant who properly raises a procedural time bar may expect the time bar to be applied regularly and consistently." *Cringle*, 2010 MT ¶¶ 17-18.

"Good cause for such relief [from a period of limitation] requires a [party to present evidence of a] legally sufficient reason." *BNSF Railway Company v. Cringle*, 2012 MT 143, ¶ 21, 365 Mont. 304, 311, 281 P.3d 203, 207. In the context of a Human Rights Act's appeal, the Montana Supreme Court ruled a party asserting a good cause exception for a late filed appeal

must show the party “acted with reasonable diligence to preserve their legal rights but [the party was] prevented from doing so by circumstances reasonably beyond their control.” *Id.* at ¶ 22; *contrast with Weidow v. Uninsured Employers’ Fund*, 2010 MT 292, 359 Mont. 77, 246 P.3d 704.

If CTABs can hear and decide whether an appeal was timely filed, it seems reasonable a CTAB can find good cause to hear a case after the deadline. Examples of good cause may be:

- (1) I had a heart attack and was in the hospital for two weeks after the deadline notice was mailed; or
- (2) The notice was mailed to the wrong address and thus was not timely received.

**4. Should the CTAB accept and hold an appeal in abeyance if an AB-26 has been filed and is pending? YES.**

Mont. Code Ann. § 15-15-102(4) states,

A taxpayer who receives an informal review by the department of revenue as provided in 15-7-102(3) may appeal the decision of the department of revenue to the county tax appeal board as provided in 15-7-102(6). The taxpayer may not file a subsequent application for reduction for the same property with the county tax appeal board during the same valuation cycle.

Mont. Code Ann. § 15-15-102(6) then states,

If a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order.

The above statutes indicate a taxpayer, after an AB-26 review, has the right to appeal the outcome of the AB-26 review to the CTAB. Neither of these statutes, however, prevents the CTAB – when a taxpayer appeals to it as well as requests an AB-26 review – from holding the appeal in abeyance pending the conclusion of the AB-26 review.

If the CTAB holds an appeal in abeyance, the CTAB will need to inform the taxpayer the appeal has been held in abeyance and that the CTAB will schedule and hear the appeal only after the taxpayer has provided notice to the CTAB informing it the AB-26 process has concluded, the AB-26 process did not resolve the matter, and thus a hearing is needed.

**5. Can the Board secretary or County Clerk and Recorder decide timeliness as it relates to deadlines on tax appeals? NO.**

Reviewing Mont. Code Ann. § 15-15-102 and noting the possible good cause exceptions outlined herein, only the CTAB can decide whether an appeal has been timely filed and whether good cause exists to hear the appeal and not the Board Secretary or the Clerk and Recorder.

**6. Do taxpayers get any additional time for mailing? NO.**

Montana Rules of Civil Procedure, Rule 6(e) states

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.

“The 3-day extension applies only **where the time period for doing an act runs from the time of service of notice**. This 3-day period is computed separately and determines the date when the 30-day time for appeal begins to run.” *MCI Telecommunications Corp. v. Montana Dept. of Public Service Regulation*, 260 Mont. 175, 178, 858 P.2d 364, 366 (1993), *emphasis added*.

Mont. Code Ann. § 15-7-102(3) states the taxpayer must file the appeal within “30 days from the date on the notice.” Therefore, the appeal “clock” does not start with receipt. Instead, the appeal “clock” is based on the date on the notice. Because appeal “clock” does not start with receipt of the appeal, Rule 6(e) does not apply. No legal basis exists entitling the taxpayer to an extra three days to file his or her appeal.

**7. How does the June 1 deadline date apply to class ten forest land and the six-year appraisal cycle? IT APPLIES TO THE TAX YEAR THE TAXPAYER WISHES TO APPEAL.**

Mont. Code Ann. § 15-15-102, which concerns appeals to the county tax appeal board, states:

(3) One application for reduction may be submitted during each valuation cycle. The application must be submitted within the time periods provided for in 15-7-102(3)(a).

Mont. Code Ann. § 15-7-102(3)(a) states:

- (iii) For class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle. An objection must be made in writing within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle. An objection made more than 30 days after the date of the classification and appraisal notice applies only for the subsequent remaining years of the 6-year reappraisal cycle. For an objection to apply to any subsequent year of the valuation cycle, the taxpayer must make the objection in writing no later than June 1 of the year for which the value is being appealed or, if a classification and appraisal notice is received after the first year of the valuation cycle, within 30 days from the date on the notice.

Reviewing this statute, the following deadlines apply to class ten forest land:

1. The taxpayer only gets to file one appeal/objection for each valuation cycle and can appeal at any time, consistent with the remaining terms provided below.
2. To appeal the entire appraisal cycle, the taxpayer must either commence an AB-26 review or appeal to the CTAB within 30 days from the date on the notice.
3. If the appeal or objection is filed late – thus more than 30 days from the date on the notice – the appeal or objection will be for the second and subsequent years of the appraisal cycle.
4. If the taxpayer does not appeal or object 30 days after the date on the notice, the taxpayer who wishes to appeal or object to subsequent years of the appraisal cycle must do so by June 1 of the appraisal year in which he or she wants the review to commence from. For example, if the taxpayer wishes to appeal years 3 through 6 of the current appraisal cycle – so not wanting to file an objection or appeal for years one and two – the taxpayer would file the objection or appeal by June 1, 2019 which is the third year of the appraisal cycle.

