



# Montana Tax Appeal Reference Guide

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## Introduction

### Appeals

If you disagree with a notice of assessment, notice of proposed disallowance of a claim for refund, or other determination or decision by the Department of Revenue, you may file a written appeal. We will work with you to resolve any outstanding issues, but we cannot disregard Montana tax laws in order to settle a dispute.

### Payment Options

If you decide not to dispute an assessment, but you do not believe that you have the financial ability to pay the assessment, please call our Citizen Services Call Center at (406) 444-6900. They will direct you to a representative in our Collection Bureau to discuss payment options.

### Representation

You are not required to hire a lawyer or other tax representative in order to participate in either an informal review before the Department of Revenue's Business and Income Tax Division or an appeal of a tax issue before the Office of Dispute Resolution. You may choose to represent yourself or to have someone represent you at every stage of the department's review and appeal proceedings.

Use [Form POA – Power of Attorney](#), to authorize one or more individuals to represent you before the Department of Revenue. This POA authorizes your representative(s) to receive and inspect confidential tax information and to act on your behalf in matters before the department. A power of attorney does not change the requirement that the department send all official mailings directly to you, the taxpayer; however, copies of all documents issued during informal review and appeal proceedings will be mailed to your identified power of attorney.

### Constitutional Issues

As an administrative agency, the Department of Revenue cannot decide constitutional issues. Constitutional issues are usually decided by a Montana district court, on appeal from a Montana Tax Appeal Board decision or in an original action filed for that purpose. However, constitutional issues still should be raised in department

appeals so that the department understands all of a taxpayer's concerns. Also, constitutional issues often involve mixed questions of fact and law, and an appeals court may find that a taxpayer has failed to exhaust administrative remedies if facts related to a constitutional challenge are not established in the administrative proceedings.

## Appeals Process

### Step One – Informal Review

If you object to your notice of assessment, refund reduction, or other determination or decision, you may appeal by requesting an Informal Review by the department's Business and Income Taxes Division.

### How do you file an objection to request an informal review?

Your objection must be in writing and filed within 45 days of the date on the notice of the action that you are challenging. If you do not file an objection within 45 days, we will consider this an admission that you agree with the adjustment. You can use [Form APLS101F – Request for Informal Review](#) to complete and file your objection. Email your objection to [soaobjections@mt.gov](mailto:soaobjections@mt.gov) or mail the objection and documentation to:

Montana Department of Revenue  
PO Box 7149  
Helena MT 59604-7149.

Whether you use Form APLS101F or send a separate written objection, any written objection should clearly state all of the following:

- Your name and address;
- Your Montana Account Number;
- Your Social Security Number or Federal Employer Identification Number;
- Tax type, i.e., individual income tax, withholding tax, etc.;
- Taxable period or periods in dispute;
- A statement that you are appealing the notice of assessment, refund reduction, or other determination or decision; and
- A written explanation of the bases for your objection and any supporting documentation

If you are requesting a waiver of penalties and/or interest, all of the following apply:

- You need to establish reasonable cause for the waiver. Please see the discussion and rule on reasonable cause in [ARM 42.2.512](#).
- Reasonable cause for waiver of the late payment penalty automatically exists if you:
  - Pay all tax and interest due, and
  - Request the waiver in writing within 45 days of the date of your notice of an amount due.

If you meet both of these qualifications, please check the “Request for Waiver of Late Payment Penalty Only” box on [Form APLS101F](#).

There is a \$500 limit per taxable period on the amount of interest that can be waived.

### **What happens after you file your objection with the department?**

The Business and Income Taxes Division will review your objection and determine whether it agrees or disagrees with your concerns. The division will mail a notice of determination advising you of the division’s determination within 45 days of receipt of your objection. If the division fails to meet this deadline, the adjustment is reversed. However, this does not prohibit the department from making the same adjustment in a different tax period.

A unit manager will conduct the review. The auditor who issued the assessment may provide information but will not make the determination on behalf of the Business and Income Taxes Division.

If the issue cannot be resolved at the division level, you may appeal to the Office of Dispute Resolution (ODR) (see Step Two).

### **Important Items to Note**

- Interest and penalties will continue to accrue, as applicable, until the total tax due is paid in full, even if you file a written objection or appeal. Please consider paying the total amount due to stop additional interest and penalties from accruing. Making a payment will not waive your appeal rights.

- Once you submit a timely objection, if you wish to provide additional information for the department to consider during the Informal Review, you may request an extension of time to provide the additional information or an informal review meeting. To allow this meeting and a review of the additional information to take place, the department may need to extend the time it takes to issue its Informal Review determination.

### **Step Two – Office of Dispute Resolution (ODR)**

Consistent with most federal and state agencies, the Department of Revenue houses an independent adjudicatory office, called the Office of Dispute Resolution. Its purpose is to render fair, objective, and unbiased decisions in tax disputes free from agency influence or direction.

The Administrative Law Judge (ALJ) is not subject to performance ratings, promotions, demotions, or compensation based upon the number of times she or he decides in favor of the agency or the taxpayer. It is the ALJ’s responsibility to render decisions based upon the record and evidence of each case. Their decisions are expected to fully explain why one party or another prevails in any given dispute. The administrative rules pertaining to ODR are Administrative Rules of Montana ([ARM](#)) [42.2.613 through 42.2.621](#).

### **How can you file an appeal with the ODR?**

Your appeal must be in writing and filed within 45 days of the date on the notice of determination regarding your informal review that you received from the Business and Income Taxes Division, as outlined in Step One above. If you do not file an objection within 45 days, the department will consider this an admission that you agree with the adjustment. For your convenience, an optional [Form APLS102F – Notice of Referral to the Office of Dispute Resolution](#) is available for you to complete and file your appeal. Email the appeal and documentation to [dordisputeresolution@mt.gov](mailto:dordisputeresolution@mt.gov) or mail to: Montana Department of Revenue, PO Box 5805, Helena, MT 59604-5805.

Whether you use [Form APLS102F](#) or send a separate written appeal, your appeal should clearly state all of the following:

- Your name, address, and telephone number
- Your Montana Account Number
- Tax type, i.e., individual income tax, withholding tax, etc.
- Taxable period or periods in dispute
- A written explanation of the basis for your objection and any supporting documentation

### **What happens after you file your appeal with the ODR?**

#### ***Initial Conference***

In any matter before the ODR, you or your representative will be required to appear before the assigned ALJ by Zoom audio for an initial conference. An order setting the initial conference will be issued within a week or two after an appeal is filed with the ODR. During the initial conference, the parties will identify the issues before ODR, discuss the need for a hearing, determine whether the issues may be settled through mediation, establish deadlines for future conferences, or, if a hearing is set, establish deadlines for all pre-hearing requirements. Appeals may be stayed for a short period of time if the parties agree.

#### ***Hearings***

The ALJ has the discretionary authority to determine the level of formality in tax hearings. Every effort is made to make these proceedings as unintimidating and inexpensive as possible for taxpayers. While taxpayers may be represented by a lawyer, accountant, or tax practitioner, such representation is entirely up to them. Individual taxpayers have often represented themselves successfully. If both parties are represented by lawyers, the ALJ may conduct the appeal in accordance with the rules of evidence and civil procedure. Testimony at hearings is taken under oath. The parties can introduce proposed evidence and cross-examine opposing parties or witnesses on any testimony or evidence offered. Hearings are conducted by Zoom, or, upon request and approval, in Helena. All hearings are recorded and transcribed, and a copy of the recording or transcription will be provided if requested.

Any tax decision ODR issues is a final agency decision. A taxpayer may appeal ODR's decision to the Montana Tax Appeal Board, as outlined in Step Three.

#### ***Mediation Process***

ODR can also mediate disputes if both parties agree and are both willing to make a good faith effort to settle the dispute informally. The parties may also agree to select a mediator outside the ODR but must pay for the mediator.

The mediation process is intended to allow the parties to meet with a mediator who will facilitate the discussion. During this process, the parties can discuss all the available evidence and, with the assistance of the mediator, work toward a satisfactory settlement that may resolve the issues pending on appeal. If the parties settle and execute a settlement agreement, they are bound by the agreement.

**If you do not agree with the decision issued by ODR, you may appeal to the Montana Tax Appeal Board (see Step Three).**

### **Step Three – Montana Tax Appeal Board (MTAB)**

The Montana Tax Appeal Board is a three-member independent review board, separate from the Department of Revenue. Members are appointed by the Governor for six-year terms.

You must file an appeal to MTAB within 30 days of a final department decision (see Step Two). When appealing to MTAB, please be sure to include a copy of the department's final Determination and a copy of ODR's Decision and Order, which will include findings of fact and conclusions of law. The appeal itself can be in the form of a letter containing a brief statement of the issue. You may represent yourself or designate someone to represent you at MTAB.

The board will issue a written decision after hearing the appeal. Either party may seek review by a state District Court. Judicial review must be sought within 60 days of the date of the MTAB Decision.

You can learn more about the Montana Tax Appeal Board by visiting their website: <https://mtab.mt.gov>.

**If you do not agree with the decision issued by the Montana Tax Appeal Board, you may appeal to the Montana District Court (see Step Four).**

#### **Step Four – Montana District Court**

For information about the Montana District Court system, please visit their website, <https://courts.mt.gov>.

**If you do not agree with the Montana District Court’s decision, you may appeal to the Montana Supreme Court (see Step Five).**

#### **Step Five – Montana Supreme Court**

For information about the Montana Supreme Court, please visit their website at <https://courts.mt.gov/courts/supreme>.