

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.20.173, 42.20.454, and) PROPOSED AMENDMENT
42.20.455 pertaining to deadlines for)
classification and appraisal reviews)
and consideration of sales price and)
fee appraisals as market value)
indicators)

TO: All Concerned Persons

1. On September 11, 2017, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor East PAD Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 31, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.20.173 STATUTORY DEADLINE DEADLINES FOR REQUESTS FOR INFORMAL CLASSIFICATION AND APPRAISAL REVIEWS, FORM AB-26 (1) ~~The reappraisal cycle valuation cycles for class three, and class four, and ten property is are~~ January 1, 2017, through December 31, 2018 provided in 15-7-111, MCA. ~~The department will accept requests for informal classification and appraisal reviews~~ Requests for Informal Classification and Appraisal Reviews, (Form AB-26), for class three and class four property for tax years 2017 and 2018 both years of the two-year valuation cycle for class three and four property and for all six years of the valuation cycle for class ten property.

~~(2) The reappraisal cycle for class ten property is January 1, 2015 through December 31, 2020. The department will accept Form AB-26 requests for class ten property for tax years 2015 through 2020.~~

~~(3)~~ (2) A property taxpayer who is Class three and four property taxpayers dissatisfied with their property's the department's appraised value of their property may submit a Form AB-26 one time per reappraisal valuation cycle. The To be considered for both years of the two-year valuation cycle, the Form AB-26 must be submitted to the local department office in the county in which the property is located

within 30 days ~~after~~ from the date on the classification and appraisal notice ~~to be~~ considered for the current tax year.

~~(4)~~(3) For taxpayers who do not file within 30 days after the date on the classification and appraisal notice, the informal review will be considered for the following If taxpayers of class three or four property miss the 30-day deadline in (2), they may object to the department's appraised value of their property for the second year of the valuation cycle by submitting a completed Form AB-26 by June 1 of the second year.

(4) Class ten property taxpayers dissatisfied with the department's appraised value of their property may submit a Form AB-26 one time per valuation cycle. To be considered for all years of the six-year valuation cycle, the Form AB-26 must be submitted to the local department office in the county in which the property is located within 30 days from the date on the classification and appraisal notice.

(5) If taxpayers of class ten property miss the 30-day deadline in (4), they may object to the department's appraised value of their property for any remaining years of the six-year valuation cycle by submitting a completed Form AB-26 by June 1 of any subsequent year of the valuation cycle.

(5)~~(6)~~ There will be no retroactive adjustments to the taxable value for prior years. Any adjustments to taxable value will be ~~reflected only~~ applied in the tax year for which the Form AB-26 was timely filed and ensuing years for the remaining year(s) of the valuation cycle. ~~There will be no retroactive adjustments to the taxable value for years prior to the accepted filing date~~ If the property taxpayer submits a Form AB-26 after June 1 of the last year of the valuation cycle, their request shall be deemed untimely with the department.

~~(6)~~(7) Taxpayers may file a Form AB-26 in any year of a ~~reappraisal~~ valuation cycle, but only one time during the cycle, unless the ~~department determines that a new classification and appraisal notice is generated due to a change in property ownership, classification, or value occurred and the taxpayer receives a new classification and appraisal notice during the cycle.~~ Taxpayers will then have 30 days from the date on the new classification and appraisal notice to submit a completed Form AB-26.

~~(7)~~(8) ~~The department will deny a property owner's Form AB-26 request if no response to the department's final written request to either schedule an appointment or provide additional documentation is received within 15 working days from the date on the request. The final written request will only occur after the department has attempted to contact the property owner several times either by telephone, by e-mail, or with a property site visit. The letter denying the taxpayer's Form AB-26 request will inform the property owner that they may appeal the department's decision to the county tax appeal board and that if they fail to respond to the department's denial they may lose their right to appeal. During the informal review process, department staff may attempt to contact the property owner by telephone, email, and/or a property site visit to schedule an appointment or request additional documentation. If attempts to contact the property owner are unsuccessful, department staff will send a written request to the taxpayer who will then have 15 business days from the date on the letter to respond. If the taxpayer does not contact the department within the allowed 15 business days, the department will deny the Form AB-26 and send a determination letter to the taxpayer.~~

AUTH: 15-1-201, MCA

IMP: 15-7-102, 15-7-110, 15-7-111, MCA

REASON: The department proposes amending ARM 42.20.173 based on the passage of House Bill (HB) 43, L. 2017, which authorized an informal review deadline for subsequent remaining year(s) in property valuation cycles; and to update terminology, adapt the rule to multiple classes of property and valuation cycles, fix grammatical errors, remove passive language, add helpful detail, and improve the order of the rule content.

The department proposes updating the rule title to properly name and refer to the Form AB-26 and to make it clear that the rule now addresses multiple deadlines. The department also proposes replacing the word "reappraisal" with "valuation," as appropriate throughout the rule, to be consistent with this change in 15-7-102, MCA, by HB 43.

Sections (1) and (2) are proposed to be collapsed together to reduce redundancy. The department also proposes adding a reference to 15-7-111, MCA, into the revised section to identify the location of property valuation cycle information, and removing all calendar year references from the rule because they are unnecessary. Removing the years will eliminate the need for the department to make cyclical amendments to the rule.

Because class three and four property are on a two-year valuation cycle and class ten property is on a six-year valuation cycle, yet both valuation cycles are addressed in this rule, the department proposes separating the language pertaining to each class into sections, where necessary, for clarity. The proposed changes to the remaining sections of the rule are as follows.

The department proposes revising the language in newly numbered (2) to identify the section as applying specifically to class three and four property taxpayers on a two-year valuation cycle who are dissatisfied with the department's appraised value of their property. The revised section provides the deadline for submitting a Form AB-26 to be considered for both years of the two-year valuation cycle. Also, as revised, the word "after" is being replaced with "from," to be consistent with the language in HB 43, and the information pertaining to the timing for applications to be considered for the current tax year is relocated to the beginning of the sentence for clarity and emphasis.

In newly numbered (3), the department proposes striking the existing language and replacing it with a more direct, detailed statement specific to class three and four property and providing the June 1 filing deadline for second year valuation review requests, as enacted by HB 43.

The department proposes adding new (4) to provide a section applying specifically to class ten property taxpayers on a six-year valuation cycle who are dissatisfied with the department's appraised value of their property. This new section provides the deadline for submitting a Form AB-26 to be considered for all six years of the six-year valuation cycle.

The department further proposes adding new (5), specific to class ten property, to provide the annual deadline for submitting a Form AB-26 if the 30-day deadline is missed at the beginning of the six-year valuation cycle.

The last three sections of the rule apply to both valuation cycles. In newly numbered (6), the department proposes reversing the order of the content to place the original second sentence at the beginning of the section to emphasize that adjustments to taxable values do not apply retroactively. The department further proposes adding language in this section to make it clear that Form AB-26 requests that are submitted after June 1 in the last year of a valuation cycle will be considered untimely.

The department also proposes revising the content of newly numbered (7) to include more detail specific to how the 30-day deadline applies when the department generates a new classification and appraisal notice, for cause.

And finally, the department proposes rewording newly numbered (8) to make it shorter and easier to follow. As proposed to be revised, the language still explains the steps the department will take to contact the taxpayer, the timeline that will be followed, and what happens if the department's efforts to reach the taxpayer are unsuccessful, but in a more orderly manner.

42.20.454 CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider the actual selling price of the property as evidence of the market value of the property. For the actual selling price to be considered, a taxpayer or the taxpayer's agent must:

(a) submit a completed Request for Informal Classification and Appraisal Review, ~~(Form AB-26), as set forth in ARM 42.20.173,~~ to the local department office in the county where the property is located ~~situated within 30 days after the date on the classification and appraisal notice;~~

(b) and (c) remain the same.

(d) provide a signed affidavit completed by at least one party or person who is not the buyer or seller and that identifies the conditions, terms, and ~~sale~~ sales price of the property;

(e) remains the same.

(f) provide evidence of two comparable sales of similar property in the same general geographic area where the taxpayer's property is ~~situated~~ located. The property sales must have occurred within six months of the valuation date adopted by the department in its reappraisal plan administrative rules, as set forth in ARM Title 42, chapter 18. The department will:

(i) and (ii) remain the same.

(2) For the actual selling price of the property to be considered, the department must:

(a) through (c) remain the same.

(d) adjust the actual selling price of the property to a value that is consistent with the ~~base-year~~ valuation date adopted by the department in its reappraisal plan administrative rules, located in ARM Title 42, chapter 18; and

(e) adjust the sales price of the property to account for changes in market conditions that may have occurred between the time of sale and the ~~base-year~~ valuation date.

(3) After making a determination regarding use of the adjusted selling price as an indication of market value for tax purposes, the department shall ~~return the~~

Form AB-26 respond in writing to the taxpayer stating clearly the reasons for accepting or rejecting the application use of the sales price and, if appropriate, what adjustments were made to the actual selling price and why the adjustments were made.

(4) If the appraised value is adjusted by the department or the tax appeal board and the department files no further appeal within the time period allowed by law, the adjusted value becomes the value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment, or upon an updated valuation occurring in subsequent property valuation cycles.

~~(5) When a tax appeal board decision indicates that the adjusted selling price is market value for the property under appeal, and the department files no further appeal within the time prescribed by law, the adjusted selling price shall become the value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment or upon an updated reappraisal value.~~

AUTH: 15-1-201, MCA

IMP: 15-7-102, 15-7-111, 15-8-111, MCA

REASON: The department proposes amending ARM 42.20.454 to add a reference to another rule, improve grammar, eliminate outdated language, and align the language with other rules that cover similar or related subject matter.

The proposed amendments to (1)(a) include removing the unnecessary parenthesis around "Form AB-26," striking the 30-day language in favor of adding a reference to ARM 42.20.173, because it provides greater detail on the statutory deadlines for all requests for classification and appraisal reviews and submissions, and replacing the word "situated" with "located" in both (1)(a) and (f) for consistency with similar rules.

The department also proposes replacing "base year" with "valuation date" in (2)(d), and removing the term from (2)(e) because it became outdated when the six-year reappraisal cycle was changed to a two-year valuation cycle for class four property in 2015. The department further proposes updating (2)(d) to include a description of the content of the ARM Title 42 rules referenced in that section for clarity and consistency with (1)(f).

The department further proposes updating the language in (3), which states that the department shall "return the Form AB-26," because that language is now outdated and inaccurate. The department responds to the taxpayer to inform them of its determination, but does not return the taxpayers Form AB-26 to them. The department also proposes making this section of the rule clearer by replacing the word "application" with "use of the sales price," to directly identify the subject matter being considered by the department.

Sections (4) and (5) were determined to contain similar content; therefore, the department proposes combining them into a single section to eliminate redundancy. The department further proposes adding language into the revised section to make it clear that a valuation adjustment made to an appraisal by the department, or the tax appeal board, is subject to change with subsequent valuation cycles.

42.20.455 CONSIDERATION OF INDEPENDENT FEE APPRAISALS AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider independent fee appraisals of the property as evidence of the market value of the property. For an independent fee appraisal to be considered, the taxpayer or the taxpayer's agent must ~~meet~~ submit the following requirements documents to the local department office in the county where the property is located:

(a) a Request for Informal Classification and Appraisal Review, Form AB-26, as set forth in ARM 42.20.173; and

(a)(b) submit a signed original long-form narrative a copy of the independent fee appraisal that meets the following requirements and was conducted:

(i) performed by an appraiser licensed or certified by the state of Montana Board of Real Estate Appraisers, under Title 37, chapter 54, MCA, or an appraiser who has been certified by a nationally recognized appraisal society or institute, to the local department office in the county where the property is situated;

(ii) in accordance with current uniform standards of professional appraisal practice (USPAP), as set forth for licensed or certified real estate appraisers under 37-54-403, MCA; or completed for federally related transactions or commercial lending institutions; and

(b)(iii) have a valuation date within six months of the base-year valuation date provided for the appraisal required in (1)(a), or be adjusted by the department or the appraiser who performed and prepared the narrative appraisal to reflect changes in market conditions between the appraisal date and the base-year valuation date; in 15-7-102, MCA, and ARM 42.18.124. This six-month requirement may necessitate that a fee appraiser conduct a retroactive appraisal, in accordance with USPAP. In this situation, the effective date of the appraisal may be prior to the date of the Appraisal Report. If an appraisal has already been conducted, and it was conducted prior to the valuation date, then:

(A) a recertification or update of value may be required as an addendum to the original appraisal; and

(B) the recertification or update of value must be completed by the same appraiser who conducted the original appraisal.

(c) submit a Request for Informal Classification and Appraisal Review (Form AB-26) and the original long-form narrative appraisal, to the local department office in the county where the property is situated within 30 days after the date on the classification and appraisal notice.

(2) For the independent appraisal to be considered, the department must:

(a) maintain the information and requirements in (1)(a) through (c) as a part of the file supporting the value placed on the property for tax purposes;

(b) conduct on-site reviews of the subject property verifying the property characteristics of the subject property;

(c) verify the comparable sales used in the independent appraisal as valid arm's-length transactions as defined in 15-8-111, MCA; and

(d) conduct on-site reviews of the comparable properties being used to support the value of the subject property in the appraisal.

(2) If the fee appraisal submitted for consideration was for class four property, as defined in 15-6-134, MCA, but not completed for a federal related transaction or commercial lending institution, the fee appraiser must determine and perform the scope of work necessary to develop, disclose, and report credible assignment results in the Appraisal Report.

(3) After making a determination regarding use of the independent fee appraisal value as market value for tax purposes, the department ~~must return the form (AB-26)~~ shall respond in writing to the taxpayer stating clearly the reasons for accepting or rejecting the application use of the fee appraisal and, if ~~accepted and~~ appropriate, what adjustments were made to the department's appraised value and ~~why those adjustments were made.~~

(4) ~~When a tax appeal board decision indicates that the independent appraisal value is market value for the property under appeal,~~ If the appraised value is adjusted by the department or by the tax appeal board, and the department files no further appeal within the time prescribed period allowed by law, the independent appraisal adjusted value shall become becomes the value for assessment and taxation purposes, until such time as changing circumstances with respect to the property requires a new valuation and assessment, or upon an updated ~~reappraisal valuation occurring in subsequent property value valuation cycles.~~

AUTH: 15-1-201, MCA

IMP: 15-7-102, 15-7-111, 15-8-111, MCA

REASON: The department proposes amending ARM 42.20.455 to update the rule title, improve grammar, eliminate outdated and unnecessary language, restructure the content for better clarity, and align the language with other rules that cover related subject matter.

The department proposes adding the word "fee" ahead of appraisals in the rule title, and in (1), (1)(b), and (2), to distinguish the type of appraisal being referred to. "Fee appraisal" is a commonly used term in the appraisal industry. Adding this distinction into the rule is intended to differentiate between appraisals conducted by the department and appraisals conducted by independent fee appraisers hired by taxpayers.

Section (1) is proposed to be restructured to make it more logical and helpful by moving the language informing the taxpayer where to submit their documents up higher in the section, and then clearly stating which documents need to be included, in a list. The department is also proposing to remove outdated language from this section referencing "long-form narrative appraisals," because the department no longer requires fee appraisals to be submitted in this format.

The department further proposes striking the 30-day language from existing (1)(c) in favor of adding a reference to ARM 42.20.173 in newly numbered (1)(a), because ARM 42.20.173 provides greater detail on the statutory deadlines for all requests for classification and appraisal reviews and submissions.

The department also proposes removing the appraiser certification requirements language from the rule, because it is outdated. The language proposed to be inserted provides the department's requirements for appraisals

submitted by independent fee appraisers. As restructured, the language in newly numbered (1)(b) is intended to be more logical and clearly identify the criteria a fee appraisal must meet for consideration by the department.

The department also proposes removing the term "base year" from newly numbered (1)(b)(iii) for clarity, because that term became outdated when the six-year reappraisal cycle was changed to a two-year reappraisal cycle for class four property in 2015. The reference to the "valuation date" in this section is accurate and sufficient. The department also proposes eliminating outdated language in current (1)(b), pertaining to the department making adjustments to fee appraisals based on market conditions. Allowing department staff to make adjustments to the fee appraisal would violate current uniform standards of professional appraisal practices (USPAP). The language proposed for newly numbered (1)(b)(iii) provides that the fee appraiser who completed the original appraisal is required to complete a recertification or update the value within six months of the valuation date, which complies with USPAP.

The department proposes striking the existing language in (2)(a), pertaining to the manner in which the department retains information, because it is unnecessary detail to include in the rule. Independent fee appraisals submitted to the department are already retained with the taxpayer's informal classification and appraisal review files. The department further proposes striking the existing language in (2)(b) through (d), because it describes tasks that the independent fee appraisers, not department staff, are required to perform to comply with USPAP.

The department proposes adding language in new (2) to define the requirements for a fee appraisal submitted for consideration that was not completed for a federal related transaction or commercial lending institution, and updating the language in (3), which states that the department shall "return the Form AB-26," because that language is now outdated and inaccurate. The department responds to the taxpayer to inform them of its determination, but does not return the taxpayer's Form AB-26 to them. The department also proposes making this section of the rule clearer by replacing the word "application" with "use of the fee appraisal," to reflect the subject matter being considered by the department.

The department's proposed revision of (4) removes excess words and adds new language explaining that a valuation adjustment made to an appraisal by the department or the tax appeal board is subject to change with subsequent valuation cycles.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 21, 2017.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons

who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 43, L. 2017, Representative Dave Fern, was contacted by regular mail on June 14, 2017 and July 13, 2017.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 7, 2017.