



## ADMINISTRATIVE RULES OF MONTANA



### 42.2.204 ISSUANCE OF AN ADMINISTRATIVE SUMMONS

- (1) An administrative summons issued under the authority of 15-1-301 , MCA, will be issued by the director or the director's designee.
- (2) Financial institutions may, at their discretion, designate a specific office where service of administrative summons may be accepted. If no such designation is made, the department shall serve the summons on the financial institution in the city where the department believes the requested information may be found.
- (3) The summons may require the personal appearance and testimony of a person in addition to the production of records, or it may require only the production of records.
- (4) If the personal appearance and testimony of a person is required, the summons will specify the date, time, and place where the appearance shall occur.
- (5) If only the production of records is required, the items must be delivered to the department at the Sam W. Mitchell Building, 125 N. Roberts, Helena, Montana 59604, or to the location designated on the administrative summons on or before the date and time specified in the summons.
- (6) The summons will:
  - (a) to the best of the department's knowledge, identify the taxpayer to whom the summons relates or the other person to whom the records pertain;
  - (b) will provide information to enable the person summoned to locate the records required under the summons;
  - (c) identify a contact person;
  - (d) be personally served as provided in Rule 45(b) of the Montana Rules of Civil Procedure;
  - (e) state the fees for appearing, which shall be the same amount witnesses are compensated in Montana district court; and
  - (f) include a state warrant (check) for one day's witness fee and mileage.
- (7) A form for claiming additional witness fees will be provided when the person appears before the department.
- (8) Questions about the identity of any person or the scope of a record request should be addressed to the contact person.
- (9) If the summons requires the giving of testimony or relates to the production of any records with respect to any person, known to the department at the time of the issuance of the summons, other than the person who is identified in the summons (third-party recordkeeper) , the

department shall, within three days, mail a copy of the summons by registered or certified mail, to that person. Additionally, the department will explain the person's right to bring a proceeding to quash the summons. In no event shall the department require the production of documents or the giving of testimony earlier than 30 days from the issuance to the third-party recordkeeper.

- (10) On receipt of a summons to which this section applies for the production of records, the summoned party, including a third-party record keeper shall proceed to assemble the records requested, or such portion thereof as the department may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.
- (11) In the event that a third-party recordkeeper incurs copying costs in excess of \$50 for any one administrative summons issued by the department, the department shall reimburse the third-party recordkeeper for those copying costs in excess of \$50. Reimbursement will be at reasonable commercial rates, such as a rate charged by a private copy service. Calculating the amount of copying costs incurred by a third-party recordkeeper will be determined by examining the actual costs expended (as shown on a receipt or invoice) or by applying a reasonable commercial rate per page copied and produced to the department, whichever amount is lower.
  - (a) Taxpayers will not be reimbursed for their own copying charges.
  - (b) Taxpayers or third-party recordkeepers will not be reimbursed for any other costs associated with the production of the requested information, except for the payment for mileage and witness fees stated in this rule.
- (12) Nothing in this section may be construed to limit the department's ability to obtain information, other than by summons, through formal or informal procedures authorized by 15-1-301 , MCA.

**Authorizing statute(s):** 15-1-201, 25-5-103, MCA

**Implementing statute(s):** 2-4-104, 15-1-301

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**History:** NEW, 2006 MAR p. 681, Eff. 3/10/06.