



## Revenue and Transportation Interim Committee

### 64th Montana Legislature

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JARET COLES, Staff Attorney  
FONG HOM, Secretary

TO: Committee Members

FROM: Jaret Coles, Staff Attorney

RE: Administrative Rule Activity

DATE: November 27, 2015

## Department of Revenue

*Proposal and Adoption Notices are available on the Internet:*

Department of Revenue notices can be found on the Secretary of State's website at <http://www.mtrules.org/>. Under the Montana Administrative Register heading, type the number "42" in the "Search by Notice No." box and click on the "Go" icon.

### Notice of Proposed Rules:

Property Tax -- Personal Property Reporting Requirements -- Personal Property Taxation Dates -- Livestock Reporting -- Livestock Per Capita Fee Payments -- Senate Bill No. 62 (2015). MAR 42-2-937. A public hearing was held on November 5, 2015, and the public comment period ended on November 17, 2015. The Department proposes to amend three rules and repeal one rule. The first amendment is clerical in nature. The second proposed amendment requires an exemption application for personal property to be filed within 30 days of acquisition. The third proposed amendment pertains to the livestock reporting and per capita fee in order to implement [Senate Bill No. 62](#). The amendment eliminates the fee for failure to report livestock and it provides further that the Department of Livestock will provide the Department with information regarding livestock that is not being reported. The repeal contained language that was relocated.

Income Tax -- Resident Military Salary Exclusion -- Senate Bill No. 378 (2015) -- MAR 42-2-938. A public hearing was held on November 4, 2015, and the public comment period ended on November 16, 2015. The Department proposes to adopt one rule that relates to [Senate Bill No.](#)

[378](#) by specifically allowing granting an income tax exemption to a member of the National Guard for "homeland defense activity" and active duty in a "contingency operation".

**Note:** The exemption for "basic, special, and incentive pay received for serving on active duty as a member of the regular armed forces" is still retained in subsection (1)(a) of the rule. As such, if a National Guard member has orders issued pursuant to Title 10 of the United State Code, then the member is considered on active duty in the regular armed forces and the exemption will apply.

Tax Credits for Contributions to Qualified Education Providers -- Student Scholarship Organizations -- Senate Bill No. 410 (2015). MAR 42-2-939. A public hearing was held on November 5, 2015, and the public comment period ended on November 17, 2015. The Department proposes to adopt three new rules that relate to [Senate Bill No. 410](#). Proposed New Rule I provides further refinement to the statutory definition of what it takes to be a "qualified education provider" by disallowing students of institutions with religious affiliations (see below for more analysis) from receiving the scholarship. Proposed New Rule II provides how a student scholarship organization must submit an online application, it limits scholarship payments to Montana qualified education providers, and it provides an example of the deadlines for when a student scholarship organization must award scholarships relative to contributions. Proposed New Rule III clarifies that the credit can be split equally for a joint contribution, and if each spouse makes a separate contribution, each may be allowed a credit up to the maximum amount of \$150.

**Overview:** [Senate Bill No. 410](#) created two new tax credits, one for contributing to a new educational improvement special revenue account for distribution to school districts for new programs, and one for making donations to student scholarship organizations that give scholarships to students in private schools. The tax credits are not available until tax year 2016, and the effective date of the legislation is January 1, 2016 (the legislation also has a termination date of December 31, 2023).

Section 14 (codified in section 15-30-3111, MCA) of [Senate Bill No. 410](#) provides for a \$150 nonrefundable tax credit for donations made to a student scholarship organization. Section 8 (codified in section 15-30-3102, MCA) defines a "student scholarship organization", and provides that it allocates revenue for scholarships to eligible students to enroll with "any qualified education provider". Section 8 defines a "qualified education provider" as follows:

- (7) "Qualified education provider" means an education provider that:
  - (a) is not a public school;
  - (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or national accreditation organization; or

(ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing at the time of enrollment that the provider is not accredited and is not seeking accreditation;

(c) is not a home school as referred to in 20-5-102(2)(e);

(d) administers a nationally recognized standardized assessment test or criterion-referenced test and:

(i) makes the results available to the child's parents or legal guardian; and

(ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a publicly accessible private website or provides the composite results of the test to the office of public instruction for posting on its website;

(e) satisfies the health and safety requirements prescribed by law for private schools in this state; and

(f) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.

The Department's [proposed New Rule I](#) further defines a "qualified education provider". The full text of proposed New Rule 1 and the Department's reasonable necessity statement is as follows:

NEW RULE I QUALIFIED EDUCATION PROVIDER (1) A "qualified education provider" has the meaning given in [15-30-3102](#), MCA, and pursuant to [15-30-3101](#), MCA, may not be:

(a) a church, school, academy, seminary, college, university, literary or scientific institution, or any other sectarian institution owned or controlled in whole or in part by any church, religious sect, or denomination; or

(b) an individual who is employed by a church, school, academy, seminary, college, university, literary or scientific institution, or any other sectarian institution owned or controlled in whole or in part by any church, religious sect, or denomination when providing those services.

(2) For the purposes of (1), "controlled in whole or in part by a church, religious sect, or denomination" includes accreditation by a faith-based organization.

AUTH: [15-1-201](#), [15-30-3114](#), MCA

IMP: Montana Constitution, [Art. V, Section 11](#), Montana Constitution, [Art. X Section 6, 15-30-3101](#), MCA

REASON: The department proposes adopting New Rule I based on the passage of [Senate Bill \(SB\) 410](#), L. 2015, which generally revised laws related to tax credits for elementary and secondary education. [SB 410](#), Section 7, was codified at [15-30-3101](#), MCA.

As proposed, New Rule I will conform to the requirements of [15-30-3101](#), MCA, which requires the department to administer the tax credit for taxpayer donations in accordance with [Art. V, Section 11\(5\)](#) and [Art. X, Section 6\(1\)](#) of the Montana Constitution, which prohibits the direct or indirect appropriations or payment from any public fund to any sectarian or religious purpose.

**Staff Comment:** There is a potential issue that proposed New Rule I exceeds the scope of the statute by further defining the term "qualified education provider".

The rule proposal cites [Art. V, Section 11\(5\)](#), and [Art. X, Section 6\(1\)](#), of the Montana Constitution as authority, reasoning that it is impermissible to provide for a direct or indirect appropriation or payment from a public fund for any sectarian or religious purpose. However, staff is unaware of a Montana District Court or Supreme Court case that: (1) labels a payment from an entity that is not under the control of the state (*i.e.*, a student scholarship organization) an appropriation of public funds, or (2) declares money derived from donors that received a tax credit is an indirect appropriation from a public fund for a sectarian or religious purpose.

Additionally, staff is aware of a Montana District Court case that analyzed whether a tax credit is an appropriation, in which the court ultimately held that a tax credit is not an appropriation. *MEA-MFT v. McCulloch*, 2012 Mont. Dist. LEXIS 20 (2012). The Montana Supreme Court did not rule on this issue since it was able to rule on another issue. *See MEA-MFT v. McCulloch*, 2012 MT 211, 366 Mont. 266, 291 P.3d 1075. As such, the Montana Supreme Court can still rule on this issue in another case.

Given the lack of a Montana Supreme Court case on this issue, staff is unable to affirmatively conclude that proposed New Rule I is within the scope of the statute.

There is also a question regarding the scope of proposed New Rule II, which limits the scholarship to eligible students that attend a Montana school or are taught by a qualified education provider in Montana. Section 8(2) provides that an "eligible student" must be a Montana resident. Staff is unaware of an explicit statutory requirement in Senate Bill No. 410 for

a school to be a Montana school, but as a matter of practice it may be hard for an out-of-state school to qualify. This is the case, as a qualified education provider is required to administer a test for all 8th grade and 11th grade students and provide the overall scores to the public. Additionally, a qualified education provider must qualify for an exemption from compulsory enrollment under state law, which may be impractical for an out-of-state school.

Property Tax -- Centrally Assessed Property -- Senate Bill No. 157 (2015). MAR 42-2-940. A public hearing was held on November 4, 2015, and the public comment period ended on November 16, 2015. The Department proposes to amend 13 rules regarding centrally assessed property. The amendments generally make grammatical corrections while revising implementation citations. Additionally, a proposed amendment to an existing rule requires centrally assessed companies to submit a statement of cash flows on an annual basis in order to calculate the yield capitalization approach to value.

Income Tax -- Pass-Through Entities -- Senate Bill No. 386 (2015). MAR 42-2-941. A public hearing was held on November 4, 2015, and the public comment period ended on November 16, 2015. The Department proposes to adopt two new rules and amend nine rules regarding pass-through entities. The first proposed new rule requires certain entities that are qualified to do business in Montana to file an affidavit when the entity is not engaged in business for the reporting period. The second proposed new rule requires a tax-exempt entity to file an affidavit to affirm tax-exempt status. The amendments generally implement [Senate Bill No. 386](#) by requiring the filing of information returns by disregarded entities that report a distributive share of income of \$1,000 or more of Montana source income.

Property Tax -- Property Classification, Appraisal, Valuation, and Exemptions -- Senate Bill No. 157 (2015) -- House Bill No. 56 (2015) -- House Bill No. 389 (2015). MAR 42-2-942. A public hearing was held on November 5, 2015, and the public comment period ended on November 17, 2015. The Department proposes to amend 18 rules and repeal 4 rules regarding property taxes.

Two of the amendments implement [House Bill No. 389](#) by requiring certain owners of real property with a property tax exemption to reapply for the exemption. The deadline to reapply for a property tax exemption is March 1, 2016, under both the proposed rule and [House Bill No. 389](#). Additionally, the proposed amendments establish renewal application fees ranging from \$0 to \$35, depending on factors such as the nonprofit entities' gross receipts, the size of the land, and the size of the building.

Two of the amendments implement [House Bill No. 56](#) by requiring land to be classified according to its actual use, as opposed to relying strictly on covenants that may not be enforced.

The remainder of the amendments and repeals generally implement [Senate Bill No. 157](#) by revising and striking language that was applicable to a 6-year reappraisal cycle to language that is applicable in a 2-year reappraisal cycle.

Liquor Administration -- Distillery Deliveries, Alternating Proprietor on a Manufacturer's Premises, Contract Manufacturing, and the Storage of Alcoholic Beverages -- House Bill No. 506 (2015). MAR 42-2-943. A public hearing was held on November 9, 2015, and the public comment period ended on November 18, 2015. The Department proposes to adopt three new rules and amend one rule regarding liquor administration. The first proposed rule implements [House Bill No. 506](#) by allowing a distillery with annual production of less than 25,000 gallons to deliver its product directly to a state agency liquor store. The second proposed rule provides a framework for arrangements in which a manufacturer of alcohol has excess production capacity and a tenant manufacturer is able to utilize the production capacity. The third proposed rule provides a framework for arrangements in which a contract manufacturer of alcohol produces beverages for another manufacturer on a contract basis. The amendment allows the storage of alcoholic beverages on the premises of a manufacturer providing a different type of alcoholic beverage.

Liquor -- Negotiated Rulemaking Regarding Agency Liquor Stores -- Senate Bill No. 193 and House Bill No. 506 (2015). MAR 42-2-944. A public hearing was held on November 9, 2015, and the public comment period ended on November 18, 2015. The Department proposes to adopt two new rules, amend two rules, and repeal four rules regarding agency liquor stores using the negotiated rulemaking process. The members of the negotiated rulemaking committee included agency liquor store owners, an agency liquor attorney, a representative of the Montana Tavern Association, and Department staff. The first proposed rule implements [House Bill No. 506](#) by allowing a qualifying distillery to deliver product directly to an agency liquor store. The second proposed rule implements section [16-2-101\(3\)](#), MCA, which prohibits agency liquor stores from being "located in or adjacent to grocery stores in communities with populations over 3,000." One amendment provides that new agency liquor stores are selected by competitive sealed bids under the Montana Procurement Act. The other amendments and repeals implement [Senate Bill No. 193](#) by striking language that is no longer applicable.

Income Tax -- Historic Property Preservation. MAR 42-2-945. A public hearing was held on November 19, 2015, and the public comment period ends on December 1, 2015. The Department proposes to amend three rules regarding tax credits for historic property preservation. All of the proposed amendments remove language that is no longer required for the purpose of administering the credit.

Property Tax -- Trended Depreciation Schedules for Valuing Property. MAR 42-2-946. A public hearing was held on November 19, 2015, and the public comment period ends on December 1, 2015. The Department proposes to amend 11 rules regarding various tables that are updated on an annual basis through Department rules. The tables generally show how the Department arrives at market value when valuing personal property, including rental equipment, farm machinery and equipment, heavy equipment, seismograph units and allied equipment, oil and gas field machinery and equipment, work-over and service rigs, oil drilling rigs, locally assessed cable television systems, ski lift equipment, and industrial machinery and equipment.

*Note:* The Department was proposing to change the valuation guide for farm machinery and equipment from the Iron Solutions Northwest Region Official Guide to the online version of the Green Guide known as Equipment Watch. The Department indicated that owners of farm machinery and equipment would notice a significant change either up or down, depending on the model year of the equipment. However, the Department also expected future valuation differences to stabilize after the initial transition year, and the change in methods was estimated to save the Department in excess of \$20,000 in subscription fees for the prior valuation guide.

*Staff Comment:* Section [15-8-111\(4\)](#), MCA, requires usage of the Northwest Region Official Guide. The Department will further amend the rule to restore language to the Northwest Region Official Guide. Additionally, the Department may decide to pursue legislation in the 2017 Legislative Session to make this change.

### **Notice of Adopted Rules**

Unclaimed Property. MAR 42-2-933. Adopted November 2, 2015. A public hearing was held and four public comments were received. The Department amended two proposed rules based on comments received. Additionally, the Department amended two rules, transferred three rules, and repealed one rule as proposed. The new rules provide that certain unclaimed patronage refunds and unclaimed shares from rural electric or telephone cooperatives and nonutility cooperatives are not presumed abandoned in all situations (see section [35-18-316](#), MCA). The amendments move the definition of "holder", "finder", and "memorandum" from the amended and repealed rules. The transfers are located in the same chapter as the original rules.

Liquor -- Prices -- Vendor Product Representatives and Permits -- Samples -- Advertising -- Unlawful Acts -- Inventory Policy (Powdered/Crystalline Liquor Products) -- Product Availability -- Product Listing -- Bailment -- State Liquor Warehouse Management -- House Bill Nos. 350 and 506 -- Senate Bill No. 193. MAR 42-2-934. Adopted November 16, 2015. A public hearing was held and four public comments were received. The Department amended 15 rules as proposed. One amendment changes the calculation of the posted price on liquor (other than fortified or sacramental wine) from 40 percent to 40.5 percent based on [Senate Bill No. 193](#). A



second amendment provides that a vendor of alcohol must be 21 years of age based on [House Bill No. 350](#). A third amendment allows microdistillers to deliver samples directly to agency liquor stores based on [House Bill No. 506](#). A fourth amendment provides that the Department has the discretion to deny the sale of a liquor product in Montana that "is in powdered or crystalline form". The remainder of the amendments generally cover the topics of how the Department manages liquor products.

Property Tax -- Property Valuation Periods -- Property Appraiser Certification Requirements -- Senate Bill No. 157. MAR 42-2-935. Adopted November 2, 2015. A public hearing was held, and no testimony or comments were received. The Department amended five rules and repealed one rule regarding the reappraisal plan. The amendments provide that the reappraisal cycle for class four property is 2 years, while allowing a supervising manager to reduce the 1 year of on-the-job training requirement (currently in existing rules for residential, agricultural, and commercial appraisers) for situations in which an appraiser gains experience in less than 1 year. According to the statements of reasonable necessity, the waiver of the 1-year requirement of on-the-job training will "streamline the process for appropriately experienced employees working through the certification process."

Property Tax -- Property Tax Assistance Programs -- Senate Bill No. 157. MAR 42-2-936. Adopted November 2, 2015. A public hearing was held, and no testimony or comments were received. The Department amended seven rules and repealed one rule regarding property tax assistance programs. The amendments and the repeal restructure the prior rules regarding the Property Tax Assistance Program (PTAP) and the Montana Disabled Veteran (MDV) program, as both of these programs were repealed and reenacted in a new part of the Montana Code Annotated by [Senate Bill No. 157](#).

## **Department of Transportation**

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### **Notice of Proposed Rules:**

None.



## **Notice of Adopted Rules**

Motor Carrier Services Out-of-Service Criteria -- Usage of Newer Manual. MAR 18-156.

Adopted October 5, 2015. No testimony or comments were received. The Department of Transportation amended one rule to change the date of a manual that the Department follows as part of the safety inspection program (*i.e.*, inspection of commercial vehicles and drivers). The Department of Transportation will use the April 1, 2015, manual instead of the April 1, 2014, manual.

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