



Revenue and Transportation Interim Committee

64th Montana Legislature

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TO: Committee Members
FROM: Jaret Coles, Staff Attorney
RE: Administrative Rule Activity
DATE: September 2, 2016

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 Administration -- Certification Testing Requirements for Property Appraisers. MAR 42-2-952. A public hearing was held and the public comment period ends on September 2, 2016. The Department proposes to amend three rules. The rules apply to residential, commercial, and agricultural property appraisers employed by the Department and the training they are required to receive. The proposed amendments describe when an employee is required to attend training and sets forth consequences when an employee fails to successfully complete an examination.

Property Tax -- Montana Ammunition Availability Act -- Senate Bill No. 122 (2015). MAR 42-2-953. A public hearing was held and the public comment period ends on September 2, 2016. The Department proposes to adopt one new rule regarding the process for property taxpayers to apply for the property tax exemption provided for with the enactment of [Senate Bill No. 122](#) (2015), which encourages the manufacture of ammunition in Montana by providing manufacturers with an opportunity to receive a property tax exemption for producing ammunition components. The proposed rule sets forth the criteria for qualifying for the exemption, filing deadlines, and how to apply for the exemption.

Property Tax Administration -- Alternative Business Office Hours in Qualified County Offices. MAR 42-2-954. Public hearings were held and the public comment period ends on September 16, 2016. The Department proposes to align the hours published in the rule with the actual hours of operation in the Carter County business office. The business office hours are listed in the rule as Monday through Wednesday, but the office is open on Monday and Wednesday. The Department proposes changing the established business office days in Wheatland County from Monday, Tuesday, and Friday to Monday, Tuesday, and Wednesday. The number of in-office days is not being reduced. The Department further proposes removing Granite County from the rule because the office now has a staffing level commensurate with the workload in the county and is therefore able to be open during traditional business office hours.

Property Tax Assistance Programs -- Senate Bill No. 157 (2015). MAR 42-2-955. A public hearing will be held on September 6, 2016, at 9 a.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on September 20, 2016. The Department proposes to amend five rules. The proposed amendments provide that in order for a parcel to qualify for the Property Tax Assistance program (PTAP) or the Montana Disabled Veteran Property Tax Assistance Program (MDV), the parcel cannot be contiguous with or adjacent to the primary residential property. Additionally, in determining whether the applicant meets the income requirements for PTAP and MDV, the Department proposes to use the applicant's federal adjusted gross income in situations where a Montana income tax return was not filed, and an applicant is considered to have zero income in situations where an income tax return was not required to be filed.

Property Tax -- Property Reappraisal Cycles - Assessment Review Deadlines - Electronic Classification and Appraisal Notices - Agricultural Land Regions - Bona Fide Agricultural Operation Determinations -- Implementation of Montana Tax Appeal Board Decision -- Senate Bill No. 157 (2015). MAR 42-2-956. A public hearing will be held on September 13, 2016, at 9 a.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on September 27, 2016. The Department proposes to amend seven rules and repeal three rules. The proposed amendments revise administrative procedures by updating reappraisal cycles, informing a property taxpayer that an AB-26 will be denied when no response to schedule an appointment or provide additional information is received within 14 working days of the request, and allowing a taxpayer to request electronic classification and appraisal notices starting tax year 2017.

The proposed amendments for agricultural land revise the qualifications for obtaining agricultural land classification for specialty in unique crops by eliminating the 1-acre requirement and the requirement that a certain amount of trees need to be on the property, while also eliminating agricultural classification while trees are growing (i.e., start upphase).

The proposed amendments for forest lands (class 10 property) provide that when forest lands are newly classified or when they have a decrease in acres due to a land use change, a value before reappraisal (VBR) will be calculated. Additionally, a decrease or increase in acres due to changes that result from the Geographic Information System (GIS) or incidental fluctuations due to farming practices will not require a calculated VBR.

The proposed repeals delete rules regarding the phase-in for forest land property, as the concepts are already provided in an existing rule.

Urban Renewal Districts (URD), Targeted Economic Development Districts (TEDD), and Tax Increment Finance Districts (TIFD). MAR 42-2-957. A public hearing will be held on September 13, 2016, at 10:30 a.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on September 27, 2016. The Department proposes to amend six rules. The proposed amendments: (1) provide for identification of centrally assessed property in proposed Urban Renewal Districts and proposed Targeted Economic Development Districts before certification of base taxable value; (2) detail the calculation for eliminating other property tax abatements from the base taxable value and incremental taxable value; and (3) describe the process that is used to apportion base taxable value and incremental taxable value to each levy district when a TIFD encompasses two or more levy districts.

Property Tax Administration -- Requests for Nondisclosure of Property Owner Record Information. MAR 42-2-958. A public hearing will be held on September 13, 2016, at 1:00 p.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on September 27, 2016. The Department proposes to adopt one rule. The proposed rule provides a framework for an individual that is at risk of physical harm or to personal safety to request that the department withhold his or her name from the Department's property tax information websites.

Property Tax -- Golf Course Valuation. MAR 42-2-959. A public hearing will be held on September 13, 2016, at 2:30 p.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on September 27, 2016. The Department proposes to adopt one rule and amend one rule.

The proposed new rule describes the appraisal methodology that will be utilized for valuing golf courses, which includes potential use of the income, sales comparison, and cost approaches depending on the data that is available. Taxpayers that own or operate a golf course are required to submit yearly gross income statements from all aspects of the golf course operation, including but not limited to green fees, cart rentals, and food and beverages. If a taxpayer fails to provide the yearly gross income information, it will be estimated by the Department and the taxpayer will not receive a reduction in the estimated value.

The proposed amendment adds definitions for the terms "gross income" and "gross income multiplier", both of which are used in the proposed new rule.

Staff Note: Section 15-6-134, MCA, provides "all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards" is taxed at one-half the tax rate for commercial property (i.e., class four property). *See* sections 15-6-134(1)(d)(ii) and 15-6-134(4), MCA.

Corporate Income Tax -- Senate Bill No. 361 (2013). MAR 42-2-960. A public hearing will be held on September 29, 2016, at 11:00 a.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on October 13, 2016. The Department proposes to amend 25 rules and repeal one rule.

Some of the proposed amendments are housekeeping in nature in order to fully implement [Senate Bill No. 361](#) (2013), which changed the name of the "corporate license tax" to the "corporate income tax". Additionally, the Department proposes to eliminate outdated language.

The Department also proposed to clarify what it refers to as "long-standing" practices of the Department, including amendments: (1) that define what a taxpayer with a change in federal taxable income or in the federal return needs to file regarding their Montana income tax return and the timelines in which the actions need to occur; (2) pertaining to filing requirements for inactive corporations; (3) that detail the requirements for obtaining a certificate of dissolution or withdrawal or a certificate of tax clearance from the Department; (4) regarding refund claims made after the statute of limitations expires; (5) pertaining to how conversion of a corporate entity to a disregarded entity (sole proprietorship, partnership, or S corporation) will affect net operating losses incurred prior to the conversion; (6) describing how to calculate and apply net operating losses when there is a change in reporting method.

The proposed amendments add definitions for "costs of performance" and "income producing activity" that according to the Department are effectively the definitions proposed by the Multistate Tax Commission. These definitions are used in the sales apportionment factor calculation, and therefore affect multistate corporations. According to the Department's reasonable necessity statement, the purpose of the definitions is "to provide additional guidance for corporate taxpayers who are reporting sales other than sales of tangible personal property in the sales apportionment factor".

Three of the proposed amendments relate to the water's edge election. These amendments: (1) provide that a corporation cannot choose to file as a water's edge corporation retroactively; (2) provide corporations that are part of a group and that are doing business in Montana are included in the water's edge group; (3) clarifies what happens when a non-water's edge taxpayer is acquired by an entity not previously taxable in Montana and also clarifies what happens in the

acquisition of a foreign entity by a Montana taxpayer which has not previously owned foreign entities.

One of the proposed amendments removes the shipment of goods into Montana as a condition for taxable nexus (*i.e.*, when a multistate corporation's income is taxable in Montana), which according to the reasonable necessity statement, makes the language "consistent with that used by the Multistate Tax Commission in its uniformity guidelines."

Staff Note: This proposed rule action was published on Friday September 2, 2016. Staff is in the process of reviewing this notice in further detail, and the Committee will receive an update on September 8, 2016, during the rule review portion of the agenda.

Computation of Wage Withholding for State Income Taxes. MAR 42-2-961. A public hearing will be held on September 29, 2016, at 1:00 p.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on October 13, 2016. The Department proposes to amend six rules. The department proposes to adjust withholding formulas and tables for inflation once a year. Additionally, the process for claiming more than ten allowances is clarified, and the Department's authority to examine an employee's federal Form W-4 is explicit.

Notice of Adopted Rules

Uniform Dispute Review Process -- Department's Office of Dispute Resolution. MAR 42-2-950. Adopted June 6, 2016. A public hearing was held and comments were received from one individual. The Department amended nine rules. In the amendments, terms that are used in the rules are added and definitions that are no longer used are deleted, the dispute resolution flowchart is redesigned, more details are added regarding the initial office of dispute resolution conference, the mediation process, and the hearing process, and outdated language is revised.

Department of Transportation

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Notice of Proposed Rules:

Motor Fuels -- Transfer and Amendment -- House Bill No. 99 (2015). MAR 18-161. A public hearing is not contemplated and the public comment period ended September 2, 2016. The

Department of Transportation proposed to adopt five rules, amend 48 rules, transfer 12 rules, and repeal 16 rules. The proposal implements [House Bill No. 99](#) (2015), which generally combined the gasoline tax and special fuels tax into one part of law.

Notice of Adopted Rules

Motor Carrier Services -- Safety Requirements. MAR 18-160. The Department amended three rules as proposed, and no public comment or testimony was received. The amendments revise the adoption date of federal regulations regarding interstate and intrastate motor carriers, haulers of hazardous materials, and the safety inspection program.

Transportation Commission -- Outdoor Advertising Control. MAR 18-158. Adopted August 8, 2016. A public hearing was held and comments were received from multiple proponents and opponents. The Transportation Commission adopt one new rule, amended 23 rules, and repealed two rules regarding outdoor advertising.

The new rule provides for electronic billboards on controlled routes, subject to a variety of restrictions, including brightness level, display time of the message, and static nature of the message (*i.e.*, streaming messages and messages that fade, roll, explode, dissolve, or spin are prohibited). Additionally, the electronic billboards can only be placed in an area that is zoned commercial or industrial, and they must be placed at least 2,000 feet away from another permitted sign.

After receiving public comments in opposition to proposed rules that would have prohibited advertising on bus shelters, the Transportation Commission did not amend the proposed rule to prohibit bus shelters, and it will continue to work on bus shelter advertising rules for a future rulemaking notice.

The amendments are comprehensive in nature, and they pertain to the following topics: revised definitions, unzoned commercial activities that may qualify for an off-premises outdoor advertising permit, on-premises signs, off-premises signs, unzoned industrial activity, new sign permits, fees (the inspection fee increased from \$100 to \$150), new sign construction standards, off-premises sign standards, prohibited signs, community "welcome to" signs, mobile advertising devices, temporary signs, church and service club signs, directional signs, political signs, official signs, repair of nonconforming signs, upgrade or relocation of conforming signs, sign structures that are blank, illegal signs, and cultural signs.

The proposed repeals eliminate cultural (now part of the directional sign category) and noncommercial signs as separate categories.