



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: November 14, 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 -- Property Reappraisal -- Senate Bill No. 157 (2015). MAR 42-2-964. A public hearing was held on November 9, 2016. The public comment period ends on November 21, 2016. The Department proposes to adopt one new rule, amend four rules, and repeal one rule pertaining to property reappraisal. The proposed new rule is similar to an existing rule, but agricultural property is separated from forest lands based on changes that were made by [Senate Bill No. 157](#). With agricultural property now on a two-year cycle, the new rule provides a high-level overview of the agricultural appraisal process. One of the amended rules corresponds with the new rule by eliminating language regarding the agricultural appraisal process from a rule that provides a high-level overview of the forest lands appraisal process. Additionally, the proposed amendments adopt the reappraisal plan and manuals that will be utilized in the next cycle for residential, commercial, industrial, and agricultural property.

Property Tax -- Trended Depreciation Schedules for Valuing Property. MAR 42-2-965. A public hearing was held on November 9, 2016. The public comment period ends on November 21, 2016. 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 (including the recent addition of solar energy generating equipment).

Property Tax -- Agricultural Land Valuation. MAR 42-2-966. A public hearing was held on November 9, 2016. The public comment period ends on November 21, 2016. The Department proposes to amend six rules. Five of the amendments are housekeeping in nature, as the proposals eliminate language regarding the 2015 agricultural reappraisal cycle. The sixth amendment updates: (1) commodity prices with the most current agricultural statistics; (2) the minimum value of irrigated land based on the new commodity price; (3) the highest productivity of nonirrigated continuously cropped farmland; and (4) the minimum carrying capacity for grazing land to be eligible for agricultural land and determined by Montana State University College of Agriculture.

Notice of Adopted Rules

Property Tax Administration -- Certification Testing Requirements for Property Appraisers. MAR 42-2-952. Adopted September 12, 2016. The Department amended three rules as proposed, and no public comment or testimony was received. The amendments apply to residential, commercial, and agricultural property appraisers employed by the Department and the training they are required to receive. The 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. Adopted October 3, 2016. The Department adopted one new rule as proposed, and no public comment or testimony was received. The new rule pertains to 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 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. Adopted October 3, 2016. Public hearings were held, comments were received from two employees of Carter County, and one rule was adopted as proposed. The Department is aligning the hours published in the rule with the actual hours of operation in the Carter County business office. The Department is also 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.

Property Tax Assistance Programs -- Senate Bill No. 157 (2015). MAR 42-2-955. Adopted October 3, 2016. The Department amended five rules as proposed, and no public comment or testimony was received. The 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 plans on using the applicant's federal adjusted gross income in situations in which a Montana income tax return was not filed, and an applicant is considered to have zero income in situations in which 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. Adopted October 31, 2016. A public hearing was held, comments were received from staff and seven individuals, seven rules were amended after incorporating some of the public comment that was received, and three rules were repealed. The 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 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 up phase).

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

Staff Note: Pursuant to this committee's motion, staff appeared at the rule hearing and submitted written comments to the Department reflecting the committee's concern that a taxpayer receive proper notice that a Form AB-26 request will be denied for failure to respond. In light of the committee's concerns, the Department amended the rule proposal as follows:

42.20.173 STATUTORY DEADLINE FOR CLASSIFICATION AND APPRAISAL REVIEWS (1) through (6) remain as proposed.

(7) 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 ~~14~~ 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.

Urban Renewal Districts (URD), Targeted Economic Development Districts (TEDD), and Tax Increment Finance Districts (TIFD). MAR 42-2-957. Adopted October 17, 2016. A public hearing was held, comments were received from one individual, and four rules were adopted after incorporating the public comment that was received. The amendments: (1) detail the calculation for eliminating other property tax abatements from the base taxable value and incremental taxable value; and (2) 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. Adopted October 17, 2016. A public hearing was held, comments were received from an employee of the Montana State Library, and one rule was adopted after incorporating the public comment that was received. The 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 website.

Computation of Wage Withholding for State Income Taxes. MAR 42-2-961. Adopted October 17, 2016. The Department amended six rules as proposed, and no public comment or testimony was received. The department will 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.

Income Tax -- Pass-through Entity Audit Adjustments and the Computation of Composite Tax -- House Bill No. 359 (2015) and House Bill No. 379 (2015). MAR 42-2-962. Adopted October 31, 2016. A public hearing was held and no public comment or testimony was received. The Department amended five rules. Two of the amendments were housekeeping in nature. The other amendments implement [House Bill No. 379](#) by changing the timeframe for revision of a pass-through entity's return, provide further instructions on how to fill out a composite return, and amend examples in a rule to account for changes in the inflation factor.

Tax Administration and Income Tax -- Application of Penalties and Interest -- Reasonable Cause -- Timeframe for Appealing Notices of Assessment -- House Bill No. 379 (2015). MAR 42-2-963. Adopted October 31, 2016. A public hearing was held and no public comment or testimony was received. The Department adopted three new rules, amended 16 rules, and repealed three rules. The adopted rules explain the process for applying penalties and interest to an assessment of tax, provide examples for how penalties are calculated, and provide definitions for "reasonable basis" and "substantial authority" similar to the federal definitions. The amendments and repeals update references and language while moving language between sections of the rules.

Adoptions Pending -- Presented During September Committee Meeting:

Property Tax -- Golf Course Valuation. MAR 42-2-959. A public hearing was held on September 13, 2016, and the public comment period ended 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" are 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 was held on September 29, 2016, and the public comment period ended 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 that 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."

Department of Transportation

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Notice of Proposed Rules:

None.

Notice of Adopted Rules

Motor Fuels -- Transfer and Amendment -- House Bill No. 99 (2015), MAR 18-161. Adopted October 3, 2016. The Department of Transportation received public comment in support of the proposal from one individual. The Department adopted five rules, amended 48 rules, transferred 12 rules, and repealed 16 rules as proposed. The changes implement [House Bill No. 99](#) (2015), which generally combined the gasoline tax and special fuels tax into one part of law.

Followup from September Meeting Regarding Future Amendment of Rule

Overview of Issue:

During the September 8, 2016, meeting, public comment was received from Matt Donnelly on behalf of the Gallatin Gateway County Water and Sewer District (GGCWSD). The public comment pertained to ARM [18.7.202](#), which is a Department of Transportation rule in the "[Right-of-Way Occupancy by Utilities](#)" subchapter that has not been amended since 1995. The rule at issue defines a "utility" by incorporating section [69-3-101](#), MCA, which is a section of law that is administered by the Public Service Commission (PSC), and not the Department of Transportation. As a public utility, GGCWSD is not regulated by the PSC

The central concern that was presented to the committee is that by incorporating section 69-3-101, MCA, the rule specifically exempts "county or consolidated city and county water or sewer districts" from the definition of "utility". This leads to a situation in which GGCWSD may not be eligible for cost reimbursement in the event a utility line needs to be moved. The term "utility" is used in ARM 18.7.206, which provides as follows (emphasis added):

18.7.206 AUTHORITY OF PRIVATE AND PUBLIC UTILITY LINES

(1) *All utilities defined in (3) of ARM 18.7.202*, have authority under Montana law to occupy highway rights-of-way, and in event of relocation, *are eligible for reimbursement pursuant to the laws of the state of Montana*.

(2) *All other facilities* are private and have no authority to occupy highway rights-of-way other than by revocable permits issued at the sole discretion of the department. Such facilities are regulated by these provisions, but in the event of relocation, they *are not eligible for reimbursement* under the provisions of 23 CFR part 645, subpart A, or otherwise.

The applicable definition of utility in section 60-4-401, MCA, provides that a utility "includes publicly, privately, and cooperatively owned utilities." Moreover, section 60-4-403, MCA, provides (emphasis added):

60-4-403. Relocation -- costs. (1) Except as provided in subsections (2) and (3), 75% of all costs of relocation, dismantling, and removal must be paid by the department as a cost of federal-aid systems construction.

(2) The department shall pay for the *entire cost* of relocating a *publicly owned water or sewer facility with 500 or fewer service connectors* under the following conditions:

(a) the facility has had 500 or fewer subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or federal-aid system construction.

(3) The department shall pay for *85% of all costs of relocating a publicly owned water or sewer facility with more than 500 but fewer than 1,000 service connectors*, subject to the following conditions:

(a) the facility had more than 500 but fewer than 1,000 subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or federal-aid highway system construction.

Current Status:

The Department of Transportation's chief legal counsel responded to the concerns expressed by GGCWSD:

"I have reviewed our administrative rule and the statutes concerning relocation of utilities and agree with Gallatin that MDT's administrative rules are unclear with regards to the relocation of utilities statutes. The administrative rules concerning utilities have not been amended for 20 years, and the Department is taking a

comprehensive look at all of these rules, including the administrative rule defining utility."

A time-line was not presented regarding when the an administrative rule hearing would take place. However, staff was informed by the Department of Transportation that it "will be able to review and redraft the rules and have them ready for publication with the Secretary of State by the first of March, 2017." This information was shared with Mr. Donnelly, and he mentioned the proposal was "more than acceptable" and that he wanted to thank everyone involved. However, Mr. Donnelly also desired to know whether the Department of Transportation will need to have legislation considered to fix any of the utility rules. In responding to this question, the Department of Transportation replied that they do not anticipate that any legislation will be necessary.

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