



Revenue and Transportation Interim Committee

61st Montana Legislature

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November 19, 2010

TO: Revenue and Transportation Interim Committee

FROM: Lee Heiman, Staff Attorney

SUBJECT: Economic Impact Statements -- Proposed Rules MAR 42-2-845 and MAR 42-2-846

The Department of Revenue submitted two economic impact statements to the Revenue and Transportation Committee. The statements addressed proposed administrative rules in MAR 42-2-845 and MAR 42-2-846, published in Issue 17 of the Montana Administrative Register, dated September 9, 2010.

An economic impact statement (EIS) is governed by section 2-4-405, MCA. An EIS is usually written upon a written request of an appropriate administrative rule committee based upon a majority vote of the members. These statements were prepared after the Director of the Department of Revenue volunteered to have them prepared without formal committee action.

Section 2-4-405, MCA, has a list of eight items that must be included in an EIS unless the committee waives an item. They are:

1. a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
2. a description of the probable economic impact of the proposed rule upon affected classes of persons, including but not limited to providers of services under contracts with the state and affected small businesses, and quantifying, to the extent practicable, that impact;
3. the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;
4. an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;
5. an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;
6. an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

7. a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and
8. a quantification or description of the data upon which items 1 through 7 are based and an explanation of how the data was gathered.

Both EIS's address all of the required items.

The EIS for MAR 42-2-845, which proposes how multistate telecommunications companies report their income earned in Montana, addresses different classes of telecommunications companies operating in Montana and how the proposed rules would affect them. The proposed rules are an exception to the general allocation and apportionment provisions under Montana corporation law found in sections 15-31-301 through 15-31-313, MCA. Section 15-31-312, MCA, specifically grants rulemaking authority to the Department over these sections. Section 15-31-312, MCA, which the proposed rules implement, provides that "the taxpayer may petition for or the tax administrator may require" separate accounting or the inclusion or exclusion of the standard factors or additional factors if the "allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity" in Montana. The taxpayers, telecommunications companies, have until now been apportioned according to the standard formula. These rules would establish a different method. The Department has adopted different methods for railroads, trucking, airlines, construction contracts, publishing companies, and television and radio broadcasting.

The EIS for MAR 42-2-846, which proposes new rules relating to centrally assessed properties, includes appraisal methods, the definition and determination of intangible property, and reporting requirements of centrally assessed properties. A new proposed rule states that certain manuals adopted by nongovernmental entities are to be used for reference and to guide appraisals. The Department adds definitions of "intangible personal property" and "goodwill" and substitutes a provision allowing taxpayers to make recommendations for a change in percentages at any time for the current requirement for a biennial review with taxpayers. The Department also provides for the filing of annual property reports of centrally assessed properties. The Department has general rulemaking authority for the adoption of the rules.

The actual dollar impact of the proposals are not quantified. The Department says that all the changes except the change in the manner of reviewing the percentages reflect current practice and hence there is no economic impact. For the change in the manner of reviewing percentages, the Department says that the change is beneficial for all parties.