



## Revenue and Transportation Interim Committee

### 61st Montana Legislature

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JEFF MARTIN, Research Analyst  
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TO: Committee Members  
FROM: Lee Heiman, Staff Attorney  
RE: Administrative Rule Activity  
DATE: April 29, 2010

### Department of Revenue

*All notices are available on the Internet at:*

*[http://mt.gov/revenue/formsandresources/administrativerules/upcomingevents\\_proposedrulesnotices.asp](http://mt.gov/revenue/formsandresources/administrativerules/upcomingevents_proposedrulesnotices.asp)*

#### Notice of Proposed Rules:

Individual Income Taxes -- Cleanup and Housekeeping. MAR 42-2-820. A public hearing was held in the Reception Area (Third Floor) Conference Room, Mitchell Building, on March 31, 2010. The Department adopted one new rule and amended 60 existing rules (see *Adoption Notices* below). The new rule implements the innocent spouse relief provision enacted by SB 418, 2009 Session. The amendments correct errors, adjust dates and forms, make clarifications, and change MCA cites to conform to the recodification of Title 15, chapter 30, enacted in the 2009 Session.

Clarify Corporate Tax Credits for New and Expanding Industry. MAR 42-2-821. A public hearing was held in the Reception Area (Third Floor) Conference Room, Mitchell Building, on April 22, 2010. The Department proposes to amend one rule to update the cite to the latest industrial classification system, to change an MCA cite, and correct a typographical error.

Cleanup of Provisions Relating to Corporate and Individual Tax Credits. MAR 42-2-822. A public hearing was held in the Reception Area (Third Floor) Conference Room, Mitchell Building, on April 22, 2010. The Department proposes to adopt one new rule and amend 26 existing rules. The new rule relates to the method for claiming the historic preservation credit. The amended rules update qualified endowment credit, clarify the scope and the relationship of similar credits, relate to pass-through entities, provide general clarification, clean up dates and forms, and change MCA cites to conform to the recodification of Title 15, chapter 30, enacted in the 2009 session.

Cleanup of Provisions Relating to Individual Income Tax Credits. MAR 42-2-823. A public hearing was held in the Reception Area (Third Floor) Conference Room, Mitchell Building, on April 22, 2010. The Department proposes to amend 14 existing rules. The proposed

amendments specifically relate to income taxes paid to another state or country, filing for the capital gains credit, and the tax credit for property taxes based upon a relief multiplier of 0. The rules generally clarify rules and examples, clean up dates and forms, and change MCA cites to conform to the recodification of Title 15, chapter 30, enacted in the 2009 session.

Extension of Deadline for Assessment Reviews. MAR 42-2-824. A public hearing was held in the Reception Area (Third Floor) Conference Room, Mitchell Building, on April 19, 2010. The Department proposes to adopt one new rule to allow property owners who missed the 2009 assessment notice appeal deadline to request an informal AB-26 appeal by June 30, 2010. Any revaluation based on the appeal would not adjust 2009 values. After June 30, 2010, the appeal deadline after receipt of an assessment notice returns to 30 days.

Comment: Section 15-7-102(3), MCA, allows for an assessment review "within 30 days after receiving the notice of classification and appraisal from the department". Under that subsection the Department does not have authority to adopt other than a 30-day deadline, but since it is the Department that enforces the deadline (by refusing a late appeal) there would be no obvious opponent to the rule. Under 15-7-102(1)(b), MCA, the Department is "not required to" send out an assessment notice for value phased in or caused by a change in the tax rate. The Department could therefore send a notice to all property owners that would have the effect of setting a new 30-day deadline, but at a large cost to the state.

Hearing on Comments Relating to Penalties for Alcohol Sales to a Minor or Intoxicated Person. MAR 42-2-825. A public hearing will be held in Room 303, State Capitol, on May 26, 2010, at 9:30 a.m. to consider amendment to ARM 42.13.101, the schedule of penalties for alcohol sales to minors and intoxicated persons. No specific change is proposed, but issues and penalties imposed in neighboring states are printed in the notice.

Energy Conservation Credit -- Update. MAR 42-2-826. A public hearing will be held in the Third Floor Reception Area Conference Room, Mitchell Building, Helena, on May 10, 2010, at 1:30 p.m. The Department proposes to adopt one new rule on standards and ratings of products installed on or after July 1, 2010, for energy conservation purposes under the energy conservation tax credit. The standards and ratings are the same as required for federal credits allowing a simpler calculation of the credit. The Department also proposes to amend six existing rules. The amendments are to coordinate with the new rule, update definitions, and clarify existing provisions and examples.

Individual Energy Tax Credits. MAR 42-2-827. A public hearing will be held in the Third Floor Reception Area Conference Room, Mitchell Building, Helena, on May 10, 2010, at 2:30 p.m. The Department proposes to adopt one new rule on individual energy-related tax benefits that differentiates the credit for alternative energy systems and the credit for energy conservation investments and distinguishes the geothermal system credit to help the taxpayer. The proposal amends 13 rules to differentiate credits available to a taxpayer, update definitions, improve readability, implement legislative changes and correct cites and dates that have been changed, clarify examples, and change cites to conform to the recodification of Title 15, chapter 30, in 2009. The Department is proposing to repeal six rules because the content was transferred to

another section for readability and to remove rules for the property tax exemption for certain electrical generation and delivery facilities constructed before January 1, 2006. None were constructed that were eligible for the exemption.

Property Taxes – Correction of Value Before Reappraisal (VBR) for 2009 Agricultural Land. MAR 42-2-828. A public hearing is to be held on May 10, 2010, at 11:00 a.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. Comment period closes May 14, 2010. The Department proposes to adopt one new rule relating to the application of the tax year 2009 phase-in for agricultural (class three) properties with productivity-only changes. The proposed rule sets forward two different procedures, depending on whether taxpayers timely filed an appeal, including an AB-26, County Tax Appeal Board (CTAB) appeal, State Tax Appeal Board (STAB) appeal, or a District Court action. For taxpayers who submitted a timely appeal, the Department will (1) replace the calculated VBR with the prior year VBR of the prior grade, (2) issue a revised assessment notice for 2009 showing the correct VBR, and (3) provide counties with enough information to issue a new tax bill. For taxpayers who did not submit a timely appeal, the Department proposes to correct the VBR calculation beginning in tax year 2010 and phase in the overassessment (or underassessment) by adjusting the taxable value by one-fifth each year. The proposed rule does not attempt to phase in the taxes that were overpaid (or underpaid).

Comment: There are no specific statutes that address how the Department should fix assessment errors such as this one. However, the Department does have a general obligation to ensure that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with the law. *See* Mont. Const. Art. VIII, sec. 3; §§ 15-1-201(1)(a), 15-9-101, MCA. On its face the proposed rule treats taxpayers who submitted a timely appeal differently from taxpayers who did not submit a timely appeal. This is the case, as taxpayers who submitted a timely appeal will not be required to wait 5 years to recoup an overpayment. Taxpayers who submitted a timely appeal and fully paid will presumably receive a refund, although the proposed rule is unclear. Indeed, if the proposed rule is adopted it may not be effective until after the May 31, 2010, deadline.

It is also impossible to quantify how much aggregate tax will be paid by taxpayers who filed an appeal versus those taxpayers who did not file an appeal. For taxpayers who did not file an appeal, the proposed rule states that the Department will “adjust the *taxable values* each year for the subsequent five years of this reappraisal cycle by one-fifth of the difference in taxable value.” Difference in taxable value is then defined as “the amount that the department either under or over assessed in 2009.” This is not the same thing as refunding an overpayment of tax equally during a 5-year period. Since a different number of mills will most likely be applied to each of the 5 years, it is impossible to know if taxpayers who did not file an appeal will recover less than a similarly situated taxpayer who filed an appeal (they may even recover more). Nonetheless, disparate treatment may be justified due to the fact that the Department is not required to issue a refund when the statutory deadline for making an appeal has passed and taxes were not paid under protest. *See* §§ 15-1-402, 15-1-406(3), 15-1-407(2)(a) and (3)(d), 15-7-102(2)(b), MCA.

Liquor License Applications. MAR 42-2-829. The Department will hold a public hearing on June 2, 2010, at 1:00 p.m in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The Department proposes to adopt two new rules and amend 11 existing rules. The new rules provide that on-premises licensees (not breweries) that serve alcoholic beverages for off-premises consumption must serve them in their original packages or as an individual serving. The second new rule establishes procedures for issuance of a sacramental wine license. The amended rules relate to disclosure of ownership interests in license applications, definitions for licenses, a 20-day response time for certain served notices, cleanup of the schedule of fees, determination of suitability of premises, including prohibition of service by other than individuals such as vending machines, requiring future licensees to post concession agreements, limiting the duration of catered events, providing that server compensation may not be based on alcohol sales under concession agreements, clarification of restrictions on holding interests in other alcohol licenses, and general language and grammar cleanup.

Comment: In reference to disclosure of ownership rules amended in ARM 42.12.101, the implemented statute, 16-4-401, MCA, does not have a 51% aggregated ownership requirement for reporting by publicly traded corporations. The proposed rule seems to require it of them, but the amendment also references the requirements of 16-4-401, MCA, so the actual requirement is unclear.

Special Alcoholic Beverage Licenses and Permits. MAR 42-2-830. The Department will hold a public hearing on June 2, 2010, at 2:00 p.m in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The Department proposes to adopt one new rule and amend three existing rules. The proposed new rule clarifies the operation of a restaurant beer and wine license in regards to alcoholic service only to patrons who are or will be ordering food; clarifies that alcohol purchases must be on the food bill; and limits hours of service and possession of alcohol to 11 a.m. to 11 p.m.

Restaurant Beer and Wine Licences and the License Lottery Process. MAR 42-2-831. The Department will hold a public hearing on June 2, 2010, at 2:30 p.m in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The Department proposes to amend six existing rules on the lottery process for granting certain types of alcoholic beverage licenses. The amendments differentiate the process for restaurant beer and wine licenses from the other lotteries, centrally define terms, clarify the application process, and change the manner in which applicants for restaurant beer and wine licenses for premises with a seating capacity of 101 or more persons can, based upon the drawing and the application of the 25% seating quota, choose to apply for a license with less seating capacity.

#### **Notice of Adopted Rules:**

Regulations for Liquor Licensees -- Sales to Minors and Intoxicated Persons. Proposed MAR 42-2-810, Adopted March 25, 2010. The Department held a public hearing on November 18, 2009, and received extensive comments opposed to the amendment of ARM 42.13.101, relating to schedules of penalties for sales to minors and intoxicated persons. That rule will not be amended but subject to a new public hearing as provided in MAR 42-2-825. The other proposed rules and amendments were adopted, but based on a comment on fire codes, the Department

amended ARM 42.13.111 prior to adoption.

Forest Land Property. MAR 42-2-814. Adopted February 25, 2010. A public hearing was held on November 23, 2009. Ten comments were received. The comments all disagreed with the proposed rule, primarily on timing of provisions such as the cap rate and advisory council, which the Department explained were to establish criteria for the next reappraisal cycle, and items such as definitions, productivity determination, and clarity of the rules. The Department adopted the rules as proposed.

Agricultural Land Valuation. MAR 42-2-815. Adopted February 25, 2010. A public hearing was held on November 23, 2009. Nine comments were received. The comments were on productive value, including defining, determining, and phasing in, keeping taxpayers informed, AUMs and grazing land, and "denied access land". Based upon the comments the Department agreed that before the next reappraisal cycle irrigated land that is grazed needs more study and the Department changed proposed Rule II to clarify productivity information on "denied access lands." The rules were otherwise adopted as proposed.

Prepaid Telecommunications 9-1-1 Fees. MAR 42-2-817. Adopted March 25, 2010. A public hearing was held on November 23, 2009. This rule was the subject of negotiated rulemaking. Seven comments were received. Two comments complemented the Department on the rules, two comments stated the rules were unworkable and contrary to federal law, and the rest had specific problems with the rules. The Department changed proposed Rule I to address a legal comment. The rules were otherwise adopted as proposed.

Withholding Taxes. MAR 42-2-818. Adopted March 11, 2010. A public hearing was held on February 11, 2010. No one appeared to testify and no comments were received. The rules were adopted as proposed.

Property Tax Assistance Program. MAR 42-2-819. Adopted March 11, 2010. A public hearing was held on February 4, 2010. No one appeared to testify and no comments were received. For the purposes of clarification the Department changed the proposed amendments to ARM 42.19.401; otherwise the rules were adopted as proposed.

Relating to Individual Income Taxes. MAR 42-2-820. Adopted April 29, 2010. A public hearing was held on March 31, 2010. No one appeared to testify and no comments were received. The Department changed the proposed amendment to ARM 42.15.219 to correct in inconsistency in an example. The Department also changed the proposed amendments to ARM 42.15.112 by inserting provisions relating to the newly enacted federal Military Spouses Residency Relief Act, which allows non-military spouses of military personnel based in a state to retain their former tax residency. The federal law is effective for this year. The Department otherwise adopted the rules as proposed.

## **Department of Transportation**

**Notice of Proposed Rules:**

Update of Motor Carrier Provisions -- Federal Rules -- Hazardous Materials --Weights -- Safety. MAR 18-124. No public hearing is scheduled. The Department proposes to adopt one new rule and amend six existing rules. The new rule recodifies existing provisions relating to federal rules adopted by reference governing transportation of hazardous materials into a single rule. The rule amendments update existing federal rules adopted by reference and conforms terminology to new rules and changes in federal law enacted since the rules were last amended.

**Notice of Adopted Rules:**

Administration of Emergency Medical Service Grants. MAR 18-123, Adopted March 11, 2010. No comments or testimony were received. The Department adopted the rules as proposed.

Fuel Distributor's Statements. MAR 18-125. Adopted March 11, 2010. One comment was received and the Department's response was that the rules would not cause the perceived problems. The Department adopted the rules as proposed.

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