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Revenue and Transportation Interim Committee

63rd Montana Legislature

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February 6, 2014

TO: Committee Members
FROM: Jaret Coles, Staff Attorney
RE: Administrative Rule Activity

Department of Revenue

Proposal and Adoption Notices are available on the Internet at:

http://www.revenue.mt.gov/formsandresources/administrative_rules/default.mcp

Attorney General Opinion:

9-1-1 Fees for Prepaid Wireless Service -- Lack of Legislative Authority to Promulgate Rules to Allow for Collection of the Fees. 55 A.G. Op. 2. Adopted January 16, 2014. Attorney General Fox issued an Attorney General Opinion that was requested by Speaker Blasdel. The opinion is attached to this memorandum and is [available on the internet](#). The Attorney General held as follows:

The Legislature has not authorized the State to collect 9-1-1 fees for prepaid wireless services purchased from independent retail stores. Absent this legislative authority, the Department of Revenue cannot promulgate rules to allow for the collection of the fees on these sales.

One of the rules at issue in the Attorney General Opinion (42.31.401) was adopted in 1986, and amended in 1998, 2003, and 2010. Five of the rules at issue (42.31.406, 42.31.407, 42.31.408, and 42.31.409) were adopted on March 26, 2010.

Notice of Proposed Rules:

Liquor Tax and Administration -- Distilleries -- House Bill No. 517 (2005). MAR 42-2-903. A public hearing was held on January 13, 2014. The public comment period ended on January 20,

2014. The Department proposes to amend six rules regarding distilleries. The amendments add definitions, clarify when a patio or deck may be utilized by a distillery, provide that a premises must meet the suitability requirements before a license is issued, provide for reporting requirements to the Department for the purpose of taxation and product pricing, provide that a microdistillery sample room cannot provide samples to the public unless the product was produced at the microdistillery, and detail the process for a distillery to import bulk distilled spirits in the manufacturing process.

Liquor Tax and Administration -- Liquor Licenses -- House Bill No. 524 (2013) (removing grocery, pharmacy requirement on off-premises beer, wine license) -- Senate Bill No. 120 (2013) (increasing from one to three the number of liquor licenses an individual may have)-- Senate Bill No. 266 (2013) (revising sacramental wine license laws). MAR 42-2-904. A public hearing was held on January 27, 2014. The public comment period ended on February 3, 2014. The Department proposes to adopt three new rules and amend seven rules regarding liquor administration. The new rules allow electronic submission of documents, describe who is responsible for paying the tax on shipments of sacramental wine, and describe who may purchase sacramental wine. The amendments implement House Bill No. 524 by allowing stand-alone beer or table wine businesses to obtain a license for off-premises consumption, implement Senate Bill No. 120 by allowing an increase in the number of all-beverages licenses that an individual may possess an ownership interest in, and further implement Senate Bill No. 266 regarding the sacramental wine license.

Property Tax -- Property Tax Assistance and Exemptions. MAR 42-2-905. A public hearing was held on February 6, 2014. The public comment period ends on February 13, 2014. The Department proposes to amend four rules regarding property tax assistance and exemptions. The amendments were drafted to provide consistency for the property tax assistance program (15-6-134, MCA), the extended property tax assistance program (15-6-193, MCA), and the property tax exemption for qualified disabled veterans. For example, the definition section was expanded so it can be used for all three programs.

Property Tax -- Official Record for Real and Personal Property -- Local Government Tax Increment Financing Districts -- Senate Bill No. 239 (2013). MAR 42-2-906. A public hearing was held on February 6, 2014. The public comment period ends on February 13, 2014. The Department proposes to adopt one new rule regarding the property tax record. Additionally, the Department proposes to amend six rules and repeal two rules regarding local government tax increment financing districts. The proposed new rule provides that the official real and personal property record is located in the Computer Assisted Mass Appraisal System (CAMAS). The amendments implement Senate Bill No. 239, which revised tax increment financing district laws by providing for the creation of targeted economic development districts while removing provisions for creating technology districts, aerospace transportation and technology districts,

and industrial districts. The amendments generally repeal outdated language based on the amendments and update definitions and concepts, except as noted in the comment.

Comment: The Department added a provision that it "will not certify the base taxable value of a newly created [targeted economic development district or urban renewal district] if the district crosses any school district boundary." This requirement does not expressly exist in Title 7, chapter 15, part 42, MCA. Legislative staff is in the process of making further inquiries with the Department regarding this provision and will report to the committee.

Notice of Adopted Rules

Property Tax and Class Eight Property -- Senate Bill No. 96 (2013). MAR 42-2-895. Adopted December 26, 2013. A public hearing was held on September 26, 2013, and one person appeared at the hearing to testify. The Department amended three rules regarding personal property exemptions. The amendments implement Senate Bill No. 96 by striking inapplicable language, reorganizing the existing sections, and providing that businesses with \$100,000 or less in personal property will no longer be required to submit a reporting form unless required by the Department.

Liquor Tax and Administration -- Wine Importation and Licensee Reporting Requirements -- House Bill No. 402 (2013). MAR 42-2-896. Adopted December 12, 2013. A public hearing was held on November 12, 2013. Three people testified or submitted written comments. The Department amended three rules regarding importation of wine, wine distributor monthly reports, and winery reporting requirements for direct sales to a retailer, consumer, or table wine distributor.

Business Licenses -- Electronic Submission of Documents Through the Business Licensing Portal. MAR 42-2-897. Adopted December 12, 2013. A public hearing was held on November 12, 2013. No one appeared at the hearing to testify and no written comments were received. The Board of Review, through the Department, adopted one new rule regarding electronic submission of documents and electronic signatures. The purpose of the rule is to enable businesses to electronically apply for one or more licenses by completing a single copy of the licensing master application, in addition to allowing businesses to apply for, pay for, and renew business licenses online.

Property Tax -- Trended Depreciation Schedules for Valuing Property. MAR 42-2-898. Adopted December 12, 2013. A public hearing was held on November 21, 2013. No one appeared at the hearing to testify and no written comments were received. The Department amended 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, television cable systems, ski lift equipment, and industrial machinery and equipment.

Liquor Advertising. MAR 42-2-899. Adopted December 26, 2013. A public hearing was not required, and no written comments were received. The Department amended one rule by adding "in effect on April 1, 2012" after a citation to a federal regulation regarding when a registered representative is allowed to distribute point of sale advertising materials and consumer advertising specialties to a retailer. The amendment essentially provides that the federal regulation in effect on April 1, 2012, is the controlling regulation unless a later date is adopted in future rulemaking.

Property Tax -- Clarification of Valuation Periods. MAR 42-2-900. Adopted December 26, 2013. A public hearing was held on December 5, 2013. No one appeared at the hearing to testify and no written comments were received. The Department amended one rule to correct an erroneous reference to "January 1, 2014" instead of "July 1, 2008". The amendment essentially clarifies that 2008 market value is used for class four property from January 1, 2009, through December 31, 2014.

Property Tax -- Applications for Property Tax Exemptions. MAR 42-2-901. Adopted December 26, 2013. A public hearing was held on December 5, 2013. No one appeared at the hearing to testify and no written comments were received. The Department amended one rule regarding the timeframe for a property owner or federally recognized tribe to apply for a property tax exemption. Applications that are postmarked after March 1 of the year for which the exemption is sought will be considered for the following year unless the applicant can demonstrate an impediment that prevented timely filing.

Debt Collection Services Provided on Behalf of Other Agencies. MAR 42-2-902. Adopted January 30, 2014. A public hearing was held on January 7, 2014. No one appeared at the hearing to testify and no written comments were received. The Department adopted nine new rules as proposed. The new rules define the procedures that are utilized by the Department when it collects debts for state agencies pursuant to Title 17, chapter 4, MCA.

Department of Transportation

Proposal and Adoption Notices are available on the Internet:

The Department of Transportation does not maintain an administrative rules website, but 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 "18" in the "Search by Notice No." box and click on the "Go" icon.

Notice of Proposed Rules:

Motor Carrier Services Safety Assistance Program -- MAR 18-145. No public hearing is contemplated, and the public comment period ends February 13, 2014. The Department of Transportation proposes to adopt one new rule and amend three rules pertaining to motor carrier services safety assistance program. The rules allow Montana Highway Patrol (MHP) officers, Department peace officers, and civilian safety inspectors to enforce federal safety requirements, perform roadside inspections and investigations, inspect a commercial motor carrier's place of business, and require production of documents. Additionally, MHP officers and Department peace officers are allowed to issue citations and make arrests in connection with violations of safety standards, while civilian safety inspectors are required to refer violations to an MHP officer or a Department peace officer.

Note: Pursuant to the reasonable necessity statements, the rules are necessary because the Federal Motor Carrier Safety Administration stated that the Department failed to adopt right-of-entry authority for all officer and inspectors conducting safety inspections. Section 61-10-154(5), MCA, authorizes the Department of Transportation to enforce provisions of Title 49 of the United States Code and federal regulations.

Notice of Adopted Rules:

Community Welcome To Signs -- MAR 18-144. Adopted January 30, 2014. No public hearing was held and two written comments were received. The Transportation Commission adopted one new rule as proposed and amended two rules as proposed pertaining to community "welcome to" signs. The rules address standards for allowing "welcome to" signs to be placed along controlled routes under strict location and design standards to promote community recognition.

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