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Revenue and Transportation Interim Committee

63rd Montana Legislature

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July 2, 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/home/rules.aspx>

Notice of Proposed Rules:

Housekeeping -- General Rules and Definitions -- Biennial Review of Administrative Rules. MAR 42-2-907. A public hearing was held on June 12, 2014. The public comment period ended on June 29, 2014. The Department proposes to amend 24 rules, and it states that the purpose is "to update statutory references due to recodification, remove outdated statutes, provide additional supporting statutes, and replace general statute title and chapter references with the specific statutes (where practical) to meet current ARM formatting standards." The majority of the proposed amendments are housekeeping in nature. Additionally, the current definitions for "business income" and "nonbusiness income" are eliminated and the definition for "statement of account" is expanded.

Canceled Hearing and Postponement -- Dispute Resolution Procedure. MAR 42-2-908. On June 12, 2014, the Department proposed to amend nine rules regarding dispute resolution, and a hearing was scheduled. On June 16, 2014, the Department canceled the hearing and issued a notice of decision indicating that further review of the proposed amendments is necessary before proceeding with the public hearing. The Department will re-notice the rules for public participation at a later date.

Income Tax -- Qualified Endowment Credit -- Senate Bill No. 108 (2013). MAR 42-2-909. A public hearing will be held on July 8, 2014, at 11 a.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on July 15, 2014. The Department proposes to amend four rules regarding the qualified endowment tax credit. The proposed amendments expand dates from December 31, 2013, to December 31, 2019, based on the extension of the sunset in Senate Bill No. 108. Additionally, the actuarial life expectancy tables that are used by the Internal Revenue Service (IRS) are incorporated pursuant to section 15-30-2327(4), MCA, which requires usage of the most recent actuarial table published by the IRS.

Property Tax -- Implementing a Montana Supreme Court Decision Pertaining to Centrally Assessed Property. MAR 42-2-910. A public hearing will be held on July 8, 2014, at 1:30 p.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on July 15, 2014. The Department proposes to amend two rules regarding the valuation of intangible personal property. The proposed amendments strike the Department's definitions of "goodwill" and "intangible personal property" based on the Montana Supreme Court's decision in *Gold Creek Cellular of Mont. v. State*, 2013 MT 273, 372 Mont. 71, 310 P.3d 533. In *Gold Creek Cellular*, the Court held that the Department may not define goodwill in a way that precludes a taxpayer from proposing an alternative methodology or from providing further information. Additionally, the Court held that the Department's definition of intangible personal property was contradictory to section 15-6-218, MCA, regarding the two requirements of intangible personal property.

The proposed amendment also expands the definition of "book depreciation" to include depreciation that is reported on independently audited financial statements (the current rule utilizes depreciation reported to the regulatory agency). Depreciation was not directly addressed in *Gold Creek Cellular*.

Notice of Adopted Rules:

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. Adopted June 12, 2014. A public hearing was held on January 27, 2014; four people appeared to present testimony, and written public comments were received. The Department adopted three new rules and amended 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 -- Official Record for Real and Personal Property -- Local Government Tax Increment Financing Districts -- Senate Bill No. 239 (2013). MAR 42-2-906. Adopted May 22, 2014. A public hearing was held on February 6, 2014; two people appeared to present testimony, and written public comments were received. The Department adopted one new rule regarding the property tax record. Additionally, the Department amended six rules and repealed two rules regarding local government tax increment financing districts. The 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 and update definitions and concepts.

As part of the hearing process, the Department struck a proposed amendment indicating that it would 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.

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:

None from May 8, 2014, through June 26, 2014.

Notice of Adopted Rules:

Motor Fuels Tax -- MAR 18-146. Adopted May 8, 2014. No public comments were received and the Department of Transportation amended one rule and repealed one rule regarding the motor fuels tax as proposed. The amendment defines good or reasonable cause for late filing and late payment of the motor fuel tax as a first-time late offense within a 3-year period of timely filings. The repeal deletes a graduated penalty rule, as section 15-70-210, MCA, requires a 10% penalty unless there is good cause.

Note: Pursuant to the reasonable necessity statements, the rule changes are necessary because the Legislative Audit Division conducted an audit on the Motor Fuels Section and made the recommendations.

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