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Revenue and Transportation Interim Committee

65th Montana Legislature

TO: Committee Members

FROM: Jaret Coles, Staff Attorney

RE: Administrative Rule Activity

DATE: December 1, 2017

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:

Corporate Income Tax -- Carryforward and Carryback Provisions of Corporate Net Operating Losses -- House Bill No. 550 (2017). MAR 42-2-984. A public hearing was held on November 2, 2017, and the public comment period ended on November 13, 2017. The Department proposes to amend two rules. The proposed amendments implement House Bill No. 550 (2017), which changed the carryforward period for net operating losses for corporate income tax purposes from seven years to ten years for tax years beginning after December 31, 2017, and also limited the amount of net operating loss allowed to be carried back to $500,000 per taxable period for taxable periods beginning after December 31, 2017. The proposed amendments add language to separately provide for tax years that began prior to this change and add language to include the provisions that will begin after January 1, 2018.

Corporate Income Tax -- Allocation and Apportionment of Income of Multistate Corporate Taxpayers -- Unitary Multistate Taxpayers -- Montana Activity Through Multiple Entities -- House Bill No. 511 (2017). MAR 42-2-985. A public hearing was held on November 2, 2017, and the public comment period ended on November 13, 2017. The Department proposes to adopt seven rules, amend 47 rules, and repeal one rule. In general, the proposed changes implement House Bill No. 511 (2017), which requires corporate income tax taxpayers to use a market sourcing approach to sourcing receipts for purposes of the receipts apportionment factor. The new language added by House Bill No. 511 to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations addressing the sourcing of receipts using the market sourcing approach.

Six of the proposed new rules are modeled after apportionment regulations adopted by the MTC and address: (1) sales other than sales of tangible personal property; (2) sales, rental, lease, or license of real property; (3) rental, lease, or license of tangible personal property; (4) sale of a service; (5) license or lease of intangible property; and (6) sale of intangible property.

One of the proposed new rules (and an amendment and repeal) changes the way the Department administers the corporate income tax regarding unitary multistate taxpayers whose Montana activity is reflected through multiple entities by switching from the "Joyce Rule" to the "Finnigan Rule". The current approach is for the Department to use the "Joyce Rule", which provides that in order to include the apportionment factor numerators of a member of a unitary group, that individual member must have nexus within the taxing state. Under "Finnigan," the apportionment factor numerators of all members of a unitary group are included if just one member of the unitary group has nexus within the taxing state. The Department's reasonable necessity statement provides that the "adoption of the 'Finnigan' rules can help limit the risk of manipulation of the apportionment factors of unitary groups."

The proposed amendments generally substitute words and terms to account for the changes by the new rules or eliminate provisions that are no longer applicable.

STAFF NOTE: The rules are voluminous, and a separate Revenue and Transportation Interim Committee agenda item follows Administrative Rule Review on December 5, 2017.

Corporate Income Tax -- Apportionment and Allocation of Income for Financial Institutions. MAR 42-2-986. A public hearing was held on November 2, 2017, and the public comment period ended on November 13, 2017. The Department proposes to adopt three rules that are modeled after regulations adopted by the Multistate Tax Commission. The proposed rules provide: (1) definitions for words used in the two new rules; and (2) direction for multistate financial institutions when apportioning their receipts factor. The Department's reasonable necessity statement states that the "proposed new rules are intended to more fairly apportion the receipts of financial institutions to states in which they do business."

Property Tax -- Trended Depreciation Schedules for Valuing Property -- House Bill No. 115 (2017). MAR 42-2-987. A public hearing was held on November 2, 2017, and the public comment period ended on November 13, 2017. The Department proposes to amend 12 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.

Additionally, an amendment to one rule implements House Bill No. 115, which replaced the requirement that the Department use Iron Solutions, Northwest Region Official Guide, to value farm machinery with language that allows the department to seek out and use other published valuation guides that meet the criteria in the statute. As such, the Department proposes usage of the online version of the guide known as Equipment Watch, as of October of the year prior to the year of assessment.

Notice of Adopted Rules:

Livestock Reporting and Per Capita Fees -- Honey Bees -- House Bill No. 345 (2017). MAR 42-2-971. Adopted September 11, 2017. A public hearing was held, one person testified, no written comments were received, and the Department amended two rules by incorporating public comment. The amendments: (1) implement House Bill No. 345 (2017) by providing that only "honey" bees are reported; (2) clarify that the term "cattle" includes "heifer and steer calves 9 months and older, yearlings, cows, and bulls"; and (3) strike the requirement that the department will estimate livestock counts provided by a landowner when an owner of livestock that is not a landowner fails to self-report.

Property Tax Exemption for Nonfossil Energy Systems -- Rate Reductions for Value-added Property -- Department's Notification of Property Tax Liens -- House Bill No. 111 (2013) and House Bill No. 18 (2017). MAR 42-2-972. Adopted September 11, 2017. A public hearing was held, one person testified, no written comments were received, and the Department amended one rule by incorporating public comment and repealed three rules. The amendment removed outdated terminology for the property tax exemption for nonfossil energy systems, including references to tax years 2001 through 2010. All of the repeals are housekeeping in nature.

Individual Income Tax -- Resident Military Salary Exclusion. MAR 42-2-973. Adopted September 11, 2017. A public hearing was held, one person testified in support of the rule, no written comments were received, and one rule was amended as proposed. The amendment added language providing that "active duty" in the National Guard means active duty performed under an order issued pursuant to Title 10 of the United States Code.

Property Tax -- Deadlines for Classification and Appraisal Reviews and Consideration of Sales Price and Fee Appraisals as Market Value Indicators -- House Bill No. 43 (2017). MAR 42-2-975. Adopted October 30, 2017. A public hearing was held, one person testified, written comments were received in support of the amendments, and three rules were amended after incorporating public comment. One of the amendments clarifies the process for submitting Form AB-26 regarding a request for informal classification and appraisal review, based on passage of House Bill No. 43 (2017), which authorized an informal review deadline for remaining years(s) in a property valuation cycle. The second amendment updates outdated language. The third amendment provides than an independent fee appraisal that is submitted to the Department by a taxpayer must be conducted by an appraiser that is licensed or certified by the Montana Board of Real Estate Appraisers.

Property Tax -- Property Tax Exemption Applications -- Exemptions for Veterans' Organizations -- Exemption Notifications to County Treasurers -- Valuation of Condominiums and Townhomes -- House Bill No. 200 (2017), House Bill No. 224 (2017), and Senate Bill No. 324 (2017). MAR 42-2-976. Adopted October 30, 2017. A public hearing was held, no public comment was received, and the department amended five rules. The amendments: (1) implement House Bill No. 200 (2017), regarding a housing unit on land belonging to a community land trust, by proposing the cost method to value condominiums and townhomes on tax-exempt land; (2) implement House Bill No. 224 (2017), regarding application for a veterans' clubhouse property tax exemption in the event someone other than the society or organization owns the property; (3) implement Senate Bill No. 324 (2017), which requires the Department to notify the county treasurer of any determination made on a property tax exemption application; and (4) eliminate the requirement that exempted property owners submit a reapplication fee, given that the reapplication fee was only required for tax year 2015 as part of House Bill No. 389 (2015). The remainder of the changes were housekeeping in nature.

Property Tax -- Land Classification, Natural Disaster Reduction, and Forest Land Eligibility and Valuation -- House Bill No. 43 (2017) and House Bill No. 583 (2017). MAR 42-2-977. Adopted November 13, 2017. A public hearing was held, two people testified, written comments were received, and six rules were amended after incorporating public comment. The amendments: (1) implement House Bill No. 43 (2017) by listing the informal review deadline for remaining years(s) in a property valuation cycle and the process for Department review of Form AB-26; (2) implement House Bill No. 583 (2017), which revised property taxes for forest land with residential or commercial use by defining what "forest land management use" means and providing that land under structures associated with "forest land management" is valued as forest land unless there is a residence on the same one-acre area; and (3) eliminate the application process for forest land classification and provide that a property owner that believes property should be classified as forest land should submit a Form AB-26.

Income Tax -- Calculating the Elderly Homeowner/Renter Tax Credit. MAR 42-2-978. Adopted October 30, 2017. A public hearing was held, one person testified, written and telephonic comments were received in support of the amendments, and two rules were amended as proposed. The amendments update definitions while modifying the manner of how to calculate how much rent was paid by residents of a health, long-term, or residential care facility. Prior to January 1, 2017, if a resident lived in a facility that did not provide an adequate breakdown between "rent" and "amenities" paid, the rent allowed was limited to $30 per day. The amendment changes the calculation by requiring a 20% reduction for services related to board (*i.e.*, meals, housekeeping, laundry, and transportation), a 30% reduction for continuous care (*i.e.*, assisted living, medical care, paramedical care, memory care, medical supplies, and pharmacy), and a 50% reduction if both board and continuous care are provided. A resident of a facility that provides a detailed statement showing how much was paid for rent may choose between the calculation or the detailed statement method to calculate rent paid.

Income Tax -- Pass-Through Entities -- Senate Bill No. 252 (2017) and House Bill No. 42 (2017). MAR 42-2-979. Adopted October 30, 2017. A public hearing was held, no public comment was received, and the Department amended five rules as proposed. The amendments: (1) use the term "domestic second-tier pass-through entity" that was provided in Senate Bill No. 252 (2017); (2) change pass-through entity return filing deadlines to implement House Bill No. 42 (2017), which revised the filing deadline for partnerships to align with the federal deadline; and (3) revise the automatic filing extension so that it is automatically six months, regardless of whether a federal extension was approved, so long as any "tax, penalties, and interest due are paid on or before the date the return is filed". The remainder of the amendments are housekeeping in nature and not related to new legislation.

Property Tax -- Property Tax Assistance Programs -- House Bill No. 74 (2017), House Bill No. 554 (2017), and Senate Bill No. 94 (2017). MAR 42-2-980. Adopted November 13, 2017. A public hearing was held, one person testified, written comments were received, and the Department amended three rules and adopted one rule after incorporating public comment. The amendments: (1) implement House Bill No. 554 (2017), by providing details about how the Department determines whether a property qualifies for the property tax assistance benefit when the property ownership changes; and (2) implement House Bill No. 74 (2017), which struck outdated language.

The new rule implements Senate Bill No. 94 (2017), which enacted a new property tax assistance program for residential property owners when their land value is disproportionately higher than the department's value of their home and other improvements. The new rule summarizes the qualifications for the program, references the statute for locating details, provides guidelines, outlines the application process, provides how to provide documentation proving property ownership within three degrees of consanguinity (ancestral line of descent) for 30 years, provides where to locate an application form, and addresses the application deadline.

Income Tax -- Tax Credits -- House Bill No. 137 (2017) -- Senate Bill No. 10 (2017) -- Senate Bill No. 175 (2015) -- Senate Bill No. 309 (2015). MAR 42-2-981. Adopted October 30, 2017. No public comment or testimony was received and the Department adopted one rule, amended nine rules, and repealed 17 rules.

The new rule is intended to be informational and provides guidance to taxpayers on how corporate income tax credits are tracked and applied in the case of a merger or consolidation.

The amendments update tax years in examples and delete outdated language. Additionally, the amendments: (1) implement Senate Bill No. 175 (2015), which expanded the emergency lodging credit to include families as well as individuals by including the term "family" or "families" into the language of the rule; (2) implement Senate Bill No. 309 (2015), which expanded the credit for unlocking isolated land to include access to federal land as well as state land by replacing the word "state" with "public" in multiple rules; and (3) implement House Bill No. 137 (2017), which repealed the credit provided in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool.

The repeals: (1) eliminate rules that pertain to the rural physician's credit, as tax year 2013 was the last tax year this credit may have been claimed; (2) implement Senate Bill No. 10 (2017), which repealed the refundable income tax credit, by eliminating a rule relating to this credit; (3) eliminate rules pertaining to the repealed Small Business Health Insurance Purchasing Pool; (4) eliminate rules that relate to the expired oilfield crush facility tax credit and biodiesel or biolubricant production facility tax credit; and (5) eliminate rules relating to the expired media production tax credit.

Coal Valuation for Coal Gross Proceeds -- Coal Severance Tax on Coal Production. MAR 42-2-982. Adopted November 13, 2017. A public hearing was held, two people testified, three people submitted written testimony, and the Department amended eight rules, adopted one rule, and repealed two rules after incorporating public comment.

The amendments: (1) define terms pertaining to the determination of the market value of the coal, including the determination of whether a transaction is at "arm's length"; (2) remove outdated references while incorporating the revised defined terms; (3) provide guidance on how to calculate contract sales price; and (4) describe the variety of valuation methods the department will use to impute coal value.

The new rule provides that the department may examine records of coal companies and their related parties, including contracts for the sale of coal, to determine the price of coal.

The repeals eliminate two rules based on the reasoning that the content is sufficiently covered in statute and the amendments to the rules.

Employer Apprenticeship Tax Credit -- House Bill No. 308 (2017). MAR 42-2-983. Adopted October 30, 2017. No public comment or testimony was received and the Department adopted one rule as proposed. The new rule implements House Bill No. 308 (2017), which provides a credit to employers for creating new or expanding existing apprenticeship opportunities within their organization by detailing the documentation that must be filed with a tax return.

Department of Transportation

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Notice of Proposed Rules:

Fuel Tax Bridge and Road Safety and Accountability Program -- House Bill No. 473 (2017). MAR 18-165. No public hearing was contemplated and the public comment period ended November 10, 2017. House Bill No. 473 established the Bridge and Road Safety and Accountability (BARSAA) program to provide funding to eligible local governments for construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, and bridges. A portion of motor fuel tax revenues generated within the state provides the funding for this program and allocates a portion of the fuel tax to local governments. The department proposes to implement House Bill No. 473 by adopting eight new rules that detail the process used by local governments for the new BARSAA program.

Notice of Adopted Rules:

None.

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