



Revenue and Transportation Interim Committee

65th Montana Legislature

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TO: Committee Members

FROM: Jaret Coles, Staff Attorney

RE: Administrative Rule Activity

DATE: March 9, 2018

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:

Tax Administration -- Office of Dispute Resolution (ODR) -- Senate Bill No. 137. [MAR 42-2-988](#). A public hearing was held on March 8, 2018, and the public comment period ended on March 16, 2018. The Department proposes to amend five rules. The proposed amendments implement [Senate Bill No. 137 \(2017\)](#), which revised taxpayer dispute resolution procedures to allow taxpayers the right to bypass the Department's Office of Dispute Resolution (ODR) process and directly appeal to the Montana Tax Appeal Board.

Income Tax -- Pension and Annuity Income Exclusions, Dependent Exemptions, and Medical Care Savings Accounts -- House Bill No. 175. [MAR 42-2-989](#). A public hearing will be held on March 29, 2018, at 11:00 a.m. in the Third Floor Reception Conference Room, Mitchell Building, Helena. The public comment period ends on April 11, 2018. The Department proposes to amend seven rules. Three of the proposed amendments update statutory references, describe the form that is used to waive a net operating loss, and adopt the Internal Revenue Code support test for determining when a person is a qualifying relative for purposes of claiming an income tax exemption. Four of the proposed amendments implement [House Bill No. 175 \(2017\)](#), which revised the tax exemptions and eligible withdrawals in the Montana medical care savings account (MSA) laws.

Staff Comment: [House Bill No. 175](#) expanded the definition of "eligible medical expense" to include "a family leave expense". As such, an account holder is permitted to use money in a Medical Care Savings Account (MSA) that was excluded from adjusted gross income to cover wages that were lost while caring for an immediate family member. An immediate family member is defined as a "parent, spouse, or child.". [House Bill No. 175](#) does not prohibit an account holder from distributing MSA funds to someone other than the account holder or the spouse of the account holder and does not specifically declare that the funds are taxable. For example, an account holder can gift MSA money to a friend to help the friend cover family leave expenses. If this were to occur, the Department will treat the gifted MSA funds as ordinary income to the friend. *See* Proposed Amendment to ARM 42.15.603(8) ("Qualified withdrawals made with respect to a family leave expense, as defined in [15-61-102](#), MCA, are deemed to be in exchange of adequate consideration for loss of income and must be treated as ordinary income to the recipient, except when received by the account holder or the spouse of the account holder.").

The Department's reasonable necessity statement for the proposed amendment provides: "As proposed, new (8) provides that when the account holder makes a qualified withdrawal with respect to a family leave expense, the funds received by the recipient, when it is neither the account holder nor the spouse of the account holder, is ordinary income. The statute remains silent regarding who applies to an FMLA leave, and only addresses the effect of such withdrawal for the account holder. Yet, for income tax purposes, such a transfer would be regarded as a gift if it was not for compensating a loss of revenue stemming from the FMLA leave. This payment is similar to an unemployment insurance compensation and is regarded as ordinary income. Montana statute does not provide for an exemption in this case."

Withholding Taxes -- House Bill No. 63. [MAR 42-2-990](#). A public hearing will be held on March 29, 2018, at 9:30 a.m. in the Third Floor Reception Conference Room, Mitchell Building, Helena. The public comment period ends on April 11, 2018. The Department proposes to amend five rules. The proposed amendments implement [House Bill No. 63](#) (2017), which revised the due date for filing the annual royalty and tax statement provided in [15-30-2544](#), MCA. As a result of the new legislation, Form RW-3, Montana Annual Mineral Royalty Withholding Tax Reconciliation, is due on or before January 31 instead of February 28. In addition, one proposed amendment adds new language to provide the calculation that is required for allocating mineral royalty withholdings between owners of a pass-through entity.

Income Tax -- Apportionment and Allocation of Income Reported by Pass-Through Entities and Guaranteed Payments to Individual Partners -- House Bill No. 511. [MAR 42-2-991](#). A public hearing will be held on March 29, 2018, at 1:00 p.m. in the Third Floor Reception Conference Room, Mitchell Building, Helena. The public comment period ends on April 11, 2018. The Department proposes to adopt two rules and amend two rules. One proposed rule provides guidance on how guaranteed payments that are made to an individual are sourced to the state.

The amendments implement [House Bill No. 511 \(2017\)](#), which changed the term "business income" to "apportionable income," and the term "nonbusiness income" to "nonapportionable income." The Department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute.

Notice of Adopted Rules:

Corporate Income Tax -- Carryforward and Carryback Provisions of Corporate Net Operating Losses -- House Bill No. 550 (2017). [MAR 42-2-984](#). Adopted November 27, 2017. The Department amended two rules as proposed. The 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 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](#). Adopted November 27, 2017. The Department adopted seven rules, amended 48 rules, and repealed one rule. In general, the 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 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 new rules (and an amendment and repeal) changed 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 previous approach was 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 provided 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 substituted words and terms to account for the changes by the new rules or eliminated provisions that were no longer applicable.

Corporate Income Tax -- Apportionment and Allocation of Income for Financial Institutions. [MAR 42-2-986](#). Adopted November 27, 2017. The Department adopted three rules that are modeled after regulations adopted by the Multistate Tax Commission. The rules provide: (1) definitions for words used in the rules; and (2) direction for multistate financial institutions when apportioning their receipts factor. The Department's reasonable necessity statement stated 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](#). The Department amended 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 implemented [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 will use the online version of the guide known as Equipment Watch as of October of the year prior to the year of assessment.

Department of Transportation

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Notice of Proposed Rules:

Motor Fuels Tax Collection and International Fuel Tax Agreement (IFTA). MAR 18-166. No public hearing is contemplated and the public comment period ended February 23, 2018. The Department of Transportation proposes to adopt one rule and amend two rules. The proposed new rule establishes a notice and hearing procedure for assessment actions and other license and permit enforcement actions. The proposed amendments revise definitions to define terms used in the proposed new rule while also stating the bond requirements for an IFTA licenses.

Notice of Adopted Rules:

Fuel Tax Bridge and Road Safety and Accountability Program -- House Bill No. 473 (2017). MAR 18-165. Adopted November 27, 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.

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