



GOVERNOR GREG GIANFORTE
DIRECTOR BRENDAN BEATTY

MEMORANDUM

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel *DES*

DATE: July 11, 2025

SUBJECT: Department of Revenue Major Case Update

MONTANA SUPREME COURT

National Order of Cowboy Rangers (NOCR) v. MDOR: The department denied NOCR's application for an all-alcoholic beverage license as a non-profit, nationally chartered fraternal organization following a protest hearing, where the department's Office of Dispute Resolution (ODR) determined NOCR failed to meet eligibility or suitability criteria as a nationally chartered fraternal organization that existed for five or more years prior to January 1, 1949, under § 16-4-201(8)(b), MCA. Pursuant to § 2-4-702(2)(a), MCA, the deadline for NOCR to file a petition for judicial review ran on November 20, 2024. NOCR did not petition until January 13, 2025, and asserted equity principles and good cause for its delayed filing.

On May 7, 2025, the Thirteenth Judicial District Court, Yellowstone County, granted the department's motion to dismiss NOCR's petition for judicial review as untimely. On May 21, 2025, NOCR appealed to the Montana Supreme Court. NOCR's opening brief to the Montana Supreme Court is due July 21, 2025.

STATE DISTRICT COURT

Order of Chosen Friends v. MDOR; Order of Chosen Friends, Lodge 3 v. MDOR; Order of Chosen Friends, Lodge 3, d/b/a Arete Group, LLC v. MDOR. Similar to the NOCR case (above), the department's ODR denied the Plaintiffs/Petitioners' applications following a protest hearing, determining that they failed to meet eligibility or suitability criteria as a nationally chartered fraternal organization that existed for five or more years prior to January 1, 1949, under § 16-4-201(8)(b), MCA.

Plaintiffs/Petitioners petitioned the Thirteenth Judicial District Court, Yellowstone County, for judicial review of the department's denial of their alcoholic beverage license applications as a non-profit, nationally chartered fraternal organization.

Plaintiffs/Petitioners moved to dismiss the department and seek to litigate against the protesters. The motion has been briefed and the parties await the court's decision on the merits.

Thomas Powers and Cindra Lord-Powers and Ryan Swenson and Elizabeth Swenson, et al. v. State of Montana and Department of Revenue: On October 21, 2024, Mr. and Mrs. Powers and Mr. and Mrs. Swenson, as Plaintiffs, filed suit in Butte-Silver Bow County against the State of Montana and the department alleging that the "state" and the department have failed to equalize and adjust all taxable property in the state as required by Article VIII, Section 3 of the Montana Constitution and §15-9-101, MCA. The suit requests the Court (1) certify the matter as a class action suit; (2) issue declaratory judgment(s) under the Uniform Declaratory Judgment Act (UDJA) on various legal theories; and (3) grant supplemental relief to Plaintiffs, including attorneys' fees and costs. The department filed a motion to dismiss on the basis that the suit was filed under the incorrect declaratory judgment authority, and the issue has been fully briefed. The department is awaiting a ruling.

Eagle Bear: On December 2, 2019, Eagle Bear filed a complaint with the Montana Ninth Judicial District Court challenging Montana's lodging facility use tax and sales tax as applied to Eagle Bear's campground, which is located within the Blackfeet Indian Reservation. Eagle Bear asserts that federal law preempts the taxes and that the taxes violate equal protection. Eagle Bear also sued the Blackfeet Nation in US District Court, Great Falls Division. As a result, the parties stayed the Montana District Court matter pending the outcome of the US District Court matter. On December 8, 2023, the U.S. District Court issued its Order which granted summary judgment to the Blackfeet Nation, denied numerous Eagle Bear and third-party motions, and closed the matter. Since the Order's appeals deadlines had not concluded, the Montana District Court matter was stayed.

Somewhat related to the underlying litigation, Eagle Bear filed a Chapter 11 bankruptcy petition with the United States Bankruptcy Court, District of Montana, on May 23, 2022.

On June 2, 2025, Eagle Bear filed two unopposed Motions to Dismiss with Prejudice - one with the district court and the other with the Montana Tax Appeal Board (MTAB). Both the district court and MTAB granted the Motions to Dismiss on June 2, 2025, and June 9, 2025, respectively.

Boardwalk Properties, Inc./Michael Delaney and Ileana Indreland: In June 2021, Boardwalk Properties sued the department in the Eighteenth Judicial District Court, Gallatin County, challenging the 2021 statutory amendments to § 16-4-213, MCA, governing resort area all-beverages licenses, specifically that accommodation units may not be located within the boundaries of a quota area in order to qualify toward the required total for the potential issuance of additional resort retail all-beverages licenses (House Bill 705 (2021)). The

lawsuit asserted that the amended statute violates both the state and federal constitutions (retrospective legislation, equal protection, due process, and takings). Discovery closed on March 8, 2024, both parties filed cross-motions for summary judgment, and oral argument was held on August 21, 2024.

On June 18, 2025, the Court granted summary judgment in favor of the department and the department has filed its proposed entry of final judgment for the Court's consideration.

Strobhar v. State of Montana, MDOR, MDOR Director Brendan Beatty (official capacity), State Auditor Troy Downing (official capacity): Mr. Strobhar sued the department and Co-Defendants in Montana First Judicial District Court, regarding nonresident investment adviser representatives and securities salespersons annual registration fees, which the State Auditor administers pursuant to 30-10-209, MCA, which was amended in 2019 by House Bill 694 (HB 694). The department filed an Answer to Plaintiff's First Amended Complaint and Demand for Jury Trial on April 4, 2024. On April 10, 2024, the department and Co-Defendants filed their responses to Plaintiff's First Set of Discovery Requests. On May 1, 2024, the Court adopted a Civil Scheduling Order for the case, which set the pretrial deadlines for the matter and contemplated trial in mid-2026. In September 2024, however, the Plaintiff further amended his complaint which removed the department as a party to the suit.

MONTANA TAX APPEAL BOARD

Billings Generation, Inc., Orndorff, Roberts, and Smith: The taxpayers appealed the department's assessments for tax year 2020 to MTAB on April 4, 2024. Taxpayers then filed a Petition for Interlocutory Adjudication in the First Judicial District Court. Following briefing, the Court granted the department's Motion to Dismiss, concluding the taxpayers had failed to raise an issue justiciable by the District Court. The MTAB hearing is scheduled for October 7-9, 2025.

Calumet Montana Refining, LLC: Calumet appealed the Cascade County Tax Appeal Board's (CTAB) November 13, 2023, decision upholding the department's 2023 valuation to MTAB. On May 17, 2024, Calumet also appealed the CTAB's April 29, 2024, decision upholding the department's revised 2022 valuation. Calumet subsequently appealed the department's 2024 valuation and moved for MTAB to consolidate the 2022, 2023 and 2024 matters. The matters have been consolidated and a hearing has been scheduled for May 4-15, 2026.

Phillips 66 Company (P66): The department appealed the Yellowstone County Tax Appeal Board (YCTAB) decision regarding the 2024 valuation of the Billings P66 refinery on March 21, 2025. The MTAB has scheduled a hearing on the matter for January 12-15, 2026.

BANKRUPTCY COURT

Timothy Blixseth: Mr. Blixseth filed an Adversary Complaint against the department of Revenue in the United States Bankruptcy Court, District of Nevada, on December 23, 2021. Mr. Blixseth sought an undisclosed amount of damages against the department for the filing of an involuntary bankruptcy petition in 2011.

On July 27, 2022, the Bankruptcy Court granted the department's Motion to Dismiss as to the punitive damages. However, the Bankruptcy Court denied the department's Motion as to costs, attorneys fees, and proximate damages. The department filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) Bankruptcy Appellate Panel on August 10, 2022. On August 24, 2022, Mr. Blixseth filed a Notice of Cross-Appeal challenging the Bankruptcy Court's dismissal of his claim for punitive damages. Additionally, on June 1, 2023, Beau Blixseth and George Mack file a Motion to Intervene in the adversary proceeding pending in the United States Bankruptcy Court, District of Nevada. The Motion to Intervene was denied on October 27, 2023.

The department and Mr. Blixseth completed the briefing schedule, and the Ninth Circuit heard oral argument on the appeal on January 10, 2024, in Pasadena, CA.

On August 14, 2024, the Ninth Circuit issued its opinion reversing the lower courts' decision that the department waived its sovereign immunity. The Ninth Circuit found that under the reasoning found in current precedent, the department did not waive its sovereign when it filed an involuntary bankruptcy proceeding against Mr. Blixseth. Mr. Blixseth requested a Petition for Rehearing (*en banc*) which the Ninth Circuit denied on September 30, 2024.

On February 26, 2025, Mr. Blixseth filed a Petition for Writ of Certiorari with the United States Supreme Court (SCOTUS) and on May 2, 2025, the department filed its Brief in Opposition to the Petition for Writ of Certiorari. On June 6, 2025, SCOTUS denied the petition. The case is currently making its way back through the court dockets.

SETTLEMENTS

Montana Sky Networks/Montana Sky West v. Montana Department of Revenue: On November 26, 2024, the District Court Judge granted the department's Motion for Summary Judgment. Rather than proceed to appeal before the Montana Supreme Court, the parties settled the pending matters and Montana Sky Networks and Montana Sky West agreed to dismiss all pending appeals, and the department agreed to not issue revised assessments for previous tax years. The market value for the tax years in appeal was not adjusted.

MT Sun, LLC: MT Sun, LLC, filed an appeal of the department's valuation of MT Sun's property before MTAB for tax years 2023 and 2024. The parties settled the market value of MT Sun's property as follows: for both the 2023 and 2024 tax years, Montana market value shall be \$80,000,000.

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