



Mike Kadas
Director

Montana Department of Revenue



Steve Bullock
Governor

November 10, 2015

Members of the Montana Legislature
Montana State Capitol
Helena, Montana 59624

RE: Department of Revenue Justification for Rules Related to Senate Bill 410 (2015)

Dear Montana Legislator,

The Revenue and Transportation Interim Committee is polling the entire legislature to determine whether a proposed Department of Revenue rule is consistent with the intent of the Legislature. As required by § 2-4-403(3), MCA, the RTIC has offered the department the opportunity to present a written justification for the proposed rule to the members of the legislature, the basics of which are provided herein.

Our State Constitution requires that Executive Branch officers take an oath of office. Art. III § 3, Montana Constitution. In this oath, we swear to "support, protect and defend the constitution of the United States, and the constitution of the state of Montana" From this I have an obligation to take into account our Constitution when writing and implementing statute or writing and implementing administrative rules.

SB 410 provides a mechanism for taxpayers to utilize a tax credit for donations to public and private schools; it makes no reference to religious or non-religious schools. However, Art. V, § 11(5), and Art. X, § 6 of the Montana Constitution do. The latter is quite explicit:

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, town, school district, and public corporation shall not make any direct or indirect appropriation or payment from any public fund or monies or any grant of land or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

The tax credit is at the very least an indirect payment. Thus, the draft rules for implementation of SB 410 limit the use of the tax credit for donations to non-religious organizations.

Second, SB 410, in Section 1 and Section 7, explicitly and uniquely requires the department to administer the provisions of the bill in compliance with the sections of the Constitution noted above.

Section 7. Purpose. . . . The tax credit for taxpayer donations under [sections 7 through 17] must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution.

With this mandate, it is difficult for the department to come to any other interpretation of the statute than that we were to take the constitutional exclusion seriously.

Finally, this letter is necessarily a brief summary of the justification for the rules for SB 410. It should not be interpreted as a full discourse on the subject.

I thank you for the opportunity to provide, and your consideration of, this justification.

Sincerely,



Mike Kadas
Director