



**Mike Kadas**  
Director

# Montana Department of Revenue



**Steve Bullock**  
Governor

## **MEMORANDUM**

To: Mike Kadas, Director  
From: Dan Whyte, Deputy Chief Legal Counsel  
Date: December 4, 2013  
Subject: Department of Revenue Major Case Update

### **MONTANA SUPREME COURT**

AT&T Mobility & Gold Creek Cellular d/b/a Verizon: The validity of the Department's administrative rules relating to intangible personal property was on appeal to the Supreme Court. On September 24, 2013, the Supreme Court determined that the Department was too limited in its application of administrative rules relating to intangible personal property and goodwill. The Department will be repealing the affected rules.

Applied Materials: The Department appealed the District Court decision on an interlocutory appeal from the State Tax Appeal Board. The District Court concluded that Applied Materials, the surviving corporation from a merger with Semitool, Inc., is entitled to the Research and Development Credit earned by Semitool. The Department's position is that only the corporation that earned the credit is entitled to claim it. The Department has appealed the District Court decision and filed its opening brief with the Montana Supreme Court on November 18, 2013,

Bresnan Communications, LLC: The Department has appealed the District Court decision finding that Bresnan owns Class 8 properties subject to local assessment to the Montana Supreme Court. Oral argument took place on September 25, 2013. Challenges to tax years 2011 and 2012 are stayed before the Thirteenth Judicial District Court pending the Montana Supreme Court's ruling, as the complaints raise nearly identical issues.

Westmoreland Resources, Inc.: Westmoreland appealed the District Court's decision affirming the Department's interpretation that tribal taxes are not a "tax paid to the federal, state, or local governments" for purposes of deducting taxes paid on production from the contract sales price of coal. Westmoreland's opening brief is due December 27, 2013.

### **STATE DISTRICT COURT**

Anaconda Deer Lodge County TIFD: The Department is currently engaged in litigation with Anaconda Deer Lodge County (ADLC) and Anaconda School District No. 10 (SD 10). The

matter concerns SD 10's treatment of funds it receives as a part of a remittance agreement from an industrial tax increment financing district (TIFD) located within ADLC. It is the position of the Department that the way that SD 10 handles the tax remittances does not comport with Montana law, and results in the illegal double-taxation of the citizens of ADLC. On October 21, 2013, the District Court dismissed the Department's Writ of Mandamus on the grounds that the Department lacks standing. The Court has also ordered the parties to appear at a hearing on January 17, 2013, in Anaconda to determine whether the Department's actions preclude it from challenging the County's ordinance.

Cloud Peak: Cloud Peak filed a declaratory judgment action in the First Judicial District, disputing the Department's deficiency assessment (issued following an audit) for coal severance, coal gross proceeds, and the resource indemnity trust tax for tax years 2005-2007. The main issue is whether the Department can impute a value to coal sold under non-arm's length contracts, and if so, whether the Department's method for doing so was correct. The Department moved for summary judgment, and oral argument took place October 15, 2013.

The District Court entered its Order on Cross-Motions for Summary Judgment on October 31, 2013. The Court affirmed most of the Department's assessment, including its ability to impute a value to the coal, its ability to assess penalty and interest on an additional assessment, and its ability to assess tax upon the value of additives used to prevent freezing and dust. The Court concluded, however, that the Department's method of calculating market value of coal sold pursuant to non-arm's-length agreements incorrectly utilized as comparable sales arm's length contracts negotiated outside of a reasonable time from the date of the non-arm's length contracts negotiation. It ordered the Department to re-calculate an imputed value by using comparable arm's length contracts negotiated within a reasonable period of time around the negotiation date of the subject contracts.

Lucas, et al.: This matter is in litigation before the Fourteenth Judicial District Court, Meagher County. It is currently before the Court on the issue of a definition of a class for the class action. Both Lucas and the Department have filed motions for summary judgment based on the applicable statutes.

MCR: MCR filed an action in Toole County seeking attorney fees after obtaining a summary judgment from STAB on an appeal of an oil and gas production tax audit and assessment. The Department filed for summary judgment. The matter has been fully briefed and the parties are awaiting either oral argument or a decision from the District Court.

Omimex Canada, Ltd.: Omimex filed a declaratory judgment action in Silver Bow County District Court for tax years 2011 and 2012. A hearing was held on March 5, 2012. Omimex alleges that its properties should not be subject to central assessment and that the Department incorrectly classified Omimex. Omimex also alleges valuation errors. The original trial date of December 10, 2012, was vacated and the parties are awaiting a new trial date from the District Court. Omimex's challenge to the 2013 tax year is currently before ODR.

Phillips 66 (f/k/a ConocoPhillips): Tax years 2010 and 2011 are currently before the District Court on Interlocutory Appeal over the issue of the appeals process and the extent of the

appeal from a county tax appeal board to the State Tax Appeal Board. Tax year 2012 is being held in abeyance before STAB. Phillips 66 recently filed a Declaratory Judgment action with the First Judicial District Court for the 2013 tax year and the Department has filed its answer.

Priceline, et al. (On-Line Travel Companies): A jury trial is currently scheduled for March 3 through 14, 2014, in the First Judicial District Court. The parties have filed cross-motions for summary judgment and oral arguments are set for December 5, 2013, before Judge Seeley on the motions. Mediation is scheduled for December 4, 2013.

### **STATE TAX APPEAL BOARD**

AT&T Mobility, LLC: Multiple tax years have been pending at either ODR or STAB awaiting the Supreme Court decision regarding the Department's administrative rules relating to intangible personal property. The status of these cases is currently under consideration now that the Supreme Court decision has been handed down.

Blixseth: Mr. Blixseth appealed the Department's audit and assessment in the amount of \$56 million in February 2011. This litigation was stayed during the involuntary bankruptcy but is now being actively litigated. Preliminary dispositive motions are due January 15, 2014. See bankruptcy discussion below.

CHS, Inc.: Currently there are no pending hearings scheduled at STAB. The parties agreed to mediation, which occurred on October 28, 2013. During the mediation, the parties reached a settlement of the dispute as it pertained to the Laurel Refinery assets and the Billings tank farm. The Missoula and Gallatin County Tax Appeal Boards have also scheduled hearings for the terminal properties for tax year 2012 to occur in early December.

Gold Creek Cellular d/b/a Verizon: Multiple tax years have been pending at either ODR or STAB awaiting the Supreme Court decision regarding the Department's administrative rules relating to intangible personal property. The status of these cases is currently under consideration now that the Supreme Court decision has been handed down.

### **BANKRUPTCY**

Blixseth: The Department is pursuing Mr. Blixseth's \$56 million tax debt through an involuntary bankruptcy in Nevada. While the bankruptcy court dismissed the involuntary case, the matter is on appeal before the Nevada Federal District Court. Meanwhile, Mr. Blixseth has sought attorney fees before the bankruptcy court in the amount of \$3.2 million. The Court recently granted a stay of the attorney fees issue pending a decision on whether an involuntary bankruptcy is appropriate. Additionally, Mr. Blixseth has filed an action against the Department in the Nevada Bankruptcy Court related to the Yellowstone Club Liquidating Trust's execution on Mr. Blixseth's fee claim against the Department.