



Revenue and Transportation Interim Committee

64th Montana Legislature

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TO: Committee Members
FROM: Jaret Coles, Staff Attorney
RE: Administrative Rule Activity
DATE: February 25, 2016

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:

Public Utilities, Cooperative Utilities, and Electricity Suppliers -- Universal System Benefits Programs -- Senate Bill No. 312 (2015). MAR 42-2-947. A public hearing was held on February 1, 2016, and the public comment period ended on February 12, 2016. The Department proposes to amend three rules. Two of the amendments are clerical in nature, while one of the amendments implements [Senate Bill No. 312](#) by imposing a notification requirement on the Department and a penalty provision for utilities and large customers who fail to timely file a universal system benefits (USB) program annual summary report each year with the Department.

Staff Comment: The statute cited by the Department for rulemaking authority (section [69-8-413](#), MCA) provides that rules regarding Title 69, chapter 8, part 4 (*i.e.*, the part that is implemented in MAR 42-2-947), "must be adopted in accordance with the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1." Additionally, the timeframe for adopting rules is "on or before September 1, 1999". As it stands, negotiated rulemaking was not utilized for MAR 42-2-947.

Crude Oil Pricing -- Stripper Well Bonus and Stripper Well Exemption Definitions -- House Bill No. 67 and House Bill No. 411 (2015). MAR 42-2-948. A public hearing will be held on March 15, 2016, at 10:30 a.m. in the Third Floor Reception Area Conference Room, Mitchell Building, Helena. The public comment period ends on March 29, 2016. The Department proposes to

amend one rule regarding definitions for "stripper well bonus" and "stripper well exemption". The amendments implement [House Bill No. 67](#) by deleting references to the Wall Street Journal for the average price for a barrel of west Texas intermediate crude oil. Additionally, the amendments implement [House Bill No. 411](#) by revising the price of a barrel of crude oil in relation to the imposition of production tax rates. Under [HB 411](#) and the proposed amendments, when crude oil is less than \$54 a barrel for a calendar quarter, the stripper exemption production tax rate takes effect.

Notice of Adopted Rules

Income Tax -- Fiduciaries, Estates, and Trusts. MAR 42-2-931. Adopted December 28, 2015. A public hearing was held and comments were received from four individuals. The Department adopted 11 new rules, amended two rules, and repealed two rules regarding fiduciaries, estates, and trusts. The new rules provide multiple definitions, some of which are in the Uniform Trust Code. Additionally, the new rules provide filing requirements, detail when extensions are allowed, detail the additions and subtractions that are allowed in determining Montana adjusted total income, provide guidance on how to characterize distributions to beneficiaries, detail when penalties and interest are assessed, and cover a variety of other trust topics. The new rules address highly complex subject matter, and the Department placed the new rules in a single chapter. The amendments strike outdated references to a repealed rule and move language to a new rule. The repeals delete material that is now contained in the new rules.

Note: Sections [15-30-2151](#) through [15-30-2153](#), MCA, set forward the taxation of income of estates and trusts. In general, the income of an estate or trust is taxed as if it were the income of an individual. *See* section [15-30-2153](#), MCA. However, if income is required to be distributed to a beneficiary, then an estate or trust receives a deduction. *See* section [15-30-2152\(3\)\(a\)](#), MCA.

Property Tax -- Personal Property Reporting Requirements -- Personal Property Taxation Dates Livestock Reporting -- Livestock Per Capita Fee Payments -- Senate Bill No. 62 (2015). MAR 42-2-937. Adopted December 14, 2015. A public hearing was held and comments were received from two individuals. The Department amended three rules and repealed one rule. The first amendment is clerical in nature. The second amendment requires an exemption application for personal property to be filed within 30 days of acquisition. The third amendment pertains to the livestock reporting and per capita fee in order to implement [Senate Bill No. 62](#). The amendment eliminates the fee for failure to report livestock and it provides further that the Department of Livestock will provide the Department with information regarding livestock that is not being reported. The repeal contained language that was relocated.

Income Tax -- Resident Military Salary Exclusion -- Senate Bill No. 378 (2015) -- MAR 42-2-938. Adopted December 14, 2015. A public hearing was held and comments were received from

two individuals. The Department adopted one rule that relates to [Senate Bill No. 378](#) by specifically allowing an income tax exemption to a member of the National Guard for "homeland defense activity" and active duty in a "contingency operation".

Staff Comment: Public comment was received by legislative staff after the Department's hearing indicating that it was improper for the Department to amend the proposed rule after the rule hearing without providing another opportunity for public comment. A copy of the Department's amendments before and after the hearing and the statute that is being implemented are provided in **Appendix A**. Additionally, the Department's Notice of Amendment is attached as **Appendix B**. Before the November 30, 2015, Revenue and Transportation Interim Committee meeting, staff corresponded with the Department on an informal basis regarding MAR 42-2-938. This correspondence is attached as **Appendix C**.

Tax Credits for Contributions to Qualified Education Providers -- Student Scholarship Organizations -- Senate Bill No. 410 (2015). MAR 42-2-939. Adopted December 14, 2015. A public hearing was held and comments were received from multiple individuals. The Department adopted three new rules that relate to [Senate Bill No. 410](#) as proposed. New Rule I provides further refinement to the statutory definition of what it takes to be a "qualified education provider" by disallowing students of institutions with religious affiliations from receiving the scholarship (see November 27, 2015, staff rule review memorandum for more information). New Rule II provides how a student scholarship organization must submit an online application, it limits scholarship payments to Montana qualified education providers, and it provides an example of the deadlines for when a student scholarship organization must award scholarships relative to contributions. New Rule III clarifies that the credit can be split equally for a joint contribution, and if each spouse makes a separate contribution, each may be allowed a credit up to the maximum amount of \$150.

Staff Comment: The rules that were adopted by the Department in MAR 42-2-938 are currently subject to legal challenges by two different parties in state district court and federal district court. The state case was filed in the Montana Eleventh Judicial Court, Flathead County, and is entitled *Espinoza v. Montana Department of Revenue*, Cause No. DV-15-1152A. The federal case was filed in Federal District Court (Lewis and Clark County), and is entitled *Armstrong v. Kadas*, Cause No. CV 15-114-H-SEH.

Property Tax -- Centrally Assessed Property -- Senate Bill No. 157 (2015). MAR 42-2-940. Adopted November 30, 2015. A public hearing was held and public comment was received by one individual. The Department amended 11 rules regarding centrally assessed property. The amendments generally make grammatical corrections while revising implementation citations. Additionally, an amendment to an existing rule requires centrally assessed companies to submit a

statement of cash flows on an annual basis in order to calculate the yield capitalization approach to value.

Income Tax -- Pass-Through Entities -- Senate Bill No. 386 (2015). MAR 42-2-941. Adopted November 30, 2015. A public hearing was held and public comments were received by two individuals. The Department adopted two new rules and amended nine rules regarding pass-through entities. The first proposed new rule requires certain entities that are qualified to do business in Montana to file an affidavit when the entity is not engaged in business for the reporting period. The second proposed new rule requires a tax-exempt entity to file an affidavit to affirm tax-exempt status. The amendments generally implement [Senate Bill No. 386](#) by requiring the filing of information returns by disregarded entities that report a distributive share of income of \$1,000 or more of Montana source income.

Property Tax -- Property Classification, Appraisal, Valuation, and Exemptions -- Senate Bill No. 157 (2015) -- House Bill No. 56 (2015) -- House Bill No. 389 (2015). MAR 42-2-942. Adopted December 14, 2015. A public hearing was held and public comments were received by six individuals. The Department amended 18 rules and repealed four rules regarding property taxes. As part of the public hearing process, the Department made further changes to the rules by including a reasonable cause provisions for entities that fail to meet the March 1, 2016, deadline, and by simplifying the fee schedule by having a single \$25 fee for land with improvements, as opposed to a sliding fee between \$20 - \$35.

Two of the amendments implement [House Bill No. 389](#) by requiring certain owners of real property with a property tax exemption to reapply for the exemption. The deadline to reapply for a property tax exemption is March 1, 2016, under both the proposed rule and [HB 389](#). Additionally, the proposed amendments establish renewal application fees ranging from \$0 to \$25 depending on factors such as the nonprofit entities' gross receipts and whether there is an improvement on the property.

Two of the amendments implement [House Bill No. 56](#) by requiring land to be classified according to its actual use, as opposed to relying strictly on covenants that may not be enforced.

The remainder of the amendments and repeals generally implement [Senate Bill No. 157](#) by revising and striking language that was applicable to a 6-year reappraisal cycle to language that is applicable in a 2-year reappraisal cycle.

Liquor Administration -- Distillery Deliveries, Alternating Proprietor on a Manufacturer's Premises, Contract Manufacturing, and the Storage of Alcoholic Beverages -- House Bill No. 506 (2015). MAR 42-2-943. Adopted November 30, 2015. A public hearing was held and public comments were received by eight individuals. The Department adopted three new rules and

amended one rule regarding liquor administration. The first new rule implements [House Bill No. 506](#) by allowing a distillery with annual production of less than 25,000 gallons to deliver its product directly to a state agency liquor store. The second new rule provides a framework for arrangements in which a manufacturer of alcohol has excess production capacity and a tenant manufacturer is able to utilize the production capacity. The third new rule provides a framework for arrangements in which a contract manufacturer of alcohol produces beverages for another manufacturer on a contract basis. The amendment allows the storage of alcoholic beverages on the premises of a manufacturer providing a different type of alcoholic beverage.

Liquor -- Negotiated Rulemaking Regarding Agency Liquor Stores -- Senate Bill No. 193 and House Bill No. 506 (2015). MAR 42-2-944. Adopted November 30, 2015. A public hearing was held and public comments were received by two individuals. The Department adopted two new rules, amended two rules, and repealed four rules regarding agency liquor stores using the negotiated rulemaking process. The members of the negotiated rulemaking committee included agency liquor store owners, an agency liquor attorney, a representative of the Montana Tavern Association, and Department staff. The first new rule implements [House Bill No. 506](#) by allowing a qualifying distillery to deliver product directly to an agency liquor store. The second new rule implements section [16-2-101\(3\)](#), MCA, which prohibits agency liquor stores from being "located in or adjacent to grocery stores in communities with populations over 3,000." One amendment provides that new agency liquor stores are selected by competitive sealed bids under the Montana Procurement Act. The other amendments and repeals implement [Senate Bill No. 193](#) by striking language that is no longer applicable.

Income Tax -- Historic Property Preservation. MAR 42-2-945. Adopted December 14, 2015. A public hearing was held and public comment was received by one individual. The Department amended three rules regarding tax credits for historic property preservation. All of the amendments remove language that is no longer required for the purpose of administering the credit. Additionally, based on public comment, the Department revised an amendment to address a situation where a lessor elects to transfer a federal rehabilitation credit to a lessee.

Property Tax -- Trended Depreciation Schedules for Valuing Property. MAR 42-2-946. Adopted December 14, 2015. A public hearing was held, no members of the public appeared to testify, and now written comments were received. The Department amended 11 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.

Department of Transportation

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Notice of Proposed Rules:

None.

Notice of Adopted Rules

Motor Carrier Services -- Weight, Speed, and Overweight Bridge Crossing Conditions . MAR 18-157. Adopted February 8, 2016. Public comments were received from one individual and the Department of Transportation amended six rules. The amendments update references to federal rules, revise lighting requirements for flag vehicles, and provide requirements for overweight vehicle bridge crossings.

CI0425 6056jcna.

APPENDIX A

ARM 42.15.214 as Amended by Department of Revenue:

- **KEY:** Bold highlighted text reflects the adoption notice amendment (i.e., language that came in after public comment that was not re-published until adoption); underlined text represents new rule language that was adopted; strikeouts represent old rule language that was eliminated; the language that is not underlined was in the original rule

42.15.214 RESIDENT MILITARY SALARY EXCLUSION (1) The following items of military compensation received by a resident service member are exempt from Montana income tax:

(a) basic, special, and incentive pay received for serving on active duty as a member of the regular armed forces;

(b) basic, special, and incentive pay received by a member of a reserve component of the armed forces or a member of the National Guard, for active duty in a "~~contingent~~ contingency operation" as defined in 10 USC 101; and

~~(c) basic, special, and incentive pay received by a member of the National Guard for active service authorized by the President of the United States or the Secretary of the Defense for a period of more than 30 consecutive days for the purpose of responding to a national emergency declared by the President and supported by federal funds performing a "homeland defense activity" as defined in 32 USC 901.~~

(2) Military compensation that is not exempt from Montana income tax includes:

(a) salary received for annual training and ~~weekend duty~~ inactive duty training **for service not described in (1)(b) or (1)(c);**

(b) salary received by a member of a reserve component of the armed forces for service not described in (1)(b) or (1)(c); and

(c) salary received by a member of the National Guard engaged in "active Guard and Reserve duty" as defined in 10 USC 101, for service not described in (1)(b) or (1)(c); and

~~(e)(d)~~ retired, retainer, or equivalent pay, or allowances.

(3) As provided in the Military Family Tax Relief Act of 2003, for federal income tax purposes a member of a reserve component of the armed forces may deduct certain travel expenses incurred after December 31, 2002, in connection with serving more than 100 miles away from home. Because the deduction reduces federal adjusted gross income, the deduction also reduces the service member's income subject to Montana tax.

AUTH: [15-30-2620](#), MCA

IMP: [15-30-2101](#), [15-30-2117](#), MCA

REASON: The department proposes amending ARM [42.15.214](#) to implement Senate Bill 378, L. 2015, which clarifies a Montana resident's eligibility to exempt military salaries in certain situations. The new legislation applies to tax years beginning after December 31, 2015.

As proposed, the amendment revises the phrase "contingent operation" to "contingency operation" and explains that individuals serving on active duty in a

"contingency operation" or for performing a "homeland defense activity," as defined in 10 USC 101 and 32 USC 901 respectively, are exempt from Montana state income tax.

The department further proposes amending (2) to make it clear that military salaries received while on "inactive duty training" or while on "active Guard and Reserve duty" are not exempt from Montana state income tax unless such duty is also a homeland defense activity or a contingency operation. The proposed amendments establish in rule the department's current treatment of military exempt salaries.

Section 15-30-2117, MCA, as amended by SB 378:

"15-30-2117. Military salary, veterans' bonus, or death benefit -- exemptions. (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are exempt from taxation under this chapter. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) (a) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(b) (i) The salary received by residents of Montana for active duty in the national guard is exempt from state income tax.

(ii) For the purposes of this subsection (2)(b), "active duty" means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10 U.S.C.; or

(B) Title 32 U.S.C. for a homeland defense activity, as defined in Title 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

(3) The amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter.

(4) The amount received by a beneficiary pursuant to 10-1-1201 is exempt from taxation under this chapter."

APPENDIX B

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.15.214 pertaining to resident)
military salary exclusion)

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-938 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1679 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 4, 2015, a public hearing was held to consider the proposed amendment. James C. Wangerin and Walter Wangerin appeared and testified at the hearing. Other members of the public attended the hearing, but did not testify. The department also received written comments from James C. Wangerin.

3. Based upon the comments received and after further review, the department has amended ARM 42.15.214 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.15.214 RESIDENT MILITARY SALARY EXCLUSION (1) remains as proposed.

(2) Military compensation that is not exempt from Montana income tax includes:

(a) salary received for annual training and inactive duty training for service not described in (1)(b) or (1)(c);

(b) through (3) remain as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: James C. Wangerin stated that the documentation required from a National Guard member to verify the right "active duty" status required to qualify for an exemption is not well defined in ARM 42.15.214. He stated that the Servicemembers Civil Relief Act (SCRA) certificate and the fact that the federal government does not withhold based on a determined exemption eligibility should be sufficient for the department to make the same determination. He further stated that the SCRA certificate should be conclusive evidence of eligibility for the exemption and feels that this certificate should be included in the proposed amendments to the rule as an item for determining eligibility.

RESPONSE 1: The department agrees that the SCRA certificate is a good resource to help substantiate a service member's branch of service and duty status, and appreciates Mr. Wangerin's efforts to make the department aware of this tool.

However, the SCRA certificate cannot be relied upon as a definitive verification to determine the military salary exclusion for Title 32 service. The certificate itself states, "SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by the SCRA, as defined in accordance with 10 U.S.C. 101(d)(1)."

COMMENT 2: Mr. Wangerin stated that if the federal Defense and Accounting Service (DFAS) does not withhold Montana taxes from the pay of a National Guard member, that should be sufficient proof that the member is exempt from the Montana withholding tax.

RESPONSE 2: The absence of Montana tax withholding cannot be relied upon as definitive proof that an individual is exempt from Montana income tax, because withholding amounts are susceptible to errors. This is evident in the situation with Montana's National Guard service members, who should have Montana tax withheld from their wages. An employer not withholding income tax from an employee's pay does not discharge the employee's liability for those income taxes.

COMMENT 3: Mr. Wangerin commented that the President of the United States has declared a state of national emergency in all years since September 11, 2001. Under the declaration, the National Guard continually conducts training in anticipation of acts of terrorism, both within the United States and overseas. This declaration should be sufficient to qualify National Guard members for exemption during annual training and inactive duty training. Once there is no longer a national emergency declaration, a guard member's pay would no longer be exempt.

RESPONSE 3: Section 15-30-2117, MCA, does not provide a blanket exemption for the National Guard for periods when the President of the United States has declared a state of national emergency unless the guard member's orders for that time period are issued pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 4: Mr. Wangerin also stated that when a service member returns from overseas and is on a mandatory 30-day paid leave status, the pay received for that time period should also be exempt from withholding.

RESPONSE 4: Section 15-30-2117, MCA, does not provide an exemption for service members during a period of time following their return home from overseas duty unless their orders for that time period are issued pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 5: Mr. Wangerin further summarized his questions regarding the proposed amendments as follows:

One: Prior to January 1, 2016, should the SCRA certificate be considered prima facie evidence of National Guard pay exemption for the period covered?

Two: After January 1, 2016, should the SCRA certificate be considered prima facie evidence of National Guard pay exemption for the period covered?

Three: Is National Guard pay exempt from Montana income tax if the guard member's Title 32 orders are in response to a national emergency?

Four: Is National Guard pay exempt for Montana income tax if the guard member is under Title 32 orders in response to a contingency operation?

Five: Is National Guard pay exempt from Montana income tax if the guard member is under Title 32 orders in support of or participating in a training mission, or for training in anticipation of a mission in response to a contingency operation?

RESPONSE 5: Regarding one and two, as provided in the department's response to Comment 1, the SCRA certificate is a good resource to help substantiate a service member's branch of service and duty status, but it cannot be relied upon as a definitive verification to determine the military salary exclusion for Title 32 service.

Regarding three, National Guard members serving during periods when the President of the United States has declared a state of national emergency would qualify for the exclusion when they are ordered to active duty pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation in accordance with 15-30-2117, MCA.

Regarding four, if a National Guard member is serving on active duty ordered under Title 32 for a "homeland defense activity," as defined in 32 U.S.C. 901, and that service member is part of a unit engaged in a "contingency operation," as defined in 10 U.S.C. 101, then the salary received by that service member is likely exempt from Montana income tax pursuant to 15-30-2117(2)(b)(ii)(B), MCA.

Regarding five, National Guard members who provide support or conduct training activities during, leading up to, or following a contingency operation, would not necessarily qualify for the exclusion. The only time they would qualify for an exemption is when a servicemember's orders are issued pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, in accordance with 15-30-2117, MCA, and when the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 6: Mr. Wangerin stated that national disasters are included in the definition of a contingency operation under the National Defense Authorization Act for fiscal year 2012 (Publication L112-81, enacted December 31, 2011) and, therefore, a guard member's service in accordance with the Act should be considered service in a contingency operation.

RESPONSE 6: If a National Guard member's duty meets the definition of a contingency operation, as defined in 10 U.S.C. 101, then the guard member's salary would be exempt pursuant to 15-30-2117(2)(a)(ii)(B), MCA. Since this is already provided for in ARM 42.15.214, there is no need to provide any additional explanation.

COMMENT 7: Mr. Wangerin stated that the SCRA certificate should be considered prima facie evidence for the period covered. National Guard pay is exempt from Montana income tax if the guard member is serving under Title 32 orders issued in response to a national emergency.

National Guard pay is exempt from Montana income tax if the guard member is serving under Title 32 orders issued in response to a contingency operation. This provision would also apply to dual-status military technicians who are serving as trainers in anticipation of a mission related to overseas contingency operations.

National Guard pay is exempt from Montana income tax if the guard member is serving under Title 32 orders in support of a training mission or for training in anticipation of, or in support of, a mission in response to a contingency operation.

RESPONSE 7: As detailed in Response 1, and again referenced in Response 5, the department recognizes the SCRA certificate as a good resource, but it cannot be relied upon as a definitive verification to determine the military salary exclusion for Title 32 service.

Section 15-30-2117, MCA, does not provide an exemption for service members who are training or providing other support in anticipation of a mission related to overseas contingency operations unless their orders for that time period are issued pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 8: Mr. Wangerin commented that that the exclusion of annual training in the proposed amendment to ARM 42.15.214(2)(b) should be deleted, as annual training can occur as part of a contingency operation.

RESPONSE 8: The department appreciates Mr. Wangerin's suggestion and has further amended ARM 42.15.214(2)(a) to address the issue he raises. The change in the rule will clarify that the exclusion does not apply to annual training or inactive duty training unless such service qualifies as a "contingency operation" or a "homeland defense activity."

COMMENT 9: Mr. Wangerin requested that the department make additional amendments to ARM 42.15.214 in support of the testimony and comments offered at the hearing. He asked the department to further amend the rule to include the following:

A definition for "active duty" to include any duty performed by a National Guard member pursuant to Title 10 U.S.C., or Title 32 U.S.C. for homeland defense activity or contingency operation; and language stating that a guard member

supporting a military operation is considered to be participating in a contingency operation and combat duty is not required; that a contingency operation is created when a governor requests federal assistance in responding to a major disaster or emergency and also includes any operations in connection with national emergencies in response to acts of terrorism; that an SCRA certificate is sufficient evidence for exemption from Montana income tax if National Guard pay is received under Title 32; and that National Guard members should be exempt for the following: active duty in the air defense alert program, dual status military technicians called to active duty under Title 32 as trainers related to overseas contingency operations, duty under Title 32 for a southwest border mission, while on mandatory 30-day leave following overseas duty, annual training and inactive duty training missions or for training in anticipation of a contingency operation, active guard and reserve duty.

RESPONSE 9: The department appreciates Mr. Wangerin's suggestions, but disagrees with the need to further amend the rule.

Section 15-30-2117, MCA, provides a definition of "active duty" in the National Guard, which is duty performed by a National Guard member pursuant to Title 10 U.S.C., or Title 32 U.S.C. for a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

The department agrees that if a National Guard member is ordered to service as part of one of these situations, then their salary should be excluded from the calculation of Montana income tax. National Guard service in the air defense alert program, as a dual status military technician, as a trainer, while on mandatory leave following overseas duty, while performing annual or inactive duty training, or in any other situation may or may not qualify for the exemption depending on if the service member is ordered to duty pursuant to Title 10 U.S.C., or Title 32 U.S.C. for a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

As previously explained, the SCRA certificate is a good resource, but cannot be relied upon as a definitive verification to determine the military salary exclusion for Title 32 service.

COMMENT 10: Mr. Wangerin also suggested that the department amend ARM 42.15.514(2) to set out when military compensation is not exempt, as follows:

Pay under orders of state active duty in the National Guard;

Pay under Title 32 orders when the member is not in a deployable unit;

Pay under Title 32 when there is no declaration of national emergency or a declaration of war by Congress.

RESPONSE 10: The department appreciates Mr. Wangerin's additional suggestions for amendments, but disagrees with the need to further amend the rule.

The department agrees that in most cases, duty performed in these particular situations will not qualify for the exemption. In every case, the determination needs to be made based on if the National Guard service member is ordered to duty pursuant to Title 10 U.S.C., or Title 32 U.S.C. for a "homeland defense activity," as defined in 32

U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 11: Walter Wangerin testified stating his support for the comments and statements made by James Wangerin.

RESPONSE 11: The department appreciates the comments from both Mr. James Wangerin and Mr. Walter Wangerin. Their contributions provide the department with helpful insight into ways the department can better serve members of the military.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 14, 2015

APPENDIX C

Coles, Jaret

From: Christensen, Micah
Sent: Tuesday, November 24, 2015 5:21 PM
To: Logan, Laurie; Coles, Jaret
Cc: Whyte, Daniel; Baerlocher, Lee; McHugh, Shona
Subject: RE: Rule Review Questions

I have included my answer to the military question below – highlighted in gray.

Micah Christensen
Unit Manager, Compliance
Montana Department of Revenue
406-444-4373

From: Logan, Laurie
Sent: Friday, November 20, 2015 10:14 AM
To: Coles, Jaret
Cc: Whyte, Daniel; Christensen, Micah; Baerlocher, Lee; Diemert, Sherri; Moore, Cynthia
Subject: RE: Rule Review Questions
Importance: High

Good morning Jaret.

Slammed seems like an appropriate description. Thanks! I hope all is well with you too.

By way of copy on this email, I am forwarding your questions along to those business experts for you: **Micah Christensen** (Lee Baerlocher) on the military salary exclusion and **Sherri Diemert** (Cynthia Monteau Moore) on the trend tables.

Good luck with your summary. If you have more questions, send them over.

Laurie

From: Coles, Jaret
Sent: Friday, November 20, 2015 9:39 AM
To: Logan, Laurie
Cc: Whyte, Daniel
Subject: Rule Review Questions

Hi Laurie:

I hope all is well. I suspect you are slammed with rule related tasks.

Anyway, I am involved in finally looking at the rules in more depth for RTIC, and I have a few questions that I wanted to get in front of the Department's subject matter experts for additional thought. I may have more questions as I continue

my review, but I can always send those to you in a subsequent email. You do not need to include my comments in the public comment portions.

Income Tax -- Resident Military Salary Exclusion -- Senate Bill No. 378 (2015) -- MAR 42-2-938. A public hearing was held on November 4, 2015, and the public comment period ended on November 16, 2015. The Department proposes to adopt one rule that relates to Senate Bill No. 378.

****Hi Laurie: I have a question on the proposed amendment. SB 378 exempts salary of national guard members for all orders issues under "Title 10 U.S.C." (see section 15-30-2117(2)(b)(ii)(A)). However, the proposed amendments do not seem to embrace this concept, as the only Title 10 exemption in the rule is for a contingency operation under "10 USC 101". Additionally, it seems like the proposed amendments in (2)(c) could be construed to disallow Title 10 pay that is not part of a contingency operation. Any feedback?*****

The rule still allows the exemption of all Title 10 duty. (1)(a) of the rule states that pay received for serving on active duty as a member of the regular armed forces is exempt from income tax. If a national guard member is on orders issued pursuant to Title 10, then he/she is considered on active duty in the regular armed forces and would be exempt. The cites to Title 10 USC 101 for a contingency operation and to Title 32 USC 901 for a homeland defense activity are simply references to the definitions for those activities. This is to clarify that orders issued pursuant to Title 32 are still exempt if the activities of the servicemember fit the definition of a "contingency operation" or a "homeland defense activity" (see section 15-30-2117(2)(b)(ii)(A)) Those definitions can be found in Title 10 USC 101 or Title 32 USC 901 respectively, but the orders may or may not be issued pursuant to those specific Titles.

Property Tax -- Trended Depreciation Schedules for Valuing Property. MAR 42-2-946. A public hearing was held on November 19, 2015, and the public comment period ends on December 1, 2015. The Department proposes to amend 11 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.

Note: The Department is proposing to change the valuation guide for farm machinery and equipment from the Iron Solutions Northwest Region Official Guide to the online version of the Green Guide know as Equipment Watch. The Department indicated that owners of farm machinery and equipment will notice a signification change either up or down, depending on the model year of the equipment. However, the Department also expects future valuation differences to stabilize after the initial transition year, and the change in methods is estimated to save the Department in excess of \$20,000 in subscription fees for the prior valuation guide.

**** Hi Laurie: I have a question on the proposed amendments for ARM 42.21.123. It seems like the Northwest Region Official guide is required by statute. Section 15-8-111(4)(a), MCA, provides that "the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.**

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide"Any feedback?***

Thanks,

Jaret

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