

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF ADOPTION OF  
Temporary Emergency Rule I ) TEMPORARY EMERGENCY RULE  
pertaining to late payment penalties )  
on quarterly VGM taxes )

TO: All Concerned Persons

1. The Department of Justice is adopting Temporary Emergency Rule I (DEPARTMENT MAY WAIVE OR REDUCE LATE PAYMENT PENALTIES FOR VGM TAXES ACCRUING DURING QUARTERS IMPACTED BY COVID-19 CLOSURE ORDERS) for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 3-2020.

D. On March 26, 2020, Governor Steve Bullock implemented Executive Orders 2-2020 and 3-2020, ordering Montanans to stay at home, enforcing social distancing, and restricting Montanans' personal and business interactions to essential activities only. Among many other directives, the Governor's action confirmed and continued state and local officials' earlier orders closing bars, taverns, restaurants, casinos, and others holding gambling licenses.

E. On March 31, 2020, President Donald J. Trump declared that a major disaster exists in the State of Montana and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic beginning on January 20, 2020, and continuing.

F. The Attorney General finds, under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, or welfare requiring adoption of a rule upon fewer than 30 days' notice.

G. The Attorney General further finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare, due to the risk of community transmission of the COVID-19 virus among persons congregating in public gathering places, including businesses holding gambling licenses. For the safety of patrons, employees, and vendors, those businesses have been ordered to temporarily close. The Attorney General finds those business closures pose significant and immediate financial

hardships to affected licensees, which threatens the welfare and even the survival of those licensed businesses. Further, the financial distress of licensees directly threatens the welfare of all Montanans due to potential widespread loss of employment, loss of taxes payable to local and state governments, and loss of Main Street Montana's community, recreational, and social hubs.

H. The Attorney General further finds emergency action is necessary a) to ease regulatory burdens and costs borne by gambling licensees ordered to close; b) to manage licensees' anticipated difficulties paying quarterly video gambling machine tax payments due by April 15, 2020; and c) to comply with Governor Steve Bullock's March 26, 2020 directive as it may be extended or revised, as well as any similar orders issued by city and county officials. In his recent directive, the Governor cited and implemented 10-3-104, MCA, which empowers the Governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. The Attorney General finds New Rule I is necessary to comply with that directive and finds the threat to the welfare of gambling licensees cannot be averted or remedied by any other administrative act.

I. There is reasonable necessity to immediately adopt a temporary emergency rule to ease regulatory and financial burdens on gambling licensees ordered to close to protect the public health, safety, and welfare, because of the emergency conditions of the COVID-19 pandemic. There is reasonable necessity to immediately adopt temporary emergency rules pursuant to the Governor's directive implementing 10-3-104, MCA, to ensure that the department's strict compliance with gambling rules does not contribute to licensees' insolvency or failure.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice to advise us of the nature of the accommodation that you need. Please contact Jean Saye, Department of Justice, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail [jsaye@mt.gov](mailto:jsaye@mt.gov).

3. The temporary emergency rule is effective April 2, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides:

NEW RULE I DEPARTMENT MAY WAIVE OR REDUCE LATE PAYMENT PENALTIES FOR VGM TAXES ACCRUING DURING QUARTERS IMPACTED BY COVID-19 CLOSURE ORDERS (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The department may find that good cause exists for late payment of video gambling machine quarterly taxes payable under 23-5-610, MCA, and ARM 23.16.1826 due to the circumstances of the COVID-19 pandemic.

(3) For licensees remaining closed to the public in compliance with executive orders 2-2020 and 3-2020, any current or future governor's orders extending, revising, or implementing those orders, and/or any similar orders issued by city and county officials, the department may waive or reduce the penalties imposed by ARM 23.16.1826, as is reasonable and appropriate to the circumstances of the COVID-19 pandemic, for tax periods during which the VGM permittee's operations were significantly impacted by mandatory closure orders.

(4) This rule does not alter any rule requiring timely submission of VGM quarterly tax reports.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-136, 23-5-610, 23-5-621, 23-5-637, MCA

REASON: In addition to the rationale stated in paragraph 1, the department has received pleas from individual gambling operators, from industry representatives, and from route operators for relaxation of the late VGM penalties imposed by administrative rule, ARM 23.16.1826. VGM taxes due for the third quarter of fiscal year 2020 (January 1 to March 31, 2020) are due on April 15. That rule provides penalties, calculated on a time-based formula, "will be assessed." The Montana hospitality industry, as much as or more than any other business sector, has been hard hit by closure orders and faces undeniable financial hardships. While some licensees may have adequate cash reserves to weather the COVID-19 crisis, many Montana licensees will be unable to pay routine bills, employee payroll, and VGM taxes. The late payment penalty of up to 100% of the tax due should temporarily be relaxed during this health and business crisis. While ARM 23.16.1826 is a necessary and effective tax collection tool in ordinary times, an emergency rule is necessary to ease this regulatory burden before the third quarter taxes are payable.

5. The rationale for the temporary emergency rule is set forth in paragraph 1 and in the statement of reasonable necessity following the rule.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 2 above.

7. As required by 2-4-306, MCA, the Department of Justice has taken appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them by sending this Notice of Adoption of Temporary Emergency Rule to every person on the Gambling Control Division's

interested persons list, by posting a link to this notice on the Gambling Control Division's social media outlet, Facebook, and by delivering a copy to trade group representatives.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that adoption of the emergency rule will not significantly and directly impact small businesses.

/s/ Hannah Tokerud  
Hannah Tokerud  
Rule Reviewer

/s/ Timothy C. Fox  
Timothy C. Fox  
Attorney General  
Department of Justice

Certified to the Secretary of State April 2, 2020.