

Memorandum

TO: Revenue Interim Committee

FROM: Dan Whyte, Chief Legal Counsel

DATE: July 21, 2020

SUBJECT: Department of Revenue Major Case Update

UNITED STATES SUPREME COURT

Espinoza, et al.: In December 2016, several parents of religious school students sued the state in the 11th Judicial District (Flathead County) on the basis that the Department's administrative rules limiting SB 410 scholarships to nonreligious private schools violated the Legislature's intent that scholarships be allowed for students attending religious schools. Additionally, the Plaintiffs argued that the Department interfered with the families' constitutional rights to free exercise of religion and equal protection.

On May 23, 2017, the District Court granted Espinoza's motion for summary judgment, finding that the tax credit is not an appropriation under the Montana Constitution, permanently enjoining the Department from applying its administrative rules prohibiting scholarships to religious schools.

The case was appealed to the Montana Supreme Court, who held the tax credit program unconstitutional because Mont. Const. Art. X, § 6 prohibited any appropriation or payment to religious schools or churches. The case was appealed to the United States Supreme Court.

In a 5-4 decision against the Department, Chief Justice Roberts wrote in his opinion that the application of Montana Constitution's "no-aid" provision to a state program providing tuition assistance to parents who send their children to private schools discriminated against religious schools and the families whose children attend or hope to attend them in violation of the free exercise clause. According to the Court, Montana's no-aid provision "bars religious schools from public benefits solely because of the religious character of the schools" and "also bars parents who wish to send their children to a religious school from those same benefits, again solely because of the religious character of the school." Roberts also asserted that the Montana Supreme Court was wrong to invalidate the entire program on the basis of the no-aid provision in the state constitution. Roberts wrote that "A state need not subsidize private education. But once a state decides to do so, it cannot disqualify some private schools solely because they are religious."

The case has been remanded to the Montana Supreme Court for further proceedings.

NINTH CIRCUIT COURT OF APPEALS

Blixseth: The 9th Circuit Court of Appeals held oral argument on August 26, 2019, on the Department's appeal of the dismissal of the involuntary bankruptcy petition filed against Tim Blixseth. On February 19, 2020, the 9th Circuit Court of Appeals held that the Department of Revenue lacked standing to bring the involuntary bankruptcy and remanded the matter back to the Nevada Bankruptcy Court for further proceedings.

FEDERAL DISTRICT COURT

LL Liquor: Before the Federal District Court is the question of the damages owed to LL Liquor for Montana's breach of contract. The Department has argued that under state law the State owes no damages for a period of two years from the judgment ordering damages. LL Liquor argues that the State owes interest of 10% per year. The District Court ruled that the State owes LL Liquor 1.79% interest on the \$5,000,000 judgment amount pursuant to 26 U.S.C. 1961. Both parties have appealed to the 9th Circuit Court of Appeals and all briefs have been filed.

MONTANA SUPREME COURT

Boyne USA, Inc.: The Montana Tax Appeal Board (MTAB) found that Boyne is subject to the lodging and facility use and sales taxes on a "Resort Services Fee" that the company charges all customers reserving rooms at Big Sky Resort. MTAB also found that Boyne was not obligated to remit tax amounts collected for no-shows and forfeiture cancellations. On appeal, to the District Court, the Court further divided the taxes owed by holding Boyne USA's resort services fee is subject to the sales tax in Montana Code Annotated, Title 15, chapter 68 but not the lodging facility use tax in Title 15, chapter 65. The Court agreed with MTAB's ruling that Boyne is not required to remit those amounts collected when a customer is a no show or cancels.

Greenwood: After winning on the residency issue before the Montana Supreme Court for the 2008-2012 tax years, the remanded issue – relating to the community property laws of Texas, and income earned in Montana by one spouse – was settled between the Department and the Taxpayer. The community property issue was a novel issue in Montana and would have likely required years more litigation to fully resolve. This settlement concluded 7-8+ years of litigation between the parties.

STATE DISTRICT COURT

Eagle Bear: On October 18, 2019, Eagle Bear, Inc. filed a complaint in Federal District Court asserting that as an operator of a campground located on Indian trust lands within the exterior boundaries of the Blackfeet Indian Reservation, federal law preempts the application of Montana's Lodging Facility Sales and Use Tax. The Department filed a Motion to Dismiss on November 8, 2019, on the grounds that the Tax Injunction Act, 28 USCS § 1341, bars jurisdiction with this Court and, in the alternative, because Eagle Bear has failed to join indispensable parties, the Blackfeet Indian Nation and the federal government, pursuant to Rule 19, F.R.Civ.P. On November 27, 2019, Eagle Bear Inc. filed a Notice of Voluntary Dismissal.

On December 2, 2019, Eagle Bear filed a complaint with the Montana Ninth Judicial District Court alleging identical claims as it had before the federal court. On February 5, 2020, the Department filed a Motion to Dismiss. On February 20, 2020, Eagle Bear filed a brief opposing the Department's Motion to Dismiss and on March 10, 2020, the Department filed a reply brief. The district court has not yet ruled on the Motion to Dismiss nor set a hearing date.

MONTANA TAX APPEAL BOARD

Phillips 66 Refinery: For the 2019 tax year, the Department determined the market value of Phillips' Billings Refinery to be \$921 million. Phillips challenged the Department's market value for the Billings Refinery and filed an appeal with the Yellowstone County Tax Appeal Board (YCTAB), seeking a value of \$716 million. The YCTAB agreed with Phillips and reduced the market value to \$716 million. The Department appealed the YCTAB decision to the Montana Tax Appeal Board. The hearing is currently scheduled for December 1-4, 2020.

SETTLEMENTS

Calumet: Calumet disagreed with the Department's property tax assessments of the company's Great Falls Refinery for the 2017, 2018, and 2019 tax years. After hearings before the Cascade County Tax Appeal Board, the parties filed appeals with the Montana Tax Appeal Board, with the 2017/2018 dispute scheduled for hearing later in 2020 (the hearing date had been extended due to the death of a witness and the COVID-19 pandemic). In May, the Department and Calumet resolved the litigation concerning the market value of the Great Falls Refinery for the 2017-2019 tax years, and when doing so, also agreed upon a market value for the 2020 tax year. The settled values for the refinery property are: \$456,618,000 (2017); \$372,405,000 (2018); \$369,157,000 (2019); and \$366,000,000 (2020).