

TO: Revenue Interim Committee

FROM: Dan Whyte, Chief Legal Counsel

DATE: November 19, 2019

SUBJECT: Department of Revenue Major Case Update

UNITED STATES SUPREME COURT

Espinoza, et al.: The Department filed its brief on the merits on November 8, 2019.

FEDERAL 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 Use Tax and Sales Tax. Eagle Bear also asserts an equal protection claim. The Department filed our response on November 8.

LL Liquor, Inc.: On October 29, 2019, the Court issued an order for briefing on the application of 28 U.S.C. § 1961 to the computation of interest issue pending before the Court. Opening briefs were filed November 1 with response briefs filed November 8.

MONTANA SUPREME COURT

Greenwood: The Department determined that Clayton Greenwood was a resident of Montana for tax years 2008 through 2012 and that he failed to file resident Montana individual income tax returns. Mr. Greenwood challenged the Department's determination. After proceedings before the Office of Dispute Resolution and the Montana Tax Appeal Board (MTAB), Mr. Greenwood filed a Petition for Judicial Review with the First Judicial District Court. On August 30, 2019, the First Judicial District Court issued an Order affirming the MTAB's determination that Mr. Greenwood was a resident of the state and was required to file resident individual income tax returns. On October 25, 2019, Mr. Greenwood filed a Notice of Appeal with the Montana Supreme Court. The parties are awaiting transfer of the District Court record and a briefing schedule from the Court.

STATE DISTRICT COURT

Solem: The Solems filed a motion for class certification in the 11th Judicial District Court, Flathead County, challenging their land value, primarily arguing that the water influence used by the Department leads to improperly inflated values. The District Court recently granted class certification. The class certified is "all lakefront property owners in Neighborhood 800 who have timely paid under protest any portion of their property taxes

since the last assessment cycle beginning in 2009.” Neighborhood 800 is the Somers/Lakeside area in which the Solem's property is located. Between 2009 and 2015, approximately 200 taxpayers in Neighborhood 800 paid property taxes under protest. On October 15, 2019, the 11th Judicial District Court, Flathead County, found liability in favor of the Solems and reserved the issue of damages. The parties anticipate a status conference in the near future.

Boyne USA, Inc.: The parties are working together to set a briefing schedule of the cross Petitions for Judicial Review. Oral Argument is set for March 2, 2020.

MONTANA TAX APPEAL BOARD (MTAB)

Calumet Refinery (Calumet): The Department and Calumet appealed a decision rendered by the Cascade County Tax Appeal Board to the MTAB relating to the 2017 and 2018 tax years. The underlying litigation concerns the proper market value for Calumet's Great Falls refinery. During the course of Discovery, an expert witness for Calumet passed away. While the matter is scheduled for trial in February 2020, the parties are working to determine the impact of the expert's passing on the trial schedule.

SETTLEMENTS

Plains Pipeline: Plains Pipeline appealed the Department's tax year 2018 and 2019 centrally assessed valuations of their Montana property to the MTAB. The parties successfully settled the appealed tax years; 2018, \$20,000,000 and 2019, \$15,000,000.

Rocky Mountain Pipeline: Rocky Mountain Pipeline appealed the Department's tax year 2018 and 2019 centrally assessed valuation of their Montana property to the MTAB. The parties successfully settled the appealed tax years; 2018, \$15,000,000 and 2019, \$20,000,000.

CenturyLink, Inc.: CenturyLink appealed the Department's 2019 centrally assessed valuation of their Montana property to the Department's Office of Dispute Resolution. The parties successfully settled the appealed tax year for a Montana value of \$183,519,027.

Blackfoot: Blackfoot Communications, Inc. appealed the Department's 2019 centrally assessed valuation of their Montana property to the Department's Office of Dispute Resolution. The parties successfully settled the appealed tax year for a Montana value of \$9,100,000.