



Gene Walborn
Director

Montana Department of Revenue



Steve Bullock
Governor

MEMORANDUM

TO: Revenue Interim Committee
FROM: Dan Whyte, Chief Legal Counsel 
DATE: September 24, 2019
SUBJECT: Department of Revenue Major Case Update

UNITED STATES SUPREME COURT

Espinoza, et al.: The United States Supreme Court granted Espinoza's Petition for Writ of Certiorari. Briefing is currently proceeding before the Court. The Appellants' brief was filed on September 11, 2019 and the State's brief is due November 8, 2019.

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. The Department is awaiting the Ninth Circuit's decision.

MONTANA SUPREME COURT

Exxon Mobil: On July 9, 2019, the Montana Supreme Court reversed the District Court and held that Exxon was entitled to exclude actual dividends received from "80/20" companies under I.R.C. § 243 because the plain language of § 15-31-325, MCA did not expressly prohibit I.R.C. § 243 deductions. The Supreme Court, relying on *Baker Bancorporation*, agreed with Exxon that it was entitled to 100% of the dividends received deduction. As a result, the Court reversed the Department's assessment of additional tax in the amount of \$4,081,231.

VisionNet: On August 27, 2019, the Montana Supreme Court affirmed the District Court's determination that the Department properly classified VisionNet as a telecommunications company.

Mountain Water: Briefing is currently underway in Mountain Water's appeal of the District Court's decision finding that Mountain Water was correctly assessed the taxes for the years in question and remained responsible for the taxes until the completion of the condemnation proceedings.

STATE DISTRICT COURT

Boyne USA, Inc.: In August, Boyne and the Department filed cross Petitions for Judicial Review with the District Court. Boyne's claim includes a Declaratory Judgment action challenging a Department rule. Boyne is appealing the MTAB's ruling that Boyne owes the lodging and facility use and sales taxes on the Resort Services Fee. The Department is appealing the Board's ruling that Boyne does not owe a tax obligation for no-show and forfeiture cancellations.

MONTANA TAX APPEAL BOARD

None.

SETTLEMENTS

Phillips 66 Refinery: Phillips initiated a limited appeal from the Yellowstone County Tax Appeal Board's November 2018 decision that concluded a value of the refinery for 2018 to be \$845 million. The company's MTAB appeal related to the market value of its Billings refinery. In July, the parties settled Phillips 66's 2018 market value dispute before MTAB for a market value of \$826,908,000.