

MEMORANDUM

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel

DATE: January 13, 2022

SUBJECT: Department of Revenue Major Case Update

MONTANA SUPREME COURT

Franklin and Janet Tiegs/Baker Produce: The Tiegs, nonresident taxpayers, appealed MTAB's decision to the First Judicial District Court, Lewis & Clark County, with a Petition for Judicial Review challenging the Department and MTAB's determination that their previously reported Montana source losses did not constitute a Montana net operating loss (NOL) and could not be carried forward to offset Montana source income in subsequent years. On September 10, 2021, the District Court reversed MTAB's decision. The Department has filed an appeal with the Montana Supreme Court and our opening brief is due January 26.

STATE DISTRICT COURT

Omimex Canada: Omimex has appealed the appraised value of their holdings for the 2019, 2020, and 2021 tax years. Omimex appeals to District Court regarding classification of some of their property. TY 2019 is set for a bench trial October 24, 2022. TY 2020 is set for a bench trial January 9, 2023. Omimex elected to bypass ODR for the TY 2020-21 appeals. The parties have discussed and are likely to move forward with TY 2019 litigation and hold all other matters in abeyance pending the outcome of the 2019 appeal. Notably, Omimex is slowly divesting itself of its holdings in Montana and has sold several of its subsidiary pipelines to third parties.

Eagle Bear: On December 2, 2019, Eagle Bear filed a complaint with the Montana Ninth Judicial District Court challenging Montana's lodging facility use tax and sales tax as applied to Eagle Bear's campground, which is located within the Blackfeet Indian Reservation. Eagle Bear asserts that federal law preempts the taxes and that the taxes violate equal protection. Eagle Bear is also suing the Blackfeet Nation in US District Court, Great Falls Division. As a result, the Montana District Court matter has been stayed pending the outcome of the US District Court matter.

Boardwalk Properties, Inc./Michael Delaney and Ileana Indreland: In June 2021, Boardwalk Properties sued the Department in the Eighteenth Judicial District Court, Gallatin County, challenging the recent statutory amendments to § 16-4-213, MCA, governing resort area all-beverages licenses, specifically that accommodation units may not be located within the boundaries of a quota area in order to qualify toward the required total for the potential issuance

of additional resort retail all-beverages licenses (House Bill 705). The lawsuit asserts that the amended statute violates both the state and federal constitutions (retrospective legislation, equal protection, due process, and takings). Discovery is currently underway.

William and Ellen 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 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 Solems’ property is located. Between 2009 and 2015, approximately 200 taxpayers in Neighborhood 800 paid property taxes under protest.

A four-day trial on liability was held in March 2019. On October 15, 2019, the District Court issued its Findings of Fact, Conclusions of Law, and Order finding the Department liable. The District Court concluded that the Department employed a non-uniform method of appraisal, failed to value similar properties in a like manner, and failed to appraise the subject properties in a manner that is fair to all taxpayers. The matter has now moved to the damages phase. Motions relating to damages were filed and the District Court granted Solems’ motions on the calculation of damages and whether Solems are entitled to attorney fees and costs. The District Court denied Solems’ motion to expand the class definition to include taxpayers who did not pay under protest. The District Court denied the Department’s motion to decertify the class. The District Court held a status conference on December 14, 2021, and the District Court requested a status update regarding finalization of the remaining issues.

MONTANA TAX APPEAL BOARD

Pioneer: Pioneer, a Washington S corporation, filed an appeal to the Montana Tax Appeal Board after the Department denied its claimed refund and assessed a tax due against Pioneer. Pioneer asserts that it is entitled to use the apportionment provisions of the Multistate Tax Compact; the Department is arguing that the multi-tiered pass-through structure of Pioneer means it must apportion its Montana income to Montana. Post-hearing briefing has been filed and a final decision is pending.

Rimrock Owners LP: Rimrock Owners is a PAD appeal regarding the appraised value of the Rimrock Mall in Billings. The hearing will likely be set for June 14, 2022. The parties are currently negotiating a possible resolution of the appraised value for the property before we engage discovery and hearing preparations.

OFFICE OF DISPUTE RESOLUTION

Herban Legends, LLC: The Department’s Cannabis Control Division investigators conducted two investigations in 2021 of this Licensee resulting in reasonable cause to believe that the Licensee has failed to operate its medical marijuana licenses in compliance with the State law. The Department issued a Notice of Proposed Action for 17 counts of violations. The Department

is currently proposing revocation of the licenses. The matter is pending before the Department's Office of Dispute Resolution. The parties have exchanged witness and exhibit lists in anticipation of the hearing scheduled for January 20, 2022.

Plains Pipeline Montana, LLC.: Plains is appealing the Department's 2021 tax year centrally assessed appraised value of \$22,435,637. Plains challenges the valuation, cap rates, and allocation and also contends that the Department has incorrectly defined the unit. The matter is currently pending before ODR.

Rocky Mountain Pipeline Montana, LLC.: Rocky is appealing the Department's 2021 tax year centrally assessed appraised value of \$34,071,999. Rocky challenges the valuation and asserts that the assessment violates equalization and equal protection. The matter is currently pending before ODR.

COUNTY TAX APPEAL BOARD

Phillips 66: Phillips 66 Company filed an appeal of the appraised value of its oil refinery in Billings with the Yellowstone County Tax Appeal Board. The Department's 2021 market value for the Phillips 66 Billings Refinery is \$865,706,983. Phillips 66 has challenged that value and has requested a market value of \$616,000,000. The Yellowstone CTAB has scheduled a hearing on March 16, 2022.

BANKRUPTCY COURT

Timothy Blixseth: Mr. Blixseth filed an Adversary Complaint against the Department of Revenue in the United States Bankruptcy Court, District of Nevada, on December 23, 2021. Mr. Blixseth seeks an undisclosed amount of damages against the Department for the filing of an involuntary bankruptcy petition in 2011. The Department's responsive pleading is due January 25, 2022.

SETTLEMENTS

Boyne: After the Supreme Court's decision in June 2021, Boyne and the Department settled the audit period amounts, as well as the tax periods that followed up until the date of the decision. Boyne paid the taxes due and owing as a result of the audit to stop the accrual of interest. Boyne paid the Department an additional \$108,689.12 to resolve tax periods ending June 30, 2011 through September 30, 2021.

Charter Communications: Charter Communications appealed the Department's 2021 centrally assessed valuation of Charter to the Office of Dispute Resolution. After discussions with Charter, the Department agreed to lower Charter's taxable value from \$226,163,125 to \$203,320,417.

Rocking J Ranch LLP: Rocking J Ranch appealed the Department's audit determination that Rocking J Ranch owed additional Lodging Facility Sales and Use Taxes to the Montana Tax Appeal Board. After the Supreme Court's decision in Boyne, the parties agreed to settle the

matter. Rocking J had paid the underlying taxes to stop the accrual of interest and the Department issued Rocking J a refund in the amount of \$81,105.00. The agreement closed tax periods ending July 1, 2014 through September 30, 2021.