

MEMORANDUM

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel

DATE: July 15, 2021

SUBJECT: Department of Revenue Major Case Update

NEVADA BANKRUPTCY COURT

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.

On June 3, 2021, Judge Nakagawa of the United States Bankruptcy Court, District of Nevada, issued three orders. First, Judge Nakagawa dismissed Blixseth's Motion to Strike Pleading. Next, Judge Nakagawa denied the Department's Motion for Relief from Judgment. Finally, Judge Nakagawa confirmed dismissal of the involuntary bankruptcy petition filed against Mr. Blixseth.

Neither Mr. Blixseth or the Department appealed Judge Nakagawa's Orders and the case is closed pending any further motions. Mr. Blixseth's tax liability owed to the State of Montana remains at \$80 million plus.

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.

On June 29, 2021, the Supreme Court affirmed the District Court's ruling with two dissenting opinions. Justice Shea dissented on the issue of the sales tax and Justice Gustafson dissented on the issues of the sales and the no-show and cancellation charges.

B.Y.O.B.: The Department of Revenue is the Defendant of a tort claim alleging tortious interference and ancillary claims stemming from the revocation of an agency franchise agreement to operate a liquor store. DOR is represented by outside counsel hired by Tort Defense. The Department won summary judgment at the District Court level, which plaintiffs appealed to the Montana Supreme Court. The matter is fully briefed and we are waiting for a decision.

STATE DISTRICT COURT

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 the taxes are preempted by federal law and that they violate equal protection. In 2020, the District Court denied the Department's motion to dismiss, and the parties are currently engaged in pretrial discovery. Trial is currently scheduled for December 28, 2021 in Glacier County.

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. The Department filed its Response Brief on July 1, 2021 and is currently awaiting the Tiegs' reply brief. Oral argument is scheduled for September 2, 2021.

Boardwalk Properties, Inc./Michael Delaney and Ileana Indreland: The Department was recently served with the complaint filed in the Eighteenth Judicial District Court, Gallatin County. The suit challenges recent statutory amendments to § 16-4-213, MCA, governing resort area all-beverages licenses. The lawsuit asserts that the amended statute violates both the state and federal constitutions (retrospective legislation, equal protection, due process, and takings). The Department's answer is due August 8, 2021.

Omimex Canada: Omimex has appealed the appraised value of their holdings for the 2019 and 2020 tax years. Those appeals are in abeyance at the Office of Dispute Resolution pending settlement negotiations. Omimex has also appealed the tax classification for some of their holdings in an effort to avoid central assessment. Those appeals are in the First Judicial District Court. The parties are currently trying to schedule a meeting to discuss settlement.

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 as to issues related to class and issues related to damages were filed on July 17, 2020. 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.

Fatbeam, LLC: On January 7, 2021, Fatbeam, LLC, filed a Petition for Declaratory Judgment before the Thirteenth Judicial District Court, Yellowstone County. Fatbeam is challenging the Department's central assessment of Fatbeam's telecommunications property located in Montana. The parties are currently engaged in discovery, and oral argument on all motions is currently scheduled for November 22, 2021, in Billings.

SETTLEMENTS

Plains Pipeline Montana, LLC: Plains appealed the Department's 2020 tax year centrally assessed appraised value of \$30,286,498. The matter was appealed to MTAB. The parties agreed to a total market value of \$15,000,000 based on the Department's allocation determination.

Rocky Mountain Pipeline Montana, LLC: Rocky appeal the Department's 2020 tax year centrally assessed appraised value of \$46,524,974. The matter was appealed to MTAB. The parties agreed to a total market value of \$28,000,000.