

## MEMORANDUM

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel

DATE: June 9, 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 appealed the District Court decision to the Montana Supreme Court, and briefing is in progress.

James Wangerin: Mr. Wangerin appeals the District Court's denial of his petition for judicial review of the Department's decision to not adopt an administrative rule he requested. The parties completed Briefing May 31, 2022. The Court has not ordered oral arguments to date.

### 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 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 parties stayed the Montana District Court matter pending the outcome of the US District Court matter.

On May 23, 2022, Eagle Bear filed a Chapter 11 bankruptcy petition with the United States Bankruptcy Court, District of Montana. The Department is not currently involved as a party in the bankruptcy 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 11<sup>th</sup> 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. The parties filed Motions relating to damages 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 parties are currently working toward obtaining a final appealable judgment.

## **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 parties participated in a hearing before the Department Office of Dispute Resolution on March 15, 2022, and are waiting for a decision.

High Plains, LLC: High Plains, LLC applied for a dispensary, provider and tier-one canopy license but did not adequately prepare their proposed premises in time to meet the January 1 deadline, pursuant to the requirements set forth in HB 701. The CCD denied the license application and High Plains appealed to the Office of Dispute Resolution. Parties participated in a hearing on March 2, 2022, and a decision upholding the CCD’s denial was issued on May 12, 2022. High Plains has until June 13 to file a petition for judicial review. As of the date of this report, the Department is not aware of whether High Plains has filed a petition.

## 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. Currently pending before the bankruptcy court is the Department's Motion to Dismiss and Mr. Blixseth's Rule 9011 Motion.

## SETTLEMENTS

Omimex Canada: Omimex appealed the appraised value of their holdings for the 2019, 2020, and 2021 tax years. Omimex appealed to District Court regarding classification of some of their property. From 2018 to 2021 Omimex broke up and sold the various pieces of its former unit. On May 4, 2022, the parties entered a global settlement agreement which reclassified Omimex's property as class eight for TY 2019, and sets the fair market value of the property for TYs 2020 and 2021. The settlement agreement resulted in estimated refunds in TY 2019 of \$35,346 from the state and \$192,820 from the counties, in TY 2020 of \$32,020 from the state and \$201,147 from the counties, and in TY 2021 of \$33,797 from the State and \$187,690 from the counties.

Rimrock Owners LP: Rimrock Owners is a PAD appeal regarding the appraised value of the Rimrock Mall in Billings. Based upon additional information provided to the Department during the MTAB appeal, the parties executed the settlement agreement on May 10, 2022, agreeing to reduce the fair market value for the property from \$44,231,660 to \$38,265,700.

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 was \$865,706,983. Phillips 66 challenged that value, requesting a market value of \$616,000,000. In March 2022, the Yellowstone CTAB set a value of \$721,206,983. The Department filed a notice of appeal with MTAB. After discussions with Phillips 66, the parties reached a settlement that increased the valuation to 755,000,000.