

MEMORANDUM

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel

DATE: November 1, 2021

SUBJECT: Department of Revenue Major Case Update

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. No dates are set for TY 2020. A scheduling conference regarding TY 2021 is scheduled for November 16, 2021.

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 is currently reviewing the order and considering whether it will appeal.

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. In 2020, the District Court denied the Department's motion to dismiss. A trial is scheduled for August 29, 2022, and the parties are currently engaged in discovery.

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). The Petitioners have requested the “junque” file from Legislative Services and the Department is in the process of responding to a large document request.

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.

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. Discovery is underway and a hearing is scheduled for January 13, 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.