



Revenue Interim Committee

67th Montana Legislature

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TO: Committee Members
FROM: Jaret Coles, Staff Attorney
RE: Administrative Rule Activity
DATE: November 1, 2021

Department of Revenue

Proposal and Adoption Notices are available on the Internet:

Department of Revenue notices can be found on the Secretary of State's website at <http://www.mtrules.org>. Under the Montana Administrative Register heading, type the number "42" in the "Search by Notice No." box and click on the "Go" icon.

Notice of Proposed Rule:

Income Taxes -- Innovative Educational Program Donations to School Districts and Student Scholarship Organizations (SSO) -- [House Bill No. 279](#). MAR 42-1041. A public hearing will be held on November 29, 2021, at 1:30 p.m. The public comment period ends on December 6, 2021. The Department proposes to adopt one rule and amend three rules. The new rule provides a definition for "school district". The first proposed amendment provides the process for receiving preapproval of a tax credit for a contribution to a school district or SSO. The second proposed amendment provides examples of what constitutes a "cash" donation to include U.S. currency, a personal check, cashier's check, money order, bank draft, or traveler's check.

Tax Administration -- Debtor Appeals of Department Collections. [MAR 42-1039](#). A public hearing will be held on November 18, 2021, at 9:30 a.m. The public comment period ends on November 22, 2021. The Department proposes to amend three rules. The first proposed amendment provides two definitions for Department forms that are used to request informal review or appeal an informal review determination concerning a transfer of debt to the Department for collection pursuant to [Title 17, chapter 4](#), MCA. The second and third proposed amendments incorporate an informal review process which affords a debtor the opportunity to review a state agency debt transfer to the Department and a collection action with a Department employee.

Property Tax -- 2022 Personal Property Depreciation Schedules and Trend Tables and Updated Business Equipment Exemption -- [House Bill No. 52](#) (2021) -- [House Bill No. 303](#) (2021). [MAR 42-1038](#). A public hearing will be held on November 4, 2021, at 10:00 a.m. The public comment period ends on November 8, 2021. The Department proposes to amend four rules and repeal one rule.

Two of the proposed amendments update the authority of the web-based Personal Property Depreciation Schedules and Trend Tables publication adopted and incorporated by reference in the rules, to the 2022 version. The publication is updated annually. The 2022 publication reflects changes in personal property and industrial machinery and equipment depreciation and trend factoring data in the Department's valuation manuals and guides since last year.

A third proposed amendment implements changes made to the business equipment tax exemption amount under [House Bill No. 303](#) (2021), which increased the \$100,000 exemption to \$300,000. The amendments cross reference the statutory exemption provided in [15-6-138](#), MCA, instead of providing the exemption amount. The proposed amendments eliminate the need for future updates to the rule merely for exemption amount changes.

The fourth proposed amendment transfers content from two rules into one. The Department's proposed repeal is based on the transfer of content to other rules. Additionally, part of the rule proposed for repeal is obsolete based on the passage of [House Bill 52](#) (2021), which changed the quarterly reporting requirement to annual for all farm implement and construction equipment in a purchase incentive rental program.

Adopted/Amended Rules:

Property Tax -- Property Tax Assistance Program (PTAP) and Montana Disabled Veteran (MDV) Property Tax Assistance Program -- [House Bill No. 357](#) (2021). [MAR 42-1036](#) -- Housekeeping. Adopted October 12, 2021. No public comments were received in support or opposition to the proposed amendments. The Department amended one rule as proposed pertaining to the PTAP and MDV programs to implement [House Bill No. 357](#), which adjusts income thresholds for the PTAP and MDV programs and changes how the annual adjustment to income brackets is calculated.

Department of Revenue – Cannabis Control Division

(Reviewed by the [Economic Affairs Interim Committee](#) Pursuant to a [Memorandum of Understanding](#)):

Notice of Proposed Marijuana Rules:

Marijuana -- Implementation of the Montana Marijuana Regulation and Taxation Act – [House Bill No. 701](#). [MAR 42-1033](#). A public hearing will be held on November 16, 2021, at 9:00 a.m. The public comment period ends on November 29, 2021. The Department proposes to adopt 15 rules and amend one rule. The Department's statement of reasonable necessity provides:

The 67th Montana Legislature passed House Bill 701 (HB 701) which amends the Montana Marijuana Regulation and Taxation Act (Act), codified at 16-12-101, et. seq., MCA. Among the stated purposes of the Act in 16-12-101, MCA, and the legislative intent of HB 701, is the authorization and provision of a regulatory framework for

Montana's legal adult use cannabis industry and transfer of the Department of Public Health and Human Services' (DPHHS) medical marijuana program (MMP) to the department, which occurred effective July 1, 2021. The department's authority conferred to it by the legislature under 16-12-103, MCA, and the proposed rules under this rulemaking represent the department's initial steps to license and regulate the cultivation, manufacture, transport, and sale of marijuana as allowed by the Act while ensuring the safety of marijuana and marijuana products to the public and eliminating the illicit market for those products.

The department proposes to adopt New Rules I through XV and to amend ARM 42.39.102 to:

- (a) adopt or amend definitions for new terminology established in, or as an extension of, the Act;
- (b) provide department systems, forms, uniform application processes, and fee schedules through which marijuana businesses may apply to the department for licensure, including applicable endorsements, in the areas of manufacturing, cultivating, dispensing, or transporting marijuana;
- (c) provide department systems, forms, uniform application processes, and fee schedules for the limited cultivation and sale of medical marijuana to individuals with debilitating medical conditions (registered cardholders) under the MMP; and
- (d) reorganize and incorporate existing MMP rule provisions, many of which have been in force since 2018, from ARM Title 42, chapter 39, into these proposed rules for administrative consistency between the MMP and the adult-use program.

While this general statement of reasonable necessity covers the basis for the following proposed rule adoptions, it is supplemented below, where necessary, to explain rule-specific proposals.

Notice of Adopted/Amended Marijuana Rules:

Marijuana -- Marijuana Provider Canopy Tier Size Increases and Advertising -- [House Bill No. 701](#) (2021) - [House Bill No. 249](#) (2021). [MAR 42-1032](#). Adopted September 28, 2021. A public hearing was held, and multiple public comments were received. The Department adopted two new rules and amended one rule as proposed. The first new rule establishes the square footage and premises requirements for the tiers 10 through 12 canopy licenses. The second new rule provides for the stated canopy license fees for new tiers 10 through 12 canopy licenses. The Department is aware of fewer than five providers that have expressed an interest in upgrading their canopy tier.

The amended rule: (a) lists the specific criteria that all medical marijuana businesses must follow when engaging in the types of advertising that is allowed; (b) identifies the signage requirements and allowances that will be permitted; (c) requires a business that utilizes a website to verify that a person

under the age of 21 does not access its contents; (d) identifies and specify the types of electronic advertising restrictions that remain in place; and (e) identifies and specifies the types of advertising activities that are prohibited.

Marijuana -- Montana Medical Marijuana Program (MMP) -- [House Bill No. 701 \(2021\)](#). [MAR 42-1031](#). Adopted August 31, 2021. A public hearing was held and multiple public comments were received. The Department amended eight rules and repeal one rule regarding the MMP. The Department's statement of reasonable necessity provides:

"This rulemaking package is necessary to support the department's new Cannabis Control Division and provides necessary procedural guidance for MMP stakeholders and the department for license application and general licensing matters, information reporting requirements, and regulatory compliance provided for in HB 701. Amendments such as those proposed in ARM 42.2.613 and 42.2.621 are necessary to add MMP contested case matters to the department's existing dispute resolution processes under the Montana Administrative Procedure Act (MAPA).

The department proposes minor amendments to: (1) remove superfluous definitions or where the definition may be inconsistent with statute; (2) improve clarity of licensing processes and licensed premises requirements; and (3) improve general rule verbiage. These amendments do not impose additional requirements but clarify what is required of a licensee better than the text of existing rules.

Based on each rule's respective proposed amendments, the department must renumber rule subsections, where applicable.

Lastly, the department proposes to update the authorizing and implementing statutes for the rules, where applicable, which is required under MAPA."