

**MEMORANDUM**

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel

DATE: September 20, 2021

SUBJECT: Department of Revenue Major Case Update

**MONTANA SUPREME COURT**

B.Y.O.B.: The Department of Revenue is the Defendant in a matter a tort claim matter alleging multiple torts stemming from the revocation of an agency franchise agreement to operate a liquor store. Tort Defense represented the Department. The Department won summary judgment at the District Court level, which plaintiffs appealed to the Montana Supreme Court. On August 3, 2021, the Supreme Court affirmed the District Court's Summary Judgment in favor of the Department.

**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. In 2020, the District Court denied the Department's motion to dismiss, and the parties are currently engaged in pretrial discovery. Trial is scheduled for August 29, 2022 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. On September 10, 2021, the District Court reversed MTAB's decision. The Department is currently reviewing the order and considering next steps. If the Department elects to appeal, it must file a notice of appeal within 60 days of the District Court's decision.

Boardwalk Properties, Inc./Michael Delaney and Ileana Indreland: In June 2021, Boardwalk Properties sued the Department 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, 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 parties are currently engaged in pretrial litigation.

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. The Department filed motions to set scheduling conferences in District Court for TYs 2019 and 2020. Omimex elected to bypass ODR for the TY 2021 appeal, though a District Court Judge has not yet been assigned. There are currently no dates set in District Courts, but scheduling orders should be forthcoming. A Companion case at ODR for TY 2020 will be set for a status conference in late September.

### **MONTANA TAX APPEAL BOARD**

Amber Sabe: Amber Sabe filed an appeal to the Montana Tax Appeal Board challenging the Department's offset of Ms. Sabe's income tax refund to pay to other agency bad debts. MTAB first limited its jurisdiction of the appeal to whether the Department followed state law, administrative rules, and the proper procedure when the Department offset Ms. Sabe's income tax refund. Ultimately, MTAB determined that the Department did properly offset through SABHRS Ms. Sabe's income tax refund to reduce debt owed to MSU.

Pioneer: Pioneer, a Washington S corporation, filed an appeal to the Montana Tax Appeal Board as a result of the Department denying its claimed refund and instead assessing 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. The parties are briefing proposed orders for the Montana Tax Appeal Board.

### **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 Licensee has requested a hearing and the matter is currently pending scheduling before the Department's Office of Dispute Resolution.

### **SETTLEMENTS**

PacifiCorp: PacifiCorp contested the Department's determination of the 2021 market value of its property before the Office of Dispute Resolution. The Department and PacifiCorp agreed upon a 2021 market value of \$315,000,000 to be apportioned among the counties where PacifiCorp's property is located.

United Airlines Holdings, Inc.: United contested the Department's determination of the 2021 market value of its property before the Office of Dispute Resolution. The Department and United agreed upon a 2021 market value of \$37,341,271 to be apportioned among the counties where United's property is located.