



GOVERNOR GREG GIANFORTE  
DIRECTOR BRENDAN BEATTY

## MEMORANDUM

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel

DATE: September 15, 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, briefing is complete, and the Court classified the matter on July 27, 2022 for submission on the briefs to a five justice panel.

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.

## **MONTANA TAX APPEAL BOARD**

Evan Danno Revocable Living Trust: Mr. Danno appealed the decision of the Flathead County Tax Appeal Board to the Montana Tax Appeal Board on December 28, 2021. MTAB heard the appeal on May 17, 2022. There were 4 distinct issues determined by MTAB. First, MTAB agreed with CTAB’s adjustment to the improvements on this parcel due to deferred maintenance and physical defects/wear & tear. The department agrees with this adjustment. Second, MTAB upheld the market value calculated by the department and agreed with the calculations in the department’s land model. The third issue was the department’s rejection of the value determined by Mr. Danno’s independent

fee appraisal. A 2021 amendment to § 15-2-301, MCA, creates a presumption that when a valid fee appraisal is submitted, the appraisal should be considered correct unless the DOR introduces sufficient evidence to rebut the presumption. Mr. Danno presented a fee appraisal which met this definition. MTAB agreed with the DOR that the appraisal was flawed due to the appraiser only relying on the lowest 4 sales out of 18 he identified as being comparable to the subject property. Finally, MTAB upheld the department's reliance on the cost approach to value the improvements at issue in this appeal. Mr. Danno has until October 14, 2022 to appeal this decision to the District Court.

Mark Manly: Mr. Manly challenged the Department's valuation of a garage condominium that he owns and is located on leased land at Gallatin Field Airport. The matter was submitted to MTAB on the Gallatin County Tax Appeal Board's record as well as additional briefing from the parties. Mr. Manly sought a straight-line depreciation of the value of the condo down to a value of \$0 when the lease terminates. MTAB ruled in favor of the Department and found that regardless of the lease's termination date, the Department's valuation for the 2021-2022 cycle was correct.

#### **OFFICE OF DISPUTE RESOLUTION**

Wild West Weed dba Heartfelt Farms: In late 2021, Wild West Weed applied for a marijuana cultivation license, a manufacturing license, and a dispensary license to be operated in Yellowstone County. While the applications were pending, Yellowstone County enacted interim zoning regulations on the sale and production of marijuana in Yellowstone County, which ultimately disqualified the location for the marijuana license applications pending for Wild West Weed. Subsequent to the enactment of the Yellowstone County interim ordinance and before the expiration of the State moratorium on applications for new marijuana business licenses, the Department issued a deficiency letter to Wild West Weed, to which a response was submitted that indicated the licenses would now be located in Carbon County. Wild West Weed ultimately had trouble meeting the local regulations of Carbon County and was not able to get the facility completed to a point where it could be inspected by the Department for licensing. The Department issued a license application denial. A hearing followed and the Hearing Examiner upheld the Department's denial of the marijuana license applications for Wild West Weed. Wild West Weed has until September 29 to file a Petition for Judicial Review with the district court.

Priemium Cannabis, Inc.: In December of 2021, Priemium Cannabis submitted an application for a canopy only license. The application was denied because it was submitted too late in the year for the Department to process and because, at that time, an applicant was required to apply for a canopy license, a cultivation license, and a dispensary license. Priemium Cannabis was only prepared to operate a canopy license. An ODR hearing was held on May 12, 2022, wherein the Hearing Examiner upheld the Department's denial of license. Priemium Cannabis has until September 30 to file a Petition for Judicial Review with the district court.

## **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.

On July 27, 2022, the Bankruptcy Court granted the Department's Motion to Dismiss as to the punitive damages. However, the Bankruptcy Court denied the Department's Motion as to costs, attorneys fees, and proximate damages. The Department filed a Notice of Appeal to the 9<sup>th</sup> Circuit Bankruptcy Appellate Panel on August 10, 2022. On August 24, 2022, Mr. Blixseth filed a Notice of Cross-Appeal challenging the Bankruptcy Court's dismissal of his claim for punitive damages.

## **SETTLEMENTS**

Northwestern Energy: The Department's 2022 market value for Northwestern Energy was \$3,524,333,726. Northwestern disagreed with that valuation, requested informal review, and ultimately filed an appeal with the Office of Dispute Resolution. During the course of the company's informal review and discussions occurring after that review, the Department concluded that the market value for 2022 is \$2,944,506,807, and that value was certified to the counties. Northwestern agreed to seek the dismissal of its appeal before the Office of Dispute Resolution. The parties also agreed to utilize the next several months to discuss the methodology issues Northwestern raised in the informal review process.

NaturEner: The Department's 2022 market values for NaturEner Glacier Wind Energy 1, LLC (GW1) and NaturEner Rim Rock Wind Energy, LLC (Rim Rock) were \$36,302,465 and \$146,416,736, respectively. NaturEner disagreed with the valuations, requested informal review, and ultimately filed appeals with the Office of Dispute Resolution. During the course of informal review and discussions occurring after that review, the parties agreed to settle the matters at the following market values for 2022: \$36,302,465 for GW1 and \$120,301,530 for Rim Rock. NaturEner agreed to seek dismissal of its appeals before the Office of Dispute Resolution.