



GOVERNOR GREG GIANFORTE
DIRECTOR BRENDAN BEATTY

MEMORANDUM

TO: Revenue Interim Committee

FROM: Brendan Beatty, Director

DATE: August 26, 2022

SUBJECT: 2023 Red Tape Relief Initiative Legislative Proposals

The following is a list of the Department of Revenue's (Department) proposed Red Tape Relief Initiative (Red Tape) legislation that has been approved through the Executive Planning Process/Office of Budget and Program Planning (OBPP) for introduction to the 2023 Legislature. The Department requests the committee review and move its approval of these proposals for pre-introduction.

This document contains the Department's proposed legislative bills that have been identified by OBPP and the Department as eliminating or reducing Red Tape as set forth in Governor Gianforte's Executive Order 2021-01 (EO).

The Red Tape EO was specific to regulations. However, Department's Red Tape review of its regulations led to the identification of several statutes that meet the criteria of the EO. Working in conjunction with Lt. Governor Juras, the Department's Red Tape Project Team identified necessary legislative changes which address statutory Red Tape which the Department now proposes.

The legislative proposals listed below include one or more of the following general criteria to guide the committee with its review: (1) Red Tape cleanup only; (2) changes to the statute which are more than cleanup, but address Red Tape only; and (3) changes that address Red Tape and present more substantive changes to statute. The Department's intent with these proposals is to adhere to the EO and the Lt. Governor's direction. As such, this memorandum provides an outline of each Red Tape legislative proposal and an explanation of the Red Tape identified.

We have, in good faith, attempted to avoid any substantive changes to the laws with these Red Tape proposals which go beyond the scope of the Governor's EO. However, as is the case with any legislation, there may be instances or fact patterns which lead to unanticipated results. To the extent possible, these Red Tape legislative proposals attempt to avoid that result.

Please feel free to let me know if I can clarify anything or provide any additional information.

(3) Changes that address Red Tape and presents more substantiative changes to statute.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
BITD	07-001-RT	Revise Centrally Assessed Property Appraisals	Significant, see notes below	15-7-102 15-7-111 15-23-101 15-23-103

Type of Red Tape from EO 01-2021:

Excessive requirements, disproportionately impacts small businesses

Red Tape Identified:

Centrally-assessed properties are generally complex in nature. Currently, they are required to file annually with the Department, causing an unnecessary burden on the taxpayers to report to the Department. Moving to a two-year reappraisal cycle reduces the required filings of centrally-assessed property owners.

Red Tape Proposal:

Institute a two-year reappraisal cycle for centrally-assessed properties (except for railroad and railcar, which will remain on an annual cycle). This also allows for better taxpayer assistance, the appraisal work would be distributed to satisfy existing deadlines more thoroughly and to maximize staff resources, and the existing centrally-assessed industries would be split into two separate groups (or classes).

In even years, the Department would assess electric utilities; electric cooperatives; airlines; railroads; and railcars. In odd years, Department would assess telecommunications; telephone cooperatives; pipelines; railroads; and railcars. Additional details proposed include addressing extenuating circumstances in the “off” year (the a property is sold or the owner declares bankruptcy); and clarify that a property owner may appeal once during a two-year cycle (similar to residential property tax appeals).

This proposal could result in operational and/or fiscal savings. First, existing burdens on our appraisal staff means that they have less time to find and correct errors in their appraisal work before issuing an appraisal or before the agency certifies values in early August. Similarly, taxpayers and the appraisal staff have a very short time period to resolve disputes before values are certified—and with the number of appraisals issued each year, fully and fairly managing those informal reviews becomes harder to accomplish. As a result, some appraisal disputes that might otherwise be avoided without any cost to the Department, result in some level of litigation before MTAB and/or a district court. Those cases require the expenditure of funds from our litigation budget for litigation related travel, retention of expert witnesses, etc. If the Department’s value is ultimately reduced—via settlement or a decision—by more than 25%, local governments can demand that the refund be paid from the general fund.

This proposal effectively halves the unit’s annual appraisal work, the Department’s appraisers will therefore have more time to devote to their assignments. The volume reduction could also allow the appraisers and auditors to perform other compliance work—such as testing companies

for central assessment. Lastly, this proposal could mitigate the need for the Department to request additional FTE to satisfy our statutory obligation to value all properties at 100% of market value. For example, if the Department if the existing system persists (required to annually appraise all centrally assessed properties) and if the number of centrally assessed taxpayers increases (which is possible for certain industries), the agency will need more appraisal staff to handle that increased workload.

(2) Changes to the statute which are more than cleanup but address Red Tape only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
BITD	07-005-RT	Centrally assessed cleanup (pipelines)	None	15-23-101(2)(b)-(c), 15-6-138(2)(c)

Type of Red Tape from EO 01-2021:

Excessive requirements, disproportionately impacts small businesses

Red Tape Identified:

The federal definition of a “pipeline carrier” includes all persons providing pipeline transportation for compensation. This is a very broad definition that swallows up a large component of small pipeline operators who were likely never intended to be included in central assessment. The confusion the “pipeline carrier” language creates leads to litigation and potentially inconsistent treatment among similarly-situated taxpayers.

Red Tape Proposal: The statutory definition of centrally-assessed pipeline properties includes the following: (1) common carrier pipelines; (2) pipelines that are governed by FERC or the PSC; and (3) pipeline carriers (as that term is defined by 49 USC 15102(2)). See 15-23-101(2)(b)/(c) , MCA. Because common carrier pipelines and FERC/PSC pipelines represent the types of property that have been historically subject to central assessment, deleting the reference to “pipeline carrier” in 15-23-101(2)(c) and 15-6-138(2)(c), MCA, is our recommendation.

(1) Red Tape cleanup only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
BITD	07-008-RT	Lodging taxes organizational cleanup	None	Title 15, Chapters 65 & 68

Type of Red Tape from EO 01-2021:

Unnecessary requirements

Red Tape Identified:

The lodging facility use tax (Title 15, Chapter 65) and lodging sales tax (Title 15, Chapter 68) are located in different chapters of our code, even though they relate to the same types of transactions. Having all lodging related taxes located in one title and one chapter would benefit taxpayers and the agency.

Red Tape Proposal: Put all of the lodging related taxes one chapter would benefit taxpayers and the agency and streamline the return of in-state lodging tax payments to federal programs.

(2) Changes to the statute which are more than cleanup but address Red Tape only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
DO	01-009-RT	Income tax information for property tax purposes is confidential	None	15-30-2618, 15-31-511

Type of Red Tape from EO 01-2021:

Outdated standards for protecting taxpayer information.

Red Tape Identified:

Income information collected from property taxpayers for property tax purposes is not confidential. This leads to extra steps that property taxpayers must take in order to ensure their income information submitted for property tax purposes is protected. For example, complex confidentiality agreements are currently entered into which often requires taxpayers to engage legal counsel.

Red Tape Proposal:

Income information used for property tax appraisal is not the same as income tax return information submitted to the Department for income tax purposes.

Use of the income approach to value property requires income and expense information to construct a reliable model and perform accurate valuations. This information is generally not required to be submitted to the Department. The Department sends out surveys soliciting income and expense information to use to value property using an income approach to value and the Department creates its models with that information. However, the survey is voluntary, and when dealing with an appealed property tax assessment, taxpayers often refuse to provide income and expense information to the Department because it contains proprietary and confidential material.

By making this income and expense information for property tax purposes confidential, it will facilitate more responses to the survey, less reluctance to providing the Department with the information during property tax appeals, and lead to more accurate appraisals.

Nothing in this proposal will make the assessed value of the property confidential. It will just protect the confidential information used in the appraisal process confidential much like Realty Transfer Certificate information used in the comparable sales approach.

(2) Changes to the statute which are more than cleanup but address Red Tape only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
PAD	08-012-RT	Special mobile equipment pay taxes to get plate.	None	61-1-101, 61-3-431

Type of Red Tape from EO 01-2021:

Excessive and unnecessary requirements, especially burdensome on farmers, ranchers, small businesses, and disproportionately impacts small businesses

Red Tape Identified:

Current statute requires the owner of special mobile equipment, as defined at 61-1-101, MCA, pay a \$5 fee as well as prepay the personal property taxes before they are issued a special mobile equipment decal so the equipment can travel on public roads. This leads to a convoluted process and unnecessary delays in the decal being issued to the taxpayer.

Red Tape Proposal: This request would modify the requirements for how taxpayers receive a special mobile equipment tag or license plate from the county Motor Vehicle Division. Currently the method is difficult to navigate and creates delays and burdensome work for taxpayer and the department. This is a very time-consuming process that must take place between the Department and the MVD/Treasurers office to calculate what the taxes owed are on the equipment. The Department must then try and identify the piece of equipment in our computer system and remove the value prior to certification of value. All the while, the taxpayer is waiting to receive the decals to use the equipment legally on the roads.

The Department's proposal here includes amending the statute to address this issue and only require a non-migratory personal property taxpayer (15-24-301, MCA) to pay the \$5 fee.

(2) Changes to the statute which are more than cleanup but address Red Tape only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
PAD	08-027-RT	Amend statute to allow Department to post office hour changes on website	Reduction in newspaper ad expense	2-16-117(4)(e)

Type of Red Tape from EO 01-2021:

Outdated

Red Tape Identified:

Section 2-16-117, MCA, requires the department to post alternative office hours for local offices in the local newspapers two times per year. These communications of the hours can be done quickly and efficiently using the Department’s website.

Red Tape Proposal:

The Department maintains offices in counties throughout Montana. Section 2-16-117(4), MCA, sets forth that these Department county offices can have different hours for being open if certain requirements are met and a number of steps are taken. Section 2-16-117(4)(e), MCA, requires the Department to publish the different hours at least two times per year in a newspaper of general circulation published in the county where the office is located.

The Department is proposing that the requirement that the information be published on our website instead of in newspapers. This proposal does not propose changing anything in 2-16-110(4)(a) through (d), MCA.

(2) Changes to the statute which are more than cleanup but address Red Tape only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
BITD	07-037-RT	MEDIA Act credit cleanup	None	15-31-1005, 15-31-1006

Type of Red Tape from EO 01-2021:

Unnecessary requirements and outdated carryover requirements (to maintain the reduced carryover credit).

Red Tape Identified:

The expenditure report for small production companies (those under a base investment of \$350,000) causes taxpayers to incur unnecessary increased costs. These reports do not provide the Department with additional useful data not already received when the taxpayer submits an income tax return. Although the statute describes what information that should be included in these reports, we typically receive a number of calls from CPAs about how to complete the report. Ultimately, Department staff can adequately review the substantiation for these smaller production companies when reviewing their tax returns; leaving this additional expenditure report – and the associated costs to the taxpayers - unnecessary to this subset of companies.

Section 15-31-1005, MCA, requires production companies to submit costs within 60 days of the close of principal photography. Our MEDIA credit has a cap (first come, first served), so those who submit costs within 60 days, but are after the cap has been met, may carryover their credit, but at a reduced amount. Some companies recognize this and simply file their costs after the 60-day deadline which results in no reduction of its carryover period. As a result, taxpayers who comply the deadline are disadvantaged compared to those who disregard the 60-day deadline; the latter have a better credit carryforward than those who comply with the deadline.

Red Tape Proposal: Amend 15-31-1006, MCA, to exempt small production companies from the expenditure verification report. Amend 15-31-1005, MCA, to delete 60-day requirement.

(1) Red Tape cleanup only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
BITD	07-038-RT	Telecommunications taxes reorganization/clean-up	None	Title 15, Chapters 19 & 53, Title 10, Chapter 4

Type of Red Tape from EO 01-2021:

Unnecessary requirements

Red Tape Identified:

The 911 fee (Title 10, Chapter 4), TDD fee (Title 53, Chapter 19) and RTE (Title 15, Chapter 53) are fees/taxes imposed on telecommunications services/transactions but are found in three separate parts of our code. Including these three fees/taxes in one place would benefit taxpayers and Department staff.

Red Tape Proposal:

Similar to the lodging taxes Red Tape Proposal(07-008-RT), Amend Title 15, Chapter 53; Title 10, Chapter 4; and Title 53, Chapter 19 to include all these telecommunications taxes in one title/chapter.

(2) Changes to the statute which are more than cleanup but address Red Tape only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
BITD	07-039-RT	Alcohol taxes clean-up	None	16-1-406(2), 16-1-411

Type of Red Tape from EO 01-2021:

Unnecessary and excessive requirements, especially burdensome on small businesses

Red Tape Identified:

BET (Beer excise tax) returns are currently filed monthly. The majority of these returns report less than \$100 in tax. This creates an unnecessary and excessive requirement and is especially burdensome for small businesses to comply with this monthly filing requirement.

Foreign Wine Importers (FWIs) are required to file informational returns with the department on Form WSM (Wine Shipments into Montana). Our preference is that FWIs maintain these records rather than file an informational return. It would mean fewer filings for taxpayers, and the Department would use the records maintained and in the possession of the FWI if there was an audit.

Red Tape Proposal:

We propose having BET returns filed quarterly.

Remove the filing requirement for FWIs and set a requirement period (i.e. 3 years) that an FWI must maintain the records and make them available for inspection by the Department.

(1) Red Tape cleanup only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
PAD	08-040-RT	Repeal New Industry Classification Statute	None	Repeal 15-6-134, 15-6-192

Type of Red Tape from EO 01-2021:

Outdated statutes.

Red Tape Identified:

These statutes pertain to “new industry” classification. These “lower” the tax rate for a qualifying facility to 3 percent. However, current Class 4 and Class 8 classifications are lower than this incentive. Due to this, no taxpayer has taken this exemption for more than 20 years. Other incentives and abatements are currently available to taxpayers.

Red Tape Proposal:

Repeal 15-6-134 & 15-6-192, MCA, the statutes that are classified as “New Industry.” The statutes are old and no longer utilized because there are better alternate incentives available to taxpayers.

(1) Red Tape cleanup only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
PAD	08-041-RT	Require Counties, Not the Department to Approve Certain Condominiums	None	70-23-303, 70-23-304

Type of Red Tape from EO 01-2021:

Unnecessary requirements.

Red Tape Identified:

Montana law requires the department to approve the name of a condominium declaration and ensure that all taxes have been paid. This current process creates layers of unnecessary bureaucratic approval.

All other condominium declaration review is done at the county level. The county should be responsible for ensuring the name is not in conflict and complies with the statutory requirements. The county treasurer should certify that the taxes have been paid if owing.

Red Tape Proposal: Amend 70-23-303 & 70-23-304, MCA, to require the county, not the department, to approve all condominium requirements.