



# Revenue Interim Committee

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## 68th Montana Legislature

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TO: Committee Members

FROM: Jaret Coles, Staff Attorney

RE: Administrative Rule Activity

DATE: August 14, 2024

## 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>. Click on the "Montana Administrative Register" icon and manually look for rule notices that start with "42" in the most recent issues. The Department of Revenue also maintains a listing at: <https://mtrevenue.gov/resources/government/administrative-rules/>

### Notice of Proposed Rules:

[Income Taxation – Implementation of Senate Bill 399 \(2021\), House Bill 191 \(2021\), and Senate Bill 506 \(2023\). MAR 42-1079.](#) A public hearing was held on July 29, 2024, and the public comment period has closed. The Department proposes to amend 15 rules, repeal 12 rules, and transfer four rules. The primary purpose of the proposal is to implement Senate Bill 399 (2021) (SB 399), House Bill 191 (2021) (HB 191), and Senate Bill 506 (2023) (SB 506). The Department's statement of reasonable necessity provides:

Among its notable enactments, SB 399 simplified Montana individual income tax filing through revised filing statuses, revised calculation of taxable income, and repealed multiple tax credits. Accordingly, it is necessary for the department to amend or repeal certain administrative rules across ARM Title 42, chapter 4, to align with SB 399 changes to Montana's tax code. Examples of more global changes include references to 15-30-2131, MCA, which needs to be stricken and replaced with a reference to the Internal Revenue Code (IRC); changing references from Montana adjusted gross income to Montana taxable income; striking references to married taxpayers filing separately because the filing status

has been discontinued beginning with tax year 2024; removing obsolete tax credits; and changing "taxpayer" references in rule to "claimants," which is generally more applicable in tax credit administration.

Administrative rules in chapter 4, subchapter 3 were also affected by HB 191, in addition to SB 399. HB 191 increased the maximum credit amount of the elderly homeowner/renter credit from \$1,000 to \$1,150. The subchapter requires revision to fix outdated references and procedures including credit amounts, specific year examples, and the five-year statute of limitations which was reduced to three years by the 2015 Legislature and was not included in prior rule updates and bill implementation. The department also proposes adding language to these rules to add the same authoritative guidance that is currently provided to claimants in the calculation of household income.

The department proposes to amend chapter 4, subchapter 27, to implement SB 399 and also SB 506, which increased the maximum credit amount of the qualified endowment credit from \$10,000 to \$15,000 and made the credit permanent. As it relates to SB 506, many of the rules in this subchapter were written to be temporary in nature because the credit required renewal every six years by the Legislature. Because SB 506 made the credit permanent, many of the references to years can be stricken. The department sees a further need to provide more clarification about the types of organizations that qualify to hold a qualified endowment and strike some subsections that are explicitly found in 15-30-2327, MCA.

Further, during the department's review of chapter 4, the department identified several outdated references and procedures that require updates. Many of the rules use specific years in the examples (see ARM 42.4.303 and 42.4.403), and the department proposes a model that does not specifically reference a year. The department proposes a format that uses the sequence of years through the use of the last number in the year. The new format will be 20X1, 20X2, 20X3, etc. This method should be familiar to tax professionals and filers as the IRS uses this format in its regulations.

There are references throughout chapter 4 that list the department's physical address and website as a means for a claimant to deliver a tax credit form to the department. Because these are both subject to change, the department proposes removing them and relying on the guidance provided on our website and form instructions.

The department proposes to update rules related to how claimants claim tax credits to match current business practice. First, the rules currently allow for a claimant to report the amount of the credit without providing a copy of the form with their tax form. The department notes this practice is outdated because tax

software vendors support the ability to include a requisite form with the tax return. Additionally, auditors routinely adjust returns because tax credits were erroneously claimed. Requiring the form with the tax return prompts the claimant to provide the necessary attestations and information to obtain the credit.

The department also proposes the transfer of ARM 42.4.105, 42.4.4105, 42.4.4108, and 42.4.4114, which do not deal with tax credits, to the appropriate chapter within ARM Title 42. For example, ARM 42.4.105 relates to a corporate tax deduction. Previously, this rule was related to tax credits that were repealed under SB 399 as well as the existing corporate deduction. While the department is required to maintain the rule, per 15-32-105, MCA, the rule only applies to the corporate tax deduction under 15-32-103, MCA. As a result, the department contends the rule should be transferred to ARM Title 42, chapter 23. . . .

Income Taxation – Withholding and Estimated Income Tax Payments and the Implementation of [Senate Bill 399 \(2021\)](#), [Senate Bill 121 \(2023\)](#), and [House Bill 447 \(2023\)](#). [MAR 42-1081](#). A public hearing will be held on August 19, 2024, and the public comment period ends August 26, 2024. The Department proposes to amend 19 rules and repeal 6 rules. The primary purpose of the proposal is to implement Senate Bill 399 (2021) (SB 399), Senate Bill 121 (2023) (SB 121), and House Bill 447 (2023) (HB 447) relating to withholding and estimated income tax payments. The Department’s statement of reasonable necessity provides:

Among its notable enactments, SB 399 simplified Montana individual income tax filing through revised filing statuses, revised calculation of taxable income, and repealed multiple tax credits. Accordingly, it is necessary for the department to amend or repeal certain administrative rules across ARM Title 42, chapter 17, to align with the above-described legislative changes to Montana's tax code.

SB 399 aligns individuals' filing status with their federal filing status (especially for married couples) and creates separate tax brackets for the different filing statuses. The proposed amendments and repeals seek to remove unnecessary language and rules related to filing status. The guidance in ARM 42.17.105 for employers and their wage withholding is updated to reflect the changes in SB 399 as well as SB 121 which lowered the tax rates for individuals.

HB 447 created a Montana income tax exemption for certain employees working in the state on a temporary basis and also created an accompanying exemption for employer wage withholding. Since the affected statutes provide straightforward requirements for the exemption, amendments to rule are only necessary as cross references to the new provisions.

The remaining changes for wage withholding provide clarity in terminology and updates to reflect current department practice and processes. Further, there are

references throughout the rules chapter that list the department's physical address and website as a means for submitting forms to the department. Because these are both subject to change, the department proposes to remove them and rely on the guidance provided through our website and form instructions.

The department also proposes amendments to clarify mineral royalty withholding definitions and procedures in ARM 42.17.101 and subchapter 6. The changes will better define when a royalty payment remitter is separate from a producer and how that distinction affects royalty income thresholds and exemptions. ...

Tax Administration – Processing Tax Clearance Certificates. [MAR 42-1082](#). A public hearing will be held on August 19, 2024, and the public comment period ends August 26, 2024. The Department proposes to amend one rule. The primary purpose of the proposal is to simplify the rule regarding the issuance of tax clearance certificates by the Department. One purpose of a tax certificate is to show that an entity is in good standing with the Department.

Property Taxation – Valuation of Condominiums or Townhomes – [House Bill 685 \(2023\)](#). [MAR 42-1083](#). A public hearing will be held on September 4, 2024, and the public comment period ends on September 11, 2024. The Department proposes to amend one rule for the primary purpose of implementing House Bill 685 (2023), which changed how the Department values residential and commercial condominiums and townhomes when the cost approach to value is used.

Property Taxation – Forest Land Taxation Laws – AB 26 Processes – Forest Land Natural Disaster Property Tax Assistance -- [Senate Bill 3 \(2023\)](#). [MAR 42-1084](#). A public hearing will be held on September 4, 2024, and the public comment period ends on September 11, 2024. The Department proposes to amend two rules and repeal one rule for the primary purpose of implementing Senate Bill 3 (2023), which revised forest land taxation laws and the six-year valuation cycle to a two-year valuation cycle.

#### **Pending Rule Reviewed During Last Committee Meeting:**

Property Taxation -- Valuation of Commercial Properties. [MAR 42-1078](#). A public hearing was held on July 1, 2024, and the public comment period ended on July 8, 2024. The Department proposes to amend two rules and repeal one rule. The first proposed amendment provides that the Department uses the income approach to valuation for commercial property when there is sufficient information, followed by the cost approach. The proposal provides further that the Department does not develop sales comparison market models for commercial property.

The second proposed amendment provides how the Department develops the model for the income approach, including how information is gathered and the development of a

capitalization rate. One of the income approaches is the development of a gross income multiplier to value an apartment complex with eight units or less. As part of the revision, specific details regarding procedures, formatting, and differentiating between certain commercial operations in the development of income models is proposed for deletion.

The proposed repeal moves material to the second proposed amendment and deletes what is referred to as unnecessary verbiage.

**Staff Comment:** Section [15-8-111](#), MCA, provides the statutory standard for the determination of market value. The statutory standard for commercial property is “information available from any source considered reliable”. Moreover, the Department is required to “conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation” (USPAP). The proposed amendments specifically provide for usage of the [USPAP standard](#).

**Notice of Adopted Rules:** None

## **Montana Tax Appeal Board**

**Notice of Proposed Rules:** None

**Notice of Adopted Rules:** None