



GOVERNOR GREG GIANFORTE  
DIRECTOR BRENDAN BEATTY

**MEMORANDUM**

TO: Revenue Interim Committee

FROM: David R. Stewart, Chief Legal Counsel *DRS*

DATE: July 13, 2023

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, whose decision remains pending.

James Wangerin: Mr. Wangerin appealed 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. By its order dated November 29, 2022, the Montana Supreme Court affirmed the district court's findings that the Department's decision not to adopt an administrative rule was justified. See *Wangerin v. State of Montana, Department of Revenue*, 2022 MT 236.

William and Ellen Solem: This matter concerns the Department's 2008 mass appraisal of lakefront properties in Flathead County. In 2010, the Solems sued the Department seeking \$450 that they believed they had overpaid in taxes. In 2013, Solems amended their complaint to allege that the Department's method of valuing waterfront footage based on a "flat rate per foot" was improper and illegal. In 2016, the court certified the suit as a class action, consisting of "lakefront property owners in Neighborhood 800" who had paid taxes under protest since the last assessment cycle.

The District Court determined that the Department's mass appraisal methodology and valuation model was unfair and unconstitutional. The District Court awarded Solems damages, attorneys' fees under the private attorney general doctrine, and costs under

the insurance exception. The parties stipulated to a final judgment, reserving their appellate rights.

The Department appealed the District Court's orders on January 10, 2023. Solems cross-appealed on January 17, 2023. The Department filed its opening brief on May 25, 2023. Solems' response brief is currently due on July 25, 2023.

BlueBird Energy: On May 18, 2023, BlueBird Energy appealed the District Court's ruling that their oil production on three oil wells located in Rosebud County do not qualify for the new well tax incentive tax rate reduction. Bluebird Energy's opening brief is currently due on July 24, 2023.

## **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. There is no additional information on this case currently.

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 (2021)). 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.

## **MONTANA TAX APPEAL BOARD**

Bozeman Cottonwood: Town Pump, Inc. has challenged the constitutionality of the Department's classification and valuation of a lot it owns which adjacent to a gas station and convenience store on Huffine Lane in Bozeman. Town Pump appealed the Department's classification, use of a commercial land model to value the lot and alleged that the Department unconstitutionally failed to equalize the value of the lot with similarly situated vacant properties in the area. The Department asserts that it achieved equalization by using the same methodology to classify all properties, but Town Pump

disagrees with what constitutes “similarly situated properties.” MTAB held a hearing on February 27, 2023. The parties submitted proposed findings of fact and conclusions of law. The decision is pending.

## **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 9th 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.

On March 31, 2023, the Department filed its opening Appellate Brief and on May 31, 2023, Mr. Blixseth filed his answering brief. The Department’s reply brief is currently due on July 21, 2023. The 9th Circuit has issued a notice that oral arguments will be held in Phoenix, AZ the week of October 16, 2023.

Additionally, on June 1, 2023, Beau Blixseth and George Mack file a Motion to Intervene in the adversary proceeding pending in the United States Bankruptcy Court, District of Nevada. The Department’s objection to the motion is due on June 28, 2023, and a telephonic hearing is scheduled for July 12, 2023.

## **SETTLEMENTS**

Phillips 66: Phillips 66 appealed the 2022 assessment for its Billings refinery of \$855,930,586, including class four, class five, and class eight property to the Yellowstone County Tax Appeal Board on December 14, 2022. Following exchange of additional information prior to hearing, Phillips 66 and the Department agreed upon a 2022 market value of \$761,000,000; the value was certified to the county and the matter was dismissed.

Vision Net: The Department’s 2022 market value for Vision Net, Inc. was \$19,007,420. Vision Net disagreed with that valuation, requested informal review, and ultimately filed an appeal with the Office of Dispute Resolution. During the company’s informal review and discussions occurring after that review, the Department concluded that the market value for 2022 is \$15,204,680, and that value was certified to the counties. Vision Net agreed to seek the dismissal of its appeal before the Office of Dispute Resolution.

Puget Sound Energy: Puget Sound Energy appealed the 2022 assessment of \$247,309,480 for its centrally assessed property to the Office of Dispute Resolution. After discussions Puget Sound Energy, the Department agreed to a 2022 market value of \$234,944,003; the value was certified to the counties and Puget Sound Energy dismissed its appeal.