



GOVERNOR GREG GIANFORTE
DIRECTOR BRENDAN BEATTY

MEMORANDUM

TO: Revenue Interim Committee

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

DATE: June 24, 2024

SUBJECT: Department of Revenue Major Case Update

MONTANA SUPREME COURT

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. On September 27, 2023, the Supreme Court classified the matter for submission on briefs to a five-justice panel. The Department is awaiting the Court's decision.

STATE DISTRICT COURT

Strobhar v. State of Montana, MDOR, MDOR Director Brendan Beatty (official capacity), State Auditor Troy Downing (official capacity): Mr. Strobhar sued the

Department and Co-Defendants in Montana First Judicial District Court, regarding nonresident investment adviser representatives and securities salespersons annual registration fees, which the State Auditor administers pursuant to 30-10-209, MCA, which was amended in 2019 by House Bill 694 (HB 694). The Department filed an Answer to Plaintiff's First Amended Complaint and Demand for Jury Trial on April 4, 2024. On April 10, 2024, the Department and Co-Defendants filed their responses to Plaintiff's First Set of Discovery Requests. On May 1, 2024, the Court adopted a Civil Scheduling Order for the case, which sets the pretrial deadlines for the matter and contemplates trial in mid-2026. Discovery is currently on going.

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 also sued 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 December 8, 2023, the U.S. District Court issued its Order which granted summary judgment to the Blackfeet Nation, denied numerous Eagle Bear and third-party motions, and closed the matter. Since the Order's appeals deadlines have not concluded, the Montana District Court matter is still stayed.

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 has closed and briefing is currently underway. On March 8, 2024, both parties filed cross-motions for summary judgment. A hearing on the cross-motions is set for August 21, 2024.

Reeds v. MDOR: In July 2023, Tom and Jerry Reed sued the Department in the First Judicial District Court, challenging the residency requirements set forth in §16-12-203(2)(g), MCA, as applied to them, who are not residents of Montana. The Reeds seek declaratory and injunctive relief under the Montana Constitution, Art. II, Sections 3, 4, 17, as applied to them, claiming that the Department should be enjoined from denying them the opportunity to apply based on their residency status. On September 11, 2023, the District Court denied their motion for a preliminary injunction because the Reeds failed to establish that their "irreparable harm" is likely. The Court noted that the Reeds claims are conditional on the outcome of an action pending at the Department's Office of Dispute Resolution (ODR) against marijuana licensee Therapeutic Essentials, LLC. The Reeds admit that they invested in, and operate, Therapeutic Essentials' licenses, and the Department asserted that the licensee failed to properly disclose the Reeds and others and that the licensee unlawfully allowed the Reeds and others to possess the licensee without authorization. The Department filed a motion to dismiss the Reeds' action in District Court that has been fully briefed and is awaiting a decision.

On February 29, 2024, the ODR granted the Department's motion on summary judgment, which denied and revoked Therapeutic Essentials' licenses for allowing unauthorized persons to possess control of its licenses, for making false statements, and for not providing fingerprinting and background checks for individuals required to be background checked. The Department filed a Notice of Administrative Decision with the District Court and attached the Order Granting Summary Judgment.

Montana Sky Networks/Montana Sky West v. Montana Department of Revenue: Montana Sky Networks, Inc. ("MSN") and Montana Sky West, LLC, ("MSW") are telecommunications services providers who dispute their Class 13 classification and central assessment arguing that they are separate and distinct businesses and do not operate in more than one county or more than one state. Petitioners also dispute their central assessment as one operating unit. The Department contends it properly classified and centrally assessed MSN and MSW as one integrated operating unit. The matter has gone from informal review in the Department, through the Office of Dispute Resolution, and the current matter arises from a December 2022 Petition for Declaratory Judgment in the Nineteenth Judicial District Court in Lincoln County. Discovery for the matter has closed, cross-motions for summary judgment have been filed and fully briefed, and oral argument on the motions was held on January 2, 2024 in Libby.

MONTANA TAX APPEAL BOARD

MT Sun, LLC: MT Sun appealed a decision by the Yellowstone County Tax Appeal Board to the Montana Tax Appeal Board relating to the 2023 tax year. The underlying litigation concerns the assessed value of MT Sun's personal property. Discovery is ongoing. This dispute is scheduled for trial November 19-20, 2024.

Calumet Montana Refining, LLC: Calumet appealed the Cascade County Tax Appeal Board's November 13, 2023 decision upholding the Department's 2023 valuation to the Montana Tax Appeal Board and on May 17, 2024 also appealed the Cascade County Tax Appeal Board's April 29, 2024 decision upholding the Department's revised 2022 valuation. No hearing date for either matter has been scheduled at this time.

FEDERAL DISTRICT COURT

Reed v. MDOR: In July 2023, Tom and Jerry Reed, who are not residents of Montana, originally sued the Department and later amended their complaint to sue DOR Director Beatty in his official capacity. The Reeds claimed that the residency requirements violate the U.S. Constitution's Dormant Commerce Clause, art. I, § 8, cl. 3, and the Fourteenth Amendment Privileges and Immunities Clause, as applied to them, and that the Department should be enjoined from denying them the opportunity to apply based on their residency status. The Department raised similar arguments to those asserted in the related case pending in state District Court. The Department asserted the Reeds' claims are conditioned on the outcome of the administrative action pending at the Department's Office of Dispute Resolution (ODR) against marijuana licensee Therapeutic Essentials, LLC, and because the Reeds have not applied, any denial for licensures is hypothetical. In the administrative matter, the Department asserted that the licensee failed to properly disclose the Reeds and others and that the licensee unlawfully allowed the Reeds and others to possess the licensee without authorization, and relied on the Reeds' admissions that they invested in and operate Therapeutic Essentials licenses.

On February 29, 2024, the ODR granted the Department's motion on summary judgment, which denied and revoked Therapeutic Essentials' licenses for allowing unauthorized persons to possess control of its licenses, for making false statements, and for not providing fingerprints and background checks for individuals required to be background checked.

On March 26, 2024, the United State District Court for the District of Montana, Helena Division, granted the Department's Motion to Dismiss. The Court determined that the Reeds showed no imminent harm as required by the preliminary injunction standard,

but only “hypothetical threats of enforcement,” and thus, they failed to satisfy an “injury in fact” for standing purposes. The Court further determined that the Reeds’ suit was not ripe because “the injuries of which Plaintiffs complain are contingent upon ‘future events that may or may not occur.’

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 United States Court of Appeals for the Ninth Circuit (Ninth 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 Ninth Circuit heard oral argument on the appeal on January 10, 2024, in Pasadena, CA.

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 Motion to Intervene was denied on October 27, 2023.

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