

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.10.501, 42.10.505, and) PROPOSED AMENDMENT
42.10.506 pertaining to debtor)
appeals of department collections)

TO: All Concerned Persons

1. On November 18, 2021, at 9:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 29, 2021. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.10.501 DEFINITIONS The following definitions apply to terms found in this subchapter:

(1) remains the same.

(2) "Criteria for uncollectibility" means ~~the~~ an agency's written standards stating the collection methods that must occur in order for the agency to determine that the debt is uncollectible.

(3) "Form CB-1" means the department's Request for Informal Review form, which is available at the department's website at www.mtrevenue.gov, for use by a person to file a written objection with the department concerning the transfer of a debt to the department or the department's collection of a debt.

(4) "Form CB-2" means the department's Notice of Referral to the Office of Dispute Resolution form, which is available at the department's website at www.mtrevenue.gov, for use by a person to appeal an informal review determination to the department's Office of Dispute Resolution (ODR).

(3) and (4) remain the same but are renumbered (5) and (6).

AUTH: 15-1-201, 17-4-110, MCA

IMP: 15-1-211, 17-4-101, 17-4-104, 17-4-105, 17-4-106, 17-4-107, 17-4-108,

MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.10.501 to define new terms because the forms and notice are referenced throughout the rules subchapter, some of which are proposed for amendment in this rulemaking. Defining terminology improves taxpayer understanding of department requirements, business practices, and forms.

The department proposes to add 15-1-211, MCA, which pertains to the uniform dispute review procedure, as an implementing statute in compliance with 2-4-305, MCA.

42.10.505 DEBTOR APPEALS ON VALIDITY OF TRANSFER OF DEBT

(1) The department shall notify ~~the a~~ debtor that another agency has transferred ~~the a~~ debt to the department for collection services. The notice of transfer shall identify the debt and provide:

(a) through (c) remain the same.

(d) the debtor's appeal rights as set forth in (2) through (4).

(2) To object to the transfer of the debt from the agency to the department, the debtor must submit a written request stating the basis of the debtor's objection within 30 days of the date on the notice of transfer. Written objections may be submitted on Form CB-1, by letter sent through U.S. mail or other generally accepted delivery service, or as electronic mail to the department's email address provided on the notice of transfer. The objection must be postmarked or electronically date stamped within 30 days of the date on the notice of transfer. Failure to timely submit a written objection shall be deemed an admission that the debtor agrees that the debt stated in the notice of transfer is due and owing.

(3) The department shall review the objection and shall mail written notice to the debtor advising the debtor of the department's determination within 30 days after receipt of the objection. If the department concurs with the debtor's objection, the department will return the debt to the submitting agency. If the department disagrees with the debtor, the department shall explain the reasons for the disagreement, notify the debtor that the department's determination may be appealed to the Office of Dispute Resolution, and provide a copy of Form CB-2. The department shall also notify the debtor that the debtor must submit a Form CB-2 or other written objection to the department within 30 days of the date on the department's determination, and that the debtor will forfeit the right to a hearing if the debtor fails to submit Form CB-2 or other written objection within the 30-day period.

~~(2) (4) To request a hearing before the department on whether the transfer of the debt from the agency to the department was valid~~ If the debtor disagrees with the department's determination, the debtor must submit a Form CB-2 or other written request stating the basis of the debtor's objection within 30 days of the date on the notice of transfer department's determination to request a hearing before the Office of Dispute Resolution. Failure to timely submit a written request shall be deemed an admission that the debtor agrees that the debt stated in the notice of transfer is due and owing. Objections should be mailed to the Department of Revenue, Office of Dispute Resolution, P.O. Box 5805, Helena, Montana 59604 or e-mailed to dordisputeresolution@mt.gov. The objection must be postmarked or electronically date stamped within 30 days of the date on the department's determination. Failure

of the debtor to file a timely appeal shall be deemed an admission that the debtor agrees that the debt stated in the notice of transfer is due and owing.

(5) Deadlines may be extended if both parties agree.

(3) (6) Hearings conducted pursuant to this rule are limited to whether the transfer of the debt from the agency to the department was valid. The department shall not make any determination regarding the validity of the underlying debt. If the debtor's objection to the debt transfer includes a challenge to the validity of the underlying debt, the department may return the debt to the submitting agency. The debtor is not entitled to a hearing on the validity of the debt if the debt has been the subject matter of any proceeding to determine the validity of the debt and a decision made as a result of that proceeding has become final.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 15-1-211, 17-4-105, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.10.505 to incorporate an informal review process which affords a debtor the opportunity to review the debt transfer with a department employee. The rule amendment is necessary because, as currently written, the rule does not include the option for a debtor to request informal review as required by 15-1-211, MCA. The proposed process is substantially similar to the notice of assessment appeal process set forth in ARM 42.2.510.

The department proposes to add 15-1-211, MCA, which pertains to the uniform dispute review procedure, as an implementing statute in compliance with 2-4-305, MCA.

42.10.506 DEBTOR APPEALS ON DEPARTMENT'S COLLECTIONS

(1) The department shall notify the debtor when it identifies funds that may be subject to offset. The notice of offset shall:

~~(a) identify the debt and the funds held; and~~

~~(b) state inform the debtor that the department will hold the funds for 30 days pending receipt of a hearing request; an objection.~~

~~(c) inform the debtor of the right to request a hearing on the potential offset of the funds held;~~

~~(d) The notice shall also provide the department's contact information, including phone number and mailing address; and the debtor's appeal rights, as provided in (2) through (4).~~

~~(e) identify the methods for filing an objection to the offset.~~

~~(2) To request a hearing on the potential offset of the funds held, the debtor must submit a written request to the department stating the basis of the debtor's objection within 30 days of the date on the notice of offset.~~

~~(3) If the 30 days provided for in (2) expire without the debtor requesting a hearing, the department will apply the held funds to the debt.~~

(2) To object to the potential offset of funds held, the debtor must submit a written request stating the basis of their objection within 30 days of the date on the notice of transfer. Written objections may be submitted on Form CB-1, by letter sent through U.S. mail or other generally accepted delivery service, or as electronic mail

to the department's email address provided on the notice of transfer. The objection must be postmarked or electronically date stamped within 30 days of the date on the notice of offset. If the debtor fails to timely submit a written objection, the department will apply the held funds to the debt.

(3) The department shall review the objection and shall mail written notice to the debtor advising them of the department's determination within 30 days after receipt of the objection. If the department concurs with the debtor's objection, the department will release the held funds to the debtor. If the department disagrees with the debtor, the department shall explain the reasons for the disagreement, notify the debtor that the department's determination may be appealed to the Office of Dispute Resolution, and provide a copy of Form CB-2. The department shall also notify the debtor that the debtor must submit a Form CB-2 or other written objection to the department within 30 days of the date on the department's determination, and that the debtor will forfeit the right to a hearing if the debtor fails to submit Form CB-2 or other written objection within the 30-day period.

(4) If the debtor disagrees with the department's determination, the debtor must submit a Form CB-2 or other written objection within 30 days of the date on the department's determination to request a hearing before the Office of Dispute Resolution. Objections should be mailed to the Department of Revenue, Office of Dispute Resolution, P.O. Box 5805, Helena, Montana 59604 or e-mailed to dordisputeresolution@mt.gov. The objection must be postmarked or electronically date stamped within 30 days of the date on the department's determination. If the debtor fails to timely submit a written objection, the department will apply the held funds to the debt.

(5) Deadlines may be extended if both parties agree.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 15-1-211, 17-4-105, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.10.506 to incorporate an informal review process which affords a debtor the opportunity to review the collection action with a department employee. The rule amendment is necessary because, as currently written, the rule does not include the option for a debtor to request informal review as required by 15-1-211, MCA. The proposed process is substantially similar to the notice of assessment appeal process set forth in ARM 42.2.510. The department proposes to add 15-1-211, MCA, which pertains to the uniform dispute review procedure, as an implementing statute in compliance with 2-4-305, MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., November 22, 2021.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 12, 2021.