

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.2.510 pertaining to the)
extension of deadlines for a taxpayer)
to appeal an audit determination or a)
final determination)

TO: All Concerned Persons

1. On July 22, 2022, the Department of Revenue published MAR Notice No. 42-1057 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1289 of the 2022 Montana Administrative Register, Issue Number 14.

2. On August 15, 2022, the department held a public hearing to consider the proposed adoption. The only attendee at the hearing was Robert Story, Executive Director of the Montana Taxpayers Association. The department also received written comments from James C. Wangerin, CPA.

3. The department has amended ARM 42.2.510 as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Story provided commentary in support of the rulemaking because it improves procedural deadlines for taxpayer appeals with the department and increases the equity of outcomes especially if the department fails to adhere to procedural deadlines.

RESPONSE 1: The department thanks Mr. Story for his valuable input to this rulemaking.

COMMENT 2: Mr. Wangerin contends that the department has not been complying with the intent of the legislature that after informal review, the department must send a notice of determination within the statute's three-year deadline. Mr. Wangerin requests the department amend ARM 42.2.510 to provide " . . . if the Department fails to issue a Notice of Determination within the original statute of limitations, and an extension has not been previously agreed to between the parties, the tax return shall be accepted as originally filed."

Mr. Wangerin also provided additional commentary from his litigation with the department, which is currently pending before the Montana Supreme Court.

RESPONSE 2: Mr. Wangerin asks the department to adopt arguments he makes in an unrelated, and pending, Montana Supreme Court appeal that he

initiated and cites his briefing when making this request. The Montana Supreme Court is the appropriate forum to resolve Mr. Wangerin's concerns, and the department declines to adopt his request. Moreover, Mr. Wangerin's request is beyond the scope of the rulemaking.

The amendments are designed to bring equity to the appeal process by requiring the department timely respond to a taxpayer's request for informal review. If the department fails to timely respond, there are stronger consequences for that failure. This rule change is intended to encompass only those issues that the taxpayer specifically raises with the department and where the department fails to issue a timely response because the taxpayer may agree with the department's audit findings in some cases but not on others.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart for
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 30, 2022.