

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.23.802 and 42.23.805 ) PROPOSED AMENDMENT  
pertaining to the carryforward and )  
carryback provisions of corporate net )  
operating losses )

TO: All Concerned Persons

1. On November 2, 2017, at 1 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception 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 hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, contact the department no later than 5 p.m. on October 23, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, 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 lalogan@mt.gov.

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

42.23.802 CARRYOVERS OF NET OPERATING LOSSES (1) A For taxable periods beginning before January 1, 2018, a net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding taxable period, then to the first preceding taxable period, and then forward to the next seven succeeding taxable periods in the order of their occurrence.

(2) For taxable periods beginning after December 31, 2017, a net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding taxable period, then to the first preceding taxable period, and then forward to the next ten succeeding taxable periods in the order of their occurrence. A net operating loss carryback provided in this subsection may not exceed \$500,000 per taxable period.

(2) remains the same, but is renumbered (3).

~~(3)~~(4) The taxable income as modified by the adjustments shown in ~~(2)~~(3) shall not be considered to be less than zero. The amount of the net operating loss which may be carried forward is the excess of the loss over the modified net income.

~~(4)~~(5) For taxable periods beginning after December 31, 1988, a taxpayer may elect to forgo the entire carryback period. Montana corporate income tax Form CIT provides an area to perfect this election. When Form CIT is filed with the department,

the election must be clearly marked in the area provided on that form. If no indication is made in the area provided on Form CIT, the net operating loss will be carried back and applied as provided in (1) and (2). For state purposes, an election to forgo a federal net operating loss carryback provision will not be accepted as a valid election.

AUTH: 15-31-501, MCA

IMP: 15-31-119, MCA

REASON: The department proposes amending ARM 42.23.802 to properly implement House Bill 550, L. 2017, which changed the carryforward period for net operating losses for corporate income tax purposes from seven years to ten years for tax years beginning after December 31, 2017, and also limited the amount of net operating loss allowed to be carried back to \$500,000 per taxable period for taxable periods beginning after December 31, 2017. Therefore, the department proposes adding language in (1) to separately provide for tax years that began prior to this change, and proposes adding language in new (2) to include the provisions that will begin after January 1, 2018. The remainder of the rule and internal section references are proposed to be renumbered accordingly, to accommodate the new language.

42.23.805 TREATMENT OF NET OPERATING LOSSES SPANNING A CHANGE IN REPORTING METHODS (1) remains the same.

(2) A corporation that makes a valid water's-edge election or does not renew a prior election is agreeing that unused net operating loss carryover from a water's-edge year may only be carried to a water's-edge year, and unused net operating loss carryover from a non-water's-edge year may only be carried to a non-water's-edge year. When applying the three-year carry-back, and seven-year or ten-year carry-forward limitations, provided for in 15-31-119, MCA, all taxable periods are included, even though the loss can only be deducted in those periods in which the filing method is the same.

(3) through (4) remain the same.

AUTH: 15-31-313, 15-31-501, MCA

IMP: 15-31-119, MCA

REASON: The department proposes amending ARM 42.23.805 to properly implement House Bill 550, L. 2017, which changed the carryforward period for net operating losses for corporate income taxes from seven years to ten years for tax years beginning after December 31, 2017, by updating the language in (2) to add the ten-year carryforward provision into the rule.

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: Laurie Logan, 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 lalogan@mt.gov and must be received no later than November 13, 2017.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this 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 that 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 a 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 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 [revenue.mt.gov/rules](http://revenue.mt.gov/rules), or through the Secretary of State's web site at [sos.mt.gov/ARM/register](http://sos.mt.gov/ARM/register).

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 550, L. 2017, Representative Jeff Essmann, was contacted by regular mail on June 14, 2017 and September 14, 2017.

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. Documentation of the department's determination is available at [revenue.mt.gov/rules](http://revenue.mt.gov/rules) or upon request from the person in 4.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Mike Kadas  
Mike Kadas  
Director of Revenue

Certified to the Secretary of State October 2, 2017.