

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 42.4.403, 42.4.502, 42.4.1702, 42.4.2301, 42.4.2302, 42.4.2303, 42.4.2704, 42.4.2802, and 42.4.4115, and the repeal of ARM 42.4.601, 42.4.602, 42.4.603, 42.4.702, 42.4.703, 42.4.2402, 42.4.2403, 42.4.2404, 42.4.2501, 42.4.2502, 42.4.2503, 42.4.3301, 42.4.3302, 42.4.3303, 42.4.3304, 42.4.3305, and 42.4.3306 pertaining to tax credits) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 12, 2017, at 3 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 adoption, amendment, and repeal 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 2, 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 rule as proposed to be adopted provides as follows:

NEW RULE I APPLICATION OF CREDITS AGAINST CORPORATE INCOME TAX LIABILITY (1) Only the corporation that earned the tax credit may claim that credit against its own corporate income tax liability. A corporation earns a tax credit if it is the entity that made the qualifying investment or expenditure to generate the applicable tax credit.

(2) Except as provided for in 15-32-508, MCA, in the case of a merger or consolidation, if a credit is earned by a corporation that is no longer in existence the credit may not be claimed against the tax liability of the surviving corporation.

(3) Except as provided for in 15-32-508, MCA, in the case of a corporate entity that has converted to a disregarded entity, any credit earned by the entity prior to the conversion may not be claimed against the tax liability of another entity.

(4) As provided in (1), tax credits are applied on a separate entity basis. A tax credit may not be transferred, assigned, or otherwise used to reduce the tax liability of any other corporation, even if that other corporation is a member of the same unitary business group as the corporation that earned the credit.

AUTH: 15-31-501, MCA

IMP: 15-30-2320, 15-30-2326, 15-30-2380, 15-31-125, 15-31-130, 15-31-131, 15-31-132, 15-31-134, 15-31-150, 15-31-151, 15-31-161, 15-31-171, 15-32-115, 15-32-402, 15-32-503, 15-32-602, 15-32-701, 15-32-703, 15-50-207, 17-6-316, MCA

REASON: The department is seeing more corporate reorganizations in recent years and seeks to be transparent in providing guidance to taxpayers on how credits are tracked and applied. Therefore, the department proposes adopting New Rule I to provide detailed guidance to taxpayers regarding the application of income tax credits to their corporate income tax liability. The rule is intended to be informational and is not a change in the department's long-standing practices.

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

42.4.403 COMPUTATION OF CREDIT FOR TAX PAID TO ANOTHER STATE OR COUNTRY (1) through (3) remain the same.

(4) Examples of how to calculate these credits paid to another state or country are outlined in (a) through (c):

(a) Example 1 - Taxpayer, a full-year Montana resident, sold real property in State X in ~~2008~~ 2017. State X does not provide nonresidents a credit for income earned in that state if that income is taxable in another state. In ~~2009~~ 2018, the taxpayer was legally required to, and did, file a ~~2008~~ 2017 State X income tax return reporting the transaction and paying State X an income tax of \$700. The taxpayer's \$5,000 gain on the sale of the State X property was included in the taxable income reported on the ~~2008~~ 2017 Montana income tax return. The taxpayer's ~~2008~~ 2017 Montana income tax liability was \$3,400. The taxpayer's total ~~2008~~ 2017 Montana AGI was \$23,000, which included the \$5,000 gain on the sale of property in State X. The amount of credit the taxpayer may claim against the ~~2008~~ 2017 Montana income tax liability is \$700, the smaller of the amounts in (i) through (iii):

(i) through (iii) remain the same.

(b) Example 2 - Taxpayer, a full-year Montana resident, was a shareholder in an S corporation that was engaged in banking in State X in ~~2009~~ 2017. State X does not allow S corporations engaged in financial businesses to elect state-level S corporation treatment and imposes a tax on them measured by net income. The following represents what occurred:

(i) The S corporation was required to and did file a ~~2009~~ 2017 income tax return with State X in ~~2010~~ 2018 and paid a tax measured by its net income of \$132,000, \$121,000 by estimated payments made in ~~2009~~ 2017 and the balance of \$11,000 in ~~2010~~ 2018 when it filed its ~~2009~~ 2017 return;

(ii) The S corporation paid \$15,000 tax to State X for tax year ~~2008~~ 2016 when it filed its ~~2008~~ 2016 return in ~~2009~~ 2017. The S corporation's non-separately

stated and separately stated items for tax year ~~2009~~ 2017 were as follows, of which the Montana resident shareholder's share was 10% percent:

(A) An ordinary income of \$2,000,000 from banking business includes a deduction of \$136,000 for State X taxes paid in ~~2009~~ 2017, \$121,000 for estimated payments in ~~2009~~ 2017, and \$15,000 for ~~2008~~ 2016 taxes paid in ~~2009~~ 2017;

Tax exempt interest income	\$1,200,000
Ordinary dividends	300,000

(B) The taxpayer's total ~~2009~~ 2017 Montana AGI was \$500,000, which included 10% percent of the S corporation's ordinary dividends, or \$30,000, and 10% percent of the ordinary income from its banking business, or \$200,000;

(C) The shareholder's \$200,000 share of the S corporation's ordinary income from its business was reduced by the shareholder's share of the S corporation's deduction for \$136,000 income taxes paid to State X in ~~2009~~ 2017, or by \$13,600 (had the shareholder paid the shareholder's 10% percent share of the State X's taxes rather than the S corporation, the shareholder's 10% percent pro rata share of the S corporation's ordinary income for ~~2009~~ 2017 would have been \$213,600);

(D) The shareholder's 10% percent share of the S corporation's tax-exempt interest, or \$120,000, is exempt from Montana individual income tax but is subject to tax by State X; and

(E) Assume the taxpayer's ~~2009~~ 2017 Montana tax liability would be \$50,000 if the credit were not claimed;

(iii) The taxpayer calculates the Montana income tax liability and the amount of credit the taxpayer may claim against the ~~2009~~ 2017 income tax liability as follows:

(A) remains the same.

(B) The taxpayer's pro rata share of the tax reported and paid to State X by the S corporation for ~~2009~~ 2017 (\$13,200) is multiplied by the proportion of the taxpayer's pro rata share of the S corporation income taxed in State X that is not exempt in Montana (\$230,000) to the taxpayer's pro rata share of the amount of income that is taxable in State X, including income that is exempt in Montana (\$350,000):

Ordinary income from banking operations	\$200,000
Ordinary dividends	30,000
S corporation income exempt from Montana tax	120,000

Taxpayer's share of income tax reported and paid to State X on income that is not exempt in Montana:

$$\$13,200 \times \$230,000 / \$350,000 = \$8,674$$

(C) through (c) remain the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-124, MCA

REASON: The department proposes amending ARM 42.4.403 to update the

tax years in the examples in (4) with more current tax years and to replace the % symbol with "percent," where applicable, to correct the format of the language in that section. No substantive changes are being proposed for the rule at this time and the changes that are being proposed are unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.502 CAPITAL GAIN CREDIT (1) ~~For the applicable tax years shown below, an individual may claim a credit against their Montana individual income tax of up to 1% of their net capital gain. For tax years beginning after December 31, 2006, an An~~ individual may claim a credit against their Montana individual income tax of up to 2% percent of their net capital gain. The credit is based on the net capital gain as shown on the individual's Montana individual income tax return. Spouses who file a joint return for federal income tax purposes but a separate return for Montana income tax and who elect to claim the same amount of capital loss deduction as shown on their joint federal income tax return as provided in 15-30-2110, MCA, ~~for tax years beginning after December 31, 2006,~~ must compute the capital gain credit consistently. The credit is nonrefundable and may not be carried back or carried forward to any other tax year. The credit must be applied before any other credit.

(2) remains the same.

(3) For an estate or trust filing a form Form FID-3, Montana fiduciary return, the credit is calculated on the net capital gains reported minus any net capital gains distributed to any beneficiary.

(4) Married taxpayers filing separately must compute and report their capital gains and losses as provided in ARM 42.15.206. ~~For tax years beginning after December 31, 2006, spouses who have filed a joint federal return and are filing a separate Montana return, may not, except as provided in (5), calculate the credit based on their separate gains and losses, but must net gains and losses and calculate the credit on the net capital gain shown on their joint federal return, allocating the resulting credit between them.~~

(5) ~~For tax years beginning after December 31, 2008, spouses~~ Spouses may elect to report all of their capital gains and losses separately for the current and future tax years. An election is made by claiming a capital gains credit calculated on a net capital gain amount that is different from the net capital gain shown on the taxpayer's joint federal income tax return, or claiming a capital loss deduction that is greater than the amount that would be allowed for federal income tax purposes if the taxpayer had filed a separate federal income tax return.

(6) The following are examples of how the credit is applied:

(a) ~~Example: For tax year 2005, John and Barbara file a joint 2005 federal income tax return reporting \$5,000 of net capital gain. John's income consists of \$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and losses as provided in ARM 42.15.206. John may claim a capital gain credit of up to \$80 against his Montana income tax. Barbara is not entitled to claim any credit against her tax.~~

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
Wages	\$85,000	\$50,000	\$35,000
Sch. D capital gain (loss)	\$ 5,000	\$ 8,000	(\$ 3,000)
Fed. adjusted gross income	\$90,000	\$58,000	\$32,000
Montana adjustment for capital loss limit			\$ 1,500
Montana adjusted gross income	\$91,500	\$58,000	\$33,500
Capital loss carryover			(\$ 1,500)

(b) Example: For tax year 2006, John, a single Montana resident with \$1,300 of net capital gain, is entitled to an elderly homeowner credit of \$500. His Montana tax, before credits, is \$400. He may claim the \$13 capital gain credit before determining the amount of his refundable elderly homeowner tax credit.

Montana tax before credits	\$ 400
Capital gain credit	<u>(\$ 13)</u>
Montana tax after capital gain credit	\$ 387
Elderly homeowner credit	<u>(\$ 500)</u>
Refund	\$ 113

(c) Example: For tax year 2006, Mary has wages of \$80,000 and has \$50,000 of net capital gain, \$30,000 of which was realized from an investment in a small business investment corporation that is exempt from Montana income tax as provided in 15-33-106, MCA. Mary is entitled to a capital gain credit of \$200, 1% of the \$20,000 net capital gain included in her Montana adjusted gross income.

(d) Example: For tax year 2006, Patrick, a nonresident, has wages of \$50,000, net capital gain of \$8,000, and a distributive share of \$10,000 of ordinary income from an S corporation. In this example, the \$10,000 ordinary income from the S corporation is Montana source income. The wages and capital gain are not Montana source income. Assume that his Montana tax, computed as if he were a resident, on his taxable income after Montana exemptions, exclusions, and deductions, is \$3,000. The capital gain credit of \$80 is applied against the tax determined as if he were a resident.

Montana tax determined as if resident	\$3,000
Capital gain credit	<u>(\$ 80)</u>
Tax to which nonresident ratio applied	\$2,920
Ratio of Montana source income to income from all sources (\$10,000/\$68,000)	.147
Montana tax (\$2,920 x .147)	\$ 429

(e) Example: For tax year 2007, John and Barbara file a joint 2007 federal income tax return reporting \$5,000 of net capital gain. John's income consists of \$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and

losses as provided in ARM 42.15.206. John may claim a capital gain credit of up to \$160 (\$8,000 x 2%) against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
Wages	\$85,000	\$50,000	\$35,000
Sch. D capital gain (loss)	\$ 5,000	\$ 8,000	\$(3,000)
Fed. adjusted gross income	<u>\$90,000</u>	<u>\$58,000</u>	<u>\$32,000</u>
Montana adjusted gross income	\$90,000	\$58,000	\$32,000

(f)(a) Example: For tax year ~~2009~~ 2017, John and Barbara file a joint ~~2009~~ 2017 federal income tax return reporting \$2,000 of net capital gain. John's income consists of \$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$6,000 of net capital loss. If they file separately rather than jointly for Montana, unless they elect to separately report their capital gains and losses for this and future years as provided in (5), their capital gain credit is 2% percent of their net capital gain of \$2,000, or \$40.

(g)(b) Example: Assume the same facts as the example in (f)(a) except that the spouses do elect to separately report their capital gains and losses as provided in ~~subsection~~ (5). John may claim a capital gain credit of up to \$160 (\$8,000 x 2%) against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
Wages	\$85,000	\$50,000	\$35,000
Sch. D capital gain (loss)	\$ 2,000	\$ 8,000	\$(6,000)
Fed. adjusted gross income	\$87,000	\$58,000	\$32,000
Montana adjustment for capital loss limit			\$ 4,500
Montana adjusted gross income	\$94,500	\$58,000	\$36,500
Montana capital loss carryover			(\$ 4,500)

AUTH: 15-30-2618, MCA

IMP: 15-30-2104, 15-30-2106, 15-30-2301, MCA

REASON: The department proposes amending ARM 42.4.502 to remove language and examples throughout the rule that pertained to calculating the capital gain credit for tax years beginning prior to December 31, 2008, because it is outdated, it pertains to tax years that are at least eight years in the past, and it is unlikely there are many taxpayers that would still require this type of detailed guidance by rule. Information about the capital gain tax credit for earlier tax years will always remain available to the occasional taxpayer who needs it by contacting the department directly.

The department further proposes capitalizing a word in (3) and updating the tax years used in the two remaining examples in (6) with more current tax years. No other changes are being proposed for the rule at this time and the changes that are being proposed are unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.1702 CREDIT FOR TEMPORARY EMERGENCY LODGING (1) The owner or operator of an establishment in Montana that is licensed by the Montana Department of Public Health and Human Services (DPHHS) to provide lodging may claim the credit described in (2) against the taxes imposed in 15-30-2103, or 15-31-101, MCA, for furnishing temporary lodging in Montana, at no cost, to an individual who has been referred by a DPHHS designated charitable organization because the individual is in ~~temporary immediate danger from an assault or potential assault by a partner or family member~~ immediate need of shelter based on an imminent or existing threat to the safety or security of the individual or family. Additional information regarding the program is available at www.dphhs.mt.gov/publichealth/fcs/emergencylodging.shtml dphhs.mt.gov/publichealth/FCSS/PublicAccommodations/emergencylodging.aspx.

(2) The amount of credit is \$30 for each night, up to five nights, of gratis lodging provided to a referred individual or family during a calendar year. The credit must be claimed by the person that owns or operates the licensed establishment in the Montana tax return or report that includes the establishment's lodging receipts for the period during which the creditable lodging was provided. If the credit is claimed by an entity taxed as an S corporation or partnership, the credit must be attributed to shareholders or partners in the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes. The credit is "refundable," and if the amount of the credit exceeds the taxpayer's liability, if any, under 15-30-2103, or 15-31-101, MCA, for the period during which the creditable lodging was provided, the excess will be refunded to the taxpayer.

(3) The credit is \$30 per night ~~regardless of the number of individuals in the room~~ for each referred individual or family. For example, if two people or two families are provided lodging in the same room for three nights, the amount of the credit is \$90 (three nights of lodging multiplied by \$30 per night).

(4) When applying the limitation of five nights' lodging under 15-30-2381 and 15-31-171, MCA, each individual or family is treated as having been provided one night of lodging even if two or more referred individuals or families share a room for one night. An establishment may offer a referred individual or family more than five night's emergency lodging during a calendar year, but only the first five nights qualify for the credit.

(5) The room must be provided at no cost to either the individual, family, or the referring organization.

(6) The credit must be claimed on Form ~~TELG~~ ELC, Temporary Emergency Lodging Credit.

(7) through (9) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA

IMP: 15-30-2103, 15-30-2381, 15-31-101, 15-31-102, 15-31-171, MCA

REASON: The department proposes amending ARM 42.4.1702 due to the passage of Senate Bill (SB) 175, L. 2015, which expanded the temporary emergency lodging credit to include families as well as individuals.

The term "family" or "families" is proposed to be inserted into the language of the rule where applicable and the word "temporary" is proposed to be stricken from the title of the rule and also from the title of the associated form used to report the credit in (6), to correspond with this change in the law enacted by SB 175.

Additionally, the department proposes updating a web site address in (1) and adding language to (4) to make it clear that the limitation referred to in this section specifically pertains to the number of nights' lodging eligible for the credit.

42.4.2301 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Agreement" means the contract for participation entered into between the Montana Department of Fish, Wildlife and Parks (FWP) and the landowner(s) for purposes of guaranteeing access to state public land under the unlocking state public lands program.

(2) "Tax certification number" means the number issued by FWP certifying that the landowner is providing qualified access to state public land under the unlocking state public lands program provided for in 87-1-294, MCA.

AUTH: 15-1-201, MCA

IMP: 15-30-2380, 87-1-294, MCA

REASON: Senate Bill 309, L. 2015, expanded the credit for unlocking isolated land to include access to federal land as well as state land. Therefore, the department proposes amending ARM 42.4.2301 to replace the word "state" with "public," where applicable, within the terms defined in the rule to align the rule content with the change in the statute. The department further proposes adding the identifier "Montana" to the title of Fish, Wildlife and Parks, in (1).

42.4.2302 CLAIMING THE UNLOCKING STATE PUBLIC LANDS TAX CREDIT (1) To claim the unlocking state public lands tax credit, a taxpayer shall file a Montana tax return (Form 2 for individuals, Form FID-3 for estates and trusts, or Form CIT for C corporations), whether or not they are otherwise required to file a tax return for the year the credit is being claimed.

(2) remains the same.

(3) A taxpayer who files a tax return on a fiscal year basis shall claim the credit for the tax year in which the agreement was certified by FWP the Montana Department of Fish, Wildlife and Parks.

(4) and (5) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-30-2380, 87-1-294, MCA

REASON: Senate Bill 309, L. 2015, expanded the credit for unlocking

isolated land to include access to federal land as well as state land. Therefore, the department proposes amending ARM 42.4.2302 to replace the word "state" with "public" in the title of the rule, and in (1) to align the rule content with the change in the statute. The department further proposes replacing the acronym FWP in (3) with the full name of the agency to properly format the rule language. The acronym is not previously identified or further used in the rule.

42.4.2303 ALLOCATION OF CREDIT FOR ACCESS THROUGH LAND WITH MULTIPLE OWNERS AND LAND OWNED BY PASS-THROUGH ENTITIES

(1) For purposes of calculating the tax credit permitted by the unlocking ~~state~~ public lands program, parcels held wholly or in part by an entity disregarded for tax purposes shall be treated as owned by the entity's owner or owners. For example, a parcel held in the name of a single-member limited liability company that is disregarded for tax purposes shall be considered as owned by the sole member, or sole member and spouse, if applicable.

(2) and (3) remain the same.

(4) A partnership that is entitled to the credit may allocate the total credit in a manner that is mutually agreeable to its partners. Evidence of such an allocation may include, but is not limited to, Montana ~~Schedule(s)~~ Schedules K-1, terms of the partnership agreement that are specific to this credit, or a separate agreement between the partners regarding the allocation of this credit. If evidence of the allocation is not provided to the department upon request, or if the information provided is deficient, the total credit must be allocated to the partners in the same manner the partnership allocated its income and losses to its owners for Montana income tax purposes.

AUTH: 15-1-201, MCA

IMP: 15-30-2380, 87-1-294, MCA

REASON: Senate Bill 309, L. 2015, expanded the credit for unlocking isolated land to include access to federal land as well as state land. Therefore, the department proposes amending ARM 42.4.2303 by replacing the word "state" with "public" in (1) to align the rule content with the change in the statute. The department also proposes removing the parentheses from the word "schedule(s)" in (4) because parentheses are not applicable to use in the context of this sentence in that section.

42.4.2704 TAX CREDIT AND DEDUCTION LIMITATIONS (1) through (3)(a) remain the same.

(b) Example of an allowable deduction when ~~and~~ an outright gift is used for the Qualified Endowment Credit:

<u>Time Period</u>	<u>Market Value</u>	<u>Maximum Credit</u>	<u>Credit Percentage</u>	<u>Allowable Deduction</u>
7/1/03 - 12/31/19	\$55,000 -		$(\$10,000 / .20) =$	\$5,000

(4) through (6) remain the same.

(7) The rate a beneficiary will use to calculate their credit for an allowable contribution passed to them by an estate will be based on the nature of the gift made by the estate. For example, if an estate makes an outright gift to a qualified endowment on July 17, ~~2012~~ 2017, and the contribution is passed to a beneficiary, the beneficiary will calculate their credit using the 20 percent rate.

(8) remains the same.

(9) The maximum credit that may be claimed in a tax year by any donor for allowable contributions from all sources is limited to the maximum credit stated in (1) and (2). In the case of a married couple that makes a joint contribution, the contribution is assumed split equally. If each spouse makes a separate contribution, each may be allowed the maximum credit as stated in (1) and (2).

(a) Example 1: Assume a married couple makes a joint planned gift to a qualified endowment on September 1, ~~2012~~ 2017. The allowable contribution made by the couple is \$30,000. That couple is eligible to take a credit of up to \$12,000, with each claiming a credit of \$6,000.

(b) Example 2: Assume a married couple makes separate planned gifts to qualified endowments on September 1, ~~2012~~ 2017, which result in an allowable contribution of \$20,000 for each person. They each would be eligible to take a credit of up to \$8,000.

(10) remains the same.

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, MCA

REASON: The department proposes amending ARM 42.4.2704 to update the tax years used in the examples throughout the rule with more current tax years, and to make a grammatical correction in (3)(b). No substantive changes are being proposed for the rule at this time and the changes that are being proposed are unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.2802 HEALTH INSURANCE FOR UNINSURED MONTANANS CREDIT

~~(1) Montana law provides two different tax credits for health insurance purchased by employers for employees. A program administered by the commissioner of insurance, and referred to as the Insure Montana Credit, provides incentives, including a refundable tax credit provided in 15-30-2368 and 33-22-2006, MCA, for eligible, prequalified small employers. The rules related to that program are located in ARM Title 6, chapter 6, subchapter 52. No tax form is required to claim the preauthorized, refundable credit. Rather, the prequalified employers claim it as a line item on their individual income or corporate income tax return or, if they are taxed as an S corporation or partnership, they report it as a line item on their information returns and the pass-through entity owners claim their part as a line item on their individual income tax or corporate income tax returns, including a copy of the certificate issued by the Montana State Auditor's Office, verifying the amount of the credit.~~

~~(2)~~(1) The rules in this subchapter apply to a second credit, referred to as the Health Insurance for Uninsured Montanans Credit, provided in ~~15-30-2367 and 15-~~

~~31-132, MCA. The credit under 15-30-2367, MCA, against individual income tax, and 15-31-132, MCA, against corporate income tax, is subject to specific conditions and limitations listed in 15-31-132, MCA. It is not refundable, and any unused credit amount may not be carried over to another tax year. An employer cannot claim both the small employer credit provided in Title 33, chapter 22 and the Title 15, chapter 30 and 31, MCA tax credit.~~

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

~~(4)~~(3) The credit may not be claimed for a period of more than 36 consecutive months that begins with the first month for which the credit is claimed. The credit may be claimed for any month qualifying insurance is provided during the 36-month period even if the employer either stops paying for insurance or does not claim the credit for other months. For example, company XYZ provides qualifying insurance for its employees from January 1, ~~2009~~ 2017, until December 31, ~~2009~~ 2017, but then stops paying in ~~2010~~ 2018. The employer is eligible to claim the credit through ~~2011~~ 2019 if it starts covering its employees again in ~~2011~~ 2019.

~~(5)~~(4) For ten years after the last payment within the 35 months following the first month for which the credit is claimed, the employer or the employer's successor is ineligible to claim the credit. The 10-year period of ineligibility expires sooner if the credit is not claimed for the full 36-month period. For example, company ABC provides qualifying insurance for its employees from January 1, ~~2009~~ 2017 until December 31, ~~2010~~ 2018. The employer, or its successor, is eligible to claim the credit again January 1, ~~2021~~ 2029.

(6) through (10) remain the same, but are renumbered (5) through (9).

AUTH: 15-31-501, MCA

IMP: 15-30-2367, ~~15-30-2368~~, 15-31-132, 33-1-207, MCA

REASON: The department proposes amending ARM 42.4.2802 due to the passage of House Bill (HB) 137, L. 2017, which repealed the credit provided in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool (also known as the Insure Montana Credit) and the related statute, 15-30-2368, MCA.

To align the rule with the changes enacted by HB 137, the department proposes striking (1) to remove the language which describes the Insure Montana Credit and revising the language in (2) to remove the repealed statute and language rendered outdated and unnecessary by the change in the statute. Section (2) and subsequent sections are proposed to be renumbered to accommodate the amendments. Additionally, the department proposes updating the examples in newly numbered (3) and (4) with current tax years.

42.4.4115 PROPERTY TAX EXEMPTION FOR LAND ADJACENT TO TRANSMISSION LINE RIGHT-OF-WAY OR EASEMENT (1) and (2) remain the same.

(3) The application will be forwarded to the department's Property Assessment Division (PAD) office in Helena referred to as the "central office." The PAD central office will process the application and determine if the property meets the requirements of exemption.

(4) The central office will issue a letter indicating whether the application for exemption has been granted or denied and provide a copy of the letter to the applicant, the local county office, and the Business and Income Taxes Division (BITD).

(5) remains the same.

AUTH: 15-24-3116, MCA

IMP: 2-15-1763, 15-6-229, MCA

REASON: The department proposes amending ARM 42.4.4115 to insert the acronym PAD in the second sentence of (3) as an identifier. The department also proposes inserting missing words in the division title name in (4) as a grammatical correction and removing the acronym BITD from that sentence, because it is not further used in the rule. No substantive changes are being proposed for the rule at this time and the changes that are being proposed are unrelated to any new legislation being addressed in this same rulemaking notice.

5. The department proposes to repeal the following rules:

42.4.601 DEFINITIONS

AUTH: 15-30-2620, MCA

IMP: 15-30-2154, 15-30-2370, MCA

REASON: The department proposes repealing ARM 42.4.601 because the rural physician's credit provision it provides for expired as of December 31, 2010. The credit was allowed only in the first four years the physician opened a rural practice, and tax year 2013 was the last tax year this credit may have been claimed. Therefore, the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation proposed to be implemented in this same rulemaking notice.

42.4.602 RURAL PHYSICIAN'S CREDIT – QUALIFICATIONS – LIMITATIONS

AUTH: 15-30-2372, MCA

IMP: 15-30-2370, 15-30-2371, MCA

REASON: The department proposes repealing ARM 42.4.602 because the rural physician's credit provision it provides for expired as of December 31, 2010. The credit was allowed only in the first four years the physician opened a rural practice and tax year 2013 was the last tax year this credit may have been claimed. Therefore, the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation proposed to be implemented in this same rulemaking notice.

42.4.603 RURAL PHYSICIAN'S CREDIT - REPAYMENT

AUTH: 15-30-2372, MCA

IMP: 15-30-2371, MCA

REASON: The department proposes repealing ARM 42.4.603 because the rural physician's credit provision it provides for expired as of December 31, 2010. The credit was allowed only in the first four years the physician opened a rural practice, and tax year 2013 was the last tax year this credit may have been claimed. Therefore, the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.702 QUALIFYING FOR THE PROPERTY TAX CREDIT UNDER 15-30-2336, MCA

AUTH: 15-1-201, 15-30-2104, 15-30-2636, MCA

IMP: 15-1-201, 15-30-2636, MCA

REASON: The department proposes repealing ARM 42.4.702 because it is no longer applicable with the passage of Senate Bill 10, L. 2017, which repealed the refundable income tax credit provision provided for under 15-30-2336, MCA.

42.4.703 CALCULATION OF THE REFUNDABLE INDIVIDUAL INCOME TAX CREDIT UNDER 15-30-2336, MCA

AUTH: 15-30-2336, MCA

IMP: 15-6-134, 15-6-222, 15-30-2336, MCA

REASON: The department proposes repealing ARM 42.4.703 because it is no longer applicable with the passage of Senate Bill 10, L. 2017, which repealed the refundable income tax credit provision provided for under 15-30-2336, MCA.

42.4.2402 INSURE MONTANA REFUNDABLE CREDIT

AUTH: 15-30-2104, MCA

IMP: 15-30-2368, 33-22-2006, 33-22-2007, MCA

REASON: The department proposes repealing ARM 42.4.2402 because it is no longer applicable with the passage of House Bill 137, L. 2017, which repealed the credit provided for in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool (also known as the Insure Montana Credit), and the related statute, 15-30-2368, MCA.

42.4.2403 REDUCTION OF DEDUCTIONS ALLOWED FOR INSURANCE CLAIMS

AUTH: 15-30-2104, MCA

IMP: 15-30-2368, 15-31-130, 33-22-2006, 33-22-2007, MCA

REASON: The department proposes repealing ARM 42.4.2403 because it is

no longer applicable with the passage of House Bill 137, L. 2017, which repealed the credit provided for in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool (also known as the Insure Montana Credit), and the related statute, 15-30-2368, MCA.

42.4.2404 COORDINATION WITH OTHER HEALTH INSURANCE CREDITS

AUTH: 15-30-2104, MCA

IMP: 15-30-2367, 15-30-2368, 15-31-130, 15-31-132, 33-22-2006, 33-22-2007, MCA

REASON: The department proposes repealing ARM 42.4.2404 because it is no longer applicable with the passage of House Bill 137, L. 2017, which repealed the credit provided for in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool (also known as the Insure Montana Credit), and the related statute, 15-30-2368, MCA.

42.4.2501 DEFINITIONS

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-32-701, MCA

REASON: The department proposes repealing ARM 42.4.2501 because the oilfield crush facility tax credit provision it provides for expired as of December 31, 2014. The carryforward and recapture periods are still in effect; however, department records show that none of the very few credits claimed prior to the expiration of the credit provision are available for carryforward or subject to recapture, and therefore this rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.2502 CARRYOVER AND RECAPTURE OF OILSEED CRUSH FACILITY TAX CREDIT

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-32-701, MCA

REASON: The department proposes repealing ARM 42.4.2502 because the credit provision it provides for expired as of December 31, 2014. The carryforward and recapture periods are still in effect; however, department records show that none of the very few credits claimed prior to the expiration of the credit provision are available for carryforward or subject to recapture. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.2503 CARRYOVER AND RECAPTURE OF BIODIESEL OR BIOLUBRICANT PRODUCTION FACILITY TAX CREDIT

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-32-701, 15-32-702, MCA

REASON: The department proposes repealing ARM 42.4.2503 because the credit provision it provides for expired as of December 31, 2014. The carryforward and recapture periods are still in effect; however, department records show that none of the very few credits claimed prior to the expiration of the credit provision are available for carryforward or subject to recapture. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3301 DEFINITIONS

AUTH: 15-31-911, MCA

IMP: 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASON: The department proposes repealing ARM 42.4.3301 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation proposed to be implemented in this same rulemaking notice.

42.4.3302 STATE CERTIFICATION

AUTH: 15-31-911, MCA

IMP: 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASON: The department proposes repealing ARM 42.4.3302 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3303 SUBMISSION OF COSTS AND APPLICATION FOR TAX CREDIT

AUTH: 15-30-2620, 15-31-911, MCA

IMP: 15-30-2103, 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASON: The department proposes repealing ARM 42.4.3303 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3304 CERTIFICATION FOR EMPLOYMENT PRODUCTION TAX CREDIT

AUTH: 15-31-911, MCA

IMP: 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASON: The department proposes repealing ARM 42.4.3304 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3305 QUALIFIED EXPENDITURES

AUTH: 15-31-911, MCA

IMP: 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASON: The department proposes repealing ARM 42.4.3305 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3306 PENALTY AND INTEREST

AUTH: 15-31-911, MCA

IMP: 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASON: The department proposes repealing ARM 42.4.3306 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

6. 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 October 24, 2017.

7. Dan Whyte, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

8. 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 6 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.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsors of House Bill 137, Representative Moffie Funk, and Senate Bill 10, Senator Mark Blasdel, were contacted by regular mail on June 14, 2017, and subsequently notified on August 29, 2017 and September 5, 2017. The primary sponsors of Senate Bill 175 (2015), Senator Cynthia Wolken and Senate Bill 309 (2015), Senator Jedediah Hinkle, were contacted by regular mail on August 29, 2017 and September 5, 2017.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal 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 or upon request from the person in 6.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 11, 2017.