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# Montana Department of Revenue



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## Memorandum

**To:** Laurie Logan, Director's Office - Legal  
Ed Caplis, Tax Policy and Research

**From:** Aaron McNay, Tax Policy and Research

**Date:** February 6, 2018

**Subject:** Small Business Impact of Liquor License Auctions and Lottery Rule Changes in MAR Notice Number 42-2-992

The department is currently in the process of revising its rules that deal with liquor license auctions and lotteries in ARM Title 42, chapter 12. The proposed changes include the adoption of five new rules, the amendment of three rules and the repeal of ten additional rules.

Under the proposed rule changes, five new rules are created. The first new rule creates new definitions for terms created by Senate Bill (SB) 5, Sp. L. 2017. The second new rule stipulates when, and how, the department will notify the public of the availability of new licenses for competitive bidding. The third new rule provides details on the submission of competitive bidding forms, as well as who may submit forms. The fourth rule provides details on the steps the winner of the competitive bid process will need to take after the bid process. The fourth rule also creates a penalty for winning bidders who fail to submit a license application. Finally, the fifth new rule provides details on the boundary change process used after the elimination of the combined quota areas for liquor licenses. Each of the five new rules should not have any direct impact to Montana's small businesses. Each of the new rules were created as a result of the passage of SB 5. Any small business impacts will be a result of SB 5 and not the rule change. In addition, the license penalty should not have any impact on small businesses, assuming the winning bidder files for a license.

The proposed rule changes include changes to ARM 42.12.104, 42.12.111, 42.12.124, 42.12.130, 42.12.131 and 42.12.144. SB 5 eliminated the license lottery system until at least January 2024. The changes to ARM 42.12.104 includes the elimination of references to the lottery system. The changes also include the elimination of a section of ARM 42.12.104 that will become redundant with the implementation of the new rules. The implementation of the liquor license competitive bidding process under SB 5 required the creation of a new bidding fee. The changes to ARM 42.12.111 includes the creation of the new fee required for the bidding process. Unnecessary language that

describes a quota area is currently included in ARM 42.12.124. The amendments to ARM 42.12.124 are made to clarify the language in the rule. The methods surveyors are allowed to use when measuring the distance between the nearest corporate city boundary and the nearest entrance to the proposed premises is expanded in the proposed changes to ARM 42.12.130. The changes to ARM 42.12.131 and 42.12.144 are both necessary to remove references to the license lottery that was eliminated in SB 5. The change to ARM 42.12.131 also includes the addition of some rule that are currently in ARM 42.12.414, 42.12.416 and 41.12.405, but will be eliminated when those rules are repealed. The changes to ARM 42.12.144 also includes the removal of a reference to a fee that no longer applies, but was overlooked in 2014. Most of the rule amendments are the result of the changes made to SB 5, or are the removal of redundant language and will have no direct impact to Montana's small businesses.

The department estimates that the newly created bidding fee will be 54 liquor licenses that will be sold through the new competitive bidding process. The department also estimates that the bidding for the licenses will impact 126 businesses in fiscal year 2018, 167 in 2019, 190 in 2020 and 118 in 2021. Each business that participates in the bidding will pay the \$100 bidding fee. The combined amount of fees paid for fiscal years 2018 through 2021 will be \$60,100. It is not possible to determine which businesses that participate in the bidding process will be small businesses.

The proposed rule changes also includes the elimination of the following rules: ARM 42.12.125, 42.12.202, 42.12.401, 42.12.404, 42.12.405, 42.12.406, 42.12.408, 42.12.412, 42.12.414 and 42.12.416. SB 5 eliminated combined quota areas for liquor licenses. The passage of SB 5 eliminates the need for ARM 42.12.125 and ARM 42.12.202, as both rules address combined quota areas. SB 5 also eliminated the use of lotteries for the allocation of new liquor licenses. ARM 42.12.404, 42.12.405, 42.12.406, 42.12.408, 42.12.412 and 42.12.414 each addressed the license lottery process. The elimination of the lottery process in SB 5 makes the six rules mentioned previously unnecessary. Finally, ARM 42.12.416 addresses changes in the seating capacity of premises that receive a restaurant beer and wine license. However, the rule is no longer necessary, as the issue of seating capacity is addressed in ARM 42.13.103 and 16-4-420, MCA. The elimination of the ten rules is not expected to have any impact to small businesses in Montana, as any impact will be the result of SB 5 and not the result of the rule changes.