

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.23.211, 42.23.607, ) PROPOSED AMENDMENT  
42.23.702, 42.23.801, 42.23.802, and )  
42.26.311 pertaining to net operating )  
loss carryback and water's edge rules )  
revisions )

TO: All Concerned Persons

1. On January 22, 2020, at 1:00 p.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 January 3, 2020. 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:

42.23.211 USE OF SEPARATE ACCOUNTING METHOD (1) In applying the separate accounting method, each item of income is segregated and directly allocated according to its source. Any expense or other deductible items, including a reasonable allowance for general overhead expenses, attributable to the earning of such income are likewise segregated and deducted from such income. Items of ~~non-business~~ nonapportionable income are to be allocated as provided for under 15-31-304, MCA.

AUTH: 15-31-313, 15-31-501, MCA  
IMP: Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: The department proposes a housekeeping amendment to ARM 42.23.211 by replacing the term "nonbusiness income" with "nonapportionable income" which is necessary to align rule language with 15-1-601, MCA, revised by the 2017 Montana Legislature.

42.23.607 COMPUTATION OF QUARTERLY ESTIMATED TAX UNDER-PAYMENT INTEREST (1) and (2) remain the same.

(3) If estimated payments are required and those payments are insufficient, not submitted, or are not submitted timely, the ~~12 percent per annum~~ underpayment interest provided in 15-1-216, MCA, will be computed on the lesser of 80% of the current year's liability or 100% of last year's liability, provided that the last year was a period of 12 months and the corporation filed a return.

AUTH: 15-31-501, MCA  
IMP: 15-1-216, 15-31-510 MCA

REASONABLE NECESSITY: The department proposes a housekeeping amendment to ARM 42.23.607(3) to strike the underpayment interest amount, because it is provided in statute, and the cross-reference to the statute regarding the application of interest on an under payment of tax is sufficient. The department's amendment to (3) is necessary for clarity and brevity to direct taxpayers to the governing law.

42.23.702 TAXATION OF A LIMITED LIABILITY COMPANY (1) and (2) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA  
IMP: 15-31-101, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.23.702 to include 15-31-501 and 15-30-2620, MCA, as authorizing statutes pertaining to corporate income tax and individual income tax, respectively. Including these authorities directs a taxpayer to the department's rule making authority and conforms the rule to the requirements of 2-4-305, MCA.

42.23.801 NET OPERATING LOSSES (1) ~~The net operating loss deduction is allowed in accordance with the IRC (1954), as amended, for taxable periods ending on or before December 31, 1970. For taxable periods which begin on and after January 1, 1971, t~~The net operating loss deduction is allowed as provided in the rules contained in this subchapter.

(2) remains the same.

AUTH: 15-31-501, MCA  
IMP: 15-31-114, MCA

REASONABLE NECESSITY: Based on the department's review of its administrative rules, the department proposes a housekeeping amendment to ARM 42.23.801 which is necessary to remove outdated language.

42.23.802 CARRYOVERS OF NET OPERATING LOSSES (1) remains the same.

(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. If a combined report that is filed includes more than one entity with Montana activity, the total net operating loss carryback for all entities cannot exceed \$500,000 per taxable period.

(3) and (4) remain the same.

(5) ~~For taxable periods beginning after December 31, 1988, a~~ 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.

(6) If a taxpayer files an amended Montana return under 15-31-506, MCA, and reports a net operating loss, the time to perfect the election in (5) may be extended. If the taxpayer failed to make the election on its originally filed return, and the original return reported net income, an election may be made by filing an amended return if it is clearly marked in the area provided on the return. If more than one amended return is filed for a taxable period, the election must be made on the first return reporting a net operating loss.

AUTH: 15-31-501, MCA

IMP: 15-31-119, MCA

**REASONABLE NECESSITY:** The department proposes amending ARM 42.23.802 to provide guidance to taxpayers on the net operating loss carryback limitation, which reflects amendments to 15-31-119, MCA, by the 2017 Montana Legislature. The proposed language addresses the carryback limitation for taxpayers filing a combined report with more than one entity reporting Montana activity.

The department also proposes amending this rule to add language providing guidance to taxpayers on the election to forgo a net operating loss carryback provided in 15-31-119(11), MCA, when an amended Montana return is filed under 15-31-506, MCA. The proposed language is intended to be informational and supports the department's long-standing practice of allowing an election to forgo a net operating loss carryback clearly marked in the area provided on an amended Montana return if the original return filed by the taxpayer did not make the election and reported net income.

Lastly, and based on the department's review of the rule, the department proposes a housekeeping amendment at the beginning of (5) which is necessary to remove outdated language.

42.26.311 CERTAIN CORPORATIONS INCLUDABLE IN A WATER'S-EDGE COMBINED RETURN (1) remains the same.

(2) A corporation incorporated outside the United States, if over 50 percent of the voting stock is owned directly or indirectly by a member of the includable group

and if more than 20 percent of the average of its payroll and property, including payroll and property from disregarded entities and its pro rata share of unitary partnerships' payroll and property, is assignable to a location inside the United States, is included in a water's-edge return. For purposes of computing this average, the payroll factor provided for by 15-31-308, MCA, and the property factor as provided for by 15-31-306, MCA, shall be added together and divided by two, or by one if the denominator of either the property or payroll factor is zero.

(3) through (5) remain the same.

AUTH: 15-31-501, MCA

IMP: 15-31-322, MCA

**REASONABLE NECESSITY:** The department proposes amending ARM 42.26.311 to clarify for taxpayers which corporations are includable in a water's-edge combined return. The additional language clarifies how corporations are determined for inclusion in a water's-edge combined report because it includes unitary partnerships and disregarded entities in that determination. The proposed language is intended to be informational and the department believes is necessary for clarification of the department's long-standing practice.

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](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., January 31, 2020.

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](http://www.mtrevenue.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://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/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State December 17, 2019.