

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On August 15, 2022, 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 July 29, 2022. 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.2.510 REVIEW OF NOTICE OF ASSESSMENT (NOA) (1) remains the same.

(2) The department will provide notification by mailing the NOA to the taxpayer as prescribed in 15-1-211, MCA. Information provided on the NOA shall advise the taxpayer of the requirement to file a Request for Informal Review (Form APLS101F) or a written objection to the NOA with the department within ~~30~~ 45 days from the date of the NOA; and that failure to file a written objection within the ~~30~~ 45 days shall be deemed an admission that the debt stated in the NOA is due and owing.

(a) remains the same.

(b) If the taxpayer does not pay or respond to the NOA as required in (2), a letter will be sent to the taxpayer requesting payment within ~~30~~ 45 days of the date of the letter or a Warrant for Distraint may be issued pursuant to 15-1-702, MCA.

(c) and (d) remain the same.

(3) The taxpayer must submit to the department an objection to the NOA within ~~30~~ 45 days of the date on the NOA. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within ~~30~~ 45 days of the date of the NOA. If it is sent by e-mail, it must be sent within ~~30~~ 45 days of the date of the NOA. Failure to respond within the ~~30~~

45 days shall be deemed an admission that the debt stated in the NOA is due and owing.

(a) through (4) remain the same.

(5) The department shall review the objection and determine whether the department agrees or disagrees with the taxpayer's objections. The department shall mail written notice to the taxpayer advising the taxpayer of the department's determination within ~~30~~ 45 days after receipt of the objection.

(a) remains the same.

(b) If the department disagrees with the taxpayer, it shall explain the reasons for the disagreement in a Notice of Determination, notify the taxpayer of the dispute resolution procedures, and provide a copy of the Notice of Referral to the Office of Dispute Resolution (Form APLS102F). The department shall also notify the taxpayer that the taxpayer must submit Form APLS102F or any other written objection to the department within ~~30~~ 45 days of the date on the Notice of Determination from the department, and that the taxpayer will forfeit the right to a hearing if the taxpayer fails to submit Form APLS102F or any other written objection within the ~~30-45~~-day period.

(c) If the department does not issue a Notice of Determination within the 45-day period provided in this rule, and an extension has not been previously agreed to between the parties, the taxpayer's appeal for the period identified in the NOA is deemed granted. An appeal that is deemed granted on this basis does not prohibit the department from making the same adjustment(s) identified in the underlying NOA in a different tax period.

(6) If the taxpayer disagrees with the department's determination, the taxpayer must submit Form APLS102F or any other written objection within ~~30~~ 45 days of the date on the Notice of Determination to request a hearing before the Office of Dispute Resolution (ODR). Appeals should be mailed to the Department of Revenue, Office of Dispute Resolution, P.O. Box 5805, Helena, Montana 59604 or e-mailed to dordisputeresolution@mt.gov. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within ~~30~~ 45 days of the date of the department's Notice of Determination. If it is sent by e-mail, it must be sent within ~~30~~ 45 days of the date of the department's Notice of Determination.

(a) Failure by the taxpayer to file an appeal within ~~30~~ 45 days of the date of the department's Notice of Determination shall be deemed an admission that the debt stated in the NOA is due and owing.

(b) through (8) remain the same.

~~(9) If the department fails to comply with the deadlines in this rule, the taxpayer may immediately refer the matter to the ODR.~~

AUTH: 15-1-201, 15-1-211, 15-1-701, 15-31-501, 15-35-122, 15-36-322, 15-39-114, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-30-2602, 15-31-503, 15-35-112, 15-36-313, 15-36-314, 15-37-110, 15-37-114, 15-37-210, 15-38-110, 15-39-104, MCA

REASONABLE NECESSITY: ARM 42.2.510 contains the department's "30-day" rule for a taxpayer to appeal an audit determination or a final determination.

The department proposes to amend ARM 42.2.510 to extend this timeframe from 30 days to 45 days because taxpayers miss the 30-day deadline - often by a relatively short period - which results in additional appeals rather than an evaluation of the underlying issues. This rulemaking does add work for department staff but provides better service to the taxpayers by giving them more time to respond to our audit letters.

The more substantive change relates to what happens when the deadline lapses. Currently, if a taxpayer misses the deadline and lacks reasonable cause for doing so, the appeal is automatically over (subject to disputes over reasonable cause, etc.). This is a high standard. Conversely, (9) states that if the agency does not respond to a request for informal review (within 30 days), a taxpayer may advance the matter to the department's Office of Dispute Resolution (ODR). This is not an equivalent standard. The department proposes amending (5) to state that if the department does not issue its final determination within the 45-day window - and an extension has not been previously agreed to between the parties - the taxpayer's appeal for that year is deemed granted. Doing so levels the field for taxpayers and the agency, and also provides the department with an additional internal control measure for case management. As a result of this change, the department proposes to remove (9) because there is no other deadline contained within this rule to which it would pertain.

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 and must be received no later than 5:00 p.m., August 22, 2022.

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, or through the Secretary of State's web site at 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 rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022.