

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.17.101, 42.17.103,	)	PROPOSED AMENDMENT AND
42.17.105, 42.17.111, 42.17.113,	)	REPEAL
42.17.120, 42.17.122, 42.17.133,	)	
42.17.203, 42.17.218, 42.17.304	)	
through 42.17.306, 42.17.308,	)	
42.17.313, and 42.17.601 through	)	
42.17.604 and the repeal of ARM	)	
42.17.131, 42.17.223, 42.17.310,	)	
42.17.311, 42.17.315, and 42.17.317	)	
pertaining to withholding and	)	
estimated income tax payments and	)	
the department's implementation of	)	
Senate Bill 399 (2021), Senate Bill	)	
121 (2023), and House Bill 447	)	
(2023)	)	

TO: All Concerned Persons

1. On August 19, 2024, 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 and repeal 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 August 2, 2024. 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](mailto:todd.olson@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY The department proposes to amend and repeal the above-described rules for the primary purpose of implementing Senate Bill 399 (2021) (SB 399), Senate Bill 121 (2023) (SB 121), and House Bill 447 (2023) (HB 447) relating to withholding and estimated income tax payments.

Among its notable enactments, SB 399 simplified Montana individual income tax filing through revised filing statuses, revised calculation of taxable income, and repealed multiple tax credits. Accordingly, it is necessary for the department to amend or repeal certain administrative rules across ARM Title 42, chapter 17, to align with the above-described legislative changes to Montana's tax code.

SB 399 aligns individuals' filing status with their federal filing status (especially for married couples) and creates separate tax brackets for the different filing statuses. The proposed amendments and repeals seek to remove unnecessary language and rules related to filing status. The guidance in ARM 42.17.105 for employers and their wage withholding is updated to reflect the changes in SB 399 as well as SB 121 which lowered the tax rates for individuals.

HB 447 created a Montana income tax exemption for certain employees working in the state on a temporary basis and also created an accompanying exemption for employer wage withholding. Since the affected statutes provide straightforward requirements for the exemption, amendments to rule are only necessary as cross references to the new provisions.

The remaining changes for wage withholding provide clarity in terminology and updates to reflect current department practice and processes. Further, there are references throughout the rules chapter that list the department's physical address and website as a means for submitting forms to the department. Because these are both subject to change, the department proposes to remove them and rely on the guidance provided through our website and form instructions.

The department also proposes amendments to clarify mineral royalty withholding definitions and procedures in ARM 42.17.101 and subchapter 6. The changes will better define when a royalty payment remitter is separate from a producer and how that distinction affects royalty income thresholds and exemptions.

While this general statement of reasonable necessity covers the basis for the proposed rule amendments and repeals, it is supplemented below to explain rule-specific proposals.

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

42.17.101 DEFINITIONS The following ~~terms pertain~~ definitions apply to this chapter:

~~(1) "Advanced mineral payments" are payments made to royalty interest owners that represent the royalty interest owner's future share of the receipts from the sale of the natural resource.~~

~~(2)~~ (1) "Individual" means a worker who renders service in the course of an occupation.

~~(3)~~ (2) "Lookback letter" means the letter sent to employers notifying them of their filing frequency for employee wage withholding.

~~(4)~~ (3) "Mineral payments" are mean payments made to royalty interest owners that represent the royalty interest owner's future share of the receipts from the sale of the natural resource.

~~(5)~~ (4) "Net royalty amount payable" means the amount of mineral proceeds subject to withholding. This amount is equal to the gross royalty payments less any taxes and other expenses deducted pursuant to the royalty agreement in effect.

~~(6)~~ (5) "Net taxable earnings" means an employee's gross earnings ~~minus the number of the employee's claimed withholding allowances multiplied by the withholding exemption amount provided in 15-30-2114, MCA for the year the Montana withholding tables were last revised~~ less the employee payments described

in ARM 42.17.103(1).

~~(7)~~ (6) "Overriding royalty interest" means ownership in a percentage of production or production revenues, free of the cost of production, created by the lessee, company and/or working interest owner and paid by the lessee, company and/or working interest owner out of revenue from the well.

~~(8)~~ (7) "Person" means any natural person, company, corporation, association, partnership, joint venture, cooperative, estate, trust, receiver, or any other party or entity that has a working interest, royalty interest, overriding royalty interest, production payment, production payment including in-kind exchanges, or any other ownership interest entitled to production proceeds from deposits in this state.

~~(9)~~ (8) "Producer" is means the person that extracts natural resources from deposits in the state.

~~(10)~~ (9) "Remitter" means the ~~individual, entity, or trust~~ person obligated under a mineral lease to pay royalties to the royalty owner or their assignee, to deliver minerals to a purchaser to the credit of the royalty owner or their assignee, or to pay a portion of the proceeds of the sale of the minerals to the royalty owner or their assignee. A producer that is not paying mineral royalties directly to a mineral royalty owner is not a remitter.

~~(11)~~ (10) "Reporting forms" include, but are not limited to:

(a) Form MW-1, the Montana Withholding Tax Payment Voucher;

(b) Form MW-3, the Montana Annual W-2 1099 Withholding Tax

Reconciliation form;

(c) Montana Employee's Withholding Allowance and Exemption Certificate form (Form MW-4);

(d) Form W-2, the federal wage and tax statement form;

(e) Form RW-1, the Mineral Royalty Withholding Tax Payment Voucher form;

(f) Form RW-3, the Montana Annual Mineral Royalty Withholding Tax

Reconciliation form; and

~~(g) Form 1099,~~ All forms included in the federal Information Return Series.

~~(12)~~ (11) "Take in kind" means an operator or non-operator who elects to receive production in lieu of proceeds from the sale of production.

AUTH: 15-30-2547, 15-30-2620, MCA

IMP: 15-30-2501, 15-30-2538, MCA

**REASONABLE NECESSITY:** In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.101 to improve definitions and clarify who is considered the remitter of mineral royalty payments made to the royalty owners. The definition of remitter is important because a remitter is responsible for submitting withheld amounts to the department. Determining who is considered a remitter also affects whether certain thresholds for exemptions from withholding are met.

The department also proposes to remove the definition in current (1) because the definition is not used in the chapter and is duplicative to the definition of mineral payment in proposed (3).

The amendment to proposed (5) is made as a result of SB 399's change to

the definition of taxable income.

42.17.103 OTHER PAYMENTS; DESIGNATED DISTRIBUTIONS; ELECTION TO WITHHOLD (1) Employee contributions to pensions, profit sharing, stock bonus, or annuity plans, deferred compensation and cafeteria plans where the payments are not otherwise considered wages, an IRA, or commercial annuity contracts are exempt from withholding to the extent that the contributions are not includable in the employee's adjusted gross income for federal income tax purposes.

(2) Sick pay paid by a third party is not subject to withholding taxes unless the payor receives a written request from the employee, or the employer and the third party entered into an agreement that makes the third party responsible for the reporting and payment of withholding taxes. When a third party reports and pays withholding taxes, the third party must use its own name and tax identification number instead of the employer's.

(3) A recipient of any designated distribution from a deferred compensation plan, individual retirement plan, or commercial annuity, as defined in IRC 3405, may ~~elect to have~~ request the payor withhold state income tax from these payments by filing a Form MW-4 with the payor.

(a) The recipient's tax withholding election shall specify a flat dollar amount of income tax to be withheld by the payor from each designated distribution ~~or a number of allowances claimed by the recipient to be used with the withholding tax tables provided by the department.~~ The election shall also specify the name, current address, and taxpayer identification number of the recipient. Any change or revocation of a previously filed election shall include the same information as required in this rule for an initial election except the recipient should indicate whether a change or revocation of a previously filed election is being made. In this case, the payor shall remit the withholding tax to the department as required in ARM 42.17.113.

(b) The payor has the option to choose not to withhold from any designated distribution if the amount to be deducted and withheld is less than \$10. Additionally, income tax withholding by the payor from any designated distribution shall not be required if the amount to be withheld would reduce the net amount of the distribution to less than \$10.

(c) The payor of distributions, made up in whole or in part of contributions made pursuant to (1) or solely of employer contributions, shall notify the recipients of the availability to state withholding and the requirements for the payment to state income tax on the taxable portion of a distribution.

(i) Payors shall notify recipients of the state requirements at the same time recipients are notified of the federal election requirements under IRC 3405(d)(10)(B).

(ii) Payors shall notify recipients at the time of distribution and yearly thereafter.

(4) A recipient of unemployment compensation may request that the payor withhold state income tax from each payment by filing a Form MW-4 with the payor.

AUTH: 15-30-2620, MCA  
IMP: 15-30-2501, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.103 to improve grammar in (3) and provide in (4) that a recipient can request the payor withhold Montana income tax. Among the changes in SB 399 is the elimination of the exemption from Montana tax of unemployment compensation. The proposed addition of (4) will aid affected individuals by providing a way to request withholding to pay any tax owed.

42.17.105 COMPUTATION OF WITHHOLDING (1) Employers shall calculate the state income tax amount to withhold from employees according to the length of the payroll period, the employee's ~~gross wages, the number of allowances claimed by the employee~~ net taxable earnings, the employee's federal filing status, and any extra withholding reported on Form MW-4, ~~and using the department's "Montana Withholding Tax Tables," provided online at www.mtrevenue.gov.~~ The tables are based on the formulas provided in (2) and (3) and show the amount to withhold each pay period.

(2) Montana withholding tables are based on the following annual withholding formulas as adjusted annually for inflation and changes to federal tax parameters. Wage withholding is equal to the following amounts based on the employee's federal filing status:

(a) ~~1.80% of the first \$7,105 of net taxable earnings; plus~~ Single or married filing separately:

- (i) 0% of the first \$14,600; plus
- (ii) 4.7% of the next \$20,500; plus
- (iii) 5.9% of the net taxable earnings over \$35,100.

(b) ~~4.40% of the next \$8,120 of net taxable earnings; plus~~ Married filing jointly or qualifying widow(er):

- (i) 0% of the first \$29,200; plus
- (ii) 4.7% of the next \$41,000; plus
- (iii) 5.9% of the net taxable earnings over \$70,200.

(c) ~~6.00% of the next \$106,575 of net taxable earnings; plus~~ Head of household:

- (i) 0% of the first \$21,900; plus
- (ii) 4.7% of the next \$30,750; plus
- (iii) 5.9% of the net taxable earnings over \$52,650.
- ~~(d) 6.60% of net taxable earnings over \$121,800.~~

(3) Withholding formulas for nonannual payroll periods are calculated by dividing the dollar amounts for annual payroll in (2) by the ratio of the number of working days in a year to the number of working days in the payroll period. The following table shows payroll periods and the corresponding divisors:

<u>Payroll Period</u>	<u>Divisor</u>
Monthly	12
Semi-Monthly	24
Biweekly	26
Weekly	52
Daily	<del>260</del> <u>365</u>

(4) By ~~October 1~~ the end of each tax year, the department shall adjust the withholding formulas for inflation by either multiplying the dollar amounts in (2) and the withholding exemption amount used in the determination of net taxable earnings in ARM 42.17.101 by the inflation factor, as defined in 15-30-2101, MCA by the inflation factor defined in 15-30-2101, MCA, or by updating the values based on the adjusted amounts provided by the IRS for the new tax year.

(5) If the department determines that the inflation adjustment is immaterial, it may keep existing withholding tables in effect for another year.

AUTH: 15-30-2620, MCA

IMP: 15-30-2103, 15-30-2502, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.105 to provide updated calculations for wage withholding. SB 399 created new tax brackets based on filing status, so the calculations in rule are outdated and require amendment. The proposed amendments in (4) also change the timing of updating the values in the formula in order to provide more accurate calculations.

42.17.111 MONTANA INCOME TAX WITHHOLDING; FORM MW-4 FILING REQUIREMENTS (1) Every employer transacting business in Montana is required to withhold Montana state income tax from wages paid to an employee for services rendered within Montana, unless the compensation is specifically exempted under Montana law.

(2) Compensation which may be excludable from adjusted gross income under a United States tax treaty remains subject to Montana withholding as the determination whether a nonresident alien qualifies for tax treaty exclusion cannot be made until the individual's Montana income tax return is filed.

(3) Except as provided under 15-30-2513, MCA, temporary employment or employment of short duration within Montana does not relieve the employer of the obligation to withhold employee wages.

(4) Employers must provide each new employee a Form MW-4 for purposes of determining the amount of an employee's withholding or exemption status.

(5) If an employee fails to complete a Form MW-4, the employer shall calculate withholding using the single filing status calculation.

~~(4)~~ (6) The Amtrak Reauthorization and Improvement Act of 1990 exempts from state income tax and withholding the compensation of certain railroad, trucking, and air and water carrier employees unless they are Montana residents. The exemption from withholding applies only to nonresident interstate carrier employees and the employer applies the exemption based on the residency status claimed by the employee. No Form MW-4 is required for this exemption.

~~(5)~~ (7) Wages paid to an enrolled member of a Native American tribe are subject to withholding, except as provided in ARM 42.15.220.

(a) When the employee is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides:

(i) the wages earned by the employee are derived from reservation sources; and

(ii) the employee submits a Form MW-4 to the employer attesting that the employee resides on his or her reservation, together with a certificate of enrollment.

(b) When wages are derived from both reservation sources and nonreservation sources, only wages derived from reservation sources are exempt from withholding, provided the employee meets all the criteria in ~~(5)~~ (7)(a).

(c) When an employee does not reside on his or her reservation for an entire pay period, only wages earned while the employee was residing on the reservation are exempt from taxation, provided the employee meets all the criteria in ~~(5)~~ (7)(a).

~~(6)~~ (8) Wages paid to a resident of North Dakota for personal services rendered within Montana are not subject to withholding provided the employee has filed a Form MW-4, in accordance with ARM 42.17.134.

~~(7)~~ (9) Wages paid to the nonmilitary spouse of a military serviceperson for personal services rendered in Montana which meet the criteria in ARM 42.15.112, are not subject to withholding provided the employee has completed a Form MW-4.

~~(8)~~ (10) A withholding exemption claimed on Form MW-4 must be renewed annually by the last pay period in January. When an employee no longer needs or qualifies for an exemption, the employee must notify the employer by providing a new Form MW-4 without the previously claimed exemption. If an employee fails or refuses to provide the updated Form MW-4, the employer must withhold ~~on the basis of zero withholding allowances, in compliance with ARM 42.17.134~~ using the calculations for the single filing status.

(11) Exempt status claimed for federal purposes does not exempt an employee's wages from withholding requirements for Montana purposes.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.111 by transferring and revising relevant content regarding the submission of Form MW-4 from ARM 42.17.131(4) and (5) to this rule because they relate to the specific exemptions described in this rule. The proposed amendments also provide a timeline for submitting the form when an individual needs to renew an exemption. Finally, the rule is proposed for amendment to clarify that a federal exemption does not create an exemption from Montana withholding.

42.17.113 PAYMENTS (1) Failure to pay withheld amounts within the time provided, and the use thereof by the employer in forwarding its own business, is considered to be an illegal conversion of trust money. ~~The employer will not regard withheld wages as being equivalent to its own personal income tax indebtedness.~~ Penalties provided in 15-1-216 and ~~15-30-2644~~, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be deducted from employee wages.

(2) If an employer's payment requirement of withholding tax for state purposes conflicts with the federal tax deposit requirements, the employer may elect

to remit according to the federal schedule. The employer must provide the department with a copy of its federal notification.

(3) Once an employer becomes subject to withholding tax as provided in 15-30-2501, MCA, the employer must continue to withhold, and report, income tax from the employees' wages for all subsequent calendar years.

AUTH: 15-30-2620, MCA

IMP: 15-1-208, 15-30-2504, 15-30-2510, ~~15-30-2641~~, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.113 to remove unnecessary language in (1) that is redundant to statute and amends the reference to 15-30-2641, MCA, in (1) and the list of implementing citations because House Bill 72 (2019) repealed that statute.

42.17.120 EMPLOYER'S FAILURE TO WITHHOLD (1) If an employer fails to deduct and withhold the tax from wages as required under 15-30-2502, MCA, and thereafter the income tax against which the withholdings may be credited is paid, the amount required to be deducted and withheld shall not be collected from the employer. However, ~~such~~ any payment does not relieve the employer from liability for penalties, interest, or additions to the tax ~~applicable~~ because of ~~such~~ its failure to deduct and withhold. The employer will not be relieved ~~under this rule~~ from ~~their~~ its liability for payment of the amounts required to be withheld unless ~~they~~ it can show that the income tax against which the required withholdings may be credited has been paid.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, 15-30-2503, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.120 to improve the grammar and style of the rule.

42.17.122 RETURNS OF INFORMATION AGENTS (1) Federal Forms 1099s, and U.S. Information Returns, are required to be filed ~~for certain dividends, interest in excess of \$10, royalties, payments to retirement plans, rents, salaries, wages, prizes, awards, annuities, pensions, and real estate transactions as specified~~ in 15-30-2616, MCA. Federal Forms 1099s may be filed on paper documents or electronically. The dates for filing the information returns with the department are the same as the due dates for filing the corresponding federal return. ~~The returns are to be filed with:~~

~~Montana Department of Revenue  
P.O. Box 5835  
Helena, Montana 59604-5835.~~

(2) Paper documents ~~are to~~ must be prepared on the appropriate federal



information return and a copy filed with the department. Returns filed on paper forms ~~are to~~ must be accompanied by a copy of federal Form 1096, Annual Summary, summarizing the information being reported to the department.

(3) Federal Forms 1099s filed electronically are to conform to the specifications outlined in Federal Publication 1220 for the applicable year.

AUTH: 15-30-2620, MCA

IMP: 15-30-2616, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.122 to remove unnecessary language which has become outdated due to the addition of new types of federal Forms 1099.

42.17.133 TREATMENT OF SUPPLEMENTAL WAGES - STATE INCOME TAX WITHHOLDING (1) If supplemental wages, such as bonuses, commissions, or overtime pay, are paid at the same time as regular wages, the state income tax to be withheld should be determined as if the total of the supplemental and the regular wages were a single wage payment for the regular payroll period.

(2) If the supplemental wages are paid at a different time, the employer may determine the state income tax to be withheld by adding the supplemental wages either to the regular wages for the current payroll period or to the regular wages for the last preceding payroll period within the same calendar year.

(3) In lieu of the above, the employer may withhold on supplemental wages at the rate of ~~6~~ five percent.

AUTH: 15-30-2620, MCA

IMP: 15-30-2501, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.133 to lower the supplemental wage withholding rate described in (3). SB 399 and SB 121 lowered the top tax rates, so the department believes a corresponding reduction in the supplemental wage withholding rate to five percent is sufficient.

42.17.203 RECORDS TO BE KEPT BY EMPLOYER (1) Employers must keep employment records for each employee for five years from date of payment and make records available for department review, as provided by ARM 42.2.305. The records must show:

(a) For each pay period:

(i) the beginning and ending dates;

(ii) the total wages, as defined in 15-30-2501, MCA, for employment in the pay period; and

(iii) the number and date of weeks in which there were one or more employees.

(b) For each employee:

(i) the employee's full name;

- (ii) social security number;
  - (iii) wages for each pay period, showing separately:
    - (A) money wages payable including special payments or constructive payment of wages;
    - (B) reasonable cash value of remuneration by the employer in any medium other than cash;
    - (C) estimated or actual amount of gratuities received from persons other than employer; or
    - (D) special payments of any kind, including annual bonuses, gifts, prizes, etc.
  - (iv) the date on which the employee was hired, rehired, or returned to work after a temporary layoff;
  - (v) the date employment was terminated;
  - (vi) the cause of any termination, such as voluntary by employee, layoff, discharge, or death;
  - (vii) the method of payment:
    - (A) whether the employee is paid a salary or commission, or paid on an hourly, or by-piece basis; and
    - (B) if the employee is paid on a fixed daily basis, the employee's daily rate and the customarily scheduled days per week prevailing in the establishment for their occupation; and
    - (C) if the employee is paid on a piece rate or other variable pay basis.
  - (viii) documents supporting employee expense reimbursements; and
  - (ix) when an exemption under ARM 42.17.111 is in effect, the portion of non-exempt wages paid to the employee for each pay period, and the method used to calculate this portion.
- (2) Evidence of business ownership including, but not limited to, partnership agreements and documents issued or acknowledgments by the Secretary of State.
- (3) The department is authorized to examine all records necessary for the administration of the withholding and estimated tax law (Title 15, chapter 30, part 25, MCA). Examples of these records include:
- (a) payroll records;
  - (b) disbursement records;
  - (c) tax returns;
  - (d) personnel records;
  - (e) minutes of meetings;
  - (f) loan documentation;
  - (g) federal and state withholding ~~allowance and~~ exemption certificates; and
  - (h) any other records which might be necessary to determine employer liability.

AUTH: 15-30-2620, MCA

IMP: 15-30-2504, MCA

**REASONABLE NECESSITY:** In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.203(3)(g) to remove inaccurate terminology.

42.17.218 EMPLOYER REGISTRATION (1) Every employer required to withhold Montana income tax must register for a Montana tax identification number on Form GenReg, Montana Department of Revenue Business Registration, which is provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. The form can be submitted online through the department's website or by mailing it to the address listed on the form. ~~Application for a Montana tax identification number shall be sent to:~~

~~Department of Revenue  
P.O. Box 5805  
Helena, Montana 59604-5805.~~

- (2) Registration is not considered complete unless:
- (a) the federal employer identification number appears on the registration;
- and
- (b) all applicable social security numbers of the owners, partners, corporate officers, or other principals appear on the registration.
- (3) Failure to register does not relieve an employer from withholding, reporting, and remitting state income tax.

AUTH: 15-30-2620, MCA  
IMP: 15-30-2503, 15-30-2509, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.218 to reflect the department's general statement of reasonable necessity for the removal of address information in rule as a means for submitting forms to the department and relying on the guidance provided on our website and form instructions.

42.17.304 DETERMINATION OF TAX LIABILITY FOR PRECEDING TAX YEAR; DETERMINATION OF TAX PAID FOR CURRENT TAX YEAR (1) A taxpayer's tax liability for the preceding tax year is the total tax imposed by Title 15, chapter 30, MCA, less any nonrefundable tax credits allowed under Montana law, as shown on the taxpayer's return.

Example: A taxpayer has a tax, before applying nonrefundable credits, of \$5,000. The taxpayer has a nonrefundable ~~energy conservation installation~~ recycling credit of \$500. The taxpayer's tax liability for the prior year for estimated tax purposes is \$4,500 computed as follows:

Tax before nonrefundable credit	\$5,000
nonrefundable credits	( \$500)
tax liability	\$4,500

(2) The amount of tax paid for the current year is the sum of the withholding and estimated tax payments plus any refundable credit(s) claimed, as shown on the taxpayer's return.

A taxpayer has \$800 in Montana withholding, an elderly homeowner/renter credit of \$400 and paid \$200 in estimated payments. The amount of tax the taxpayer has paid for the current year is \$1,400 computed as follows:

Montana tax withheld	\$800
Estimated payments	<u>\$200</u>
Refundable elderly homeowner/renter credit	<u>\$400</u>
Total taxes paid for the current year	\$1,400

(3) To determine the preceding tax year liability of an individual who participates in a composite return, the following requirements apply:

(a) For a taxpayer who was a participant in a composite return for the preceding year, the tax liability for the preceding year is the participant's preceding year composite tax liability.

(b) For a taxpayer who filed a Montana individual income tax return for the preceding tax year and for the current year, and participated in a composite return filing, their tax liability for the preceding tax year is their individual liability as determined in (1).

(4) Estimated payments made by a partnership or S corporation ~~with respect to a participant's composite tax liability for taxes owed under Title 15, chapter 30, MCA, are not taxes paid by the participant owner for the current tax year. The rules for filing composite returns are located in ARM Title 42, chapter 9, subchapter 2.~~

AUTH: 15-30-2620, MCA  
IMP: 15-30-2512, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.304 to remove a reference to a credit that is no longer available. Section (4) of the rule is also proposed for amendment to reflect that partnerships and S corporations, not their owners, are responsible for making estimated payments for pass-through entity tax and composite tax liabilities.

#### 42.17.305 ESTIMATED TAX AND PAYMENT OF INSTALLMENTS

(1) Except as provided in 15-30-2512, MCA, a taxpayer is required to pay at least 100 percent of their tax liability for the preceding tax year or 90 percent of their tax for the current tax year through withholding and estimated payments. If they do not, they will be liable for interest on the underpayment, as provided in 15-30-2512, MCA. In addition, unless the department grants a taxpayer an extension to pay an installment of estimated tax, as provided in ARM 42.17.306, a taxpayer required to make installment payments of estimated tax who fails to timely pay an installment is liable for interest on the unpaid installment from the due date of the installment to the earlier of the date of payment or the due date of their income tax return, not including extensions, as provided in 15-1-216, MCA, and ARM 42.2.306.

(2) Taxpayers may complete the Form Worksheet ESW, Montana Individual Estimated Income Tax Worksheet, to determine if they are required to make current year installment payments of estimated tax and, if necessary, to determine the amount. If a taxpayer's income fluctuates or is seasonal, employing the annualization method may lower the amount of one or more installments. A taxpayer using the optional annualization method must complete the Form Worksheet ESA, Annualization Worksheet. Taxpayers are not required to file the estimated tax worksheet with their income tax return, but it is a tax record the taxpayer must retain and provide the department on request. Taxpayers using the annualization method must file Form Worksheet ESA with their income tax return. If the taxpayer files their individual income tax return electronically, the Form Worksheet ESA is a tax record the taxpayer must retain and provide the department on request.

~~(3) The department will provide taxpayers with estimated tax payment coupons on request. Unless paid electronically, as set forth in ARM 42.5.201 and 42.5.202, installment payments of estimated tax must be accompanied by a payment voucher and be:~~

~~(a) personally delivered to:  
Montana Department of Revenue  
Sam W. Mitchell Building  
125 North Roberts, 3rd Floor  
Helena, Montana; or~~

~~(b) mailed to:  
Montana Department of Revenue  
P.O. Box 6309  
Helena, Montana 59604-6309.~~

~~(4) If a taxpayer has not received estimated tax payment vouchers from the department before the first installment due date, the payment should be accompanied by a written statement setting forth that the payment is an estimated tax payment, the tax year, the due date of the installment, and the taxpayer's name, mailing address, and social security number and be:~~

~~(a) personally delivered to:  
Montana Department of Revenue  
Sam W. Mitchell Building  
125 North Roberts, 3rd Floor  
Helena, Montana; or~~

~~(b) mailed to:  
Montana Department of Revenue  
P.O. Box 6308  
Helena, Montana 59604-6308.~~

~~(5) Payment vouchers will be mailed to the taxpayer if a request for them is included with the first installment. Payments must be received by the department on or before the installment due date.~~

~~(6)~~ (3) Estimated tax payments are not required for a tax year shorter than four months. Individuals who have a short tax year of four months or more are required to pay estimated tax on the following dates:

(a) The first installment is due on April 15 or on the 15th day of the fourth month of the tax year;

(b) The second and third installments are due on the 15th day of the sixth month of the tax year and the 15th day of the ninth month of the tax year if the short tax year does not close prior to these dates; and

(c) The final installment is due on the 15th day of the first month of the succeeding tax year.

~~(7)~~ (4) If fewer than four installments are required, the applicable percentage of the required annual amount for each installment is increased. The applicable percentage per installment is as follows:

- (a) 100 percent for one installment;
- (b) 50 percent for two installments; and
- (c) 33 1/3 percent for three installments.

Example 1: If the short tax year is the 10-month period from January 1 through October 31, the estimated tax must be paid in four installments, on April 15, June 15, September 15, and November 15. Each installment is 25 percent of the total payment required.

Example 2: If the short tax year is the 9-month period from January 1 through September 30, the estimated tax must be paid in three installments, on April 15, June 15, and October 15. With three installments, each installment is 33 1/3 percent of the total payment required.

AUTH: 15-30-2620, MCA  
IMP: 15-30-2512, MCA

**REASONABLE NECESSITY:** The department proposes to amend ARM 42.17.305 to reflect the department's general statement of reasonable necessity for the removal of address information in rule as a means for submitting forms to the department and relying on the guidance provided on our website and form instructions.

42.17.306 WRITTEN REQUEST FOR EXTENSION - PAYMENT OF ESTIMATED TAX (1) A taxpayer may request an extension of time to pay all or a part of an installment of estimated taxes by making a written request identifying the evidence showing that undue hardship would result to the taxpayer if the extension were refused. The extension will not be granted under a general statement of "hardship."

~~(2) The written request, with supporting documents, must be:~~

~~(a) personally delivered to:~~

~~Montana Department of Revenue  
Sam W. Mitchell Building  
125 North Roberts, 3rd Floor  
Helena, Montana; or~~

~~(b) mailed to:~~

~~Montana Department of Revenue  
P.O. Box 5805  
Helena, Montana 59604-5805.~~

~~(3)~~ (2) The request for extension must be received by the department 30 days

before the installment date for which the extension is requested. The department will, within 30 days if possible, grant, deny, or tentatively grant the request subject to certain conditions.

(4) (3) If an extension is granted, no further notice or demand will be given, and the taxpayer must pay the estimated payment on or before the expiration of the period of the extension. If an extension is granted and the extended installment timely paid, the penalty and interest provided in 15-1-216, MCA, is not imposed. Section 15-30-2512, MCA, which provides for interest on an underpayment of tax, is in addition to the uniform penalties and interest provided in 15-1-216, MCA, and is imposed whether or not a taxpayer obtains an extension as provided in this rule.

(5) (4) While the department may grant an extension of up to six months after the installment due date, it will not grant an extension beyond the original due date of the return, typically April 15 following the tax year.

(6) (5) The granting of an extension of time for payment of one installment does not extend the time for payment of any subsequent installments.

(7) (6) Inability to pay does not constitute "hardship."

(8) (7) Examples of what does, and what does not, constitute "hardship" may be found in ARM 42.3.106.

AUTH: 15-30-2620, MCA

IMP: 15-30-2512, MCA

**REASONABLE NECESSITY:** The department proposes to amend ARM 42.17.306 to reflect the department's general statement of reasonable necessity for the removal of address information in rule, as a means for submitting forms to the department, and relying on the guidance provided on our website and form instructions.

42.17.308 DETERMINING ANNUALIZED INCOME (1) Taxpayers who use the annualization option ~~in estimating their~~ to estimate the current year tax must accurately determine the amount of income and deductions for each installment period.

(2) Income or expenses that are paid occasionally during a year cannot be spread out during the year in determining the required installments. For example, a taxpayer who distributes year-end bonuses to employees but does not determine the amount of the bonuses until the last month of the tax year may not deduct any portion of such year-end bonuses in determining taxable income for any installment period other than the final installment period for the tax year, since deductions are not allowable until paid or accrued, depending on the taxpayer's method of accounting.

AUTH: 15-30-2620, MCA

IMP: 15-30-2512, MCA

**REASONABLE NECESSITY:** The department proposes a minor grammatical amendment to ARM 42.17.308(1) to improve clarity of the stated requirement.

42.17.313 PAYMENT OF ESTIMATED TAX - DECEDENT (1) Joint estimated tax payments may not be made after the death of either spouse. The surviving spouse must recompute his or her estimated tax for the remainder of the year and pay separate installments for each remaining installment due date.

(2) Estimated tax payments are not required after the date of death for a deceased taxpayer.

(3) If a joint return is filed for the last tax year, the taxpayers' joint estimated tax payments may be applied on the return.

~~(4) If separate returns are filed for the last tax year of a deceased spouse, any joint estimated tax payments must be split equally.~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2512, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.313 as the filing circumstance in (4) will not occur under SB 399's statutory changes.

42.17.601 ADVANCE PAYMENTS AND FURTHER DISTRIBUTIONS

(1) Advance mineral royalty payments that relate to, refer to, or concern production are subject to the mineral royalty tax withholding requirements.

(2) Each remitter who disburses funds that are owed to any person owning a royalty interest, overriding royalty interest, production payment, or any other nonworking interest in minerals produced in this state, is subject to the withholding requirement of 15-30-2538, MCA. The exceptions under 15-30-2539(2), MCA, do not apply to remitters who are not producers.

(3) If a mineral is taken in-kind by a royalty owner, the take-in-kind owner must forward 6 ~~six~~ percent of the net value of the mineral that was taken in-kind to the department unless they are exempt from withholding under 15-30-2539 or 15-31-102, MCA.

~~(4) If you are a remitter and you are~~ Remitters providing accounting services, ~~and these accounting services include fulfilling that fulfill~~ the requirements of 15-30-2541, MCA, for more than one producer, ~~you~~ must remit separate withholding payments and submit a separate Form RW-3, Montana Mineral Royalty Withholding Tax Reconciliation Return, for each producer.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2541, 15-31-102, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.601(2) to improve clarity that the exceptions to mineral royalty withholding do not apply if the remitter is not also the producer. Section (4) proposes amendments to change referencing of the remitter from second-person perspective and to make the text more concise.



42.17.602 CLAIMING THE CREDIT FOR TAX WITHHELD (1) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit may be claimed for the tax withheld on a Montana individual income tax return or a Montana corporate income tax return, with a copy of Form 1099-MISC attached, to substantiate the amount claimed.

(b) Taxpayers, excluding pass-through entities, that receive a Montana Schedule K-1 from a pass-through entity, as defined in 15-30-2101, MCA, may claim a refundable credit for the amount shown as their share of the tax withheld from Montana net royalty. Taxpayers that claim such a credit must keep copies of the federal and Montana Schedule K-1(s) in their records.

(c) Pass-through entities must determine the owner's distributive share of mineral royalty withholding in proportion of the owner's share of profit and loss from the pass-through entity.

~~(d) A pass-through entity may claim mineral royalty withholding tax paid on its behalf as a credit against pass-through withholding tax owed by the pass-through entity on behalf of an owner in proportion of the owner's distributive share of profit or loss. A pass-through entity must claim the mineral withholding tax paid on its behalf as a refundable credit against pass-through entity tax owed by the entity.~~

(e) A pass-through entity must claim the mineral withholding tax paid on its behalf as a refundable credit against composite tax owed by the pass-through entity on behalf of an owner in proportion of the owner's distributive share of income or loss.

(f) A pass-through entity may claim mineral royalty withholding tax paid on its behalf as a credit against pass-through withholding tax owed by the entity on behalf of an owner in proportion of the owner's distributive share of profit or loss.

~~(f)~~ (g) An estate or trust is entitled to credit for the tax withheld in proportion to the amount of royalty income that the estate or trust includes in Montana taxable income. A beneficiary is entitled to a credit for the tax withheld in proportion to the amount of royalty income the beneficiary must report on their Montana individual income tax return.

~~(g)~~ (h) Any person filing on a fiscal year ending other than December 31, must claim a credit for the withholding tax shown on the personal income tax return required to be filed during the year following the December closing period of the Form RW-3, Montana Mineral Royalty Withholding Tax Reconciliation Return.

~~(h)~~ (i) Production taxes cannot be claimed as withholding for mineral royalty withholding or as income tax withholding.

AUTH: 15-30-2547, MCA

IMP: 15-30-2539, 15-30-3312, 15-30-3313, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.602(1)(d) and (f) to improve clarity that mineral royalty withholding paid on behalf of a pass-through entity is claimed as a credit against the tax owed by the entity resulting from the royalty income.

42.17.603 APPLICABLE THRESHOLDS - CHANGE OF OWNERSHIP - PUBLICLY TRADED PARTNERSHIPS - NONPROFIT ORGANIZATIONS - EXEMPT ROYALTY OWNERS

(1) There is not a requirement to withhold from payments to royalty interest owners if the producing entity's production does not exceed 100,000 barrels of oil and 500 million cubic feet of gas, based on the previous three calendar years' average production reported to the Montana Board of Oil and Gas Conservation. For example, the department will calculate whether payments for an entity's production are subject to withholding from their royalty interest owners for ~~2015~~ 20X5 by averaging the production numbers for calendar years ~~2011, 2012, and 2013~~ 20X1, 20X2, and 20X3 and comparing this average to the production exemption limits.

(2) If an entity does not have three years of recent mineral production records, the remitter may provide the department with information supporting the exemption from the withholding requirements of 15-30-2536, MCA. The department shall review this information to determine if an exemption is warranted and notify the remitter of the determination.

(3) On or before September 15 of each year, the department shall notify all oil and gas producers of their requirements as it relates to the provisions of 15-30-2538 and 15-30-2539, MCA. The department will notify all other mineral producers by September 15 only if they are required to withhold.

(4) If a person who is required to withhold on behalf of their royalty interest owners sold their mineral interests during the year and ceases to be the remitter, the person who acquired the mineral interests becomes the remitter and must continue to withhold 6 ~~six~~ percent of the net royalty payments from the royalty interest owners subject to the withholding requirements of 15-30-2538, MCA.

(5) If a remitter produces both oil and gas, and only one resource meets the requirements for withholding as provided in 15-30-2539, MCA, the withholding provisions apply to both oil and gas regardless of the production volumes of the other resource that does not meet the requirements of 15-30-2539, MCA.

(6) If a person not previously extracting resources in the state begins extracting from new or existing sources of natural resources in Montana (i.e., newly drilled oil or gas wells or a new mine), that person is required to withhold 6 ~~six~~ percent of the net royalty payments from the royalty interest owners subject to the withholding requirements of 15-30-2538, MCA.

(7) All persons that extract minerals other than oil and gas must withhold 6 ~~six~~ percent of the net royalty payments of all royalty interest owners subject to the withholding requirements of 15-30-2538, MCA.

(8) The person described in (7) may not be required to withhold net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the net royalty payments are immaterial.

(a) The department has defined an entity that has immaterial net royalty payments as an entity that has production amounts for minerals, other than oil and gas, with a value less than \$5 million. The only filing requirement for this type of entity is the filing of the Form RW-3 ~~by January 31 of the following year~~ along with a listing of all royalty recipients. The \$5 million value will be based on a three-year average of production value reported to the department's ~~Business Tax and Valuation Bureau~~ Natural Resources Unit. For example, the department will

calculate whether an entity is required to withhold from its royalty interest owners for ~~2017~~ 20X7 by averaging the valuation reported for ~~2013, 2014, and 2015~~ 20X3, 20X4, and 20X5.

(9) Section 15-30-2539, MCA, allows for a publicly traded partnership to be exempt from the withholding requirements of 15-30-2536 through 15-30-2547, MCA, provided the publicly traded partnership, that is a royalty owner, submits a report to both the remitter and the department. The report, which can be in the form of a letter, must contain the publicly traded partnership's letterhead and state that the partnership is publicly traded and the partnership requests exemption from 15-30-2536 through 15-30-2547, MCA. The request must be received by the remitter and the department prior to November 1 of the year prior to the calendar year in which the partnership requests exemption. Upon receipt of the report, the department will notify the partnership and the remitter of either acceptance or denial of the request within 30 days. The election does not need to be repeated annually unless requested by the department.

(10) Section 15-30-2539, MCA, allows for an organization that is exempt from taxation under 15-31-102, MCA, to be exempt from the withholding requirements of 15-30-2536 through 15-30-2547, MCA, provided the exempt organization, that is a royalty owner, submits a report to both the remitter and the department. The report, which can be in the form of a letter, must contain the exempt organization's letterhead and request exemption from 15-30-2536 through 15-30-2547, MCA. The request must be received by the remitter and the department prior to November 1 of the year prior to the calendar year in which the exempt organization requests exemption. Upon receipt of the report, the department shall notify the exempt organization and the remitter of either acceptance or denial of the request within thirty days. The election does not need to be repeated annually unless requested by the department.

(11) The exception provided in 15-30-2539, MCA, for payments to a federally recognized Indian tribe, applies to all mineral production described in the Mineral Leasing Act of ~~1939~~ 1938.

(12) According to 15-30-2539, MCA, the department grants remitters the authority to forego withholding the tax from royalty owners who meet the following qualifications:

- (a) the amount of the royalty interest payment is less than \$2,000 per year; or
- (b) less than \$166 per month.

(13) The remitter that does not withhold from royalty interest owners pursuant to (12) may, upon request from the department, be required to provide a list of the royalty interest owners.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2540, 15-30-2541, 15-30-2542, 15-30-2543, 15-30-2544, 15-30-2545, 15-30-2546, 15-30-2547, 15-31-102, MCA

**REASONABLE NECESSITY:** In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.603 to remove a date already specified in statute. The changes also specify the unit responsible for providing information in the determination of whether a

producer's production value can be considered immaterial. The rule also uses specific years in the examples in (1) and (8) and the department proposes a model that does not specifically reference a year. The department proposes a format that uses the sequence of years through the use of the last number in the year. The new format will be 20X1, 20X2, 20X3, etc. This method should be familiar to tax professionals and filers as the IRS uses this format in its regulations. Finally, the department proposes to correct the year of the Mineral Leasing Act referenced in (11).

42.17.604 REGISTRATION FOR WITHHOLDING (1) Every entity that extracts natural resources within the boundaries of Montana must register and file an application for a state identification number ~~on the form provided by the department as prescribed in ARM 42.17.218.~~

(2) Any owner or operator who has acquired the business of another entity shall not use the predecessor's state identification number. The owner or operator must register before the due date of the first report. This applies to both new businesses and businesses which have been purchased.

(3) Each registration application must contain the applicable tax identification number assigned by the IRS.

(4) No registration is considered complete unless the federal identification number appears on the form.

(5) Not being registered does not relieve a remitter from the collection and reporting requirements.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2541, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.17.604 to cross reference ARM 42.17.218 which requires all entities conducting business in the state to register for a state identification number.

5. The department proposes to repeal the following rules:

42.17.131 EMPLOYEE'S WITHHOLDING ALLOWANCES

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

42.17.223 DETERMINING EMPLOYEE STATUS

AUTH: 15-30-2620, MCA

IMP: 15-30-2523, MCA

42.17.310 DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM JOINT TO SEPARATE

AUTH: 15-30-2620, MCA  
IMP: 15-30-2512, MCA

42.17.311 DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM SEPARATE TO EITHER A JOINT RETURN OR MARRIED FILING SEPARATE

AUTH: 15-30-2620, MCA  
IMP: 15-30-2512, MCA

42.17.315 WAIVER OF INTEREST ON ESTIMATED TAX UNDERPAYMENT

AUTH: 15-30-2620, MCA  
IMP: 15-30-2512, MCA

42.17.317 ESTIMATED PAYMENTS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS

AUTH: 15-30-2620, MCA  
IMP: 15-30-2512, MCA

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: 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. August 26, 2024.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the 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, 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 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 [www.mtrevenue.gov](http://www.mtrevenue.gov), or through the Secretary of State's web site at [rules.mt.gov](http://rules.mt.gov).

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 399, Senator Hertz, was contacted by email on July 8 and on July 12, 2024. The primary bill sponsor for SB 121, Senator Beard, was contacted by email on July 8 and on July 11, 2024. The primary bill

sponsor for HB 447, Representative Thane, was notified by email on July 8 and on July 12, 2024.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Scott Mendenhall  
Scott Mendenhall  
Deputy Director of Revenue

Certified to the Secretary of State July 16, 2024.