

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.2.402 pertaining to the ) PROPOSED AMENDMENT  
simplification of processing tax )  
clearance certificates )

TO: All Concerned Persons

1. On August 19, 2024, at 2:00 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 rule. 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. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.2.402 TAX CERTIFICATES – REQUIREMENTS (1) ~~The department may issue a tax certificate, referred to as a "Title 15 Certificate," to a domestic corporation or limited liability company (LLC) that has been involuntarily dissolved by the Montana Secretary of State (MSOS) if the business has filed all required tax returns and reports and has paid all taxes, including interest and penalties, owed by the entity. Effective May 6, 2011, an LLC that has only one member and has not elected to be taxed as a corporation is not required to provide a Title 15 certificate from the department to be reinstated under 35-8-912, MCA. A tax certificate is a document a person or an entity can request from the department for the purpose of fulfilling the requirements of 15-31-524, 15-31-552, 16-4-401, 16-12-203, 35-6-201, 35-8-912, 35-8-1010, 35-14-1422, 35-14-1507, or 35-14-1509, MCA, or for the purpose of showing that the entity is in good standing with the department. A person or entity may request a tax certificate by filing an application on the department's online transaction portal, or by completing a paper form.~~

(2) ~~The department may issue a tax certificate, referred to as a "Dissolution/Withdrawal Certificate" to a domestic C or S corporation that wishes to voluntarily dissolve, and to a foreign C or S corporation and LLC that wishes to voluntarily withdraw, if the business has filed all required tax returns and reports and has paid all taxes, including interest and penalties, up to the date of the request. In most situations, the department may issue a tax certificate only after a person or~~

entity files all required tax returns and reports and pays all taxes, including interest and penalties that are owed, if any. If the tax certificate is intended to address a reinstatement from a dissolution under 35-8-209 or 35-14-1420, MCA, or the dissolution or withdrawal of a foreign entity, the department may issue a certificate only after the person or entity files all required tax returns and pays all taxes imposed under Title 15, MCA.

~~(3) The department may issue a tax certificate, referred to as a "Tax Clearance Certificate" to a domestic C or S corporation that has completed its dissolution or to a foreign C or S corporation that has completed its withdrawal, verifying that the corporation has filed all applicable returns, including a final return, and that all taxes owed by the corporation, including interest and penalties, have been paid through and including the corporation's final year of existence in Montana. The department may issue a tax certificate if, at the time of applying, the person or entity is enrolled in a payment plan or other agreement, such as a settlement agreement, with the department and they have not defaulted on that payment plan or other agreement.~~

~~(4) The department will issue a tax certificate, referred to as a "Reviver Certificate" to a domestic C corporation whose corporate powers have been suspended or to a foreign C corporation whose right to do intrastate business in the state has been forfeited as provided in 15-31-523, MCA, for failure to file a corporation license tax return or to pay a corporation license tax and that is seeking to be relieved from the suspension or forfeiture as follows:~~

~~(a) if the application for relief from the suspension or forfeiture is made within one year or less after the date of the suspension or forfeiture and if the suspension was made because the corporation failed to file a required corporation license tax return, then the department will issue the certificate if the corporation has filed the required return and paid any associated tax, interest and penalties; or~~

~~(b) if the application for relief from the suspension or forfeiture is made within one year or less after the date of the suspension or forfeiture and if the suspension was made because the corporation failed to pay all or any part of its corporation license tax liability, then the department will issue the certificate if the corporation has paid the tax, interest and penalties.~~

~~(5) The department will also issue a tax certificate, referred to as a "Reviver Certificate" to a domestic C corporation whose corporate powers have been suspended or to a foreign C corporation whose right to do intrastate business in the state has been forfeited as provided in 15-31-523, MCA, for failure to file a corporation license tax return or to pay a corporation license tax and that is seeking to be relieved from the suspension or forfeiture as follows:~~

~~(a) if the application for relief from the suspension or forfeiture is made more than one year after the date of the suspension or forfeiture and if the suspension was made because the corporation failed to file a required return, then the department will issue the certificate if the corporation has filed the required return and paid twice the amount of any associated tax and penalties; or~~

~~(b) if the application for relief from the suspension or forfeiture is made more than one year after the date of the suspension or forfeiture and if the suspension was made because the corporation failed to pay all or any part of its corporation~~

license tax liability, then the department will issue the certificate if the corporation has paid twice the amount of tax and penalties.

~~(6) The department may issue a tax certificate, referred to as a "Certificate of Good Standing," to any entity wishing to show that it filed required tax returns and paid all tax, interest, and penalties. The Certificate of Good Standing will be issued when the department has all the information it needs to determine that all required returns have been filed and all taxes, penalties, and interest have been paid.~~

~~(7) (4) The department will not issue any process a tax certificate request unless the application contains the person or entity's name, mailing address, and federal employer identification number (FEIN) of the entity. If the entity is a single member LLC that has no employees and does not have an FEIN, the single member LLC shall use its owner's social security number (SSN) or FEIN. If the entity is a C corporation requesting a tax clearance certificate described in ~~(3)~~ under 15-31-552, 35-14-1507, or 35-14-1509, MCA, the entity it must provide the additional documents and information as provided described in ARM 42.23.313.~~

~~(8) Except as provided in (9), the tax filing requirements of the single member LLC for purposes of obtaining a tax certificate, are separate from the tax filing requirements of its owner. Because an entity that is disregarded for tax purposes may, and usually does, have an obligation to file an information return (Form DER-1, Montana Disregarded Entity Information Return) with the department, a single member LLC cannot claim to be current on its tax filing requirements on the basis that its owner is current on the owner's tax filing requirements.~~

~~(9) (5) For wage withholding purposes, a single member LLC that has not elected to be taxed as a corporation and its owner are considered to be the same employer. The department will not issue a tax certificate ~~for~~ to the single member LLC unless all withholding taxes have been paid by the single member LLC and the owner.~~

~~(6) A tax certificate issued by the department expires six months from the date of its issuance.~~

AUTH: 15-1-201, MCA

IMP: 15-31-524, 15-31-552, 35-1-944, 35-1-1037, 35-6-201, 35-8-912, 35-8-1010, MCA

REASONABLE NECESSITY: Governor Gianforte's Red Tape Relief Initiative charged executive agencies with the goal of simplifying administrative rules through the removal of redundancies to statute and clarification of department procedures and/or requirements.

The department's Business and Income Taxes Division (BIT) analyzed that the department has historically issued tax clearance certificates based on sometimes complex statutory descriptions rather than a taxpayer's self-described need for the certificate, such as a certificate of good standing; for a business entity's dissolution or withdrawal (i.e., winding up); or to revive an administratively dissolved business entity.

In 2022, BIT changed its internal business practice to improve its work with taxpayers to lessen or eliminate confusion about tax clearance certificates, as

described above, and the response has been very positive. The department now proposes to amend ARM 42.2.402 to officially adopt the business practice into rule.

The proposed removal of text in current (1) through (6) reflects unnecessary clutter in the rule which does not lend to any greater understanding of the subject matter by a taxpayer. The department's proposed amendments will require section renumbering, where necessary.

Section (1) amendments propose to give appropriate deference to the listed statutory authorities and clarifies the existence of an application process, available online or via a traditional paper application.

Section (2) amendments propose to clarify the general conditions that apply to persons or entities that apply for tax certificates, in particular when the certificate request is related to statutory reinstatements for limited liability companies and business corporations under Title 35, chapters 8 and 14, MCA, respectively.

The proposed amendments in (3) seek to clarify BIT's practice that allows for the issuance of a tax certificate to a person or entity who has entered into a payment plan or other agreement, such as a settlement agreement, with the department.

Amendments in proposed (4) and (5) are necessary for internal consistency and housekeeping of the rule text for improved clarity.

The department proposes new (6) which informs entities that receive tax certificates that a certificate has an expiration period from the date of issuance. This proposed expiration period is necessary because entities have annual tax reporting requirements, and a tax certificate should not suggest open-ended compliance.

Finally, the department proposes to amend the implementing citations which is required under 2-4-305, MCA.

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 August 26, 2024.

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 [rules.mt.gov](http://rules.mt.gov).

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/ Scott Mendenhall  
Scott Mendenhall  
Deputy Director of Revenue

Certified to the Secretary of State July 16, 2024.