



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

MEMORANDUM

To: Dan Bucks, Director

From: C. A. Daw, Chief Legal Counsel 

Date: July 16, 2012

Subject: Department of Revenue Major Case Update

MONTANA SUPREME COURT

Cenex Harvest States (CHS): (2009-2011) CHS filed a Complaint for Declaratory Judgment challenging the DOR's method of assessment for industrial property taxes. Yellowstone and Gallatin CTABs were held in abeyance pending outcome of declaratory judgment action in Yellowstone District Court. The Court granted Summary Judgment in favor of DOR regarding jurisdiction to hear the case as a Declaratory Judgment action. CHS has appealed to Montana Supreme Court. CHS's opening brief will be due approximately the end of August with the DOR's reply 30 days after.

Robison, Dustin: Robison worked on the oil rigs in Wyoming and deducted the travel expenses he incurred traveling from his home in Billings to the work site. DOR determined that his employment was indefinite, rather than temporary, that his tax home was in Wyoming, and, therefore, the travel expenses were not deductible. Robison appealed to ODR and the DOR was affirmed. He then appealed to STAB and the ODR decision was reversed. The DOR filed a petition for judicial review with the District Court which found in favor of DOR. Robison then appealed to the Montana Supreme Court. The Supreme Court issued its decision on July 6, 2012, affirming the District Court.

STATE DISTRICT COURT

AT&T Mobility, LLC: (2011-2012) These tax years are currently pending before the Department's Office of Dispute Resolution. AT&T is appealing the market value determined by the Department for AT&T's property. In light of STAB's order to stay the 2009 case, the parties stipulated to a stay at ODR pending the district court action on the validity of the Department's administrative rules relating to intangible personal property.

Bresnan Communications, LLC This case proceeded to hearing before District Court Judge Watters in Yellowstone County in October 2011. Bresnan contended that it owned "cable television property" subject to local assessment and classification under Class 8. The Department contended that because Bresnan offers its cable, high speed internet, and

telephone services over a shared infrastructure that its operations were subject to central assessment and unit valuation. The Department further contended that Bresnan's delivery of cable television, high speed internet, and telephone service satisfies Montana's definition of a telecommunication services company and thus Bresnan should be classified within Class 13 as such. The Court issued its decision on July 6, 2012, finding that Bresnan owns Class 8 properties subject to local assessment. The Department has announced that it will appeal this decision to the Montana Supreme Court.

Gold Creek Cellular d/b/a Verizon: (2009) -- Verizon is appealing the market value determined by the Department for Verizon's property. Per STAB 4/7/11 order, this appeal is stayed pending district court action on the validity of the Department's administrative rules relating to intangible personal property. (2010 -2012) These tax years are currently pending before the Department's Office of Dispute Resolution. Verizon is appealing the market value determined by the Department for Verizon's property. In light of STAB's order to stay the 2009 case, the parties stipulated to a stay at ODR pending the district court action on the validity of the Department's administrative rules relating to intangible personal property.

Omimex Canada, Ltd.: Omimex filed a declaratory judgment action in Silver Bow County District Court for tax year 2011. Omimex alleges that its properties should not be subject to central assessment and that the Department incorrectly classified Omimex. Omimex also alleges valuation errors. Trial is set for December 10, 2012, but due to several outstanding motions it is unlikely that the case will go in December.

WWC Holding Co.: Tax Year 2010 is currently pending before the Department's Office of Dispute Resolution. WWC is appealing the market value determined by the Department for WWC's property. In light of STAB's order to stay the 2009 case, the parties stipulated to a stay at ODR pending the district court action on the validity of the Department's administrative rules relating to intangible personal property.

STATE TAX APPEAL BOARD

ConocoPhillips: The 2010 and 2011 tax years are pending before the State Tax Appeal Board. The dispute concerns the appropriate value of Conoco's Billings Refinery. The Department appealed the Yellowstone County Tax Appeal Board's adverse decision which lowered the appraised value from approximately \$500 million to \$370 million. This matter is currently scheduled for trial in March 2013.

MCR: (2005-2007): The Department audited MCR and, using a delivery price adjustment method of valuation, determined that MCR owed approximately \$700,000 in additional tax, interest, and penalty. During litigation, the Department and MCR settled some matters, but the central issue of whether the Department could value MCR's gas at the wellhead using a delivery price adjustment method of valuation remained. The parties cross-moved for summary judgment, and on June 7, 2012, STAB ruled that the Department could not use a delivery price adjustment to value gas at the wellhead and granted MCR's summary judgment motion. The Department must decide whether to appeal by August 6, 2012.

Puget Sound Energy: (2005-2007) These tax years are currently on remand to STAB to better explain certain of its findings and conclusions. The Department's supplemental post-hearing briefing on the remand issues is currently due July 27, 2012. Puget's response is currently due August 10, 2012. (2009-2010) Both of these tax years are stayed at the State Tax Appeal Board pending resolution of the 2005-2007 tax years. (2011) This tax year is stayed at the Department's Office of Dispute Resolution pending resolution of tax years 2005-2007 that are currently before STAB.

Montana Department of Revenue
Centrally Assessed Taxes Paid Under Protest
as of 7/1/2012

Company	Year	Tax Protested	Total Uncontested	Total Tax	Protested %	State Portion of Protested Tax	Venue
Electric and Gas Companies:							
Puget Sound Energy	2005	\$ 2,699,299	\$ 6,299,293	\$ 8,997,562	30.0%	935,461	Supreme Court - Remanded to DC - Remanded to STAB
	2006	\$ 3,676,454	\$ 5,514,682	\$ 9,191,136	40.0%	1,281,923	Supreme Court - Remanded to DC - Remanded to STAB
	2007	\$ 4,687,663	\$ 5,729,366	\$ 10,417,029	45.0%	1,633,356	Supreme Court - Remanded to DC - Remanded to STAB
	2009	\$ 2,983,789	\$ 6,962,173	\$ 9,945,962	30.0%	1,047,751	STAB - Held in Abeyance
	2010	\$ 2,569,550	\$ 5,995,616	\$ 8,565,166	30.0%	852,183	STAB - Held in Abeyance
	2011	\$ 2,786,411	\$ 6,501,627	\$ 9,288,038	30.0%	867,985	ODR - Held in Abeyance
Total		\$ 19,403,136	\$ 37,001,757	\$ 56,404,893	34.4%	6,678,689	
Pipeline Companies:							
Ominex Resources, Inc.	2011	\$ 1,661,636	\$ 225,343	\$ 1,886,979	89.6%	342,255	District Court - Judge Newman - Waiting for Decision
		\$ 1,661,636	\$ 225,343	\$ 1,886,979	89.1%	342,255	
Telecommunication Companies:							
Verizon Wireless	2009	\$ 3,872,731	\$ 1,580,014	\$ 5,452,745	71.0%	564,647	District Court - Judge Reynolds - Waiting for Decision
	2010	\$ 3,363,678	\$ 986,974	\$ 4,350,651	77.3%	1,103,715	ODR - Held in Abeyance
	2011	\$ 9,072,356	\$ 1,707,594	\$ 10,780,000	84.2%	1,504,811	STAB - Held in Abeyance
		\$ 16,308,764	\$ 4,274,582	\$ 20,583,396	79.2%	3,173,173	
WWWC Holdings dba Alltel	2010	\$ 3,363,678	\$ 986,974	\$ 4,350,651	77.3%	1,103,715	ODR - Held in Abeyance
		\$ 3,363,678	\$ 986,974	\$ 4,350,651	77.3%	1,103,715	
AT&T Mobility	2011	\$ 3,827,153	\$ 673,499	\$ 4,500,652	85.0%	641,802	District Court - Judge Reynolds - Waiting for Decision
		\$ 3,827,153	\$ 673,499	\$ 4,500,652	85.0%	641,802	
Bresnan Communications	2010	\$ 5,623,726	\$ 1,672,270	\$ 7,295,996	77.1%	892,926	Supreme Court
	2011	\$ 11,107,207	\$ 2,062,129	\$ 13,169,336	84.3%	1,776,830	District Court - Judge Baugh - Stayed Pending 2010 Case
		\$ 16,730,933	\$ 3,734,399	\$ 20,465,332	81.8%	2,659,756	
Total		\$ 61,295,301	\$ 46,896,553	\$ 108,192,503	56.7%	\$ 14,539,389	
Industrial Property Taxes Paid Under Protest All amounts are estimated							
Oil Refiners:							
CHS	2009	\$ 3,600,000	\$ 2,950,000	\$ 6,550,000	55.0%	720,000	Supreme Court
	2010	\$ 4,700,000	\$ 2,320,000	\$ 7,020,000	67.0%	940,000	Supreme Court
	2011	\$ 4,400,000	\$ 2,590,000	\$ 6,990,000	63.0%	890,000	District Court - Judge Todd Stayed Pending 2010 Case
	\$ 12,700,000	\$ 7,860,000	\$ 20,560,000	61.8%	2,540,000		
ConocoPhillips	2010	\$ 1,600,000	\$ 5,070,000	\$ 6,670,000	24.0%	320,000	STAB
	2011	\$ 2,200,000	\$ 4,900,000	\$ 7,100,000	31.0%	440,000	STAB
		\$ 3,800,000	\$ 9,970,000	\$ 13,770,000	27.6%	760,000	