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Director

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Steve Bullock
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MEMORANDUM

To: Revenue and Transportation Interim Committee (RTIC)

From: Mike Kadas, Director

Date: May 6, 2014

Subject: Elderly Homeowner and Renter Credit Program

Introduction

At the February RTIC meeting Representative Jacobsen raised concerns that he has heard from constituents about recent Department of Revenue (Department) compliance efforts related to the Elderly Homeowner and Renter Credit program, specifically to tax exempt nursing and related healthcare residential facilities and their residents that do not qualify for the program.

This report is intended to provide more detail on this compliance effort and the taxpayers that are affected as well as the Department actions to respond to the concerns of residents of the tax exempt facilities.

Background

When the legislature established the Elderly Homeowner and Renter Tax Credit (credit) in 1981, it limited the credit to citizens living in Montana residences that were subject to property taxes. It excluded any portion of taxes or rent that was subject to a public rent or tax subsidy program. When the committees discussed this aspect of the bill, members and witnesses spoke only vaguely of public housing and did not elaborate on what they meant by the term.

In the 1983 session, the legislature clarified through an amendment to statute that its limit of the credit to taxpayers who paid taxes on their property also applied to renters—that the credit was not available for rented land and dwellings that were not subject to property taxes. The chairman of the committee explained that because the amendment applied to persons living in certain types of public housing he would ask the Legislative Council to study the issue because of his concerns that these renters have incomes below the poverty line and could benefit from the program.

In the 1989 session, the legislature amended the statute to allow residents of county and municipal public housing to receive the credit. The fact that the remaining limitation

would apply to elderly citizens living in private as well as public tax exempt health care and assisted living facilities was not discussed.

These facilities did not become a major part of our health care system until the late 1990's and early 2000's when federal and state policy makers determined it was in the public interest to provide home and community based care for the elderly as a way to minimize the higher cost services of nursing homes.

Legislative History

During the 1981 session, Senator Pat Regan introduced SB 337 at the request of Governor Schwinden. It became law that May. At the time the sponsors referred to it as a "property tax circuit breaker bill."

The bill provided a refundable income tax credit for a portion of the property tax or rent Montana residents 62 years old or older paid for their primary residence. The bill allowed a renter to claim 15% of their gross rent as an equivalent of property taxes paid.

SB 337 explicitly excluded from relief property that was not subject to property taxes. The bill also did not allow citizens living in accommodations subject to a public rent or tax subsidy program to claim the credit. The sponsor's rationale stated in testimony at the bill hearing was that:

- The elderly have always paid property taxes whether they have rented or owned a home.
- Reductions in income upon retirement are met with increased rent or property taxes through inflation.
- Middle and upper income citizens have property tax relief through itemized deductions.
- At the time on a national average 3.4% of income went to property taxes while for the elderly the average was 8.1%.
- The bill was designed to address this disparity and to supplement the local relief provided by the Property Tax Assistance Program (PTAP).

The limitation on tax exempt property was not a matter of discussion except for public housing being mentioned as the example. The bill's application to elderly citizens living in tax exempt retirement and health care facilities was never raised.

During the 1983 session, the legislature adopted HB 227 which was introduced by Representative Yardley, Chairman of the House Taxation Committee. Originally the statute excluded Social Security income from the definition of income but made no mention of railroad retirement benefits. HB 227 excluded railroad benefits from the calculation of the income as well. At the same time the bill clarified that rented property upon which no property taxes were paid was also excluded from the credit just as owned property was excluded. The chairman recommended that the Legislative

Council study the public housing exclusion because their residents had incomes below the poverty level and could benefit from the relief provided by the statute.

During the 1989 session, HB 564 was introduced by Representative McCormick and enacted that April. The bill amended the statute to allow citizens living in public housing to qualify for the credit. It accomplished this by defining dwellings rented from a county or municipal housing authority as eligible residences or homesteads. The Department opposed the bill.

The sponsor's rationale was that these citizens were paying rents and needed the credit while opponents believed the bill reversed the original premise of the statute that the credit was a return on property taxes paid.

In adopting the bill the legislature did not discuss the issue of elderly citizens living in nonprofit private and public retirement and health care as this is a more recent phenomenon.

Since the late 1990s the number and variety of assisted living and retirement facilities have increased dramatically as state Medicaid waivers for home and community based services became available. Federal and State policy makers, confronting large increases in Medicaid services for the elderly, achieved major savings by placing a new emphasis on these community based services, which are less expensive than the skilled nursing care found in nursing homes. In supporting this movement, the Montana Legislature provided these facilities tax exempt status if they were licensed by Montana's Department of Public Health and Human Services and organized as a public benefit, mutual benefit, or religious corporation.

Department Taxpayer Compliance Efforts on Elderly Homeowner and Renter Credit Program

In 2013, it came to the Department's attention that a number of residents of tax exempt facilities were claiming and receiving the Elderly Homeowner and Renter credit. The DOR investigated the qualification requirements to ensure that our interpretation that claims made by individuals living in facilities that are exempt from property taxes do not qualify for the credit. The Department determined that the governing statute was clear that individuals claiming the credit from these facilities do not qualify.

Based on this information the Department began notifying tax preparers and tax exempt facilities that our review of the statute determined that residents of tax exempt facilities do not qualify for the credit. The Department began actively enforcing this provision of the program for tax year 2013 claims.

There are approximately 21,000 individuals that claimed the credit in the past. Of these, there are an estimated 1,200 individuals that live in a tax exempt facility that do not qualify for the credit. To date, the Department has denied 451 claims. Unfortunately

189 claims have been approved for individuals that do not qualify. The Department is confident that this error rate will be significantly reduced in the future.

Future Department Actions

The Department is continuing to take steps to develop future programs and processes to educate individuals about the Elderly Homeowner and Renter credit program. Some of the education efforts being considered include:

- Annual notification to individuals that have received the credit in the past notifying them of the eligibility criteria.
- Working with tax exempt facilities on education programs to inform their residents about the program and the programs eligibility criteria.
- Continued education and communication efforts with paid and volunteer tax preparers.
- Continued improvement to the Elderly Homeowner and Renter credit form (2EC) and instructions.

The Department is confident that with continued education and public outreach that the individuals that may or may not qualify will better understand the eligibility criteria of the program.