



Mike Kadas
Director

Montana Department of Revenue



Steve Bullock
Governor

MEMORANDUM

To: Mike Kadas, Director

From: C. A. Daw, Chief Legal Counsel
Dan Whyte, Deputy Chief Legal Counsel

Date: September 30, 2013

Subject: Department of Revenue Major Case Update

MONTANA SUPREME COURT

AT&T Mobility & Gold Creek Cellular d/b/a Verizon: The validity of the Department's administrative rules relating to intangible personal property is on appeal to the Supreme Court. On September 24, 2013, the Supreme Court determined that the Department was too limited in its application of administrative rules relating to intangible personal property and good will.

Applied Materials: On 9/11/13, the Department appealed the District Court decision on an interlocutory appeal from the State Tax Appeal Board. The District Court concluded that Applied Materials, the surviving corporation from a merger with Semitool, Inc., is entitled to the Research and Development Credit earned by Semitool. The Department's position is that only the corporation that earned the credit is entitled to claim it.

Bresnan Communications, LLC: The Department has appealed the District Court decision finding that Bresnan owns Class 8 properties subject to local assessment to the Montana Supreme Court. Oral argument took place on September 25, 2013.

Westmoreland Resources, Inc.: Westmoreland appealed the District Court's decision affirming the Department's interpretation that tribal taxes are not a "tax paid to the federal, state, or local governments" for purposes of deducting taxes paid on production from the contract sales price of coal. The parties are awaiting the district court's transmittal of the record before briefing on the matter may proceed.

STATE DISTRICT COURT

Anaconda Deer Lodge County TIFID: The Department of Revenue is currently engaged in litigation with Anaconda Deer Lodge County (ADLC) and Anaconda School District No. 10

(SD 10). The matter concerns SD 10's treatment of funds it receives as a part of a remittance agreement from an industrial tax increment financing district (TIFD) located within ADLC. It is the position of the Department that the way that SD 10 handles the tax remittances does not comport with Montana law, and results in the illegal double-taxation of the citizens of ADLC. The matter is currently in discovery.

Cloud Peak: Cloud Peak filed a declaratory judgment action in the First Judicial District, disputing the Department's deficiency assessment (issued following an audit) for coal severance, coal gross proceeds, and the resource indemnity trust tax for tax years 2005-2007. The main issue is whether the Department can impute a value to coal sold under non-arm's length contracts, and if so, whether the Department's method for doing so was correct. The Department moved for summary judgment, and oral argument is set for October 15, 2013.

Lucas, et al.: This matter is in litigation before the Fourteenth Judicial District Court, Meagher County. It is currently before the Court on the issue of a definition of a class for the class action. Both Lucas and the Department have filed motions for summary judgment based on the applicable statutes.

MCR: MCR filed an action in Toole County seeking attorney fees after obtaining a summary judgment from STAB on an appeal of an oil and gas production tax audit and assessment. The Department has filed for summary judgment in that action and the matter is currently being briefed.

Omimex Canada, Ltd.: Omimex filed a declaratory judgment action in Silver Bow County District Court for tax years 2011 and 2012. Omimex alleges that its properties should not be subject to central assessment and that the Department incorrectly classified Omimex. Omimex also alleges valuation errors. The original trial date of December 10, 2012, was vacated and the parties are awaiting a new trial date from the District Court.

Phillips 66 (f/k/a ConocoPhillips): Currently before the District Court on Interlocutory Appeal over the issue of the appeals process and the extent of the appeal from a county tax appeal board to the State Tax Appeal Board.

Priceline, et al. (On-Line Travel Companies): A jury trial is currently scheduled for March 3 through 14, 2014, in the First Judicial District Court. The parties will be filing cross-motions for summary judgment that are due on September 23, 2013.

STATE TAX APPEAL BOARD

AT&T Mobility, LLC: Multiple tax years have been pending at either ODR or STAB awaiting the Supreme Court decision regarding the Department's administrative rules relating to intangible personal property. The status of these cases is currently under consideration now that the Supreme Court decision has been handed down.

Blixseth: Mr. Blixseth appealed the Department's audit and assessment in the amount of \$56 million in February 2011. This litigation was stayed during the involuntary bankruptcy but is now being actively litigated. Preliminary dispositive motions are due January 15, 2014.

CHS, Inc.: Currently there are no pending hearings scheduled at STAB. The parties have agreed to mediation, which will take place on October 28, 2013.

Gold Creek Cellular d/b/a Verizon: Multiple tax years have been pending at either ODR or STAB awaiting the Supreme Court decision regarding the Department's administrative rules relating to intangible personal property. The status of these cases is currently under consideration now that the Supreme Court decision has been handed down.

BANKRUPTCY

Blixseth: The Department is pursuing Mr. Blixseth's \$56 million tax debt through an involuntary bankruptcy in Nevada. While the bankruptcy court dismissed the involuntary case, the matter is on appeal before the Nevada Federal District Court. Meanwhile, Mr. Blixseth has sought attorney fees before the bankruptcy court in the amount of \$3.2 million. The Court recently granted a stay of the attorney fees issue pending a decision on whether an involuntary bankruptcy is appropriate.