

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.21.116, 42.21.158, and) PROPOSED AMENDMENT
42.21.162 relating to personal property)
valuation)

TO: All Concerned Persons

1. On September 26, 2013, at 1:30 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 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 that you need, no later than 5 p.m. on September 16, 2013. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov.

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

42.21.116 EXEMPT INTANGIBLE PERSONAL PROPERTY DEDUCTION FOR COMMERCIAL AND INDUSTRIAL PROPERTY (1) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-6-138, 15-6-218, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.21.116, as a matter of housekeeping, to include a missing implementing citation.

42.21.158 PERSONAL PROPERTY REPORTING REQUIREMENTS (1) remains the same.

~~(2) As determined by the department, if the aggregate market value of an individual's or business entity's class eight property is \$20,000 or less, the individual's or business entity's class eight property is exempt from taxation. If the aggregate market value of an individual's or business entity's class eight property is greater than \$20,000, the individual's or business entity's class eight property is subject to taxation. To ensure fair and accurate reporting of all taxable class eight property, the department may require all individuals or business entities to report all of their class eight property periodically, including exempt property. Beginning in tax~~

year 2011, the department requires biennial reporting of all exempt class eight property.

(a) Starting in tax year 2012, the aggregate market value of class eight property owned by an individual or business entity will be taxed as follows:

(i) the first \$2 million of taxable market value will be taxed at the rate of 2 percent; and,

(ii) all taxable market value in excess of \$2 million will be taxed at the rate of 3 percent.

(b) If the conditions provided in 15-6-138, MCA, are met, the aggregate market value of class eight property owned by an individual or business entity, as provided in (2), will be taxed as follows:

(i) the first \$3 million of taxable market value will be taxed at the rate of 1.5 percent; and,

(ii) all taxable market value in excess of \$3 million will be taxed at the rate of 3 percent.

(c) The department will apply the operative tax rates identified in (a) or (b) to an individual's or business entity's class eight property by:

(i) determining the fraction obtained by dividing the appropriate threshold level, \$2 million or \$3 million, respectively, as identified in (a)(i) or (b)(i), by the individual's or business entity's total aggregated class eight taxable market value;

(ii) determining the portion of class eight property in each location that will receive the reduced tax rate, as identified in (a) or (b), by multiplying the fraction obtained in (c)(i), by the taxable market value of class eight property in each location owned by an individual or business entity;

(iii) multiplying the appropriate tax rate, identified in (a)(i) or (b)(i), by the fractional portion of the individual's or business entity's class eight property; and

(iv) applying the 3 percent rate, identified in (a)(ii) and (b)(ii), to the remaining fractional portion of the individual's or business entity's class eight property identified in (c)(ii).

(d) The following are examples of how the provisions of (2)(a), (b), and (c) apply:

(i) Example 1. On January 1, 2012, Taxpayer X owns class eight property with a total taxable market value of \$5 million in four different locations throughout the state. The 2 percent rate for the first \$2 million of aggregate taxable market value is applied to the property in each location as follows:

Location	Taxable market value	2% rate allocation	3% rate allocation
1	\$ 500,000	$2/5 \times \$500,000 = \$200,000$	$3/5 \times \$500,000 = \$300,000$
2	\$1,000,000	$2/5 \times \$1,000,000 = \$400,000$	$3/5 \times \$1,000,000 = \$600,000$
3	\$1,500,000	$2/5 \times \$1,500,000 = \$600,000$	$3/5 \times \$1,500,000 = \$900,000$
4	\$2,000,000	$2/5 \times \$2,000,000 = \$800,000$	$3/5 \times \$2,000,000 = \$1,200,000$
	\$5,000,000		

After adjustment for the tax rate difference, the taxable value at each location is determined by multiplying the amounts allocated to each location by the applicable tax rates and adding the results.

Location	2% taxable value	3% taxable value	Total taxable value
1	$\$200,000 \times .02 = \$4,000$	$\$300,000 \times .03 = \$9,000$	\$13,000
2	$\$400,000 \times .02 = \$8,000$	$\$600,000 \times .03 = \$18,000$	\$26,000
3	$\$600,000 \times .02 = \$12,000$	$\$900,000 \times .03 = \$27,000$	\$39,000
4	$\$800,000 \times .02 = \$16,000$	$\$1,200,000 \times .03 = \$36,000$	\$52,000

The mills for the levy district within which each property is located are applied to this total taxable value. Various government subdivisions have the authority to impose mills to raise taxes. They are sometimes collectively referred to as "taxing jurisdictions." The department creates a levy district for each distinct geographic area in the state where the same mills apply to all of the properties. For example, location 1 could be in a levy district that has mills imposed by the state, county, a high school district, and a mosquito district; location 2 could be in a levy district that has mills imposed by the state and county; location 3 could be in a levy district that has mills imposed by the state, county, a high school district, a grade school district, and a rural fire district; and location 4 could be in a levy district that has mills imposed by the state, county, city, and an urban transportation district.

(ii) Example 2. On January 1, 2012, Taxpayer Y owns class eight property with a total taxable market value of \$2 million in four different locations throughout the state. No allocation of Taxpayer Y's property between the 2 percent and 3 percent tax rates is required. The property at each location is taxed at the 2 percent rate.

Location	Taxable market value	Total taxable value
1	\$ 500,000	$\$ 500,000 \times .02 = \$10,000$
2	\$ 250,000	$\$ 250,000 \times .02 = \$ 5,000$
3	\$ 250,000	$\$ 250,000 \times .02 = \$ 5,000$
4	\$1,000,000	$\$1,000,000 \times .02 = \$20,000$
	\$2,000,000	

The mills for the levy district within which each property is located are applied to this total taxable value.

(iii) Example 3. On January 1, 2012, Taxpayer Z owns class eight property with a total taxable market value of \$19,000 in four different locations throughout the state. Because the class eight property of an individual or business entity that owns an aggregate of \$20,000 or less in market value of class eight property is exempt from taxation, (2)(a), (b), and (c) do not apply to Taxpayer Z.

(iv) Example 4. Assume the same facts as in (i) Example 1, but with the added fact that one of the locations is within a tax increment financing district (TIFD). The calculations and results of Example 1 do not change: the total taxable value is determined the same way and the mills for the levy districts are applied the same

~~way. The fact that there is a TIFD changes only how the taxes that are levied are distributed. For the purposes of this rule, the statewide aggregate taxable market value of a taxpayer's class eight property includes all property owned, claimed, possessed, controlled, or managed by an individual or business entity, either directly or indirectly through an affiliated entity or family member, unless that property is specifically exempted in Title 15, chapter 6, part 2, of MCA.~~

~~(3) The department will provide educational information on the class eight personal property exemption to all individual taxpayers or business entities the department is aware of that currently have class eight business personal property. As used in this rule, "affiliated entity" means:~~

~~(a) a member of a combined group of unitary corporations filing a Montana corporation license tax return;~~

~~(b) a member of an affiliated group of corporations filing a U.S. Consolidated Income Tax Return;~~

~~(c) any corporation if the individual or business entity directly or indirectly owns more than 50 percent of the stock value or voting power;~~

~~(d) any partnership if the individual or business entity directly or indirectly owns more than 50 percent of the capital interest in, or the profits of, the partnership;~~

~~(e) a corporation and a partnership if the same persons own:~~

~~(i) more than 50 percent in value of the corporation's stock; and~~

~~(ii) more than 50 percent of the capital interest in, or the profits of, the partnership;~~

~~(f) an S corporation and another S corporation, if the same individuals own more than 50 percent in value of the outstanding stock of each corporation;~~

~~(g) an S corporation and a C corporation, if:~~

~~(i) the same individuals own more than 50 percent in value of the outstanding stock of each corporation; and~~

~~(ii) any trust, if the individual or business entity is the grantor or a beneficiary.~~

~~(4) The taxpayer's completed personal property statement as provided for in 15-8-301, MCA, must be returned to the department postmarked no later than February 15. If a taxpayer fails to return a completed personal property statement by February 15, the department will provide a written notice to the taxpayer advising the taxpayer of their obligation to return a completed personal property statement. The notice shall also advise the taxpayer that they are subject to penalty for refusing or neglecting to respond to the department's request for information under the provisions of 15-1-303 and 15-8-309, MCA, or any other applicable statute. For purposes of applying (2) and (3):~~

~~(a) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and~~

~~(b) an individual is considered as owning the stock, directly or indirectly, by the individual's spouse or minor child.~~

~~(5) Statements postmarked after March 15 will be assessed the penalty provided in (4) unless:~~

~~(a) the taxpayer provides evidence of their inability to comply with the timeframes set forth in (4) due to hospitalization, physical illness, infirmity, or mental illness; and~~

~~(b) evidence that this/these condition(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March 15 to prevent timely filing of the reporting form. As determined by the department, if the statewide aggregate market value of an individual's or business entity's class eight property is \$100,000 or less, the individual's or business entity's class eight property is exempt from taxation. If the aggregate market value of an individual's or business entity's class eight property is greater than \$100,000 the market value of an individual's or business entity's class eight property that is greater than \$100,000 is subject to taxation.~~

~~(6) Industrial and commercial property taxpayers shall provide documentation of the installed costs of intangible personal property included on the taxpayer's accounting records. Starting in tax year 2014, the department will apply the exemption and the applicable tax rates identified in (a) through (d) to an individual's or business entity's class eight property by adding together the statewide market value of class eight property owned by the individual or business entity to determine the aggregate market value. If the aggregate market value of class eight property is:~~

~~(a) \$100,000 or less, the taxable market value of the property is zero;~~

~~(b) greater than \$100,000 the department will apply the \$100,000 exemption proportionally between each property owned;~~

~~(c) \$6,100,000 or less, the department will apply the \$100,000 exemption proportionally between each property owned and apply the 1.5 percent taxable rate to the remaining taxable market value; or~~

~~(d) greater than \$6,100,000 the department will apply the \$100,000 exemption proportionally between each property owned, apply the 1.5 percent taxable rate proportionally to the next \$6,000,000 of taxable market value, and apply the 3 percent taxable rate to the remaining taxable market value.~~

~~(7) For purposes of determining the statewide aggregate taxable market value of class eight property of an individual or business entity, the class eight property of an individual or business entity includes all property the individual or business entity owns, claims, possesses, controls, or manages by himself, herself, or itself directly or indirectly through an affiliated entity or family member. As used in this rule, "affiliated entity" means:~~

~~(a) a member of a combined group of unitary corporations filing a Montana corporation license tax return;~~

~~(b) a member of an affiliated group of corporations filing a U.S. Consolidated Income Tax Return;~~

~~(c) any corporation if the individual or business entity directly or indirectly owns more than 50 percent of the stock value or voting power;~~

~~(d) any partnership if the individual or business entity directly or indirectly owns more than 50 percent of capital interests or profits interests in the partnership;~~

~~(e) a corporation and a partnership if the same persons own:~~

~~(i) more than 50 percent in value of the corporation's stock; and~~

~~(ii) more than 50 percent of the capital interest or the profits interest in the partnership;~~

~~(f) an S corporation and another S corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation;~~

- ~~(g) an S corporation and a C corporation, if the same individuals own more than 50 percent in value of the outstanding stock of each corporation; and~~
- ~~(h) any trust, if the individual or business entity is the grantor or a beneficiary.~~

When the department requires a personal property statement/reporting form as provided in 15-8-301, MCA, the statement/reporting form shall advise the taxpayer that they are subject to penalty under the provisions of 15-1-303 and 15-8-309, MCA, or any other applicable statute, for refusing or neglecting to respond to the department's request for information. The taxpayer's completed personal property statement/reporting form must be returned to the department postmarked no later than March 1.

~~(8) For purposes of applying (7):~~

~~(a) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and~~

~~(b) an individual is considered as owning the stock owned, directly or indirectly, by the individual's spouse or minor child. A taxpayer's completed statement/reporting form postmarked after March 1 will be subject to the penalties referenced in (7) unless the taxpayer provides:~~

~~(a) evidence of their inability to comply with the timeframes due to hospitalization, physical illness, infirmity, or mental illness; and~~

~~(b) evidence that this/these condition(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March 1 to prevent timely filing of the reporting form.~~

~~(9) The department may assess at the 3 percent rate all of the class eight property of any individual or business entity that does not either:~~

~~(a) affirm on their personal property and business equipment reporting form that they have no affiliated entities; or~~

~~(b) identify their affiliated entities on their personal property and business equipment reporting form. Beginning in Tax Year 2014, personal property owners whose aggregate class eight market value is \$100,000 or less, as defined in (2), will have no further reporting obligation, except:~~

~~(a) if the property owner acquires new personal property, the value of which brings the aggregate market value of the personal property above the \$100,000 exemption, the taxpayer must notify the department and complete a personal property statement/reporting form for the applicable tax year; or~~

~~(b) if the department requests the property owner to complete a personal property statement/reporting form as required by 15-8-301, MCA, or as a result of an audit and review of taxable value authorized by 15-8-104, MCA, and ARM 42.21.159.~~

~~(10) For any tax year after 2012, the exemption from tax provided in (2) may be denied for the property of any person that does not either:~~

~~(a) affirm on their personal property and business equipment reporting form that they have no affiliated entities; or~~

~~(b) identify their affiliated entities on their personal property and business equipment reporting form as provided in (9). New businesses that start up in tax year 2014, and after, are not required to submit a personal property statement/reporting form if the entity's business equipment is valued at \$100,000 or less,~~

unless requested by the department in accordance with (9).

(11) Industrial and commercial property taxpayers shall provide documentation of the installed costs of intangible personal property included on the taxpayer's accounting records.

(12) The department will provide educational information on the class eight personal property exemption to all individual taxpayers or business entities the department is aware of that currently have class eight business personal property.

AUTH: 15-1-201, 15-9-101, MCA

IMP: 15-1-121, 15-1-303, 15-6-138, Title 15, chapter 6, part 2, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-9-101, 15-24-902, 15-24-903, 15-24-904, 15-24-905, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.21.158, to properly implement Senate Bill 96, L. 2013, which changes the business personal property exemption from a \$20,000 threshold to a \$100,000 exemption. The proposed amendments also reorganize existing sections of the rule to provide a definition of the applicable entities first, and then explain the exemption and applicable percentages based upon the amount of personal property owned by an individual or business entity. The proposed amendments redefine the personal property reporting requirements and provide additional clarity. The proposed title amendment adds in the word "personal" to more fully capture the rule content.

The examples the department is proposing to strike from (2) were originally included as part of the rule based upon Senate Bill 372, L. 2011, which no longer applies. The department extended the application deadline from February 15 to March 1. This allows the property taxpayer more time to submit their statement/reporting form. The penalty will be imposed after March 1. Further proposed amendments in (2) define the statewide aggregate taxable market value of class eight properties.

The department also proposes to strike the language in (4) that references a written notice provided to the taxpayer reminding them of their obligation to return a completed personal property statement. A reminder notice is not a statutory requirement but was implemented by the department as a courtesy to the taxpayer. Removing the language will create administrative efficiencies and result in less paperwork for the taxpayer. Amendments in (5) and (6) will change the exemption from a \$20,000 threshold to a \$100,000 exemption, explain how the property will be taxed, and increase the dollar thresholds for the 1.5 percent and 3 percent tax rates.

Section (9), as amended, will explain that businesses with \$100,000 or less in tangible market value will no longer be required to report to the department unless they have acquired personal property that increases their aggregate taxable market value above \$100,000 or if the department requires the property taxpayer to submit a statement/reporting form. New businesses owning business equipment valued at \$100,000 or less are not required to submit a property reporting form unless requested by the department. These amendments change the department's existing processes from focusing upon self-reporting and less on auditing to focusing on auditing and less on self-reporting. The change in processes lessens the reporting requirements by businesses across the state.

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) remains the same.

(2) In order to obtain an exemption for personal property, other than class eight property that is ~~exempt under 15-6-138(4), MCA, freeport merchandise or business inventories that are exempt under 15-6-202, MCA, or intangible personal property that is exempt under 15-6-218, MCA,~~ automatically exempt under Title 15, chapter 6, part 2, MCA, an application for exemption must be filed before March 1 of the year for which the exemption is sought. If the applicant acquires the personal property after January 1, they must submit an application for exemption:

- (a) by March 1; or
 - (b) within 30 days of acquisition of a motor vehicle ~~the property;~~ or
 - (c) ~~within 30 days of receipt of an assessment notice, whichever is later.~~
- (3) through (7) remain the same.

AUTH: 15-1-201, MCA

IMP: Title 15, chapter 6, part 2, 15-8-201, 15-16-613, 15-24-301, 15-24-303,
MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.21.162 in conjunction with amendments being made to a rule in another chapter, ARM 42.20.102, relative to the proration of taxes for personal property. The amendments to ARM 42.20.102 correct a potential inequity among taxpayers caused by the existing wording of that rule. Similarly, the proposed amendments to ARM 42.21.162 will correctly allow the proration to apply only to motor vehicles based on the date of acquisition.

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: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.4375; or e-mail lalogan@mt.gov and must be received no later than October 3, 2013.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. It can be found by selecting the "Administrative Rules" link in the left hand column of the homepage under the "Public Meetings" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. 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, faxed to the office at 406.444.4375, or made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 96, L. 2013, Senator Bruce Tutvedt, was notified by regular mail on June 21, 2013, and subsequently notified on August 9, 2013.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. By applying the standard of a small business impact analysis set out in the statute, the department has determined the law change in Senate Bill 96, L. 2013, and not the modification of the rules, causes the impact to small business.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State August 26, 2013