

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through III, the amendment of)	PROPOSED ADOPTION,
ARM 42.2.304, 42.2.503, 42.2.504,)	AMENDMENT, TRANSFER AND
42.2.505, 42.2.510, 42.2.511,)	AMENDMENT, AND
42.3.102, 42.3.103, 42.3.115,)	REPEAL
42.14.204, 42.15.315, 42.15.316,)	
42.30.103, and 42.30.107, the)	
transfer and amendment of ARM)	
42.3.105 and 42.3.107, and the)	
repeal of ARM 42.2.306, 42.15.320,)	
and 42.23.605 pertaining to the)	
application of penalties and interest)	
and reasonable cause; and also)	
pertaining to the timeframe for)	
appealing notices of assessment)	

TO: All Concerned Persons

1. On October 13, 2016, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, transfer and amendment, and repeal of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, contact the department no later than 5 p.m. on October 3, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, 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 lalogan@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I ADJUSTMENTS TO PENALTY AND INTEREST (1) Late pay penalties will be adjusted based on the corrected amount of tax due that results from an amended return, adjustment from an audit, or correction to the original return.

(2) The department will adjust interest based on the corrected amount of tax due that results from an amended return, adjustment from an audit, or correction to the original return, unless a decrease in tax due arises from a net operating loss or a tax credit.

(3) When there is a change to the tax liability that results from an amended return, adjustment from an audit, or correction to the original return, no change will be

made to the underpayment interest penalty as calculated on the original return.

(4) The taxpayer may appeal a penalty assessment under the provisions of ARM 42.2.510 and ARM 42.2.613 through 42.2.621.

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-1-216, 15-1-222, 15-30-2602, 15-30-2604, 15-30-2605, 15-31-502, 15-31-503, 15-31-510, MCA

REASON: The department proposes adopting New Rule I to provide a single rule, as opposed to the current multiple rules, to explain the department's process for applying penalties and interest to an assessment of tax. While the process is uniform for all taxes that the department administers, rules on the subject matter currently exist in multiple chapters of ARM Title 42. The language in this proposed new rule is comprised of relevant information from two rules the department is proposing to repeal in this same notice, ARM 42.15.320 and 42.23.605. The department's intent is to better organize the subject matter together in a single rule and then place the new rule in ARM Title 42, chapter 2, in the same location as the department's other penalty and interest related rules.

NEW RULE II SUBSTANTIAL UNDERSTATEMENT PENALTY (1) A taxpayer who substantially understates tax due is subject to a substantial understatement of tax penalty in an amount equal to 20 percent of the understatement.

(2) For individuals, estates, and trusts, the penalty does not apply to understatements of tax that are less than or equal to \$3,000. For understatements larger than \$3,000, the penalty applies when the understatement exceeds the greater of:

- (a) 10 percent of the tax the taxpayer is required to show on the return; or
- (b) \$3,000.

(3) Examples of how the substantial underpayment penalty is calculated for individual, estate, and trust taxpayers are as follows:

(a) A taxpayer reports \$2,000 of tax on their original return; however, the taxpayer was required to report \$6,000. The taxpayer understated their tax by \$4,000. To determine whether the taxpayer's understatement was substantial, the understatement has to exceed the greater of \$3,000, or 10 percent of the tax required to be paid. Because the understated amount of \$4,000 exceeds both \$3,000 and 10 percent of the required tax to be paid (\$6,000 x 10 percent is \$600) the substantial understatement penalty applies. The taxpayer would be assessed a penalty of \$800 (20 percent of \$4,000).

(b) A taxpayer reports \$3,500 of tax on their original return, however, the taxpayer was required to report \$6,000 of tax. The taxpayer understated their tax by \$2,500. The understatement does not exceed \$3,000. As a result, the taxpayer is not subject to the penalty.

(4) For taxpayers, other than individuals, estates, and trusts, the penalty does not apply to understatements that are less than or equal to \$10,000. For understatements greater than \$10,000, the penalty applies when the understatement of tax exceeds the lesser of:

- (a) 10 percent of the tax required to be shown on the return; or

(b) \$500,000.

(5) Examples of how the substantial underpayment penalty is calculated for taxpayers other than individuals are as follows:

(a) A corporate taxpayer reports \$5,500,000 of tax on their original return; however, the taxpayer was required to report \$6,250,000 of tax. The taxpayer understated its tax by \$750,000. Because \$500,000 is less than 10 percent of the tax required to be shown on the return (\$625,000), \$500,000 is used to determine whether the taxpayer substantially understated its tax. Here, the taxpayer substantially understated its tax (\$750,000 is greater than \$500,000) and is assessed a \$150,000 penalty (\$750,000 x 20 percent).

(b) A corporate taxpayer reports \$750,000 of tax on their original return; however, the taxpayer was required to report \$1,000,000 of tax. The taxpayer understated its tax by \$250,000. Because \$100,000 (10 percent of the tax required to be shown on the return) is less than \$500,000, \$100,000 is used to determine whether the taxpayer substantially understated its tax. Here, the taxpayer substantially understated its tax (\$250,000 is greater than \$100,000) and is assessed a \$50,000 penalty (\$250,000 x 20 percent).

(c) A corporate taxpayer reports \$901,000 of tax on their original return; however, the taxpayer was required to report \$1,000,000 of tax. The taxpayer understated its tax by \$99,000. Because \$100,000 (10 percent of the tax required to be shown on the return) is less than \$500,000, \$100,000 is used to determine whether the taxpayer substantially understated its tax. The taxpayer did not substantially understate its tax because its understatement is less than \$100,000. The taxpayer is not subject to the penalty.

(d) A corporate taxpayer reports \$991,000 of tax on their original return; however, the taxpayer was required to report \$1,000,000 of tax. The taxpayer understated its tax by \$9,000. Since the understatement does not exceed \$10,000, the taxpayer is not subject to the penalty.

(6) The burden of proof is on the taxpayer to establish the existence of substantial authority or a reasonable basis for the tax treatment of an item taken on the return.

(7) For the purposes of determining a reduced penalty, the penalty is first calculated based on the understatement as a whole. Reductions are separately calculated by item and then subtracted from the penalty. For example:

Understatement subject to penalty	\$	11,000
Substantial understatement penalty before reduction	\$	2,200
Penalty reduction	\$	(500)
Total substantial understatement penalty	\$	1,700

(8) For the purposes of this rule, the following definitions apply:

(a) "Adequate disclosure" means a clear and comprehensive disclosure through statements, footnotes and/or supplemental schedules, which provides a comprehensive and clear description of the taxpayer's position.

(b) "Reasonable basis" means a well-reasoned construction of applicable statutory provisions and/or rules that provide substantial authority applied in good

faith to support the taxpayer's position.

(c) "Substantial authority" means an objective standard that is more stringent than the reasonable basis standard, where the weight of the authorities' supporting treatment is substantial in relation to the weight of the authorities' supporting contrary treatment.

AUTH: 15-1-2620, 15-31-501, MCA

IMP: 15-1-216, MCA

REASON: The department proposes adopting New Rule II to implement House Bill (HB) 379, L. 2015, which established a penalty on taxpayers who substantially understate tax due on an original or amended tax return. As proposed, the rule explains how the penalty applies and provides examples for when and how the penalty is calculated, and an example of how the relief provision shall be applied.

The department also proposes definitions for terms referenced in the statute and used in the proposed new rule. The definitions are the department's proposed definitions, but are based on the federal definitions for the same terms as provided in Treasury Regulations Section 1.6662-3 and 1.6662-4. Because the federal definitions are so expansive, the department extracted the principal concepts within each definition to arrive at the definitions proposed in this notice for state purposes.

NEW RULE III LATE FILING PENALTY (1) Applicable late filing penalties are calculated at 5 percent of the net tax due for each month during which there is a failure to file the return or report. Late filing penalties shall:

- (a) not exceed an amount up to 25 percent of the net tax due; and
- (b) not be less than \$50.

(2) Net tax due includes the amount of any credit against the tax that may be claimed on the return or report and any payments received by the due date of the return or report, including extensions.

(3) If the due date of the return or report is a date other than the last day of a calendar month, the late filing penalty is assessed each month or fraction thereof for which there is a failure to file a tax return or report. For example:

(a) A taxpayer files a tax return on June 20 that was due on April 15 of the same year. When filing the return, the taxpayer pays the tax due of \$1,500. The late filing penalty assessed is \$225 ($\$1,500 \times 5 \text{ percent} \times 3 \text{ months}$).

(b) A taxpayer files a tax return on June 20 that was due on April 15 of the same year. When filing the return, the taxpayer pays the tax due of \$300. The late filing penalty assessed is \$50 because the calculated penalty does not exceed the \$50 minimum ($\$300 \times 5 \text{ percent} \times 3 \text{ months} = \45).

(c) A taxpayer files a tax return due on June 20 that was due on April 15 of the same year. The taxpayer, however, paid the tax due of \$1,500 on April 15. The late filing penalty assessed is the minimum \$50.

(4) If the due date of the return or report, including extensions, is the last day of a calendar month, the late filing penalty is assessed each succeeding month or fraction thereof for which there is a failure to file a tax return or report. For example:

(a) A taxpayer files a tax return on April 10 that was due on March 31 of the same year. When filing the return, the taxpayer pays the tax due of \$1,500. The

late filing penalty assessed is \$75 (\$1,500 x 5 percent x 1 month).

(b) A taxpayer files a tax return on April 10 that was due on March 31 of the same year. The taxpayer, however, paid the tax due of \$1,500 on March 31. The late filing penalty assessed is the minimum \$50.

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-1-216, MCA

REASON: The department proposes adopting New Rule III to implement House Bill (HB) 379, L. 2015, which revised the calculation of late filing penalties on delinquent tax returns.

As proposed, the new rule provides the parameters for the late filing penalties and when they are applied, and provides examples for when and how the penalty is calculated. Section (3) provides an example of how the penalty is calculated when the due date of a return is mid-month, because this proposed rule can apply to any tax type with returns or reports due mid-month, with or without an extension.

Section (4) further explains how the penalty is calculated when the due date is the last date of the month. For both sections, the department has provided multiple scenarios to also illustrate how the percent of tax versus minimum penalty applies.

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

42.2.304 DEFINITIONS The terms used by the department are, in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

(1) through (35) remain the same.

(36) "Notice of Assessment (NOA)" means the first notice provided to the taxpayer of an amount owed to the department or of a violation. It may include, but is not limited to, a notice of refund reduction, net operating loss adjustment, tax debt, fine, or notice of a violation of the laws administered by the department. It does not include notices pertaining to inheritance taxes, estate taxes, or liquor licensing matters.

(36) through (48) remain the same, but are renumbered (37) through (49).

(49)(50) "Reasonable cause" means the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return, pay the tax within the prescribed time, or object to a department action as provided for in ARM 42.2.510. Examples of what does or does not constitute reasonable cause may be found in ARM 42.3.105 ARM 42.2.506.

(50) through (57) remain the same, but are renumbered (51) through (58).

(58)(59) "Statement of Account (SOA)" means the first a notice provided to the taxpayer of an amount summarizing amounts owed to the department or of a violation. It may include, but is not limited to, a notice of refund reduction, net operating loss adjustment, tax debt, fine, or notice of a violation of the laws administered by the department. It does not include notices pertaining to inheritance

~~taxes, estate taxes, or liquor licensing matters.~~

(59) through (62) remain the same, but are renumbered (60) through (63).

AUTH: 15-1-201, 15-30-2620, 15-31-501, 16-1-303, 16-10-104, 16-11-103,
MCA

IMP: 1-1-215, 15-1-102, 15-1-206, 15-1-601, 15-30-2101, 15-30-2104, 15-30-2111, 15-30-2602, 15-30-3301, 15-30-3302, 15-30-3311, 15-30-3312, 15-30-3313, 15-30-3321, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.2.304 to add a definition for the term "Notice of Assessment (NOA)," and to change the definition for the term "Statement of Account (SOA)," to reflect terminology use changes that have occurred in the department.

Going forward the NOA, rather than the SOA, will serve as a bill to the taxpayer and the first notice of an assessment or balance due for a single tax period. Therefore, the term NOA is proposed to be defined with the same definition previously assigned to the SOA.

The SOA, on the other hand, will serve as a statement to show the cumulative amount due if the assessment on the NOA is not paid within 30 days. Therefore, the definition for the term SOA is proposed to be revised to reflect its title and more appropriate use as a summary statement of an account's status.

The updated notice names are intended to make it easier for taxpayers to distinguish between an initial notice or bill, and a cumulative notice or statement of their outstanding account balance.

The department also proposes revising the definition of "reasonable cause" to update a rule number reference that will change with the transfer of ARM 42.3.105 to ARM 42.2.506 in this same notice.

42.2.503 JEOPARDY ASSESSMENT AND EMERGENCY EXECUTION

(1) and (1)(a) remain the same.

(b) of the amount of deficiency, penalty, and accrued interest (the ~~statement of account~~ Notice of Assessment (NOA));

(c) and (d) remain the same.

(e) that if the taxpayer does not file a written objection to the amount of the ~~statement of account~~ NOA or a Request for Informal Review Form (APLS101F) with the department within 30 days of the date of the notice, the assessment becomes final and may not be appealed to the ~~State Tax Appeal Board~~ state tax appeal board; and

(f) remains the same.

(2) If the department finds the collection of a deficiency, for which a ~~Notice of Deficiency~~ an NOA has been mailed, will be jeopardized by delay and the time for filing a written objection to the amount of the ~~Statement of Account~~ NOA or a Request for Informal Review form (APLS101F) with the department as provided in ARM 42.2.510 has not yet expired, the deficiency, penalty, and accrued interest become immediately due and payable on the date the department mails the taxpayer a written notice:

(a) through (4) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-36-322, 15-39-114, MCA
IMP: 15-30-2504, 15-30-2631, 15-31-522, 15-31-525, 15-31-531, 15-36-319,
15-37-107, 15-38-107, 15-38-108, 15-39-106, MCA

REASON: The department proposes amending ARM 42.2.503 to change references to the "Notice of Deficiency" and "Statement of Account (SOA)" to "Notice of Assessment," or "NOA," to correspond with the current use of these terms by the department. The department is changing the way it notices taxpayers of tax due. The NOA will serve as a bill to the taxpayer and the first notice of an assessment or balance due for a single tax period and the SOA, will now serve as a summary of the amount due from a taxpayer for all tax periods.

42.2.504 OTHER PENALTIES - LATE PAY, FAILURE TO FILE, FRAUDULENT AND FRIVOLOUS (1) ~~Applicable late filing penalties and late pay penalties must be calculated as set forth in 15-1-216, MCA.~~

(2) remains the same.

(3) A taxpayer who files, renders, or signs a false or fraudulent return or statement, or who supplies the department with false or fraudulent information, is subject to the additional ~~civil and criminal~~ penalties described in ~~15-30-2641~~ 15-1-216, MCA.

(4) A person who files a frivolous return or report under Title 15, MCA, is subject to the additional penalties described in 15-1-216, MCA. Frivolous positions, as defined in 26 U.S.C. 6702, that may apply to provisions of Title 15, MCA, can be found on the department's web site at revenue.mt.gov/frivolouspositions.

AUTH: 15-30-2620, MCA

IMP: 15-1-216, ~~15-30-2641~~, 15-30-2642, MCA

REASON: The department proposes amending ARM 42.2.504 to implement House Bill (HB) 379, L. 2015, which revised how late filing and late payment penalties are calculated, revised the failure to file penalty, and added penalties for the filing of fraudulent or frivolous returns or reports.

The department proposes striking the term "late filing penalties" from (1), because late filing penalties are now going to be provided for separately and with greater detail in proposed New Rule III.

The department also proposes striking 15-30-2641, MCA, from the language in (3) and replacing it with 15-1-216, MCA, because it more completely captures the relevant changes enacted by HB 379. Section 15-30-2641, MCA, is also proposed to be stricken from the implementing section of the rule for the same reason. The term "civil and criminal" is also proposed to be stricken from (3) because the term is not described in 15-1-216, MCA, as it was in 15-30-2641, MCA.

The department further proposes adding new (4) to provide the location for federal information on how these penalties are calculated and what constitutes a frivolous position, as a helpful resource. The department intends to maintain a link to the most current IRS notice outlining frivolous positions on its web site at all times for convenient access by taxpayers.

The department also proposes expanding the rule title to include more specific detail about the types of penalties covered in the rule.

42.2.505 INTEREST ON UNPAID TAX (1) ~~Interest on unpaid tax must be calculated as set forth in 15-1-216, MCA~~ Unless otherwise provided by law, for all taxes, fees, and other assessments imposed under Titles 15 and 16, MCA, and administered by the department, interest attaches as outlined in 15-1-216, MCA.

(2) Exclusions to this rule are provided in 15-1-216, MCA.

(2) remains the same, but is renumbered (3).

(4) Interest on all outstanding taxes shall accrue at the rate in effect, as provided in 15-1-216, MCA, during each calendar year, regardless of when the tax was originally due or when the tax was assessed. The rate does not affect any interest accrued prior to the current tax year.

(5) For purposes of determining interest on the underpayment of estimates provided in 15-30-2512, MCA, the rate in effect on the original due date of the tax return shall be used. For example, a return for the 2015 tax year is due April 15, 2016, so the rate that became effective January 1, 2016, shall be used to compute interest on the underpayment of estimates.

AUTH: 15-1-201, 15-1-216, 15-30-2620, 15-31-501, 16-10-104, 16-11-103,
MCA

IMP: 15-1-206, 15-1-207, 15-1-216, 15-1-701, 15-1-708, 15-30-2512, 15-30-2602, 15-31-502, 15-31-503, 15-31-510, 16-1-409, 16-1-411, 16-11-143, MCA

REASON: The department proposes amending ARM 42.2.505 for two reasons.

First, the department has determined the language in another rule, ARM 42.2.306, to be somewhat duplicative with this rule and therefore proposes repealing and placing the relevant language from ARM 42.2.306 into (1), newly numbered (2), and new (4) and (5) of this rule instead, to combine the content of the two rules together in a single location. As a result of the combination of the two rules, the statutes referenced in the authoritative and implementing sections of ARM 42.2.306 are also proposed to be added to the relevant sections in this rule.

Second, the department proposes amending ARM 42.2.505 to implement House Bill (HB) 379, L. 2015, which revised how interest is calculated on outstanding tax balances. While a portion of the language in proposed new (4) was taken from ARM 42.2.306, the previous version of the language in that rule needed to be updated to reflect the changes enacted by HB 379. Specifically, interest was previously based on 8 percent or the federal interest rate established for the fourth quarter of the preceding tax year, whichever was less. However, HB 379 now provides that the interest rate be based on the federal interest rate established for the third quarter of the preceding tax year without limitation.

42.2.510 REVIEW OF STATEMENT OF ACCOUNT (SOA) NOTICES
NOTICE OF ASSESSMENT (NOA) (1) This rule applies to all department actions where a ~~Statement of Account (SOA)~~ Notice of Assessment (NOA) or deficiency assessment, as those terms are defined in ARM 42.2.304, is issued. ~~A statement of~~

~~account~~ An NOA does not include centrally assessed appraisal reports and centrally assessed assessment notices which are covered by ARM 42.2.511.

(2) The department will provide notification ~~to the taxpayer~~ by mailing the SOA NOA to the taxpayer as prescribed in 15-1-211, MCA. Information provided on the SOA NOA shall advise the taxpayer of the requirement to file a Request for Informal Review ~~Form~~ (Form APLS101F) or a written objection to the SOA NOA with the department within 30 days from the date of the SOA NOA; and that failure to file a written objection within the 30 days shall be deemed an admission that ~~the taxpayer agrees~~ the debt stated in the SOA NOA is due and owing.

(a) If the taxpayer agrees with the SOA NOA, the matter is resolved upon compliance with, or acceptance of, the terms set forth in the SOA NOA.

(b) If the taxpayer does not pay or respond to the SOA NOA as required in (2), a letter will be sent to the taxpayer requesting payment within 30 days of the date of the letter or a Warrant for Distrain may be issued pursuant to 15-1-702, MCA.

(c) If payment ~~to the bill~~ is received, the matter is resolved.

(d) If payment ~~to the bill~~ is not received, the matter is forwarded to the department's ~~Accounts Receivable and Collections Bureau (ARC)~~ process for handling.

(3) The taxpayer must submit, to the department, an objection to the SOA NOA within 30 days of the date on the SOA NOA. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within 30 days of the date of the SOA NOA. If it is sent by ~~electronic mail~~ e-mail, it must be sent within 30 days of the date of the SOA NOA. Failure to respond within the 30 days shall be deemed an admission that ~~the taxpayer concurs that they owe~~ the debt stated in the SOA NOA is due and owing.

(a) Objections may be submitted using ~~the~~ Form APLS101F or by a detailed letter stating the issues and amount of tax disputed.

(b) Electronic objections will be accepted. The e-mail address, soaobjections@mt.gov is provided ~~on the SOA~~ in the appeal rights section of the SOA NOA.

(4) ~~A mutual~~ An extension to deadlines in this rule may be granted if both parties agree.

(5) The department shall review the objection and determine whether the department agrees or disagrees with the taxpayer's objections. The department shall mail written notice to the taxpayer advising the taxpayer of the department's determination within 30 days after receipt of the objection.

(a) If the department concurs with the taxpayer, the matter is resolved by withdrawing or revising the SOA NOA.

(b) If the department disagrees with the taxpayer, it shall explain the reasons for the disagreement in a Notice of Determination, notify the taxpayer of the dispute resolution procedures, and provide a copy of the Notice of Referral to the Office of Dispute Resolution ~~Form~~ (Form APLS102F). The department shall also notify the taxpayer that the taxpayer must submit ~~an~~ Form APLS102F or detailed letter any other written objection to the department within ~~45~~ 30 days of the date on the Notice of Determination from the department, and that the taxpayer will forfeit the right to a

hearing if the taxpayer fails to submit the Form APLS102F or detailed letter ~~any other written objection~~ within the ~~15-day~~ 30-day period.

~~(6) Appeals shall be submitted to~~ If the taxpayer disagrees with the department's determination, the taxpayer must submit Form APLS102F or any other written objection within 30 days of the date on the Notice of Determination to request a hearing before the Office of Dispute Resolution (ODR). ~~if the taxpayer decides to appeal the department decision, as required in 15-1-211, MCA. This may be done by completing the APLS102F, or by providing a detailed letter and submitting either document to the department within 15 days of the date of the Notice of Determination from the department. Appeals should be sent mailed to the Department of Revenue, Office of Dispute Resolution, P.O. Box 7704 5805, Helena, Montana 59604 or e-mailed to dordisputeresolution@mt.gov. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within 30 days of the date of the department's Notice of Determination. If it is sent by e-mail, it must be sent within 30 days of the date of the department's Notice of Determination.~~

~~(a) Failure by the taxpayer to file an appeal by the taxpayer within 15~~ 30 days of the date of the ~~department's~~ Notice of Determination ~~by the department~~ shall be deemed an admission that ~~the taxpayer concurs that the debt stated in the SOA~~ NOA is due and owing.

~~(b) remains the same.~~

~~(c) If the taxpayer does not pay the bill, the matter will be referred to ARC for collection~~ the department's Collections Bureau.

~~(7) Once the matter is submitted to the Office of Dispute Resolution (ODR), ARM 42.2.613 through 42.2.621 apply. The department has 180 calendar days from the referral date to resolve the matter.~~

~~(8) and (9) remain the same.~~

AUTH: 15-1-201, 15-1-211, 15-1-701, 15-31-501, 15-35-122, 15-36-322, 15-39-114, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-30-2602, 15-31-503, 15-35-112, 15-36-313, 15-36-314, 15-37-110, 15-37-114, 15-37-210, 15-38-110, 15-39-104, MCA

REASON: The department proposes amending ARM 42.2.510 to change references to the Statement of Account (SOA) to Notice of Assessment (NOA) to correspond with the change to the way the department now notices taxpayers of tax due. The NOA will serve as a bill to the taxpayer and the first notice of an assessment or balance due for a single tax period. The SOA will now serve as a summary of the amount due from a taxpayer for all tax periods.

The department also proposes striking the soaobjections@mt.gov e-mail address from the rule because it is inconsistently titled with the change of the name of the department's first notice to the taxpayer. Additionally, the department proposes striking the e-mail address from the rule to avoid confusion as the department transitions from the old SOA to the new NOA.

The department proposes amending (5)(b) and (6) to extend the appeal deadline to the Office of Dispute Resolution (ODR) from 15 days to 30 days. The department proposes this amendment to align the appeal deadline to the ODR with

the 30-day deadline for objecting to an NOA from the department. By allowing taxpayers 30 days to file an appeal with the ODR, the dispute resolution process is more consistent and less likely to confuse taxpayers. The appeal deadline for centrally assessed companies, provided in ARM 42.2.511, will remain unchanged at 15 days to provide for short certification periods.

The department also proposes amending (6) to change the address for the ODR to its current P.O. box number and amending (6)(c) to change the name of the "Accounts Receivable and Collections" to its current name "Collections Bureau."

The department further proposes changing the name of the rule title to correspond with the amendments in the rule content.

42.2.511 REVIEW OF CENTRALLY ASSESSED PROPERTY APPRAISALS

(1) remains the same.

(2) Appraisal reports will be mailed to the taxpayer as provided in ARM 42.22.115. The appraisal report shall advise the taxpayer of the requirement to file a Request for Informal Review Form (Form CAB-8) or a written objection to the appraisal report within 15 days of the date of the appraisal report; and that failure to file a written objection within the 15 days shall be deemed an admission that ~~the taxpayer agrees~~ the appraisal is correct and final. If the taxpayer agrees with the appraisal, no response is required and the department will advise the local department field office and the taxpayer by issuing an assessment notice on or before July 1 of the year of assessment that the appraisal is final.

(3) Objections to an appraisal report shall be sent to the department within 15 days of the date on the appraisal report. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within 15 days of the date of the appraisal report. If it is sent by ~~electronic mail~~ e-mail, it must be sent within 15 days of the date of the appraisal report. Failure to respond within the 15 days shall be deemed an admission that the taxpayer concurs with the appraisal as stated in the appraisal report.

(a) Electronic objections will be accepted. The e-mail address, ~~soaobjections@mt.gov~~, is provided ~~on~~ in the appeal rights section of the appraisal report ~~in the appeal rights section~~.

(4) ~~Mutual extensions~~ Extensions may be granted if both parties agree. The parties may extend the time periods in this rule after the initial objection has been filed by completing an extension form or by detailed letter.

(5) and (5)(a) remain the same.

(b) If the department disagrees with the taxpayer, it shall explain the reasons for the disagreement by issuing a Notice of Determination and revised appraisal report, if applicable, notifying the taxpayer of the dispute resolution procedures and providing a copy of the Notice of Referral to the Office of Dispute Resolution for Centrally Assessed Companies (APLS102F) (Form CAB-9). The department shall also notify the taxpayer that the taxpayer must submit ~~the APLS102F Form CAB-9 or a detailed letter~~ any other written objection to the department within 15 days of the date on the ~~revised appraisal report~~ Notice of Determination, and that the taxpayer will forfeit the right to a hearing if the taxpayer fails to submit ~~the APLS102F Form CAB-9 or detailed letter~~ any other written objection within the 15-day period. Appeals should be sent mailed to the Department of Revenue, Office of Dispute

Resolution, P.O. Box 7704 5805, Helena, Montana 59604, or e-mailed to dordisputeresolution@mt.gov. If the objection is sent by the U.S. Postal Service or any other generally accepted delivery service, the objection must be postmarked within 15 days of the date of the department's Notice of Determination. If it is sent by e-mail, it must be sent within 15 days of the department's Notice of Determination. Failure to object within the 15 days shall be deemed an admission that the taxpayer concurs with the department's Notice of Determination.

(6) If the taxpayer decides to appeal the department's decision, the taxpayer shall:

(a) submit to the department Form CAB-9 or any other written objection within 15 days of the date of on the revised appraisal report Notice of Determination forward the matter to request a hearing before the Office of Dispute Resolution (ODR), as required in 15-1-211, MCA, by completing the Form APLS102F, or by providing a detailed letter and submitting either document to the department; or

(b) upon mutual agreement of the parties, file an appeal with the ~~State Tax Appeal Board~~ state tax appeal board.

(7) If the matter is submitted to the ODR, ARM 42.2.613 through 42.2.621 apply. The department has 180 calendar days from the referral date to resolve the matter.

(8) remains the same.

(9) If the department fails to comply with the deadlines in this rule, the taxpayer may immediately refer the matter to the ODR.

AUTH: 15-1-201, 15-1-211, 15-23-108, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-23-102, 15-23-107, MCA

REASON: The department proposes amending ARM 42.2.511 to remove references to Form APLS102F and to add references to the new Form CAB-9. Proposed amendments to ARM 42.2.510, in this same notice, change the appeal deadline to the Office of Dispute Resolution from 15 days to 30 days, while this rule, which is specific to centrally assessed property, maintains the 15-day appeal deadline in centrally assessed company cases to provide for short certification periods. The proposed change to 30 days in ARM 42.2.510 means that Form APLS102F can no longer be used for centrally assessed company appeals. Therefore, the department has developed a new appeal form, titled Form CAB-9, specifically for use by centrally assessed companies that remain subject to the existing 15-day appeal deadline.

The department also proposes amending (5) and (6) to remove references to "revised appraisal report" and to add references to "Notice of Determination" to better reflect the department's current business practice.

The department further proposes amending (5)(b) to change the address for the Office of Dispute Resolution to its current P.O. box number.

42.3.102 PURPOSE AND APPLICATION (1) remains the same.

(2) The purpose of a penalty is to secure the proper and timely filing of a tax return or statement and the prompt payment of the tax by penalizing the delinquent taxpayer. The purpose of interest on a tax is, in part, to compensate the state of

Montana for the ~~cost of money~~ loss of interest incurred by the state while the tax is delinquent.

(3) and (4) remain the same.

(5) These rules apply only to penalty and interest on a tax which are due because the taxpayer failed to file a tax return or statement or failed to pay any tax on time, including tax assessed as a result of a deficiency assessment.

(6) These rules do not apply to any penalty or interest on a tax, due to any other failure to comply with the tax laws or rules. Specifically, these rules do not apply to penalty and interest on a tax ~~assessed as a result of a deficiency assessment or~~ assessed because of fraud or other violation of the law.

(7) and (8) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-35-122, 15-53-155, 15-60-104, 15-65-102, MCA

IMP: 15-1-206, 15-1-216, 15-30-2641, 15-31-502, 15-35-105, 15-37-108, 15-38-107, 15-53-155, 15-59-106, 15-60-208, 15-61-205, 15-65-115, MCA

REASON: The department proposes amending ARM 42.3.102 to correct an error by striking the deficiency assessment language from (6) and adding it to (5) where it is more appropriate and more clearly aligns with the language in ARM 42.3.115 regarding the waiver of late payment penalties.

42.3.103 WAIVER OF INTEREST ON THE TAX (1) Except as otherwise provided by statute or rule, interest may be waived by the department for the same reasons or causes as provided in these rules for the waiver of penalties. ~~However~~

(2) Except as provided in (3), 15-1-206, MCA, forbids the waiver of more than ~~\$100~~ \$500 in interest on the tax per applicable tax period. Therefore, under no circumstances will interest on a tax in excess of ~~\$100~~ \$500 per applicable taxing period be waived by the department.

(3) A taxpayer that has entered into a payment plan with the department to make installment payments of delinquent taxes, interest, and penalties may receive, upon written request, an additional waiver of \$100 of interest for each tax period if the taxpayer has complied with all of the conditions of the payment plan.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-35-122, 15-53-155, 15-60-104, 15-65-102, MCA

IMP: 15-1-206, 15-1-216, 15-30-2641, 15-31-502, 15-35-105, 15-37-108, 15-38-107, 15-53-155, 15-59-106, 15-60-208, 15-61-205, 15-65-115, MCA

REASON: The department proposes amending ARM 42.3.103 to implement House Bill (HB) 379, L. 2015, which revised the amount of interest the department may waive for reasonable cause to \$500. Prior to the revision, the department could not waive more than \$100. The revision also allows for an additional waiver of interest when a taxpayer complies with the conditions and completes payment of a payment plan.

42.3.115 REASONABLE CAUSE FOR WAIVER OF LATE PAYMENT

PENALTY FOR AMENDED TAX RETURNS AND PAYMENT OF DEBT WITHIN 30 DAYS (1) ~~Reasonable cause exists for waiver of the late payment penalty if the taxpayer has voluntarily filed an amended tax return and paid the tax.~~

(2) ~~Reasonable cause exists for~~ An automatic waiver of the late payment penalty if the taxpayer pays tax and interest due when notified by the department within 30 days of the date of the department's first Statement of Account (SOA) Notice of Assessment (NOA). This ~~reasonable cause~~ automatic waiver provision only applies to the first SOA NOA sent to the taxpayer for the tax period. For example, the department mails monthly SOAs statements to taxpayers notifying them of any total tax, penalty, and interest due for all tax periods. The department will only ~~consider~~ apply an automatic waiver of the late payment penalty for the first SOA NOA mailed to the taxpayer for that tax period.

(2) An automatic waiver of the late payment penalty is permitted if the taxpayer, subject to the conditions outlined in 15-30-2512, MCA, files an individual income tax return and pays at least 90 percent of the tax, when due, for the current year.

(3) Subject to (5), waiver of the late payment penalty is allowed if the taxpayer:

(a) files an amended tax return and pays the tax and interest due with the amended return;

(b) pays tax and interest due, as a result of a deficiency, within 30 days of the date of the first deficiency notice; or

(c) establishes reasonable cause pursuant to ARM 42.3.105.

(3) through (5) remain the same, but are renumbered (4) through (6).

AUTH: 15-1-201, 15-1-217, MCA

IMP: 15-1-206, 15-1-216, MCA

REASON: The department proposes amending ARM 42.3.115 to implement House Bill (HB) 379, L. 2015, which revised when and how late payment penalties may be waived.

Specifically, the department proposes adding the language in new (2) to provide for an automatic waiver of late payment penalties when a taxpayer pays tax and interest within 30 days of the date of the first notice of a balance due for the period. A written request is still required if additional notices of assessment are issued for a secondary reason. For example, a taxpayer files a 2016 return and does not pay the tax due with the return. The department sends the taxpayer a Notice of Assessment (NOA) for the tax due, the taxpayer pays the balance within 30 days, and the department automatically waives the late payment penalty. Subsequently, the department audits the 2016 tax return and issues an NOA as a result of the audit findings. The taxpayer may still receive a waiver of late payment penalties if the balance due is paid within 30 days of the date of the notice because the audit is a separate event on the period; however, the department requires a written request for the waiver because it is not the first time the taxpayer received an NOA for the period.

The department also proposes changing the title of the rule to simply "Waiver of Late Payment Penalty" because, as revised, the rule for waiving late pay penalties

is being expanded to apply reasonable cause to more circumstances than the more restrictive existing title of the rule implies.

The department further proposes changing references to Statement of Account, or SOA, to Notice of Assessment, or NOA, to correspond with the change to the way the department now notices taxpayers of tax due. The NOA will serve as a bill to the taxpayer and the first notice of an assessment or balance due for a single tax period. The SOA will now serve as a summary of the amount due from a taxpayer for all tax periods.

42.14.204 PENALTIES AND INTEREST (1) Upon request, the late pay and late file penalty may be waived pursuant to ARM 42.2.506, 42.2.507, 42.3.101, 42.3.102, 42.3.103, 42.3.104, ~~42.3.105~~, 42.3.106, ~~42.3.107~~, 42.3.108, 42.3.109, 42.3.110, 42.3.111, 42.3.113, 42.3.115, and 42.3.120.

AUTH: 15-65-102, 15-68-801, MCA
IMP: 15-1-206, 15-65-115, 15-68-514, MCA

REASON: The department proposes amending ARM 42.14.204 to update the numbers for rules referenced within the rule that are proposed in this same notice to be transferred. Specifically, ARM 42.3.105 is proposed to be transferred and renumbered ARM 42.2.506, and ARM 42.3.107 is proposed to be transferred and renumbered ARM 42.2.507. The proposed amendment of this rule captures those changes to keep this rule current.

42.15.315 ORIGINAL AND AMENDED RETURNS (1) remains the same.
(2) Original returns are Montana Forms 2, ~~2M~~, 2EZ, and FID-3 only.
Montana Form 2M applies only to tax year 2014 and prior years.

(3) and (4) remain the same.

(5) Late file and late pay penalties are assessed as required under 15-1-216 and ~~15-30-2641~~, MCA, on the correct amount due on the original return.

(6) remains the same.

(7) If required by 15-1-216 and ~~15-30-2641~~, MCA, interest will be calculated on the original return. If an amendment is made to the original return, interest will be calculated as required under 15-30-2609 or 15-30-2602, MCA, as of the due date in (1).

(8) and (9) remain the same.

(10) When an original return for tax years beginning on or after January 1, 2010, is filed after the extended due date, and the department does not issue the requested refund within 45 days of receiving the return, interest as allowed under 15-30-2609, MCA, is payable from the date the return was filed. For example, an original return for tax year ~~2010~~ 2016 requesting a refund is filed November 12, ~~2014~~ 2017, and the department does not issue the refund until January 30, ~~2012~~ 2018. Refund interest is payable from the date the return was filed (November 12, ~~2014~~ 2017) until the date the refund was issued (January 30, ~~2012~~ 2018).

(11) remains the same.

AUTH: 15-30-2620, MCA

IMP: 15-1-216, 15-30-2512, 15-30-2602, 15-30-2609, ~~15-30-2641~~, MCA

REASON: The department proposes amending ARM 42.15.315 to implement House Bill (HB) 379, L. 2015, which revised applicable penalties and interest. As a result of the addition of a penalty for filing a fraudulent return, in HB 379 the reference to 15-30-2641, MCA, is outdated and this rule now needs to refer directly to 15-1-216, MCA, instead. For this reason, the department proposes amending (5) and (7) to make this change and also proposes striking 15-30-2641, MCA, from the implementing section of the rule.

The department also proposes removing an outdated reference to Form 2M because the form was eliminated from the available filing options for individuals for tax periods beginning after December 31, 2014.

The department further proposes updating the calendar years in the example provided in (10) to align the example with more current tax years.

42.15.316 EXTENSIONS AND ESTIMATED PAYMENTS (1) For tax years beginning after December 31, ~~2004~~ 2015, and before January 1, ~~2010~~ 2017, a ~~four~~ six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the following conditions are met on or before the due date of the return:

(a) through (5) remain the same.

~~(6) An additional two month extension is automatically allowed if the taxpayer has applied for an extension of time to file their federal income tax return and made the payments required for the initial extension described in (1).~~

~~(7) For tax years beginning on or after January 1, 2010, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the conditions of (1)(b) are met on or before the due date of the return.~~

~~(8)~~(6) For tax years beginning after December 31, 2011, and before January 1, 2017, an individual whose income tax liability for the current year is \$200 or less, and who pays the entire tax liability and files his or her return on or before the extended due date provided for in 15-30-2604(3)(a), MCA, will not be charged interest or the penalties for late filing and late payment.

(7) For tax years beginning on or after January 1, 2017, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the tax, penalty, and interest are paid when the return is filed.

(9) remains the same, but is renumbered (8).

AUTH: 15-30-2620, MCA

IMP: 15-1-201, 15-1-216, 15-30-2604, 15-30-2651, MCA

REASON: The department proposes amending ARM 42.15.316 to implement House Bill (HB) 379, L. 2015, which revised when tax, interest, and penalty must be paid in order to receive an extension of time to file a return, as provided for in new (7) beginning on or after January 1, 2017.

The department is changing the years referenced in this rule to appropriately reference tax years with extension due dates that have not yet expired. The rule is irrelevant with regard to tax years with extension dates that have passed. For this

reason, the language in current (6) and (7) is proposed to be stricken and the language in new (7) is proposed to be added to provide more current information in the rule.

42.30.103 FIDUCIARY - INCOME TAX RETURN EXTENSIONS (1) A For tax periods beginning before January 1, 2017, a fiduciary is allowed an automatic six-month extension to file a Montana Income Tax Return for Estates and Trusts (Form FID-3) if:

(a) and (b) remain the same.

(2) For tax years beginning on or after January 1, 2017, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the tax, penalty, and interest are paid when the return is filed.

(2) through (4) remain the same, but are renumbered (3) through (5).

AUTH: 15-1-201, 15-30-2104, 15-30-2603, MCA

IMP: 15-30-2154, 15-30-2604, MCA

REASON: The department proposes amending ARM 42.30.103 to implement House Bill (HB) 379, L. 2015, which revised when tax, interest, and penalty must be paid in order to receive an extension of time to file a return as provided for in new (2) beginning on or after January 1, 2017.

The department proposes adding the language in (1) and new (2) to differentiate between the change in rules applicable to an automatic extension for periods prior to and beginning after January 1, 2017. For periods prior to January 1, 2017, multiple conditions need to be met to qualify for the automatic extension. In accordance with the revisions in HB 379, the only condition that needs to be met for an automatic extension is full payment of tax, and applicable penalties and interest, due with the return when filed. Therefore, the department proposes amending the rule to add this distinction.

42.30.107 FIDUCIARY - INTEREST AND PENALTIES (1) remains the same.

(2) If a fiduciary is required to file Form FID-3:

(a) late payment penalties and late filing penalties will be applied as provided in 15-1-216, MCA;

(b) for tax periods beginning before January 1, 2017:

(i) interest on unpaid tax will accrue from the original due date of the return as provided in 15-1-216, MCA, unless the current year's tax liability is \$200 or less and the entire tax liability is paid by the extended due date; and

(~~e~~)(ii) underpayment interest, as provided in 15-30-2512, MCA, will accrue from the original due date of the return unless the tax liability is \$200 or less and the entire tax liability is paid by the extended due date; or

(c) for tax periods beginning on or after January 1, 2017:

(i) interest on unpaid tax will accrue from the original due date of the return as provided in 15-1-216, MCA; and

(ii) underpayment interest, as provided in 15-30-2512, MCA, will accrue from the original due date of the return.

(3) and (4) remain the same.

AUTH: 15-1-201, 15-30-2104, MCA

IMP: 15-1-216, 15-30-2512, 15-30-2604, MCA

REASON: The department proposes amending ARM 42.30.107 to implement House Bill (HB) 379, L. 2015, which revised how interest and penalties are accrued and applied to unpaid balances.

The proposed amendments add language in (2) to make the rule conform with the change enacted by HB 379, which eliminated the provision that interest would not accrue on unpaid tax if the estate or trust's tax liability was \$200 or less and was paid by the extended due date of the return, for tax periods beginning on or after January 1, 2017.

5. The rules as proposed to be transferred and amended provide as follows, new matter underlined, deleted matter interlined:

42.3.105 (42.2.506) REASONABLE CAUSE FOR WAIVER OF PENALTY AND INTEREST ON THE PENALTY (1) and (2) remain the same.

(3) Examples of "reasonable cause" for failure by a taxpayer to file a tax return or report, ~~or~~ pay a tax on the date required by statute, or reply to a deficiency notice from the department include, but are not limited to:

(a) where it can be substantiated that the return or reply was mailed (whether or not the envelope bore sufficient postage) or electronically filed in time to reach the department in the normal course of business, within the legal period, (if the due date is a Saturday, Sunday, or holiday, the following business day is within the legal period);

(b) and (c) remain the same.

(d) where the delinquency or delay was due to destruction by fire or other casualty of the taxpayer's place of business or business records; or

(e) remains the same.

(4) The examples stated in (3) are illustrations only. Other reasonable causes may exist for failure to properly and timely file the tax statement or return, ~~and~~ pay the tax, or reply to a deficiency notice. Each request for waiver will be considered on a case-by-case basis using the following criteria:

(a) the taxpayer's reasons address the penalty and interest that was assessed or the date a reply was due;

(b) the length of time between the event cited as a reason and the filing, ~~or~~ payment, or reply date negate the event's effect;

(c) through (f) remain the same.

(5) The following are examples which do not constitute reasonable cause for ~~waiver of penalty and interest~~ and do demonstrate neglect:

(a) remains the same.

(b) failure to file or reply because of advice by a professional tax preparer, attorney, or accountant;

(c) through (f) remain the same.

(g) the taxpayer started to prepare the return or reply in sufficient time, but found that because of complicated issues the taxpayer was unable to finish the return or reply.

(6) The examples stated in (5) are for illustrations only. Other circumstances may exist which do not constitute reasonable cause ~~for waiver of penalty and interest~~.

(7) and (8) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-35-122, 15-53-155, 15-60-104, 15-65-102, MCA

IMP: 15-1-206, 15-1-216, 15-30-2641, 15-31-502, 15-35-105, 15-37-108, 15-38-107, 15-53-155, 15-59-106, 15-60-208, 15-61-205, 15-65-115, MCA

REASON: The department proposes amending and transferring ARM 42.3.105 to ARM Title 42, chapter 2, where it is more appropriate, because the concepts of reasonable cause apply to other administrative functions, not just the waiver of penalties and interest as found in ARM Title 42, chapter 3. Because reasonable cause may be considered in regard to the untimely response to deficiency notice or the untimely filing of a tax appeal, the department believes these concepts belong in chapter ARM Title 42, chapter 2, which contains the department's general rules.

The department proposes striking all but "reasonable cause" from the title of the rule because, as explained above, the amendments to the rule have expanded the scope of where reasonable cause may be a consideration.

As part of the transfer of this rule, the department also intends to add "reasonable cause" to the title of ARM Title 42, chapter 2, subchapter 5, to reflect the inclusion of this rule in that location.

42.3.107 (42.2.507) PROOF OF REASONABLE CAUSE OR LACK OF NEGLIGENCE (1) The taxpayer who requests waiver of penalty and interest on a tax, or submits an untimely reply to a deficiency notice, has the burden of proving to the department that reasonable cause exists for the failure to timely file the tax statement and report, and/or timely pay the tax, or timely submit a reply to a deficiency notice. The taxpayer also must prove the taxpayer was not guilty of neglect when the taxpayer failed to timely file the tax statement and report, and/or timely pay the tax, or timely submit a reply to a deficiency notice.

(2) remains the same.

(3) The simple statement that "reasonable cause" existed for the failure to timely file the tax statement or return, and/or to timely pay the tax, or timely submit a reply to a deficiency notice, is never sufficient to receive a waiver or other consideration. All requests for waiver of penalty and interest or untimely replies to a deficiency notice must include the facts the taxpayer believes demonstrate reasonable cause and lack of neglect.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-35-122, 15-53-155, 15-60-104, 15-65-102, MCA

IMP: 15-1-206, 15-1-216, 15-30-2641, 15-31-502, 15-35-105, 15-37-108, 15-38-107, 15-53-155, 15-59-106, 15-60-208, 15-61-205, 15-65-115, MCA

REASON: The department proposes amending and transferring ARM 42.3.107 to ARM Title 42, chapter 2, where it is more appropriate, because the concepts of reasonable cause apply to other administrative functions, not just the waiver of penalties and interest as found in ARM Title 42, chapter 3. Because reasonable cause may be considered in regard to the untimely response to deficiency notice or the untimely filing of a tax appeal, the department believes these concepts belong with the department's general rules.

As part of the transfer of this rule, the department also intends to add "reasonable cause" to the title of ARM Title 42, chapter 2, subchapter 5 to reflect the inclusion of this rule in that location.

6. The department proposes to repeal the following rules:

42.2.306 PENALTY AND INTEREST

AUTH: 15-1-201, 15-1-216, 16-10-104, 16-11-103, MCA

IMP: 15-1-206, 15-1-207, 15-1-216, 15-1-701, 15-1-708, 15-30-2512, 16-1-409, 16-1-411, 16-11-143, MCA

REASON: The department proposes repealing ARM 42.2.306 because it has determined that the language in the rule is somewhat duplicative with ARM 42.2.505, and therefore proposes combining the rules together as indicated in the proposed amendment of ARM 42.2.505 in this same notice.

In addition to the repeal of this rule and corresponding amendment of ARM 42.2.505, the department intends to update the title of ARM Title 42, chapter 2, subchapter 5 to include the term "Reasonable Cause," to reflect the updated content of the subchapter.

42.15.320 DEFICIENCY NOTICES AND PAYMENTS

AUTH: 15-30-2620, MCA

IMP: 15-30-2602, 15-30-2604, MCA

REASON: The department proposes repealing ARM 42.15.320 and incorporating the language from the rule into proposed New Rule I, titled "Adjustments to Penalty and Interest," which will explain the department's process for applying penalties and interest to an assessment of tax when a deficiency is discovered, as proposed to be adopted in this same notice.

The department's intent with the repeal of this rule and including the relevant information in the proposed new rule is to better organize similar subject matter together and locate it within a single rule as opposed to having the related information broken up into multiple chapters of ARM Title 42. The department further intends to place the new rule in ARM Title 42, chapter 2, to locate it together with the other penalty and interest related rules to make the information easier for

taxpayers to locate.

42.23.605 PENALTY AND INTEREST

AUTH: 15-31-501, MCA

IMP: 15-1-216, 15-1-222, 15-31-502, 15-31-503, 15-31-510, MCA

REASON: The department proposes repealing ARM 42.23.605 and incorporating the language from the rule into proposed New Rule I, titled "Adjustments to Penalty and Interest," which will explain the department's process for applying penalties and interest to an assessment of tax when a deficiency is discovered, as proposed to be adopted in this same notice.

The department's intent with the repeal of this rule and the adoption of the new rule is to better organize similar subject matter together and locate it within a single rule as opposed to having the related information broken up into multiple chapters of ARM Title 42. The department further intends to place the new rule in ARM Title 42, chapter 2, to locate it together with the other penalty and interest related rules to make the information easier for taxpayers to locate.

7. 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, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 27, 2016.

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

9. 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 that 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 a 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 7 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.

10. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. 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.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 379, L. 2015, Representative Greg Hertz, was contacted by letter on May 6, 2016, and subsequently contacted by letter on August 25, 2016.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, transfer and amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 7.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 12, 2016.