

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.4.301 and 42.4.302) PROPOSED AMENDMENT
pertaining to calculating the elderly)
homeowner/renter tax credit)

TO: All Concerned Persons

1. On September 28, 2017, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third East Reception 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 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 September 15, 2017, 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 as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.4.301 DEFINITIONS The following definitions apply to this subchapter:

(1) "Amenities" are items that enhance the pleasantness or desirability of rental or retirement homes, or contribute to the pleasure and enjoyment of the occupant(s), rather than to their indispensable needs. For periods beginning after December 31, 2016, "amenities" means services unrelated to the occupation of a dwelling and provided by personnel, including but not limited to meals, housekeeping, transportation, assisted living, or nursing care.

(2) "Gross household income" as defined under 15-30-2337, MCA, is further defined as:

(a) remains the same.

(b) ~~federal refunds received during the tax year to the extent that the amount recovered reduced the claimant's Montana income tax in a prior year~~ refundable credits received; and

(c) ~~Montana any state income tax and~~ refundable credits received, including elderly homeowner/renter credit refunds received.

(3) remains the same.

(4) "Rent" is the amount of money charged to a tenant to occupy a dwelling. "Rent" does not include amenities ~~such as meals, housekeeping, nursing care, etc.~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2337, 15-30-2338, 15-30-2340, MCA

REASON: The department proposes amending ARM 42.4.301 to update three definitions.

The department proposes modifying the terms "amenities" and "rent," in order to equalize and simplify the reporting of rents by elderly taxpayers, regardless of the type of dwelling they occupy. The proposed amendments revise the definition of rent by removing details describing amenities, because that term is separately defined in (1), and also address the situation where taxpayers living in long-term care facilities often struggle to determine what constitutes amenities in their payment to the long-term care institutions. Amending these terms will make it easier for elderly taxpayers to segregate which portion of their payment is for rent, and which portion is for amenities provided by personnel. Personnel is commonly understood to include all employees of the long-term care facility and all professionals providing services under a contract they signed with the long-term care institution. It also includes all volunteers providing services, for which residents are charged.

The department is leaving the original definition of "amenities" in place, as it would still apply to previous reporting periods, and revising the definition for reporting periods that would begin in tax year 2017. This corresponds with changes being proposed for ARM 42.4.302, in this same rulemaking notice, which expands the amount of rent that can be reported as allowable toward the credit.

The department also proposes revising the definition of the term "gross household income" for accuracy, by limiting the inclusion of federal and state tax refunds in gross household income to refundable credits of any kind, as these are the only credits that are added to gross income in the year they are received. Taxes derived from gross income received in previous years were already accounted for in the gross income of that year. Requiring them to be reported as gross income in the current tax year, when refunded, would result in counting them twice.

42.4.302 COMPUTATION OF ELDERLY HOMEOWNER/RENTER TAX CREDIT (1) remains the same.

(2) To calculate the credit, an eligible claimant is allowed to use property taxes billed:

(a) on property held in a revocable trust if the grantor(s) of the property or their spouse is the claimant and are trustees of the revocable trust;

(b) as rent if the property occupied by the claimant is in a name other than the claimant; or

(c) if the claimant has a living trust or a life estate.

~~(2)(3)~~ When a taxpayer lives in a health care facility, long-term care facility, or a residential care facility (facility), as defined in 50-5-101, MCA, the rent allowed in calculation of the property tax credit is the actual out-of-pocket rent paid ~~subject to~~ ~~(7)~~.

~~(3)(a)~~ Where if one spouse lives in a health care facility, long-term care facility, or a residential care facility as defined in 50-5-101, MCA, facility and the other lives at a different address, they are only allowed to take report either the rent at paid for the facility or the rent/property taxes billed for the other address, but not both. Married taxpayers who are living apart are entitled to file and receive only one

claim per year.

~~(4) Property taxes billed on property held in a revocable trust are allowable as long as the grantor(s) of the property or their spouse is the eligible claimant and are trustees of the revocable trust.~~

~~(5) Property taxes billed are allowable as rent if the property occupied by an eligible claimant is in a name other than the claimant.~~

~~(6) Property taxes billed to an eligible claimant who has a living trust or a life estate are allowable.~~

~~(7) If~~

~~(b) Prior to January 1, 2017, if a claimant lives lived in a healthcare facility, long-term care facility, or a residential care facility as defined in 50-5-101, MCA, but does facility that did not provide an adequate breakdown between "rent" and "amenities" paid, the rent allowed will be is limited to:~~

~~(i) \$20 a day for periods beginning on or before December 31, 2014; or~~

~~(ii) \$30 a day for periods beginning after December 31, 2014.~~

~~(c) For claims for periods beginning after December 31, 2014 2016, the rent allowed will be limited to \$30 a day. if a claimant lives in a facility, the out-of-pocket rent being claimed must exclude payments for amenities. To satisfy this obligation, the claimant must either:~~

~~(i) utilize a detailed statement provided by the facility itemizing the amount paid for rent and the amount paid for amenities separately; or~~

~~(ii) determine the amount of allowable rent by deducting the amenities from the total amount paid as follows:~~

~~(A) 20 percent for services related to board such as meals, housekeeping, laundry, and transportation;~~

~~(B) 30 percent for services related to continuous care such as assisted living, medical care, paramedical care, memory care, medical supplies, and pharmacy; or~~

~~(C) 50 percent if the services in both (A) and (B) are provided.~~

~~(d) Examples of calculating the allowable rent in (c) are as follows:~~

~~(i) Val rents a room in an independent living facility. Her \$1,000 monthly payment includes utilities and parking, but no services delivered by personnel. No calculation is needed. Val is allowed to report the full \$1,000 per month as rent.~~

~~(ii) Paul rents a room in an independent living facility. In addition to utilities and cable, his \$2,500 monthly payment includes board such as housekeeping, meals, and transportation provided by staff and contractors. The facility's year-end statement does not break out his total paid. Paul deducts 20 percent (\$2,500 - 20%) for the board services to calculate \$2,000 per month as allowable rent to report.~~

~~(iii) Ron lives in a long-term care facility and receives board services, assistance with daily living activities, and special memory care. The facility's year-end statement partially breaks out his \$40,000 total payment, showing the amount charged by a contractor for his memory care. It does not list the amounts charged for board and care provided by staff. Ron deducts 50 percent (\$40,000 - 50%) for board (20%) and care (30%) to calculate \$20,000 as allowable rent to report for the year.~~

~~(iv) George rents an apartment in an assisted living facility. The facility's year-end statement breaks out his \$30,000 total payment as \$14,400 for rent, \$5,000 for board, and \$10,600 for care. George may report the \$14,400 stated rent~~

amount or, alternately, choose to deduct 50 percent from the total (\$30,000 - 50%) for board (20%) and care (30%) to calculate \$15,000 as allowable rent to report for the year.

(v) Mary rents a room in an assisted living facility for six months while recovering from a medical procedure. Her \$2,000 total monthly payment includes assistance with daily living activities provided by staff, but she chose not to receive any additional services such as board. The facility does not itemize her payment. Mary deducts 30 percent from the monthly payment (\$2,000 - 30%) for the care to calculate \$1,400 per month in allowable rent. Mary may report either the allowable rent paid to the facility, or the monthly rent she paid for her primary residence during the same six-month period, but not both.

AUTH: 15-30-2620, MCA

IMP: 15-30-2340, 15-30-2341, 50-5-101, MCA

REASON: The department proposes the reorganization of ARM 42.4.302 into three distinct sections to avoid unnecessary cross-references and to eliminate repetitive language. The proposed changes essentially move the content of (4), (5), and (6) up as new (2), combining them into a single section.

The department also proposes combining together previous (2), (3), and (7), as newly numbered (3), and amending the content to simplify the calculation of rents when claimants are residents of long-term care facilities, and to provide an alternative method for quantifying the allowable rental amount that is more responsive to differences in pricing.

The proposed amendments to the rule still require the claimant to distinguish rent from amenities, using the revised definition of that term in ARM 42.4.301. However, the proposed amendment to the definition of "amenities," in this same rulemaking notice, modifies the scope of what would constitute rent. That amendment also modifies the alternative rent determination when the claimant is unable to obtain a clear distinction between rent and amenities. The proposed amendments replace the per-diem rental amount with a deduction, which is a fraction of the overall out-of-pocket amount paid depending on two types of services, board or care, included in the payment. This new calculation would take effect with the 2017 tax year.

This substitution is justified by the fact that the credit is designed to compensate increases in the cost of living of elderly homeowners and renters. The per-diem approach did not capture large variations in the cost of long-term care facilities. The quantitative limitation of the per diem method resulted in providing a credit based on gross household income rather than cost of living. This result was often perceived as being unfair by taxpayers. The new alternative method allows the rental amounts to reflect differences in the cost of living when renting in a long-term care facility. It provides a means to reach the amount of rent through an acceptable approximation of the cost.

The deduction for board is set at 20 percent of the payment and the deduction for care is set at 30 percent of the payment. When both types of services are rendered, claimants must add both rates to determine the deduction.

These deductions were determined based on a sample of 48 long-term care

invoices that random taxpayers provided with their return or upon request between the 2012 and 2016 tax years. Only invoices providing a clear breakdown between rent and services were used. Invoices were selected to reflect trends in pricing over the last four years, and geographic diversity. Invoices were issued by 22 institutions located in 12 different counties across the state.

To simplify the calculation of the credit, the rates were rounded to the closest decile of the median percentage of the cost for board or care listed in the sample. For board, the department found a median percentage of 19.30 percent, and the average found was 25.31 percent. The deduction for board was rounded to 20 percent. The median percentage cost found for care was 28.95 percent; and the average for this cost was 32 percent. The deduction for care was rounded to 30 percent.

The calculation does not require any count of the numbers of days spent in the facility. To determine the amount of rent, taxpayers only need the overall amount paid and the knowledge that services for board or care are rendered by personnel on a continuous basis, regardless of whether these services are delivered by staff of the facility or contractors. As proposed to be amended, the rule also provides helpful examples illustrating the alternative calculation for the rent.

The department further proposes adding 15-30-2341, MCA, as an implementing citation for this rule.

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, 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 11, 2017.

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

6. 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 4 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.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 28, 2017.