

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 130

REVENUE, DEPARTMENT OF - Interpretation of section 15-30-108, MCA;
STATUTES - Applicability and termination of section 15-30-108, MCA;
TAXATION AND REVENUE - Duration of individual income tax surtax imposed by section 15-30-108, MCA;
ADMINISTRATIVE RULES OF MONTANA - Section 42.15.106;
MONTANA CODE ANNOTATED - Sections 15-30-101(17), 15-30-103, 15-30-108, 15-30-144;
MONTANA LAWS OF 1987 - Chapter 666;
UNITED STATES CODE - 26 U.S.C. § 441(b), (g); 26 U.S.C. § 7701(23).

HELD: The individual income tax surtax imposed by section 15-30-108, MCA, applies to tax liabilities for calendar years 1987 and 1988, but does not apply to tax liabilities for calendar year 1989.

30 December 1988

Judy Rippingale
Legislative Fiscal Analyst
Room 105, State Capitol
Helena MT 59620

Dear Ms. Rippingale:

You have asked my opinion concerning the duration of the individual income tax surtax imposed by section 15-30-108, MCA. I have rephrased your specific inquiry as follows:

Does the surtax imposed by section 15-30-108, MCA, apply to tax liabilities for the calendar years 1987, 1988, and 1989, or only for the calendar years 1987 and 1988?

Section 15-30-108, MCA, which was enacted as section 6 of chapter 666, Montana Laws of 1987, and became effective May 22, 1987, provides:

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After the amount of tax liability has been computed as required in 15-30-103, each person filing a Montana individual income tax return shall add as a surtax 10% of the tax liability, and the amount so arrived at is the amount due the state.

Confusion about the duration of the surtax arises from the fact that the 1987 Legislature also enacted section 12 of chapter 666, which states:

Termination. Section 6 terminates December 31, 1989.

The surtax clearly applies to calendar years 1987 and 1988. See 1987 Mont. Laws, ch. 666, § 11(3). However, because section 15-30-108, MCA, does not terminate until December 31, 1989, there remains a question as to whether the surtax also applies to tax liabilities for the calendar year 1989.

The surtax in question is to be added after the amount of tax liability has been computed as required in section 15-30-103, MCA. That section sets the rate of tax to be levied, collected, and paid upon taxable income for each taxable year. The term "taxable year" is defined by state law to mean the taxpayer's taxable year for federal income tax purposes. § 15-30-101(17), MCA. Under federal law the term "taxable year" means the calendar year for all taxpayers who do not utilize an annual accounting period which qualifies as a fiscal year. See 26 U.S.C. § 441(b), (g); 26 U.S.C. § 7701(23). The term "calendar year" is defined in the Internal Revenue Code of 1986 as a period of twelve months ending on December 31. 26 U.S.C. § 441(d). For purposes of the analysis in this opinion, it is assumed that the taxpayer's taxable year is the calendar year as that term is defined for federal income tax purposes. However, because the surtax imposed by section 15-30-108, MCA, is not effective as of December 31, 1989, the holding would apply to any taxpayer whose taxable year closes on or before December 30, 1989.

Pursuant to its rulemaking authority (see § 15-30-305, MCA; 1987 Mont. Laws, ch. 666, § 10), the Montana Department of Revenue has adopted Rule 42.15.106, ARM, which provides that the 10 percent surtax is to be added to the taxpayer's computed income tax only for tax years 1987 and 1988. In its notice of public hearing on the proposed adoption of this rule, the department set forth its reasons for this interpretation:

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The rule is also necessary to clarify the years to which the surcharge applies. The termination date for the section of law establishing the surcharge is December 31, 1989. That termination date is interpreted to end the surcharge with the 1988 tax year. Returns are filed and taxes calculated for tax year 1989 after December 31, 1989. After that date, there is no provision for a surtax to be applied to the basic tax.

MAR Notice No. 42-2-355, 14 MAR (1987) at 1192.

The Montana Supreme Court has often stated that deference must be accorded the interpretation given a statute by the agency charged with its administration. See Department of Revenue v. Puget Sound Power & Light Co., 179 Mont. 255, 587 P.2d 1282 (1978); Montana Tavern Association v. State, 43 St. Rptr. 2180, 729 P.2d 1310 (1986). While an agency's interpretive regulation would not necessarily be binding on a reviewing court or this office, I am of the opinion that the department's interpretation in this instance is valid and consistent with legislative intent. The amount of tax liability for calendar year 1989 cannot be computed until after December 31, 1989, and returns made on the basis of a calendar year must be filed on or before April 15 following the close of the calendar year. § 15-30-144, MCA. Thus the tax liability for calendar year 1989 is to be computed, and the return therefor filed, at a time when section 15-30-108, MCA, is no longer effective.

Furthermore, the minutes of the Montana State Senate Taxation Committee hearing on House Bill 904, which became chapter 666, 1987 Montana Laws, support the department's interpretation. The bill's sponsor, Representative Harp, is reported as stating that the surtax would be effective for two years. See Minutes of Taxation Committee Meeting, Montana State Senate, April 7, 1987. In addition, the fiscal note submitted for House Bill 904 assumes that the 10 percent surtax applies to income tax liabilities for calendar years 1987 and 1988.

THEREFORE, IT IS MY OPINION:

The individual income tax surtax imposed by section 15-30-108, MCA, applies to tax liabilities for calendar years 1987 and 1988,

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but does not apply to tax liabilities for
calendar year 1989.

Very truly yours,

MIKE GREELY
Attorney General