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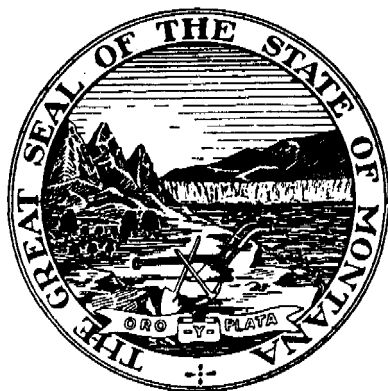
RESERVE

MONTANA DEPARTMENT OF
MINERAL SCIENCE AND TECHNOLOGY
BUTTE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA DEPARTMENT OF
MINERAL SCIENCE AND TECHNOLOGY
BUTTE

1979 ISSUE NO. 20
PAGES 1262-1309



NOTICE: The July 1977 through June 1979 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana 59601.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the repeal)	
of Rule 36-2.8(18)-S8130, the)	NOTICE OF PROPOSED REPEAL
amendment of rules 36-2.8(18)-)	OF RULE 36-2.8(18)-S8130,
S8060 through 36-2.8(18)-S8120)	AMENDMENT OF RULES 36-2.8(18)-
and rules 36-2.8(18)-S8140)	S8060 THROUGH 36-2.8(18)-S
through 36-2.8(18)-S8160, and)	8120 AND RULES 36-2.8(18)-S
the adoption of a new rule,)	8140 THROUGH 36-2.8(18)-S8160,
pertaining to alternative re-)	AND ADOPTION OF A RULE, RENEW-
newable energy source grants)	ABLE ALTERNATIVE ENERGY SOURCE
and providing for the solici-)	GRANTS
tation of proposals)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 29, 1979, the Department of Natural Resources and Conservation proposes to repeal Rule 36-2.8(18)-S8130, to amend Rules 36-2.8(18)-S8060 through 36-2.8(18)-S8120 and Rules 36-2.8(18)-S8140 through 36-2.8(18)-S8160 pertaining to alternative renewable energy source grants, and to adopt a new rule providing for the solicitation of proposals.

2. The rules as proposed to be amended and the proposed new rule provide as follows:

36-2.8(18)-S8060 PURPOSE OF RULES Senate-Bill-86-enacted by-the-1976-Legislature Title 90, Chapter 4, Part 1, MCA, provides for the funding through the Department for research, development and demonstration of alternative renewable energy sources. The purpose of ~~the rules in~~ this sub-chapter is to provide criteria and guidelines to aid in the implementation of that law.

36-2.8(18)-S8070 DEFINITIONS Unless the context requires otherwise, as used in ~~the Act and in~~ the rules in this subchapter:

(1) "Act" means ~~Chapter No. 5017, Montana Session Laws of 1975 (also referred to as the "Alternative Renewable Energy Sources Act", Section 84-7407 et seq., R.C.M., 1947)~~ Title 90, Chapter 4, Part 1, MCA.

~~(2) "Alternative renewable energy source", as defined in Section 84-7408(1) of the Act, means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.~~

~~(3)~~ (2) "Person" means, as defined in Section 90-4-102(2), MCA, "a natural person, corporation, partnership, or other business entity, association, trust, foundation, any educational or

scientific institution, or any governmental unit"; however, the term will not include religious organizations defined in 37 Att'y Gen. Rep. 165 that are constitutionally ineligible to receive alternative renewable energy source grants.

~~(4)-----"Department" means the Department of Natural Resources and Conservation;~~

(5)(3) "Application" means a written application to the Department for funding under the terms of the Act and these rules.

~~(6)(4) "Research" means an extensive, systematic study to discover facts or to discover or revise facts or theories and which would that will bring to a more advanced state the capabilities, understanding, availability, and suitability of a renewable alternative energy source.~~

~~(7)(5) "Develop" or "development" means a project which utilizes to utilize the basic results or of research or available knowledge and applies apply those results or knowledge to the actual development production of hardware or models. The term also means to establish includes the establishment of manufacturing facilities to produce renewable alternative energy systems in Montana; but it does not include the development of a project or facility to commercially market electricity, heat energy, or energy by products. Manufacturing facilities may include components or facilities that commercially market electricity, heat energy, or energy by products.~~

~~(8)(6) "Demonstrate" or "demonstration" means an extensive, systematic plan and follow through to establish that specific renewable alternative energy sources are practical and can be made to work reliably over long periods of time. These projects are primarily physical models which will be proven. means to provide operational and performance information to increase the general knowledge and encourage the use of renewable energy systems, and to provide definitive data through testing under actual operational use and conditions for performance and design criteria and economic assessment. Demonstration projects may be physical models or educational and training undertakings.~~

36-2.8(18)-S8080 ADMINISTRATIVE POLICIES (1) ~~It is the objective of the Department to orient the funding program toward the small-scale, individual, single unit dwelling type of application. Large scale, capital intensive project applications will be accepted, but the program emphasis will be directed toward the aforementioned type of applications.~~ The Department will orient the program toward individual inventiveness and small-scale, decentralized energy production units. These units may operate independent of, or in conjunction with, existing centralized systems. Large scale, capital intensive project applications may be funded, but are generally discouraged.

~~(2)-----It is the objective of the Department to give funding preference to development and demonstration projects. The Department will support projects which best enable the state to meet the legislative mandate to reduce the reliance on non-renewable energy sources.~~

(3) ~~It is the intent of the~~ The Department to only will grant funding only for applications ~~which are submitted by persons who are residents of the state of Montana, and only for projects conducted in Montana. "Conducted" means that the research and development project will be headquartered in Montana and that all development will be built in Montana.~~ This condition does not prohibit the use of expertise outside the State of Montana.

(4) Persons who are employees or contractors of the Department, or who are members of the Board of Natural Resources and Conservation, are not eligible for funding under the Act. ~~Relatives~~ Individuals related to such ~~person~~ persons by consanguinity within the fourth degree or by affinity within the second degree are likewise not eligible for funding.

(5) Applications to research, develop, or demonstrate geothermal energy sources ~~on a small scale~~ will be considered for funding. ~~Large scale, capital intensive projects are not eligible for funding.~~

(6) ~~Some~~ Because some types of ~~renewable alternative~~ alternative renewable energy sources (e.g., solar and wind) are unable to produce energy on a continuous basis, ~~therefore~~ applications for studying energy storage devices associated with such ~~alternative renewable energy sources will be accepted~~ considered.

(7) ~~As a general rule applications~~ Applications for more than \$100,000 ~~will not be granted~~ are discouraged. However, the Department will accept and review applications for more than \$100,000. If the Department determines that such a proposal is particularly applicable to Montana's energy needs and is technically outstanding, it may be funded. There is no lower limit for funding.

(8) The Department will appoint an Alternative Energy Advisory Council (AEAC) ~~consisting of five members who will make recommendations on which applications should be funded that will advise the Department on matters pertaining to program development and that may make recommendations on funding projects.~~ The Department ~~makes~~ shall make the final decision ~~as to which applications are funded~~ concerning which projects shall be funded.

(9) ~~Applications shall be~~ Funding will be granted only for projects that are applicable to Montana's energy needs. If the technology is not ~~feasible as suited~~ suited to the needs of Montana, the ~~application project~~ will not be granted funded.

(10) The Department may fund all or only ~~part~~ a portion of a ~~proposal~~ proposed project. ~~Generally only an application which is only that portion of a project directly related to the research, development, or demonstration of alternative renewable energy sources will be funded is eligible for funding. For example, an application to build a \$50,000 solar home may not be funded in full, but an application to demonstrate new solar technology as part of a home may be funded.~~

36-2.8(18)-S8090 APPLICATIONS - GENERAL REQUIREMENTS

(1) Any person may make application for a grant to fund a proposal project under the Act and these rules. The applicant

~~should~~ shall normally submit ten copies of the application at the time of filing to the Energy Planning Division of the Department, 32 South Ewing, Helena, Montana 59601, ~~consistent with these rules.~~ A lesser number of copies may be submitted upon prior approval of the Department.

(2) ~~There is no application form adopted by the Department.~~
(2)(3) ~~Although not required, to~~ To facilitate uniformity the application should meet the following requirements:

(a) The application should be typed, printed, or otherwise legibly reproduced on 8 1/2 x 11" paper. Maps, drawings, charts, or other documents bound in an application should be cut or folded to 8 1/2 x 11" size. Maps, drawings, or charts may accompany an application as separate exhibits, but should be cut or folded to 8 1/2 x 11" size if possible.

(b) Typed or offset material should have a 1" margin on all sides.

(c) All pages in an application should be consecutively numbered. Maps, drawings, or charts accompanying the application as exhibits should be identified as "Exhibit _____," and if comprising more than one sheet should be numbered "sheet _____ of _____."

~~(3)(a) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regard to the application should be made.~~

~~(b) The application shall contain a statement agreeing that all materials submitted by the application to the Department is subject to public scrutiny.~~

(4)(3) The Department will review the application to determine whether it is in substantial compliance with the Act and these rules. If the Department determines that the application is not in substantial compliance with the Act and these rules, the application will be considered deficient and the Department will reject the application, notifying the applicant in writing and listing the application deficiencies. The application may be re-submitted after corrections are made.

(5)(4) The applicant shall submit supplemental material upon request or when it becomes available without undue delay after an application is filed to update drawings and information submitted with the original application as requested, and shall update drawings and information submitted with the original application without undue delay as needed.

(6)(5) If an applicant desires to change or add to an application other than as required by subsection (4), after it is formally filed, the applicant shall inform the Department in writing as soon as possible of the change or addition. If the change or addition will result in a substantial change in the amount of funding requested or the goals and objectives stated in the original application, the Department will consider the change or addition to constitute a new application.

~~(7) There is no form adopted by the Department to fill out in making an application.~~

36.2.8(18)-S8100 APPLICATION CONTENT (1) The Application shall state the name, title, telephone number, and post office address of the person with whom communication in regard to the application should be made.

(2) The application shall contain a statement agreeing all materials submitted by the applicant to the Department will be made public.

~~{1}~~(3) An application shall must include a general declaratory statement indicating state whether the applicant is seeking funds for a research, development, or demonstration project.

~~{2}~~(4) The application shall include a declaration of the type of renewable alternative energy source to be studied (i.e., wind, solar, water, etc.) must specify the type of alternative renewable energy sources(s) that will be the focus of the project (e.g., solar, wind, water, biomass, geothermal, etc).

~~{3}~~(5) The application should contain a review of the existing "state-of-the-art" conducted by the applicant in the area of interest must contain a current "state-of-the art" review of the subject that is to be addressed by the project.

~~{4}~~(6) The application should include, whenever applicable, a description of the proposal, including, but not limited to: Where applicable, the proposal must include, but is not limited to, the following:

(a) A The theoretical basis for the proposal project, including all pertinent maps, diagrams, and photographs;

(b) The proposed technology including all pertinent diagrams and photographs;

(c) The proposed research methods, and the proposed construction methods if construction is a factor, plus all pertinent maps, diagrams, and photographs;

(d) The A description of the proposed facilities and needed equipment needed, including physical dimensions, diagrams, and photographs;

(e) The proposed time schedule for project development;

(f) A description discussion of the proposed anticipated expected results, both practical and theoretical;

(g) A statement as to how the project can advance the state-of-the-art; A discussion of how the project will promote the development of renewable energy within Montana and assist in meeting future energy needs;

(h) A statement indicating describing where the project will be constructed conducted and why that particular site is suited to the proposed project the rationale for selecting that location;

(i) A statement indicating listing of individuals who will work on the project, and what their various qualifications are; their respective roles and qualifications; and

~~{j}~~-----A statement of the role of the project in meeting future energy needs;

~~{k}~~-----A statement of how the project will be feasible and applicable;

(j) ~~A statement of the project's environmental compatibility, especially:~~ A discussion of the environmental effects of the project that especially deals with:

- (i) Pollutants or contaminants produced; and
- (ii) ~~An The estimate of the estimated~~ net energy yield of the project.

~~45~~ (7) The application shall include an estimated maximum budget for the state funds requested ~~which may not be exceeded, which should that must~~ contain:

- ~~(a)-----The wages and salaries of all research personnel, clerical help, craftsmen, etc. (itemized);~~
- ~~(b)-----A list of employee benefits;~~
- ~~(c)-----A list of building costs;~~
- ~~(d)-----A list of equipment costs (equipment generally are permanent items);~~
- ~~(e)-----A list of administrative and overhead costs;~~
- ~~(f)-----A list of the cost of supplies (supplies generally are exhaustible items);~~
- ~~(g)-----A list of communication and travel costs;~~

(a) An itemized listing of salaries and benefits for all research personnel, clerical help, craftsmen, and others;

(b) A list of all operating expenses that is itemized by the following categories:

- (i) contracted services;
- (ii) supplies;
- (iii) communications;
- (iv) travel; and
- (v) rent;
- (c) A list of equipment costs;
- (d) Where applicable, a list of administrative and overhead costs; and
- ~~(h)~~ (e) A list of any other expenses.
- (8) Any other funds that will be used to carry out the proposed project must be listed separate from those being requested from the Department. The budget format in subsection (5) must be used to itemize such funds.

~~46~~ (9) The application ~~should~~ must contain a copy list of all contracted or sub-contracted work, ~~including budgets, who is to do the work, and what work is to be done.~~ Each contracted or sub-contracted item must be described by a budget, the contractor(s), and the work to be done. If this information is not ~~if these are~~ available at the time of application, ~~they shall it~~ must be submitted at the time ~~they become~~ it becomes available.

36-2.8(18)-S8110 UNSOLICITED APPLICATION SUBMITTAL DEAD-LINES Applications for unsolicited grants shall must be submitted from August 1 through October 1. Applications for solicited grants shall must be submitted at a time specified by the Department ~~in a solicitation announcement.~~

36-2.8(18)-S8120 APPLICATION EVALUATION (1) ~~In general, applications will be reviewed and evaluated by members of an ad hoc committee which will be established by the Department. These~~

~~members will be qualified technical people in their respective renewable alternative energy fields. They may or may not be residents of the State of Montana. The evaluations will be done on an anonymous and confidential basis and the results will be disclosed to the applicant upon request. The Department may appoint individuals to assist with the review and evaluation of applications. These individuals shall be qualified technical people in their respective fields.~~

(2) ~~The Alternative Energy Advisory Council (AEAC) will meet to discuss the reviews and evaluations of each application and make recommendations to the Department. The Alternative Energy Advisory Council (AEAC) may meet to discuss applications and make recommendations to the Department.~~

(3) ~~Because only a finite amount of funds is available during each evaluation and grant period, applications received for consideration at that time in each period will be compared for relative merit as well as individual merit. The Department will then decide which applications to fund. fund those applications showing the highest relative merit consistent with the availability of funds.~~

36-2.8(18)-S8140 CONDITIONS UNDER WHICH GRANTS MAY BE USED AND OTHER CONDITIONS WILL BE AWARDED AND USED (1) Applicants shall If an applicant's proposal is accepted, the applicant may enter into a contract grant agreement with the Department under such terms and conditions the Department considers appropriate. ~~If Anytime~~ the recipient feels that changes in the contract are necessary ~~at some later date, then these, the proposed changes shall~~ may be negotiated with the Department. If a satisfactory agreement cannot be reached, the contract and the funding may be terminated by the Department with the consent of the recipient. The duration of a project may be extended if the Department determines that the grant recipient has made a diligent effort to complete the project and that additional time is required to adequately accomplish the funded scope of work.

(2) Grant recipients Each grant recipient shall submit periodic progress reports as specified by the Department; and shall submit a final reports report to the Department within ~~three (3)~~ 3 months following the yearly grant period completion of the contract period.

~~(3) Grant recipients shall submit an itemized list of expenses with each monthly or quarterly billings for payment.~~

~~(4) Grant recipients shall make oral or written presentations of progress if requested to do so by the Department.~~

~~(5) Funds granted under the terms of the Act and these rules may be used only for the purposes outlined and described in the application and approved by the Department, contract, and detailed Detailed records shall must be kept by the recipient for all expenditures. Since the proposal budgets are initially estimated, some transfers up to 25% among the budget categories expenditures will be allowed. Because the initial project budgets are estimates, transfers of up to 25% of any~~

budget category will be allowed to another budget category. Such transfers will be based upon the budget contained in the grant contract.

~~467(5)~~ The grant recipient shall ~~maintain an accounting system which adequately accounts~~ adequately account for expenditures in a manner acceptable to the Department. ~~Records, expenditures, bookkeeping, etc., for funded projects~~ All records, reports, and other documents that relate to the project and that are required by the department to be maintained by the grant recipient are subject to audit by the Office of the Legislative Auditor and the Department.

~~47(6)~~ Arrangements shall be made to assist, guide, and inform the Department during ~~on-site~~ on-site investigations. The Department ~~will~~ may made such investigations at its discretion.

36-2.8(18)-S8150 PAYMENT OF GRANTS (1) Upon approval of an application by the Department, funds will be set aside for that particular project.

~~(2) Payments shall be made on a monthly or quarterly basis against the balance of a given application's funds upon a request for payment by the recipient.~~ Requests for payment shall not be submitted more often than once a month.

~~(3) Payments will be made only on a valid project related expenditures, and any balance of payment made at the end of the one-year's funding period shall be returned to the Department.~~ Any balance of a grant which remains unused at the conclusion of the contract period shall revert to the Department.

36-2.8(18)-S8160 PROJECT ADMINISTRATION (1) The results of all research, development, or demonstration projects shall be made public record.

(2) Persons receiving demonstration funds may be required to make their projects open to the public during reasonable hours for a period of time specified ~~by the Department~~ in the grant contract.

~~(3) The Department may inspect and monitor all projects on a regular basis for a period of up to 5 years after completion of the project.~~

(4) The applicant may be required in the grant contract to maintain his funded project during the monitoring period.

RULE 1 SOLICITED PROPOSALS -- CRITERIA FOR GRANTS --

PROCEDURE (1) The Department may at any time solicit specific proposals to initiate projects that are needed to meet program goals and objectives and may fund the solicited proposals at any time during the year.

(2) The Department may solicit proposals by the following methods:

(a) The Department may issue a request for a proposal (RFP). The RFP will describe the objective(s) of the project, the maximum funding that is available, and the deadline for submittal. The RFP's will be advertised and sent to selected groups

or individuals that the Department considers to have the necessary credentials and experience to successfully carry out the project; or

(b) The Department may issue a single-source agreement with an individual or group to accomplish a specific objective for a specified grant amount.

(3) To be eligible for grant consideration, applicants must:

(a) submit priced proposals responsive to the objectives or effort cited in the solicitation;

(b) submit the proposal by the specific due date; and

(c) submit a solicited proposal meeting the requirements of 36-2.8(18)-S8090 and 36-2.8(18)-S8100.

(4) Funding will be granted to solicited proposals using the following criteria:

(a) The Department will fund a solicited proposal only if the proposal has a sufficiently high probability, in the judgment of the Department, of meeting the program goals and objectives to justify the cost;

(b) The Department will fund only the proposal that the Department rates highest in terms of the probability of meeting the program goals and objectives and of cost, unless the Department determines that the funding of additional proposals is desirable or necessary to best meet program goals and objectives and the cost of the additional programs is justified; and

(c) All grant awards will be made only up to the amount of funds available.

(3) The intent of the proposed repeal, amendments, and adoption is to better enable the Department to carry out the legislative purpose of the alternative renewable energy source grant program and to amend the rules as required by SB 401, Chapt. 624, Laws of 1979, which allows issuance of alternative renewable energy source grants for commercial projects.

Proposed changes without substantive effect include changes in punctuation, grammar, and sentence structure to remove redundancies and to clarify meanings, the update of statutory references by the substitution of the appropriate MCA reference, a limited rearrangement of paragraphs between rules, and the elimination of some definitions in Rule 36-2.8(18)-S8070 and the criteria contained in Rule 36-2.8(18)-S8130(1), (2), (4), and (5) that "unnecessarily repeat statutory language." Section 2-4-305(2), MCA.

A number of substantive changes have been proposed. A proposed amendment to Rule 36-2.8(18)-S8070(3), which contains the definition of "person" found in Section 90-4-102(2), MCA, notes that the Attorney General in 37 Att'y Gen. Rep. 165 has opined that certain religious organizations are constitutionally ineligible to receive alternative renewable energy source grants. Rules 36-2.8(18)-S8070(7) and S8080(5) are proposed to be amended, and Rule 36-2.8(18)-S8130(3) is proposed to be eliminated, to conform with the requirements of SB 401, Chap. 624, Laws of 1979.

Rule 36-2.8(18)-S8080(8), which establishes the Alternative Energy Advisory Council (AEAC), is proposed to be amended to reflect the present use of the AEAC. Changes in application evaluation, Rule 36-2.8(18)-S8120, are proposed to eliminate evaluations by an ad hoc committee and in its place allow the department to appoint qualified technical people to assist in the review and evaluation. This change would provide for a more flexible and complete review process while being less cumbersome. Other proposed changes are in the budget required to be submitted with an application and in the record keeping required of budget recipients that would provide for improved accountability for grant funds in light of the Department's experience. These proposed changes are to Rules 36-2.8(18)-S8100 and -S8140. Proposed amendments to Rule 36-2.8(18)-S8140(1) and (2) would provide criteria for grant extensions and would require a final report after the completion of the project rather than yearly reports, respectively.

A new rule is proposed to provide a procedure and evaluation criteria for solicited proposals for the purpose of providing greater flexibility in awarding grants and to enable the department to meet specific program goals and objectives.

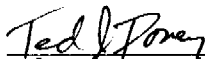
(4) Interested parties may submit their data, views, or arguments concerning the proposed repeal, amendments, and adoption in writing to the Bureau Chief, Conservation and Renewable Resources Bureau, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59601, no later than November 23, 1979.

5. If a person who is directly affected by the proposed repeal amendments, and adoption wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Bureau Chief, Conservation and Renewable Resources Bureau.

6. If the agency receives requests for a public hearing on the proposed repeal, amendments, and adoption from 25 or more persons who will be directly affected by the proposed rule changes, from the Administrative Code Committee of the legislature, or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

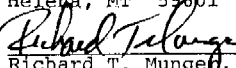
7. The authority of the Department to make the proposed rule changes is based on Section 90-4-104, MCA. The following are the statutes implemented by the substantive rule changes: the proposed amendment to the definition of "person" in Rule 36-2.8(18)-S8070(3) implements Section 90-4-102, MCA; the proposed amendments to Rules 36-2.8(18)-S8070(7) and -S8080(5) and the proposed elimination of Rule 36-2.8(18)-S8130(3) implement Section 90-4-101, MCA, as amended by SB 401, Chap. 624, Laws of 1979; the proposed amendment of Rule 36-2.8(18)-S8080(8), which affects the AEAC, and of Rule 36-2.8(18)-S8120, which affects application evaluation, implements Section 90-4-104, MCA; proposed amendments in budget and record keeping requirements in Rules 36-2.8(18)-

S8100 and -S8140 implement Sections 90-4-104 and 90-4-105, MCA; the proposed amendments to Rule 36-2,8(18)-S8140, concerning grant extensions and final reports implement Section 90-4-104 and 90-4-106, MCA; and, the proposed adoption of a new rule concerning solicited proposals implements Sections 90-4-101 and 90-4-104 through 106, MCA.



Ted J. Doney, Director
Department of Natural Resources
and Conservation
32 South Ewing
Helena, MT 59601

By:



Richard T. Munger, Deputy Director

Certified to the Secretary of State 10/16/, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENTS
Amendments of ARM 40-3.48(6)-)	OF ARM 40-3.48(6)-S4840
S4840 concerning applications;)	APPLICATIONS; ARM 40-3.48(6)-
ARM 40-3.48(6)-S4850 subsections))	S4850 (1)(b) and (2) GRANT
(1)(b) and (2) concerning seals)	AND ISSUE LICENSES; ARM 40-
and issuing licenses; ARM 40-)	3.48(6)-S4860 (1), (5), (7)
3.48(6)-S4860 subsections (1),)	EXAMINATIONS; ARM 40-3.48(6)-
(5) and (7) concerning examina-)	S4880 RECIPROCITY; AND
tions; ARM 40-3.48(6)-S4880)	PROPOSED REPEAL OF ARM 40-
concerning reciprocity; and)	3.48(6)-S48040 STANDARDS FOR
Proposed repeal of ARM 40-3.48)	REGISTRATION - QUALIFICATIONS
(6)-S48040 concerning standards)	
for registration)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 24, 1979, the Board of Landscape Architects proposes to amend ARM 40-3.48(6)-S4840 concerning applications; ARM 40-3.48(6)-S4850 subsections (1)(b) and (2) concerning seals and issuance of licenses; ARM 40-3.48(6)-S4860 Subsections (1), (5) and (7) concerning examinations; ARM 40-3.48(6)-S4880 concerning reciprocity and proposes to repeal ARM 40-3.48(6)-S48040 concerning standards and qualifications for registration.

2. The proposed amendment to 40-3.48(6)-S4840 amends subsection (1), deletes subsection (1) (a) in its entirety; amends subsection (2), (2) (a), deletes subsection (3) and (3) (a) in their entirety; amends subsection (4); amends subsection (6) and (6) (a) and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.48(6)-S4840 APPLICATIONS (1) Registration:

Applications received by the board shall be examined for conformity with the rules ~~and-regulations~~ governing applications as established by the board.

Applications accompanied by proper fees and in the form prescribed shall be entered in the records of the board. Applications not accompanied by proper fees or not conforming entirely to the rules ~~and-regulations~~ shall be returned to the applicant, with instructions as to the correction thereof, ~~or-held-in-abeyance-until-in-proper-form-as-prescribed-by-the-board.~~

~~(a)~~ (Deleted in its entirety, located at page 40-220.12 and 40-220.13 Administrative Rules of Montana)

(2) Form of Application: All applications for registration shall be made on printed forms provided by the Board. Applications made otherwise will not be accepted. Applications must be clearly typewritten black or hand-printed, suitable for photostatic copy, and all questions must be answered. ~~An-application-not-properly-made-out, or-not-accompanied-by-the-required-fee-will-be-retained-~~

~~with a statement of the reasons for return:~~

(a) The application shall be accompanied by an unmounted, recognizable, recent photograph of the applicant, ~~with date taken or photoengraving of same~~ (size 2 x 2 1/2 overall with face not less than 3/4 inches wide).

(b) ~~(a)~~ Applications shall be subscribed and sworn to before a Notary Public ~~or other person qualified to administer oaths.~~

~~(b)~~ (c)

~~(3)~~ (is deleted in its entirety)

~~(3)~~ (a) (is deleted in its entirety, both (3) and (3) (a) are located at page 40-220.13 Administrative Rules of Montana)

(4) Disposal of Applications: When the board, after due consideration of an application applicant and of information pertaining thereto, is satisfied that the applicant is eligible for registration, the applicant will be voted registration by Board majority. The applicant will be notified of the action by the board.

(a)

(b)

(5)

(6)

(6) ~~(a)~~ (deleted in its entirety and is located at page 40-220.14 Administrative Rules of Montana)"

The above rule implements section 37-66-304 MCA.

3. The proposed amendment of ARM 40-3.48(6)-S4850 changes the catch phrase, amends subsection (1)(a), deletes in its entirety (1)(b), amends subsection (2) and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.48(6)-S4850 GRANT SEALS AND ISSUE LICENSES

(1)

(a) Seals or rubber stamps of the seal for Landscape Architects must be purchased through the board. Seals of two different sizes are authorized; pocket seal; the size commercially designated as a 1 -5/8 inch seal; or a desk seal; commercially designated as a 2 inch seal. The seal or rubber stamp will bear the registrant's name, registration number, and the legend "Registered Licensed Landscape Architect", as prescribed by the board. Every registered Landscape Architect shall have a seal in design authorized by the board, bearing the name of the registrant, his registration number, and the legend "REGISTERED LANDSCAPE ARCHITECT." This seal or rubber stamp with the registrant's counter signature shall appear on the title page of specifications and on every sheet of the working drawings when filed with public authorities. In case of a partnership, only one of the registered principal partners shall be required to seal or stamp documents.

~~{b}~~ (is deleted in its entirety and is located at page 40-220.14 Administrative Rules of Montana)

(2) Certificate of Registration: A certificate of registration will be issued by the Board after approval of an application ~~and verification of the applicant's usual written signature~~. The certificate shall be signed by the ~~President-Chairman~~ and the Secretary and shall bear the registration number of the registrant.

Applicants approved for registration as Landscape Architects shall receive one certificate of registration authorizing the practice of Landscape Architecture." The above rule implements section 37-66-303 MCA.

4. The proposed amendment of ARM 40-3.48(6)-S4860 amends subsection (1), (5) and deletes subsection (7) in its entirety and will read as follows:

"40-3.48(6)-S4860 EXAMINATIONS (1) After July 1, ~~1976-1979~~, registration as a Landscape Architect will be by Uniform National Examination, as designated below ~~or otherwise exempt or designated by the board~~. ~~The cost of full examination shall be one hundred or twenty dollars for each section.~~ The ~~fifty dollar~~ application fee shall not be included in the examination fees.

.....
(5) The examination required of applicants shall be ~~part-written and part oral~~ as established and administered by CIARB (Council of Landscape Architects Registration Boards). A minimum passing grade in each subject shall be ~~seventy-five percent~~ ~~{75}~~ of a possible ~~one hundred percent~~ ~~{100}~~ before registration will be issued.

~~{7}~~ (is deleted in its entirety and is located at page 40-220.15 and 40-220.16 of the Administrative Rules of Montana)"

The above rule implements section 37-66-305 MCA.

5. The proposed amendment of 40-3.48(6)-S4880 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.48(6)-S4880 RECIPROCITY (1) Registration by Endorsement: The board may, without written examination, upon application therefore and payment of proper fee, issue a certificate of registration as a Landscape Architect to any person who submits evidence that he holds a certificate of Qualification or Registration issued to him by proper authority of the Council of Landscape Architecture Registration Boards, ~~or of any State or Territory or Possession of the United States, or of any country provided that the applicant's qualifications meet the requirements of the act and of the rules established by the board~~. Such applicants shall, as part of their application, complete and send to the board the standard application form.

(a) When application for registration by endorsement-

~~reciprocity is made, the Montana Board shall secure from the examining board by which the certificate of registration involved was issued, complete information as to the basis for the issuance of said certificate; provided, however, that if the applicant presents evidence of a certificate~~ review the certificate of qualification or registration issued by the Council of Landscape Architecture Registration Boards bearing thereon as an endorsement of his qualification for registration in Montana. ~~proper authorization by the authorized official of the state in which the holder of the certificate is a resident; such inquiry may be omitted.~~

(b) The board will, upon application for reciprocal registration by one of its registrants, certify attest to his qualifications.

~~{2}~~ (is deleted in its entirety and is located at page 40-220.17 Administrative Rules of Montana)

The above rules implements section 37-66-306 MCA.

6. The proposed repeal of ARM 40-3.48(6)-S48040 STANDARDS FOR REGISTRATION - QUALIFICATIONS deletes the rule and accompanying table of equivalents in their entirety and is presently located at pages 40-220.18 through 40-220.22 Administrative Rules of Montana.

7. The Board is proposing the amendments and repeal to bring their rules in compliance with changes made in the 1979 Legislative Session, Chapter 325, 1979 Session Laws.

8. Interested parties may submit their data, views or arguments concerning the proposed amendments and repeal in writing to the Board of Landscape Architects, Lalonde Building, Helena, Montana, no later than November 22, 1979.

9. If a person who is directly affected by the proposed amendments or repeal wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Landscape Architects Lalonde Building, Helena, Montana 59601, no later than November 22, 1979.


10. If the Board receives requests for a public hearing on the proposed amendments and repeal from 10% or 25 or more of those persons directly affected by the proposed amendments or repeal or the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register.

11. The authority of the Board to make the proposed amendments and repeal is based on section 37-66-202 MCA. The implementing sections are listed after each proposed change.

BOARD OF LANDSCAPE ARCHITECTS
GEORGE MATZ, CHAIRMAN

-1277-

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, October 16, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF REALTY REGULATION

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENT
Amendments of ARM 40-3.98(6)-)	OF ARM 40-3.98(6)-S98040 (1)
S98040 subsection (1) concerning)	RENEWAL - INACTIVE LIST -
inactive salesmen and ARM 40-)	REGISTER AND ARM 40-3.98(6)-
3.98(6)-S98085 subsection (2)(c)	S98085 (2)(c) SUSPENSION OR
concerning basis for suspension)	REVOCATION - VIOLATION OF
or revocation of licenses.)	RULES - UNWORTHINESS OR
	INCOMPETENCY

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons:

1. On November 24, 1979, the Board of Realty Regulation proposes to amend ARM 40-3.98(6)-S98040 subsection (1) concerning inactive salesmen and ARM 40-3.98(6)-S98085 (2) (c) concerning basis for suspension or revocation of licenses.

2. The amendment to ARM 40-3.98(6)-S98040 amends subsection (1) and adds a new subsection (4) and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.98(6)-S98040 RENEWAL - INACTIVE LIST - REGISTER
(1) A salesman who is unemployed at the time of renewal must renew his license on an inactive basis by ~~filing a renewal application, paying the regular fee and complying with the bonding requirement of section 66-1933, R.C.M.-1947, as amended.~~ The license must be forwarded to the Montana Board of Real Estate office and cancelled, and the renewal application must show "inactive at present" instead of the signature of the employing broker. ~~To again become active, the salesman must file a change of address application and pay the current fee to transfer his license to a licensed broker.~~

(a) pay the required fee in accordance with section 37-51-311 (2) MCA;

(b) forward the license to Board office for cancellation of active license; and

(c) indicate on renewal application "inactive at present" instead of signature of employing broker.

(2).....

(3).....

(4) For an inactive real estate licensee to again become active:

(a) if he has not paid the current year real estate license fee he must pay the required fee in accordance with section 37-51-311 (5), (7), (9) MCA according to class of license;

(b) comply with bonding requirements of section 37-51-304 MCA; and

(c) file a change of address application and pay the required fee in accordance with section 37-51-311 (1) (i) MCA, to transfer the license to a resident Montana Broker."

3. The Board is proposing the change to bring the rule in compliance with the statutes as amended by the last Legislature.

4. The proposed amendment to ARM 40-3.98(6)-S98085 amends subsection (2) (c) and will read as follows: (new matter underlined, deleted matter interlined)

" 40-3.98(6)-S98085 SUSPENSION OR REVOCATION - VIOLATION OF RULES - UNWORTHINESS OR INCOMPETENCY (1).....

(2)....(c) The licensee or agency in advertising shall be especially careful to present a true picture and shall not advertise without disclosing his name and identity as a real estate licensee. Such disclosure shall be required whenever the licensee or agency negotiates or attempts to negotiate the listing, sale, purchase or exchange of real property as described in section 37-51-102(2) MCA, which belongs to the licensee, the agency or belonging to a third party."

5. The Board is proposing the amendment to eliminate confusion regarding licensee obligation to identify himself in real estate advertisement. This amendment merely clarifies the licensee's obligation in that respect.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Realty Regulation, Lalonde Building, Helena, Montana 59601, no later than November 22, 1979.


7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Realty Regulation, Lalonde Building, Helena, Montana 59601 no later than November 22, 1979.

8. If the Board receives requests for a public hearing on the proposed amendments from 10% or 25 or more of those persons directly affected by the proposed amendments or the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register.

9. The authority of the Board to make the proposed amendments is based on section 37-51-203 MCA. The implementing sections are 37-51-302 and 37-51-321 MCA respectively.

BOARD OF REALTY REGULATION
DEXTER DELANEY, PRESIDENT

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, October 16, 1979.

MAR Notice No. 40-98-15

20-10/25/79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL	)	NOTICE OF PROPOSED REPEAL OF
OF RULE 42-2.12(6)-S12095	)	RULE 42-2.12(6)-S12095 APPEAL
concerning appeal of depart-	)	FROM DEPARTMENTAL DECISION
ment decisions in certain)	
liquor license matters.	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 3, 1979, the Department of Revenue proposes to repeal rule 42-2.12(6)-S12095 concerning appeal of department decisions in certain liquor license matters.

2. Rule 42-2.12(6)-S12095 is on page 42-108.26 of the Administrative Rules of Montana.

3. The department proposes to repeal this rule for the following reason:

Rule 42-2.12(6)-S12095 is redundant with 16-4-411, MCA, and is not needed.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing no later than November 25, 1979, to:

Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

5. If a person who is directly affected by the proposed repeal of rule 42-2.12(6)-S12095 wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than November 25, 1979.

6. If the department receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been estimated to be greater than 25 based on the number of holders of various liquor licenses.

7. Authority of the department to make the proposed repeal is given by 16-1-303, MCA. The proposals implement 2-4-305, MCA, and Chapter 600, Laws of 1979.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 10-15-79

20-10/25/79

MAR Notice No. 42-2-141

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL	)	NOTICE OF PROPOSED REPEAL OF
OF RULES 42-2.14(6)-S14080	)	RULES 42-2.14(6)-S14080,
and 42-2.14(6)-S14100,	)	42-2.14(6)-S14100, 42-2.14(10)
concerning strip coal mines	)	-S14180, 42-2.14(10)-S14210,
license tax; 42-2.14(10)	)	and 42-2.14(10)-S14240,
-S14180, concerning certain	)	concerning the miscellaneous
penalties; 42-2.14(10)	)	tax division.
-S14210, concerning certain)	
initial inventories of	)	NO PUBLIC HEARING CONTEMPLATED
tobacco products; and)	
42-2.14(10)-S14240, concerning))	
certain filing procedures.)	

TO: All Interested Persons:

1. On December 3, 1979, the Department of Revenue proposes to repeal rules 42-2.14(6)-S14080, 42-2.14(6)-S14100, 42-2.14(10)-S14180, 42-2.14(10)-S14210, and 42-2.14(10)-S14240, concerning the miscellaneous tax division.

2. Rules 42-2.14(6)-S14080 and 42-2.14(6)-S14100 are on pages 42-116 and 42-117 of the Administrative Rules of Montana. Rule 42-2.14(10)-S14180 is on page 42-119, and rules 42-2.14(10)-S14210 and 42-2.14(10)-S14240 are on page 42-120 of the Administrative Rules of Montana.

3. The department proposes to repeal these rules for the following reasons:

Rules 42-2.14(6)-S14080 and 42-2.14(6)-S14100 are based on Chapter 155, Laws of 1921, as amended. These statutes have since been repealed (Chapter 525, Laws of 1975), and consequently the rules must be repealed.

Rule 42-2.14(10)-S14180 relates to penalties in connection with the sale of tobacco products other than cigarettes and is redundant with 16-11-204 and 16-11-205, MCA.

Rules 42-2.14(10)-S14210 and 42-2.14(10)-S14240 were temporary rules and are no longer needed.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeals in writing no later than November 25, 1979, to:

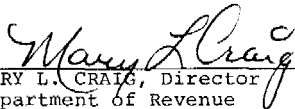
Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

5. If a person who is directly affected by the proposed repeal of rules 42-2.14(6)-S14080, 42-2.14(6)-S14100, 42-2.14(10)-S14180, 42-2.14(10)-S14210, and 42-2.14(10)-S14240 wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and

submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than November 25, 1979.

6. If the department receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been estimated to be greater than 25 based on the number of persons subjected to the tobacco licensing laws.

7. Authority of the department to make the proposed repeals is given by 15-1-201 and 16-11-103, MCA. The proposals implement 2-4-305, MCA, and Chapter 600, Laws of 1979.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 10-16-79

20-10/25/79

MAR Notice No. 42-2-142

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED AMENDMENT
general revision of rules	)	OF CERTAIN RULES relating to
relating to inheritance	)	the Montana inheritance and
and estate tax	)	estate tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 3, 1979, the Department of Revenue proposes to revise certain rules relating to the Montana inheritance and estate tax to reflect changes made by the 1979 Legislature and to eliminate some inconsistencies and redundant material pursuant to the rule recodification project.

2. The rules as proposed to be amended provide as follows:

42-2.10(1)-S1040 TRANSFERS OF JOINT INTEREST PROPERTY (1)
Whenever a government bond of the United States is inscribed in co-ownership form or any other property is held in joint tenancy by two or more persons and is payable to the survivor(s) of them upon the death of one of them, the right of the survivor(s) to the immediate possession or ownership of the interest of the decedent is a taxable transfer. For inheritance tax purposes, the decedent's interest is treated as though it passed to the surviving joint interest holders by will.

~~(2) The Tax~~

~~(a) Where the decedent dies before July 17, 1977, or where the surviving joint tenant is the decedent's spouse, the tax is upon the transfer of the decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property had belonged to the decedent and had been bequeathed or devised to the survivor by will.~~

~~(b) Where the decedent dies on or after July 17, 1977, and the surviving joint tenant is not the decedent's spouse, the full value of the property not originally belonging to the survivor is taxable.~~

~~(c) Where there is more than one surviving joint tenant and where the decedent dies before July 17, 1977, the transfer of decedent's interest to each surviving joint tenant is taxable. Where the decedent dies on or after July 17, 1977, the decedent's interest passing to the decedent's spouse and to each of the other joint tenants is taxable. In addition, the entire share of each of the non-spousal survivors (not just that interest which passed at death) is taxable to the extent it originally belonged to the decedent. The full value of the non-spousal survivor's share in the joint interest property after the decedent's death would be taxable if it originally belonged to the decedent.~~

~~(3) (2)(a) Exception In all of the above situations the~~
The inheritance tax shall does not apply to the transfer by right of survivorship of any property which can be shown to have originally belonged to the survivor and never to have belonged to the decedent prior to the creation of the joint interest. For this

exception to apply, the survivor(s) must show that the decedent had no interest, equitable or legal, in the property immediately prior to the creation of the joint interest. This exception does not apply where the interest passes to a survivor and the property had originally belonged to a different survivor. It applies only where the interest passing originally belonged to the specific survivor claiming the exception.

(b) The treatment of joint interest property is subject to the provisions of 72-16-301(3).

(4) -- How Joint Interests are Taxed

(a) -- ~~Where the decedent dies prior to July 1, 1977, or where the surviving joint tenant is the decedent's spouse, and where the joint interest in property was created either within three (3) years before A's death or in such a manner so as to take effect at or after the death of A, if A was the sole contributor or owner of the jointly held property immediately prior to the creation of the joint tenancy, such property may be completely taxable, i.e., the decedent's interest that passed to the survivor(s) is taxable to the survivor(s) under Section 91-4405 and the survivor(s) interest is taxable to the survivor(s) under Section 91-4402 as either a gift in contemplation of death (unless the three year presumption is rebutted) or as a gift to take effect at or after death.~~

~~Under the above circumstances, if A should be predeceased by the other holding joint interests, A should not have to pay inheritance tax if he shows that he was the sole contributor or owner of the property immediately prior to the creation of the joint tenancy or interest.~~

~~(b) -- Where the decedent dies prior to July 1, 1977, or where the surviving joint tenant is the decedent's spouse, a joint tenancy created more than three (3) years prior to the death of the decedent will result in only the decedent's interest passing to the survivor(s) being taxable under Section 91-4405, even if the decedent was the sole owner of the property prior to the creation of the joint tenancy.~~

~~(c) -- Where the decedent dies on or after July 1, 1977, and the surviving joint tenant is not the decedent's spouse, the full value of the property originally belonging to the decedent is taxable even if the joint interest was created more than three (3) years prior to decedent's death.~~

(3) Except as provided in subsection (2), when the decedent died prior to July 1, 1977, the transfer of joint interest property is taxable as provided in this subsection. The inheritance tax is based upon the value of the fraction of the decedent's interest passing to each surviving holder of the joint interest.

(4) Except as provided in subsection (2), when the decedent died on or after July 1, 1977, and prior to July 1, 1979, the transfer of joint interest property is taxable as provided in this subsection. When a surviving joint interest holder is also the spouse of the decedent, the inheritance tax is based upon the value of the fraction of the decedent's interest passing to the

surviving spouse. When a surviving joint interest holder is not the spouse of the decedent, the inheritance tax is based upon the full value of the decedent's interest and is not reduced in proportion to the fraction received by the survivor.

(5) Except as provided in subsection (2), when the decedent dies on or after July 1, 1979, the transfer of joint interest property is taxable as provided in this subsection. When a surviving joint interest holder is either the spouse or an issue of the decedent, the inheritance tax is based upon the value of the fraction of the decedent's interest passing to the surviving spouse or issue. When the surviving joint interest holder is not the spouse or an issue of the decedent, the inheritance tax is based upon the full value of the decedent's interest and is not reduced in proportion to the fraction received by the survivor.

42-2.10(2)-S10000 ESTATE TAX (1) The estate tax provided by ~~this section 72-16-904, MCA,~~ is equal to the federal estate tax credit allowed for state death taxes, less the net Montana inheritance tax paid. The estate tax, when applicable, applies to both residents and non-residents decedents. If the property is held both within and without this state, the federal estate tax credit shall be prorated to determine this state's portion of the credit. ~~This section requires that the estate tax be paid at the same time the federal estate tax is paid.~~

(2) If the decedent died prior to October 1, 1978, the estate tax is to be paid at the same time the federal estate tax is due and payable. If the decedent dies on or after October 1, 1978, the estate tax is due within 18 months of the date of death.

42-2.10(2)-S10030 GENERAL EXEMPTIONS

- (1) No changes.
- (2) No changes.
- (3) Exemption Amounts

(a) Where the decedent ~~dies~~ died on or after July 1, 1977, and prior to January 1, 1979, the clear value of one-half of the property distributed or passing to the decedent's surviving spouse is exempt. The following amounts of property are also exempt:

The first \$40,000 transferred to the surviving spouse.

The first \$15,000 transferred to minor lineal descendants.

The first \$7,000 transferred to adult lineal descendants and ancestors.

The first \$1,000 transferred to brothers, sisters, or descendants thereof.

The first \$1,000 transferred to son's wife or daughter's husband.

- (b) No changes.
- (c) No changes.
- (d) No changes.
- (e) No changes.

(f) Where the decedent dies on or after January 1, 1979, the clear value of all property distributed or passing to the decedent's surviving spouse is exempt. The following amounts of property are also exempt:

- (i) the first \$15,000 transferred to minor lineal descendants;
- (ii) the first \$7,000 transferred to adult lineal descendants and ancestors;
- (iii) the first \$1,000 transferred to brothers, sisters, or descendants thereof;
- (iv) the first \$1,000 transferred to son's wife or daughter's husband.
- (4) No changes.
- (5) No changes.
- (6) No changes.
- (7) No changes.

42-2.10(2)-S10050 TRANSFERS OF SECURITIES OF ASSETS --WAIVERS

(1) (a) No corporation organized or existing under the laws of this state shall transfer or deliver stock, bonds, mortgages or other securities held by a non-resident decedent to the executor, administrator, or legal representative of said decedent unless the inheritance tax on such transfer has been paid or secured or unless the State Department of Revenue has determined that no tax is due on said transfer and has issued a certificate of transfer. Transfers of securities held by a non-resident decedent are exempt from the inheritance tax of the requirements of Section 91-4413, R.C.M. 1947, have been satisfied. Waivers or consents to transfer are required for transfers of stocks or bonds in a domestic or foreign corporation from the name of a resident decedent or from the name of the trustee of a revocable or an irrevocable trust created by the decedent. Waivers or consents are not required for the transfer of securities in a Montana corporation by a non-resident decedent if such securities are exempt from the Montana inheritance tax on the basis of reciprocity.

(b) If a decedent was resident of a foreign country or was not domiciled in a district or state of the United States, a waiver is required on stock owned by the decedent in any Montana corporation.

(2) (a) Upon the death of an insured, resident decedent, waivers or consents to transfer for life insurance proceeds are not required if the proceeds of the policies do not exceed \$50,000 or if the proceeds are payable entirely to a surviving spouse regardless of the amount. In all other cases involving an insured, resident decedent, a waiver or consent is required. When the proceeds of a policy or policies exceed \$10,000, a notice of payment is required to be mailed by the company to the department. Policies which have been left with the insurer and matured endowments require a consent to transfer regardless of the amount unless payable to a surviving spouse.

(3) For non-resident decedents there are no waiver require-

ments, and the proceeds may be transferred without securing the consent of the department.

42-2.19(4)-S10060 SUBMISSION OF DOCUMENTS (1) To enable the Department of Revenue to determine the amount of inheritance tax due, if any, the following forms and documents are required:

- (a) INH-1 -- Inventory and Appraisalment,
- (b) INH-1a -- Inventory of Safety Deposit Box, if applicable,
- (c) INH-2 -- Application for Determination of Inheritance Tax,
- (d) INH-3X -- Application for Consent to Transfer Non-Probate Real Property, if applicable,

- ~~(d)~~ (e) a certified copy of decedent's last will and testament, including any codicils,
- ~~(e)~~ (f) a copy of the Federal Estate Tax Return, Form 706, if applicable,
- ~~(f)~~ (g) copies of any trust agreements,
- ~~(g)~~ (h) copies of inventories and appraisals of property located outside the state of Montana, if applicable.

(2) The following information may be requested by the Department of Revenue:

- (a) any information which is necessary to clarify description, ownership, or valuation of property shown on the Inventory and Appraisalment.
- (b) any information which will justify or clarify deductions claimed on the tax reports, including any accountings which have been filed with the court.

(3) The purpose of form INH-3X is to provide a means to terminate a joint tenancy or other nonprobate interest in real property when other assets of the decedent require probate. This form must be filed in duplicate. After certification by the department, one copy will be returned to the sender to be filed with the clerk and recorder of the appropriate county.

42-2.10(6)-S10100 INH-3 -- APPLICATION FOR DETERMINATION OF INHERITANCE TAX (NON-PROBATE) (1) ~~This form~~ Form INH-3 is designed to comply with ~~Sections 91-4470(2)(b) and 91-4471(1)(a), R.C.M.--1947, 72-16-502(2)(b) and 72-16-503(1)(a), MCA,~~ and is used only when the decedent owned no property requiring probate. ~~The INH-3~~ This form must be submitted in duplicate. After certification by the department, one copy will be returned to the sender to be filed with the clerk and recorder of the appropriate county.

3. The suggested amendments have been proposed for the following reasons:

Rule 42-2.10(1)-S1040, Transfers of Joint Interest Property, implements 72-16-303, MCA. This section was amended by Chapter

636, Laws of 1979, to provide that the issue of the decedent is treated the same as the spouse in determining the tax on the transfer of joint interest property. Consequently the rule has been rewritten to reflect this change. Additionally the language of existing subsections (2) and (4), when read together is somewhat confusing. Hence, these two subsections have been deleted and totally rewritten for clarity.

Rule 42-2.10(2)-S10000, Estate Tax, implements 72-16-904, 72-16-905, and 72-16-909, MCA. Section 72-16-909, MCA, was amended by Chapter 166, Laws of 1979, to change the time of payment of the estate tax. Because of the former language of 72-16-909, MCA, requiring payment at the same time as the federal estate tax was due, and the change made in 1979, the department has determined that October 1, 1978, constituted the date separating the two different time periods for payment.

Rule 42-2.10(2)-S10030, General Exemptions, implements several sections in Title 72, chapter 16, MCA, including 72-16-313, MCA. Section 72-16-313, MCA, was amended by Chapter 696, Laws of 1979, to increase the spousal exemption from one-half of the property transferred to all of the property transferred. Accordingly, the rule is proposed to be amended to reflect this change.

Rule 42-2.10(2)-S10050, Transfer of Securities, implements 72-16-433, MCA. The existing language of the rule is directed towards the provisions of Title 72, Chapter 16, part 7, MCA. Consequently questions concerning resident decedents and questions concerning life insurance proceeds are not addressed. Moreover, the existing language duplicates the statutes. As a result, this rule has been rewritten to deal with both securities and life insurance proceeds. The \$50,000 limit concerning insurance proceeds is based on 72-16-304, MCA, and exemption for the spouse from waiver requirements is based on 72-16-313, MCA.

Rules 42-2.10(4)-S10060 and 42-2.10(6)-S10100, relating to documents to be submitted to the department with respect to inheritance tax, have been amended to reflect the use of forms INH-3X and INH-3. These forms are applicable in the probate and non-probate situations respectively. The present rules do not reflect this and are proposed for amendment to cure this problem.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing no later than November 25, 1979 to:

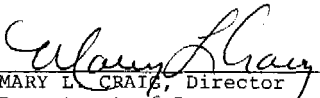
Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

5. If a person who is directly affected by the proposed

amendments to the rules listed above wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than November 25, 1979.

6. If the department receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been estimated to be greater than 25 based upon the number of estates subject to the inheritance tax in Montana.

7. Authority to make the proposed amendments is given by 15-1-201 and 72-16-201, MCA, generally. Additional authority for the amendments to rule 42-2.10(2)-S10000 is given by 72-16-901, MCA, and for rule 42-2.10(2)-S10050, additional authority is provided by 72-16-433, MCA. The amendments to rule 42-2.10(1) -S1040 implement 72-16-303, MCA; to rule 42-2.10(2)-S10000 implement 72-16-909, MCA; to rule 42-2.10(2)-S10030 implement 72-16-313, MCA; to rule 42-2.10(2)-S10050 implement 72-16-304, 72-16-433, 72-16-702, and 72-16-703, MCA; and to rules 42-2.10(4) -S10060 and 42-2.10(6)-S10100 implement 72-16-207, 72-16-301, 72-16-303, 72-16-502, and 72-16-503, MCA. Additionally, the rewriting of rules for clarity or to resolve ambiguity implements the provisions of Chapter 600, Laws of 1979.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 10-15-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED AMENDMENT
general revision of rules	)	OF CERTAIN RULES AND REPEAL OF
relating to abandoned property)	)	CERTAIN RULES relating to
		abandoned property.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 3, 1979, the Department of Revenue proposes to revise, by amendment and repeal, certain rules relating to the treatment of abandoned property to reflect changes made by the 1979 Legislature and to eliminate some inconsistencies and redundant material pursuant to the rule recodification project.

2. The rules proposed to be amended provide as follows:

42-2.10(10)-S10120 PROPERTY-SUBJECT-TO-THE-ACT APPLICABILITY

(1) The Uniform Disposition of Unclaimed Property Act primarily relates to money and intangible property generally but in certain cases includes personal property. When custody of tangible personal property is delivered to the State, provision is made for the sale of such property and for the deposit of the funds derived from the sale in the Common School Permanent Trust and Legacy Account of the State. Generally the Act deals with bank and other financial institution deposits, insurance proceeds, utility deposits, corporate stocks or other certificates of ownership, corporate dividends and assets held for distribution, funds held by fiduciaries, and miscellaneous funds and intangible personal property held by public agencies and individuals.

42-2.10(10)-S10170 PRESUMPTION OF ABANDONMENT (1) No changes.

(2) No changes.

(3) No changes.

(4) The exception to the 7-year presumption of abandonment pertains to assets held in connection with the dissolution of business organizations, including financial organizations. Assets distributable in the course of voluntary dissolution which have been are held without claim ~~for more than two (2) years from~~ upon the date for final distribution are presumed to be abandoned and must be reported.

The rules proposed to be repealed are rule 42-2.10(10)-S10140 REPORT OF ABANDONED PROPERTY, found on p. 42-105 of the Administrative Rules of Montana (ARM); rule 42-2.10(10)-S10150 WHO MUST REPORT, found on pp. 42-105 and 42-106 of the ARM; rule 42-2.10(10)-S10160 CLASSIFICATION OF PROPERTY TO BE REPORTED, found on p. 42-106 of the ARM; rule 42-2.10(10)-S10190 NEGOTIABLE INSTRUMENTS, found on p. 42-108 of the ARM; rule 42-2.10(10)-S10200 DELIVERY OF

PROPERTY, found on pp. 42-108 and 42-108.1 of the ARM; and rule 42-2.10(10)-S10220 RELIEF FOR LIABILITY FOR HOLDER, found on p. 42-108.1 of the ARM.

3. The suggested amendments and repeals have been proposed for the following reasons.

Rule 42-2.10(10)-S10120, Property Subject to the Act, implements several sections in Title 70, chapter 9, MCA, including 79-9-204, 79-9-207, and 70-9-208, MCA. Section 70-9-204, MCA, refers to corporate stocks and other certificates of ownership, and these items were not included in the rule. The proposed amendment adds a reference to stocks and certificates of ownership. Similarly, 70-9-207 and 79-9-208, MCA, refer to "intangible" personal property, and the modifier "intangible" was not included in the rule. The proposed amendment corrects this omission.

Rule 42-2.10(10)-S10170, Presumption of Abandonment, implements, in part, 70-9-205, MCA. This section was amended by Chapter 575, Laws of 1979, and the proposed amendment reflects the changes made by Chapter 575. Chapter 575 eliminated a 2-year waiting period for abandonment.

Rules 42-2.10(10)-S10140, 42-2.10(10)-S10150, and 42-2.10(10)-S10160, relating to reports to the Department, are duplicative of the statutory material found in Title 70, chapter 9, MCA; in particular Title 70, chapter 9, part 2, MCA, and 70-9-301, MCA. Accordingly these rules are recommended for repeal.

Rule 42-2.10(10)-S10190, relating to negotiable instruments, is not needed. The Uniform Disposition of Unclaimed Property Act, which the rule purports to implement, does not provide for the exclusion granted by the rule. The Act itself does not interfere with negotiability, and the rule does not appear to implement any provision of the Act.

Rules 42-2.10(10)-S10200 and 42-2.10(10)-S10220, relating to the delivery of property and relief from liability respectively, are duplicative of 70-9-303 and 70-9-304, MCA, respectively. Consequently these rules are proposed for repeal.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing no later than November 25, 1979 to:

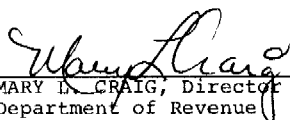
Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

5. If a person who is directly affected by the proposed amendments to the rules listed above or the proposed repeal of rules listed above wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address

given in paragraph 4 above no later than November 25, 1979.

6. If the department receives requests for a public hearing on the proposed amendments and repeals from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the legislature; from a governmental subdivision or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been estimated to be greater than 25 based upon the number of persons potentially required to report to the department concerning abandoned property.

7. Authority to make the proposed amendments and repeals is given by 70-9-105, MCA. The amendments to rule 42-2.10(10)-S10120 implement 70-9-204, 70-9-207, and 70-9-208, MCA, and to rule 42-2.10(10)-S10170 implement 70-9-205, MCA. Additionally some language changes in rule 42-2.10(10)-S10120 implement Chapter 600, Laws of 1979. The proposed repealers implement 2-4-305, MCA, and Chapter 600, Laws of 1979.


MARY D. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 10-16-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED AMENDMENT
amendment of Rules 42-2.22(2)	)	OF RULES 42-2.22(2)-S22060
-S22060 and 42-2.22(2)-S22120,	)	and 42-2.22(2)-S22120, relat-
relating to the assessment	)	ing to the assessment of motor
of motor vehicles.	)	vehicles.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 3, 1979, the Department of Revenue proposes to amend rules 42-2.22(2)-S22060 and 42-2.22(2)-S22120, relating to the assessment of motor vehicles.

2. The rules as proposed to be amended provide as follows:

42-2.22(2)-S22060 ASSESSMENT OF AUTOMOBILES AND LIGHT TRUCKS

(1) The average market value of automobiles and light trucks (those trucks rated as 1 ton or less) shall be the average retail value of such property, without regard to optional equipment, as shown in the N.A.D.A. Official Used Car Guide, Mountain States January Edition of the year of assessment, National Automobile Dealers Used Car Guide, 8400 Westpark Dr., McClean, Virginia 22102. This guide may be reviewed in the department or purchased from the publisher.

(2) No changes.

(3) No changes.

(4) No changes.

42-2.22(2)-S22120 ASSESSMENT OF LARGE TRUCKS WHICH HAVE A RATED CAPACITY OVER ~~1-1/2 TONS~~ 1 TON AND COMMERCIAL TRAILERS

(1) The average market value for large trucks, those rated over ~~1-1/2 tons~~ 1 ton, shall be the average retail values of such property as shown in the "Truck Bluebook Official Used Truck Valuation," January first edition of the year of assessment, National Market Report, Inc., 900 South Wabash Ave., Chicago, Illinois 60600. This guide may be reviewed in the Department or purchased from the publisher.

(2) No changes.

(3) No changes.

(4) No changes.

(5) No changes.

3. The rules are proposed for amendment to enable the Department to employ computer technology in the assessment of automobiles and light trucks. Use of the computer will enable the vehicle assessments to be prepared and mailed to the owners prior to the due date for property taxes on the vehicles. The taxpayer will thus be able to pay the county treasurer without having to wait in line at the assessor's office. Thus, both the taxpayer

and the local officials will be spared considerable inconvenience. The N.A.D.A. guide was chosen because the Registrar of Motor Vehicles presently has a computer program based on that guide. Hence, use of the N.A.D.A. guide will entail no further expense in obtaining computer programs. The optional equipment will not be taken into account in order to permit the department to ascertain the market value in advance. The 1 ton figure as the cut-off between light and heavy trucks was based on the factor of optional equipment. The department considers that for trucks larger than 1 ton, the value of optional equipment may easily equal or exceed the base cost of the vehicle. Consequently, optional equipment needs to be included in determining the market value of heavy trucks.

The rules have been previously amended and the text of the subsections that are not being changed pursuant to this notice may be found at pages 997 and 998 of the 1979 MAR, issue no. 16, for rule 42-2.22(2)-S22060 and at pages 1002 and 1003 of the 1979 MAR, issue no. 16, for rule 42-2.22(2)-S22120.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing no later than November 25, 1979 to:

Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Mt. 59601

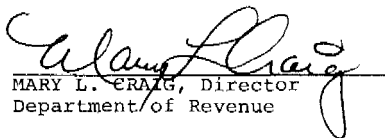
5. If a person who is directly affected by the proposed amendments to the rules listed above or the proposed repeal of rules listed above wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than November 25, 1979.

6. If the department receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been estimated to be greater than 25 based upon the number of owners of automobiles and trucks in Montana.

7. The authority of the department to make the proposed amendments is based on 15-1-201, MCA. The proposed amendments implement 15-6-139, 15-6-140, 15-8-101, and 15-8-111, MCA. The amendments will be effective December 14, 1979, and will apply to

-1295-

tax years beginning after December 31, 1979.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 10-15-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PROPOSED ADOPTION OF
OF RULES AND THE AMENDMENT OF)	RULES AND AMENDMENT OF RULE
RULE 42-2.6(1)-S6520 TO)	42-2.6(1)-S6520 relating to
IMPLEMENT HOUSE BILL 150,)	the taxation of banks and
relating to the method of)	savings and loan associations.
taxation of banks and savings)	
and loan associations.)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 3, 1979, the Department of Revenue proposes to adopt rules and to amend rule 42-2.6(1)-S6520 to implement House Bill 150 (Chapter 634, Laws of 1979), relating to the method of taxation of banks and savings and loan associations.

2. The proposed rules and the amendment provide as follows:

RULE I DEPARTMENT TRANSMITTAL OF TAX REVENUE DERIVED FROM CERTAIN FINANCIAL INSTITUTIONS (1) The corporation license tax payment and return from a bank or savings and loan association must be received by the department of revenue before any money will be transmitted to a local government pursuant to 15-31-701 and 15-31-702, MCA. Payments will not be transmitted until a final return is filed.

RULE II ALLOCATION OF REVENUE WHEN BRANCH OFFICES EXIST (1) Whenever a bank or savings and loan association has branch offices, the portion of the corporation license tax levied on the bank or savings and loan association and earmarked for taxing jurisdictions is to be allocated under the provisions of subsection (2).

(2) For the purpose of the allocation provided for in 15-31-702, MCA, each branch office located in Montana and the main office, if located in Montana, are to be considered separate units. The portion of the license tax attributed to each such unit will be that portion of the total license tax paid by the bank or savings and loan association and allocated to the taxing jurisdictions multiplied by the ratio of the total deposits in the unit to the total deposits in the bank, in the case of banks, or by the ratio of total savings deposits in the unit to the total savings deposits in the savings and loan association, in the case of savings and loan association. The portion attributed to each unit shall then be distributed to the taxing jurisdictions pursuant to the mill levy proration provided for in 15-31-702, MCA.

(3) For the purpose of the calculations required by subsection (2), total deposits and total savings deposits include only those deposits held by units located within Montana and are to be calculated as of December 31 of the tax year for which the taxes are due.

RULE III REPORT ON BRANCH OFFICES (1) Any financial institution filing a corporation license tax return with branches or outlying offices is required to file a report with the department of revenue or its agent, listing the location and total deposits of each branch located within Montana and the home office, if located within Montana, and specifying the county wherein each office is located. The report for a bank is to contain total deposit liability for the home office and each branch at the close of business on December 31 of the tax year for which the taxes are being paid. The report for a savings and loan association is to contain total savings deposits for the home office and each branch at the close of business on December 31 of the tax year for which the taxes are being paid.

RULE IV DETERMINATION OF ELIGIBLE TAXING JURISDICTIONS (1) Only those taxing jurisdictions that levy on all property are eligible to receive revenues. Taxing jurisdictions that may receive payments under 15-31-701 and 15-31-702, MCA, include, but are not limited to cities, counties, and school districts. Specifically excluded are special improvement districts, tax increment financing districts, and the state.

42-2.6(1)-S6520 GROSS INCOME (1) The term "gross income" means all income from sources within Montana recognized as gross income to the corporation in determining Federal Income Tax liability, ~~plus or minus the following modifications:~~

~~(a)--Gross income includes including interest income exempt from Federal Income Tax.~~

~~(b)--Effective for taxable years beginning on and after January 1, 1971, gross income does not include interest income derived from obligations of the United States.~~

~~(2)--Although State law does not specifically provide for a deduction for interest income from obligations of the United States, federal law requires that such interest income be treated in the same manner as interest income from state obligations. Therefore, interest income from obligations of the United States must also be allowed as a deduction from gross income to the extent included therein, effective with taxable years beginning on and after January 1, 1971.~~

3. The proposed rules and the amendment implement House Bill 150 (Chapter 634, Laws of 1979), relating to the taxation of banks and savings and loan associations. The mechanism adopted by HB 150 involves the collection of a corporation license tax from the banks and savings and loan institutions by the state with the money distributed to certain local taxing authorities based upon mill levies.

Rule I is designed to prevent premature payments by the department to local authorities based on estimated taxes, with the subsequent need to have refunds back to the state. The rule will

enable local authorities to be sure of the amount available for their jurisdictions.

Rule II provides a formula for allocating license tax proceeds when branch offices are involved. The factors chosen were total deposits for banks and total savings deposits for savings and loan associations. These factors are available to the institutions and provide an equitable means of allocating tax proceeds among the branches, as required by the statement of intent that accompanied HB 150.

Rule III simply requires the various institutions to provide the Department with sufficient information to make the allocations under Rule II.

Rule IV delineates those jurisdictions that are entitled to a share of the tax proceeds under HB 150 and those jurisdictions that are not so entitled. The lists of specific local authorities are not exhaustive and the key factor is the ability to tax all property. This requirement is designed to implement the apparent intent of the legislation to allocate funds to local governments. The state is specifically excluded from the eligible jurisdictions.

The amendments to rule 42-2.6(1)-S6520 repeal the exemption from gross income of interest income derived from obligations of the United States. This exemption is no longer needed because of amendments made to 15-31-114, MCA, by section 3 of HB 150.

4. Interested persons may submit their data, views, or arguments concerning the proposed rules and amendment in writing no later than November 25, 1979, to:


Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 59601

5. If a person who is directly affected by the proposed rules or the amendment to rule 42-2.6(1)-S6520 wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than November 25, 1979.

6. If the department receives requests for a public hearing on the proposed rules or the amendment from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly

affected has been estimated to be greater than 25 based on the number of banks and savings and loan associations and the number of local governments.

7. Authority to make the proposed rules and the amendment is given by 15-1-201, 15-31-501, and 15-31-702, MCA. Rules I through IV implement 15-31-701 and 15-31-702, MCA. The amendments to rule 42-2.6(1)-S6520 implement 15-31-114, MCA.



MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 10-16-79

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PROPOSED
Rule 46-2.10(18)-S11391 pertaining	)	ADOPTION OF A RULE
to the contracting for claims	)	PERTAINING TO CONTRACTING
processing and payment.	)	FOR CLAIMS PROCESSING
	)	AND PAYMENT.
	)	NO PUBLIC HEARING
	)	CONTEMPLATED.

TO: All Interested Persons

1. On November 26, 1979, the Department of Social and Rehabilitation Services proposes to adopt a rule, 46-2.10(18)-S11391, pertaining to the contracting for claims processing and payment.

2. The Department proposes to adopt the rule as follows:

46-2.10(18)-S11391 CONTRACTS WITH OTHER AGENCIES (1) The Department may contract with a state or private agency or agencies to process and pay claims for medical services, if contracting is determined to be the most efficient method of processing and paying claims while controlling fraud and abuse.

3. The proposed rule is necessary to allow the Department to contract with other agencies for processing and payment of claims under a medical assistance program.

4. Interested parties may submit their data, views, and arguments concerning the proposed adoption to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601 no later than November 23, 1979.

5. The authority of this agency to adopt the proposed rule is based on Section 53-6-115 MCA. The implementing authority is based on Section 53-6-115 MCA.

Kaith P. Colbo
Director, Social and Rehabilitation
Services

Certified to the Secretary of State October 16, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF ABSTRACTERS

In the matter of the Repeal)	NOTICE OF REPEAL OF ARM
of ARM 40-3.6(1)-0600 through)	40-3.6(1)-0600 through ARM
ARM 40-3.6(6)-S660 rules of)	40-3.6(6)-S660 RULES OF THE
the Board of Abstracters)	BOARD OF ABSTRACTERS

TO: All Interested Persons:

1. On September 13, 1979, the Board of Abstracters published a notice of repeal of ARM 40-3.6(1)-0600 through ARM 40-3.6(6)-S660 rules of the Board of Abstracters at page 1058, 1979 Montana Administrative Register, issue number 17.
2. The Board has repealed the rules exactly as proposed.
3. No comments or testimony were received. The rules are repealed as the board was reviewed for sunset in 1978, as provided for in Title 2, Chapter 8 MCA. The 1979 Legislature did not re-establish the board, therefore the rules served no purpose.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF ATHLETICS

In the matter of the Amendments)	NOTICE OF AMENDMENTS OF ARM
of ARM 40-3.14(6)-S1430 sub-)	40-3.14(6)-S1430 LICENSING
sections (4), (5), (9), (11))	REQUIREMENTS; ARM 40-3.14(10)-
concerning licensing require-)	S14010 REGULATION OF BOXING
ments; ARM 40-3.14(10)-S14010)	CONTESTANT; ARM 40-3.14(18)-
subsections (2)(b), (4)(a) and)	S14100 AUSTRALIAN TAG TEAM
(b), and (9)(b) concerning)	WRESTLING
regulation of boxing contes-)	
tants; and ARM 40-3.14(18)-)	
S14100 subsection (2)(b) con-)	
cerning Australian tag team)	
wrestling)	

TO: All Interested Persons:

1. On September 13, 1979, the Board of Athletics published a notice of amendments of ARM 40-3.14(6)-S1430 subsections (4), (5), (9), and (11) concerning licensing requirements; ARM 40-3.14(10)-S14010 subsections (2)(b), (4)(a) and (b), and (9)(b) concerning regulation of boxing contestants; and ARM 40-3.14(18)-S14100 subsection (2)(b) concerning Australian tag team wrestling at pages 1059 through 1061, 1979 Montana Administrative Register, issue number 17.
2. The board has amended the rules exactly as proposed.
3. No comments or testimony were received. The rules were amended for those reasons stated in the notice.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF BARBERS

In the matter of the repeal of)	NOTICE OF REPEAL OF ARM 40-
ARM 40-3.18(6)-S18010 concern-	3.18(6)-S18010 SUNDAY BARBERING
ing Sunday Barbering and ARM)	AND ARM 40-3.18(6)-S18020
40-3.18(6)-S18020 concerning)	PRICE AGREEMENTS
Price Agreements.))

TO: All Interested Persons:

1. On September 13, 1979, the Board of Barbers published a notice of proposed repeal of ARM 40-3.18(6)-S18010 concerning Sunday Barbering and ARM 40-3.18(6)-S18020 concerning Price Agreements at page 1062, 1979 Montana Administrative Register, issue number 17.

2. The board has repealed the rules exactly as proposed.

3. The board's reason for the repeal of ARM 40-3.18(6)-S18010 concerning Sunday Barbering was to comply with a letter from the Anti-trust Enforcement Bureau of Montana dated June 6, 1979, in which they reviewed the rules and determined that the above stated rule was in violation of state and federal anti-trust laws. The repeal of ARM 40-3.18(6)-S18020 was proposed for the same reason. However, it was repealed because it is redundant in that it repeats a portion of section 37-30-203 MCA without clarifying the statute. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the Amendment)	NOTICE OF AMENDMENT OF ARM
of ARM 40-3.26(6)-S26000 sub-)	40-3.26(6)-S26000 RENEWALS
section (1) concerning renewals))

TO: All Interested Persons:

1. On September 13, 1979, the Board of Chiropractors published a notice of proposed amendment of ARM 40-3.26(6)-S26000 concerning renewals at page 1063 and 1064, 1979 Montana Administrative Register, issue number 17.

2. The board has amended the rule exactly as proposed.

3. The amendment was proposed to set a specific fee, as the statutes allow the board to set the fee. The board reviewed its costs of operation and determined the fee to be adequate and necessary to cover those costs. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF WARM AIR HEATING, VENTILATION, AND
AIR CONDITIONING

In the matter of the Repeal of)	NOTICE OF REPEAL OF ARM
ARM 40-3.104(1)-010400 through)	40-3.104(1)-010400 through
ARM 40-3.104(6)-S10480 rules of)	ARM 40-3.104(6)-S10480
the Board of Warm Air Heating,)	RULES OF THE BOARD OF WARM
Ventilation and Air Conditioning)	AIR HEATING, VENTILATION
	AND AIR CONDITIONING


TO: All Interested Persons:

1. On September 13, 1979, the Board of Warm Air Heating, Ventilation and Air Conditioning published a notice of proposed repeal of ARM 40-3.104(1)-010400 through ARM 40-3.104(6)-S10480 rules of the Board of Warm Air Heating, Ventilation and Air Conditioning at page 1065, 1979 Montana Administrative Register, issue number 17.

2. The board has repealed the rules exactly as proposed.

3. No comments or testimony were received. The rules are repealed as the board was reviewed for sunset in 1978, as provided for in Title 2, Chapter 8 MCA. The 1979 Legislature did not re-establish the board, therefore the rules serve no purpose.

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, October 16, 1979

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED AMENDMENT
AMENDMENT OF RULES	)	OF RULES 42-2.22(1)-S2200,
42-2.22(1)-S2200,	)	42-2.22(1)-S2220, 42-2.22(1)
42-2.22(1)-S2220,	)	-S2230, 42-2.22(1)-S2240,
42-2.22(1)-S2230,	)	42-2.22(2)-S2260, 42-2.22(2)
42-2.22(1)-S2240,	)	-S2270, 42-2.22(2)-S2280,
42-2.22(2)-S2260,	)	42-2.22(2)-S2290, 42-2.22(2)
42-2.22(2)-S2270,	)	-S22030, 42-2.22(2)-S22050,
42-2.22(2)-S2280,	)	42-2.22(2)-S22060, 42-2.22(2)
42-2.22(2)-S2290,	)	-S22070, 42-2.22(2)-S22110,
42-2.22(2)-S22030,	)	42-2.22(2)-S22120, 42-2.22(2)
42-2.22(2)-S22050,	)	-S22140, 42-2.22(2)-S22170,
42-2.22(2)-S22060,	)	and 42-2.22(2)-S22174 assess-
42-2.22(2)-S22070,	)	of various types of real and
42-2.22(2)-S22110,	)	personal property.
42-2.22(2)-S22120,	)	NO PUBLIC HEARING CONTEMPLATED
42-2.22(2)-S22140,)	
42-2.22(2)-S22170, and)	
42-2.22(2)-S22174)	
relating to the assess-)	
ment of various types of)	
real and personal)	
property.)	

TO: All Interested Parties:

1. On August 30, 1979, the Department of Revenue published notice of the proposed amendment of the above-listed rules concerning the assessment of various types of real and personal property at pages 971 through 974 of the 1979 Montana Administrative Register, issue no. 16.
2. The department has amended the rules as proposed.
3. No comments or testimony were recieved.
4. Authority to make the proposed amendments is given by 15-1-201, MCA.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 10-16-79

20-10/25/79

Montana Administrative Register

VOLUME NO. 38

OPINION NO. 43

COUNTY COMMISSIONERS - Administrative Assistants, authority to set salaries;
COUNTY OFFICERS AND EMPLOYEES - Administrative Assistants to county commissioners, salaries;
SALARIES - Administrative Assistants to county commissioners;
MONTANA CODE ANNOTATED - Sections 2-4-505 and 7-4-2505.

HELD: There are no statutory limitations on the salary of assistants employed by a board of county commissioners.

5 October 1979

Mr. Charles A. Graveley
Lewis and Clark County Attorney
Courthouse Building
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion on the following question:

Whether the salary limitations provided in section 7-4-2505, MCA, apply to administrative assistants employed by boards of county commissioners.

In pertinent part, section 7-4-2505, MCA, provides:

(1) Except as provided in subsection (2), the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

- (a) sheriff;
- (b) clerk and recorder;
- (c) clerk of the district court;
- (d) treasurer;
- (e) assessor;
- (f) county attorney;
- (g) auditor.

(2)(a) Except as provided in subsection (2)(b), the salary of no deputy or assistant shall be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

Subsection (2)(b) applies only to undersheriffs and deputy sheriffs.

The clear effect of section 7-4-2505(2) is to establish a maximum salary level for deputies and assistants of the county officers listed in 7-4-2505(1). County commissioners are not included in that list. The function of a court when construing a statute is to ascertain and declare what in terms or in substance is contained in the statute and not to insert what has been omitted, Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). In my opinion, the salary limitations of section 7-4-2505(2) do not apply to administrative assistants employed by boards of county commissioners.

The statute authorizing county commissioners to employ personnel is section 7-5-2107, MCA, which provides:

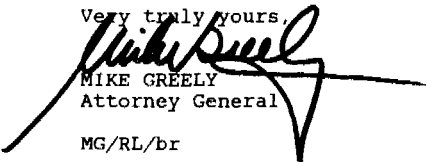
The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons. Such persons may be paid monthly, twice monthly, or every 2 weeks.

Section 7-5-2107, MCA, contains no limitation on the salary a board of county commissioners may pay its administrative assistants.

THEREFORE, IT IS MY OPINION:

There are no statutory limitations on the salary of assistants employed by a board of county commissioners.

Very truly yours,



MIKE GREELY
Attorney General

MG/RL/br

VOLUME NO. 38

OPINION NO. 44

CITIES AND TOWNS, MUNICIPAL CORPORATIONS - Temporary authority to exceed statutory mill levy limits in successive years.

CITIES AND TOWNS, MUNICIPAL CORPORATIONS - Application of section 15-7-122, MCA, to taxes improperly collected in prior year.

MONTANA CODES ANNOTATED - Sections 7-6-4451, 7-32-4117(2), 7-33-4130(2), 15-7-122, 19-10-301. REVISED CODES OF MONTANA - Sections 11-1024.2, 11-1024.4, 11-1823, 84-310, 84-4701.1.

- HELD:
1. Section 15-7-122, MCA, allows a municipality to levy a number of mills sufficient to fund a general fund budget equal to 105% of the preceding years budget, statutory mill levy limitations notwithstanding.
 2. The authority granted in section 15-7-122, MCA, may be exercised in successive years if the statutory requirement is met.
 3. Budget items funded by illegally levied taxes may not be considered when computing the 105% figure.

10 October 1979

Robert L. Knopp
Lewistown City Attorney
312 - 4th Avenue South
Lewistown, Montana 59457

Dear Mr. Knopp:

You have asked for my opinion concerning:

1. Do the provisions of section 15-7-122, MCA, allow the levying of a mill levy sufficient to fund a general fund budget for the 1979-80 fiscal year equivalent to 105 percent of the city's general fund budget for fiscal year 1978-79?
2. Can the authority of section 15-7-122, MCA, be utilized by the city on an annual basis.

3. Does the increased percentage apply to additional mills levied under the provisions of sections 7-32-4117(2) and 7-33-4130(2), and 19-10-301, MCA?

Your first question deals with whether section 15-7-122, MCA, allows a municipality which has suffered decreased property values to levy a sufficient millage to raise a sum equivalent to 105 percent of the previous years budget. In my opinion it does. That section provides:

TEMPORARY AUTHORITY TO EXCEED MILL LEVY LIMITATIONS. Taxing jurisdictions may adopt and levy for a budget equal to 105 percent of the preceding year's budget, statutory mill levy limitations notwithstanding, unless the taxable valuation therein has increased to a level which would allow statutory mill levies to produce a budget equal to 105 percent of the preceding year's budget.

It is clear that the legislature was aware of the type of problems which might be caused by a sudden drop in property values within a taxing jurisdiction. Section 15-7-122 was enacted to allow the municipality to maintain necessary services in spite of a decrease in taxable valuation.

Your second question concerns whether the authority granted in section 15-7-122 may be exercised in successive years. The question arises from the use of the phrase "temporary authority" in the catchline of the statute. The particular meaning to be given to a word in any given instance must be determined from the context and general purpose of the provision in which it is found. Ex parte Lockhart, 72 Mont. 136, 232 P. 183 (1924). In this context, the word "temporary" may be defined as "that period of time in which the statutory mill limitations will not raise an amount equal to 105 percent of the previous fiscal year's budget based upon current taxable valuations." Applying this definition, it is my opinion that the authority of section 15-7-22, MCA, may be relied on to levy a sufficient millage to raise a sum equivalent to 105 percent of the previous year's budget, even in successive years, if a decrease or insufficient increase in taxable valuation prevents the municipality from budgeting a 5% increase under statutory mill levy limitations.

Your third question deals with the interaction between the temporary budget authority and the special mill levies

authorized by sections 19-10-301, 7-33-4130(2), and 7-32-4117(2), MCA. A prior Attorney General's opinion has held that these special mill levies must be included within the 65 mill all purpose levy provided in section 7-6-4451, MCA, in those municipalities which elect to tax under that statute. 36 OP. ATT'Y GEN. NO. 94 (1976). I have reviewed that opinion and find its reasoning sound. To the extent that the special mill levies may have been assessed in addition to the 65 mill levy, they represent taxes improperly levied. It is my opinion that such improperly levied taxes may not be included in the base figure used to compute the allowable levy under section 15-7-122, MCA. For example, assume a municipality levied the maximum 65 mill all purpose levy to raise \$1,000,000. Assume further that the municipality improperly levied additional mills for the purposes described in sections 19-10-301, 7-33-4130(2) and 7-32-4117(2), MCA, to raise \$100,000, thereby creating a total sum of \$1,100,000 which was available to the municipality during the previous year. The 105 percent factor may be applied only to the \$1,000,000 which was properly collected. The maximum monies authorized by section 15-7-122 for collection in the second year would total \$1,050,000. Any other construction would be equivalent to an ex post facto sanction of the illegal taxation. The 105 percent figure applies only to that portion of the budget which was properly levied.

For your reference I have enclosed copies of the two Attorney General Opinions cited above.

THEREFORE, IT IS MY OPINION:

1. Section 15-7-122, MCA, allows a municipality to levy a number of mills sufficient to fund a general fund budget equal to 105% of the preceding years budget, statutory mill levy limitations notwithstanding.
2. The authority granted in section 15-7-122, MCA, may be exercised in successive years if the statutory requirement is met.
3. Budget items funded by illegally levied taxes may not be considered when computing the 105% figure.

Very truly yours,



MIKE GREELY

Attorney General

Montana Administrative Register

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