

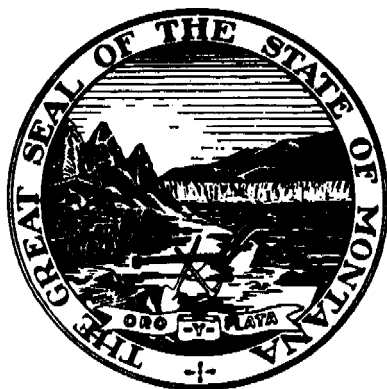
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JAN 18 1985
OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

1985 ISSUE NO. 1
JANUARY 17, 1985
PAGES 1-34
INDEX COPY



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.24.409 con-) OF 8.24.409 FEE SCHEDULE
cerning the fee schedule.)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 16, 1985, the Board of Landscape Architects proposes to amend rule 8.24.409 by adding a new subsection (4) to the fee schedule.

2. The amendment will read as follows: (new matter underlined) (full text of the rule is located at page 8-791, Administrative Rules of Montana)

"8.24.409 FEE SCHEDULE (1) ...

(4) If, under extenuating circumstances as determined by the board, an applicant withdraws his/her examination application prior to the scheduled examination, the board may apply a portion of the examination fee paid to the subsequent examination."

Auth: 37-66-202, MCA Imp: 37-66-305, MCA

3. The amendment is proposed as the examination fee covers the cost of the examination as established by CLARB, plus the actual cost of administering the examination. The board feels that in certain circumstances when an applicant withdraws his/her examination application prior to the scheduled examination because of extenuating circumstances, beyond the control of the applicant, the portion of the examination fee which would be used to cover the administration costs should be applied towards the next exam. A portion of the fee must be retained to cover the purchase of the exam, which the board is required to pay whether an individual appears or not. Normally the full fee is retained when an individual withdraws. The board feels in those situations of extenuating circumstances, the individual should have the opportunity for a portion of the fee to be applied towards a future exam.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than February 14, 1985.

5. If a person who is directly affected by the proposed amendment 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 comments he has to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than February 14, 1985.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is

less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no 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.

BOARD OF LANDSCAPE ARCHITECTS
ESTHER HAMEL, CHAIRMAN

BY: Keith F. Colbo
KEITH COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 7, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed)
amendment of 8.97.308 (5) and)
(6) concerning rates, service)
charges and fee schedule)

NOTICE OF PROPOSED AMENDMENT
OF 8.97.308 (5) & (6) RATES,
SERVICE CHARGES AND FEE
SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 16, 1985, the Montana Economic Development Board proposes to amend the above-stated rule.
2. The proposed change will amend subsections (5) and (6) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3475 through 8-3477, Administrative Rules of Montana),

"8.97.308 RATES, SERVICE CHARGES AND FEE SCHEDULE

(1) ...

(5) Basic commitment fee. Financial transactions participated in by the board under these rules must be closed within 90 calendar days of the board's issuance of its commitment. In the event such loans or financial transactions are not closed or appear that they will not be closed within that time, or in the event that a borrower would like to take advantage of a lower interest rate, the borrower may pay a commitment fee. Payment of a commitment fee will allow the borrower to fix a board interest rate at the lower of the interest rate originally secured at the time of approval or at the interest rate in effect at the time the fee is received by the board. The board, upon receipt of a commitment fee, may extend its commitment for an additional period of time at a fee herein specified, if the board determines such extension is warranted and in the best interest of the board's programs. The fee to be charged for extension of a commitment shall be calculated on the basis of the amount committed at the following rates:

(a) ...

(6) Interest rate fee. At the time of submission of an application to the administrator, or at any time prior to approval of an application by the board, the borrower, through payment of a non-refundable fee equal to 1/4% of the requested loan amount, may fix a board interest rate for the investment proposed in the application at the rate in effect the date the fee is received by the board. The acceptance of the fee does not obligate the board to make the investment proposed in the application. From 0 to 90 days the fee is 1/4% of the amount committed. The fees in subsection (5) (a) apply for periods over 90 days.

(7) ..."

Auth: 17-5-1521, 17-6-324, MCA Imp: 17-5-1504 (16),
17-6-315, 324, MCA

3. The board is proposing this amendment to more clearly state the board's intention to allow a borrower to receive the benefit of a lower rate, once the borrower pays an interest rate or commitment fee, if prior to loan closing, rates fall below that rate quoted at the time a loan is approved.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana State Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than February 14, 1985.

5. If a person who is directly affected by the proposed amendment 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 comments he has to the Montana State Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than February 14, 1985.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no 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.

MONTANA ECONOMIC DEVELOPMENT
BOARD
D. PATRICK McKITTRICK
CHAIRMAN

BY: Keith J. Colbo
KEITH COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 7, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PSYCHOLOGISTS

In the matter of the amendment) NOTICE OF AMENDMENT OF
of 8.52.613 concerning the) 8.52.613 CODE OF PROFES-
code of professional conduct.) SIONAL CONDUCT

TO: All Interested Persons:

1. On November 29, 1984, the Board of Psychologists published a notice of amendment of the above-stated rule at pages 1666 and 1667, 1984 Montana Administrative Register, issue number 22.

2. The Board received a phone call from Greg Petesch stating the adoption by reference must contain information as to where the adopted material can be obtained. Based on the phone call, the board has amended the rule with the following change: (new matter underlined) (full text of the rule is located at page 8-1425, Administrative Rules of Montana)

"8.52.613 CODE OF PROFESSIONAL CONDUCT (1) The board considers the 'Ethical Standard of Psychologists' as published by the American Psychological Association, Inc. in June 1981 to be the code of ethics governing the professional conduct of all psychologists licensed by the board. Copies may be obtained from the Board of Psychologists, 1424 9th Avenue, Helena, Montana 59620-0407.

(2) ..."

3. No other comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: Keith Colbo
KEITH COLBO, DIRECTOR

Certified to the Secretary of State, January 7, 1985.

VOLUME NO. 40

OPINION NO. 82

AGRICULTURAL PRODUCTS - Treatment for taxation purposes of raw sugar beets at sugar refinery;
TAXATION AND REVENUE - Exemption for business inventory;
TAXATION AND REVENUE - Treatment for taxation purposes of raw sugar beets at sugar refinery;
UNIFORM COMMERCIAL CODE - Definition of "goods";
WORDS AND PHRASES - "Storage";
MONTANA CODE ANNOTATED - Sections 1-2-107, 15-1-101(1), 15-6-101, 15-6-136(1)(b), 15-6-140(1)(g), 15-6-202, 30-2-105(1);
MONTANA CONSTITUTION - Article VIII, section 5;
REVISED CODES OF MONTANA, 1947 - Section 84-301;
SESSION LAWS OF 1975 - Senate Bill 165, chapter 299;
SESSION LAWS OF 1981 - Senate Bill 283, chapter 613.

HELD: A sugar refinery's piled sugar beets are exempt from taxation as business inventory under section 15-6-202, MCA.

31 December 1984

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

Should a sugar refinery's piled sugar beets be classified as class six property under section 15-6-136, MCA, and taxed accordingly, or does such property fall within the "business inventory" exemption provided in section 15-6-202, MCA?

Section 15-6-101, MCA, provides:

(1) All property in this state is subject to taxation, except as provided otherwise.

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(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with 15-6-131 through 15-6-141. [Emphasis added.]

Piled sugar beets owned by a sugar refinery clearly fit within the definition of the term "property," found in section 15-1-101(1)(j), MCA. They are therefore subject to taxation unless the Legislature has "provided otherwise." Article VIII, section 5 of the Montana Constitution empowers the Legislature to "provide otherwise" by exempting certain classes of property from taxation.

Class six property, which is taxed at four percent of its market value, includes "all unprocessed agricultural products on the farm or in storage except all perishable fruits and vegetables in farm storage and owned by the producer." § 15-6-136(1)(b), MCA. The term "agricultural," when used in connection with taxation, refers to "the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber." § 15-1-101(1)(a), MCA. Applying the above statutory guideline, and giving the words of section 15-6-136(1)(b), MCA, their ordinary and commonly understood meaning, raw sugar beets obviously constitute "unprocessed agricultural products." However, I conclude that sugar beets temporarily piled at a sugar refinery and intended for use in producing sugar and sugar products are not in "storage" within the meaning of the statute and consequently should not be classified as class six property. The Legislature has not defined the term "storage" in Title 15. The term is generally interpreted as referring to the safekeeping of goods, as in a warehouse or other depository. City of Detroit v. General Foods, 197 N.W.2d 315, 322 (Mich. Ct. App. 1972); Lincoln Savings Bank of Brooklyn v. Brown, 137 F.2d 228, 230 (Emer. Ct. App. 1943). The piling of sugar beets at a sugar refinery is not akin to the safekeeping of goods in a depository, but is more in the nature of an activity incidental to the business of the refinery. Cf. Dugan v. McArdle, 172 N.Y.S. 27, 28 (N.Y. App. Div. 1918) (under state workers' compensation law, produce dealer was not in the business of "storage" when any storage of produce involved was merely incidental to the business of dealing in produce).

The Legislature has created a "catchall" category of taxable property in section 15-6-140(1)(g), MCA, which provides that class ten property includes "all other property not included in the preceding nine classes." Sugar beets piled at a sugar refinery would fall within this class had the Legislature not provided a specific exemption for such property. Section 15-6-202, MCA, provides in relevant part:

(1) Freeport merchandise and business inventories are exempt from taxation.

....

(5) "Business inventories" includes goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to such goods....

Prior to 1975, class three property included "stocks of merchandise of all sorts." § 84-301, R.C.M. 1947. In chapter 299 of the 1975 Montana Laws (SB 165), the Legislature amended section 84-301, R.C.M. 1947, to classify business inventories in class seven for the purpose of property taxation. The language "stocks of merchandise of all sorts" was deleted from class three, and language similar to the present language in section 15-6-202, MCA, regarding business inventories was added to class seven. The legislative history of SB 165 provides little help in determining the objectives of the Legislature in creating this newly defined category of taxable property. Minutes of committee hearings on the bill suggest only that it was designed "to take business inventories out of class three and put them into class seven." There was no discussion regarding the fact that the bill placed a new label (business inventories), as well as a comprehensive definition, on property that had previously been labeled simply "stocks of merchandise of all sorts." When the phraseology of a statute is changed, it is presumed that the Legislature intended to change the existing law. State ex rel. Public Service Commission v. Brannon, 86 Mont. 200, 211, 283 P. 202, 207 (1929). Apparently, the Legislature intended to replace the former restrictive phrase with a more broadly defined concept of business property subject to taxation.

In 1981, the Legislature exempted business inventories from taxation by placing them in section 15-6-202, MCA, where they remain today. 1981 Mont. Laws, ch. 613 (SB 283). Generally, statutes creating property tax exemptions must be strictly construed. Cruse v. Fischl, 55 Mont. 258, 263, 175 P. 878, 880 (1918). However, in Montana Bankers Association v. Montana Department of Revenue, 177 Mont. 112, 117, 580 P.2d 909, 912 (1978), the Montana Supreme Court qualified this rule somewhat, stating:

[T]ax statutes granting exemptions and deductions must be strictly construed against the taxpayer claiming them. This rule of statutory construction, however, applies only to ambiguous statutes where legislative intent is not clear from the language of the statute and has no application where, as here, the meaning of the statute is clear from its language.

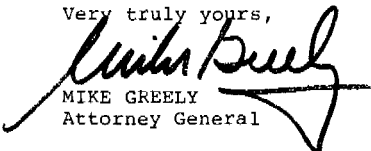
Section 15-6-202, MCA, clearly and unambiguously exempts business inventories from taxation, defining business inventories as including "goods primarily intended for sale and not for lease in the ordinary course of business." Although the Legislature has chosen not to define "goods" in Title 15, Montana's version of the Uniform Commercial Code on sales defines goods as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities...and things in action." § 30-2-105(1), MCA. Sugar and sugar products produced by a sugar refinery would clearly fit within the above definition of goods and thus would fall within the business inventory exemption provided in section 15-6-202, MCA. See Lobianco v. Property Protection, Inc., 437 A.2d 417, 419 (Pa. Super. Ct. 1981) (definition of "goods" in UCC embraces every species of property other than real estate, choses in action and investment securities). See also § 1-2-107, MCA. If the products of a sugar refinery qualify as business inventory under section 15-6-202, MCA, then the raw materials (sugar beets) used to produce such products also qualify for the exemption, since the definition of business inventory also includes "raw materials and work in progress with respect to such goods." While not defined by the Legislature, the term

raw materials is generally defined as the material or substance out of which other products or the final product is made. McElhanev Cattle Co. v. Smith, 645 P.2d 801, 806 (Ariz. 1982); State v. Hennessy Co., 71 Mont. 301, 303, 230 P. 64, 65 (1924).

THEREFORE, IT IS MY OPINION:

A sugar refinery's piled sugar beets are exempt from taxation as business inventory under section 15-6-202, MCA.

Very truly yours,


MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1984. This table includes those rules adopted during the period October 1, 1984 through December 31, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1984, this table and the table of contents of this issue of the MAR.

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