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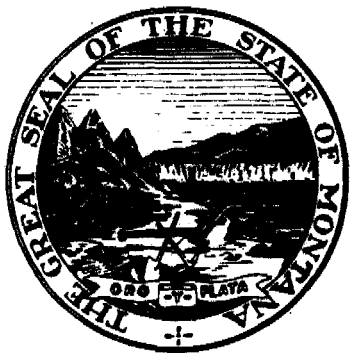


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MONTANA
ADMINISTRATIVE
REGISTER

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1988 ISSUE NO. 18
SEPTEMBER 22, 1988
PAGES 2026-2054



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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 MONTANA AGRICULTURE DEVELOPMENT COUNCIL

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of new rules pertain-) ON PROPOSED RULES PERTAIN-
ing to the "Growth Through) ING TO THE GROWTH THROUGH
Agriculture Program") AGRICULTURE PROGRAM

TO: All Interested Persons:

1. On October 20, 1988, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to consider the proposed adoption of rules pertaining to the "Growth Through Agriculture Program" administered by the Montana Agriculture Development Council.

2. The proposed new rules will read as follows:

"I. ORGANIZATIONAL RULE (1) The Montana agriculture development council ("council") was created in 1987 by section 2-15-1817, MCA.

(2) The council consists of seven members appointed by the Governor, including the director of the department of agriculture, the director of the department of commerce, and five members who are or have been actively engaged in agriculture.

(3) The council is allocated to the department of commerce for administrative purposes only as prescribed in section 2-15-121, MCA.

(4) The department provides staff for the council to administer council activities."

Auth: 2-4-201, 90-9-202, MCA Imp: 2-15-121, 90-9-202, MCA

"II. PROCEDURAL RULES (1) The council hereby adopts and incorporates by reference rules 1 through 28 of the Attorney General's Model Procedural Rules. A copy of these rules may be obtained from the staff of the Montana Agriculture Development Council, 1424 Ninth Avenue, Helena, Montana 59620. Hearings on applications shall not be considered contested cases."

Auth: 2-4-201, 90-9-202, MCA Imp: 2-4-201, 90-9-202, MCA

"III. CITIZEN PARTICIPATION RULES (1) The council hereby adopts and incorporates by reference the citizen participation rules of the department of commerce as set forth in ARM 8.2.201 through 8.2.207. A copy of these rules may be obtained from the staff of the Montana Agriculture Development Council, 1424 Ninth Avenue, Helena, Montana 59620."

Auth: 2-4-201, 90-9-202, MCA Imp: 2-4-201, 90-9-202, MCA

"IV. DEFINITIONS In addition to the definitions set forth in section 90-9-103, MCA, the following definitions apply for purposes of these rules:

(1) 'Act' means the provisions of Title 90, chapter 9, MCA.

(2) 'Department' means the department of commerce.

(3) 'Geographic area' means a county as established in the state of Montana as described in the annotations to the Montana Code Annotated, Vol. 1, 'Descriptions, county boundaries,' and may include more than one (1) county for purposes of this rule.

(4) 'Marketing' means those efforts undertaken to expand the saleability of the products of Montana agricultural businesses through the development of new products, processes and technologies; the improvement or modification of existing products, processes and technologies; and the development of new opportunities for selling and distributing Montana agricultural products.

(5) 'Person' means an individual, firm, partnership, corporation, association or other entity, authorized to conduct business in the state of Montana.

(6) 'State' means the state of Montana."

Auth: 90-9-202, MCA, Imp: 90-9-202, MCA

**"V. AGRICULTURAL BUSINESS INCUBATOR PROGRAM-PURPOSE-
INVESTMENTS-CRITERIA AND LIMITATIONS** (1) For purposes

of this rule, an agricultural business incubator is a self-financing business development entity providing such services as training, management consultation, accounting and office space to eligible agricultural businesses.

(2) The purpose of the agricultural business incubator program is to encourage the strengthening and diversification of economic activity in rural communities through assisting early-stage agricultural businesses.

(3) Investments may be made only in agricultural business incubators that are located in different geographic areas of the state.

(a) An incubator may not be located in a municipality or community with a population in excess of 15,000 people.

(b) The municipality or community in which the agricultural business incubator is located must provide funding or contributions equivalent to at least three times the council's investment.

(c) Contributions by the municipality or community may include but not be limited to land, buildings, office space or professional services.

(4) In order for an agricultural business incubator to qualify for a council investment, the applicant must:

(a) submit a completed application to the council, signed by the chief executive officer of the entity desiring to establish the agricultural business incubator;

(b) demonstrate, through supporting documentation, the ability of the incubator to be financially self-sufficient;

(c) demonstrate, through supporting documentation, the ability of the incubator to provide quality business development assistance and management skills including but not limited to:

(i) appropriate educational background of management team and key personnel;

(ii) previous experience of applicant relating to business and/or incubator management;

(d) demonstrate, through supporting documentation, community support for the proposed incubator;

(e) present in writing and before the council, a plan that addresses the business development needs of specific user groups, including, but not limited to displaced farmers, and how the proposed incubator will meet those needs;

(f) demonstrate, that at a minimum, the following services will be provided by the incubator:

(i) training;

(ii) management consultation; and

(iii) necessary professional services.

(5) A council investment in an incubator shall not exceed \$100,000.

(6) As required by section 2-4-305, MCA, notice is hereby given that parts of (1), (3) and (5) above, repeat parts of section 90-9-302, MCA and are included in this rule to provide full notification to applicants of the incubator program."

Auth: Section 90-9-202, MCA; Imp: 90-9-202, 90-9-302, MCA

"VI. AGRICULTURAL MARKETING DEVELOPMENT PROGRAM-PURPOSE-GOALS-CRITERIA (1) The purpose of the marketing program is to find new or expanded markets for the products, processes, and technologies of Montana agricultural businesses.

(2) The agricultural marketing development program will coordinate with existing department marketing programs and the market development activities of the department of agriculture.

(3) The marketing development program shall support both domestic marketing and international trade efforts.

(4) The goals of the marketing development program are to:

(a) increase sales of the products, processes, and technologies of Montana agricultural businesses on a state, national, and international level;

(b) open or expand markets for new or specialty products;

(c) monitor new and changing markets and market conditions, and provide Montana producers with such information;

(d) improve, expand, or create new relationships between buyers and sellers of the products, processes, and technologies of Montana agricultural businesses.

(5) The council will identify, on a biannual basis, markets, products, processes, and technologies it seeks to study, expand, or otherwise develop:

(a) the council shall publish requests for proposals, in compliance with Montana law, which seek persons to further identify, study, and expand such markets, products, processes, and technologies. Contracts for market development activities will be awarded consistent with the criteria contained in the requests for proposals and other applicable provisions of Montana law."

Auth: 90-9-202, MCA Imp: 90-9-401, 90-9-202, MCA

3. The Montana Agriculture Development Council is proposing to adopt the new rules in order to implement various provisions of the "Growth Through Agriculture Program" found in Title 90, Chapter 9, MCA.

4. Interested persons may present their views and comments either orally or in writing at the hearing. Written views and comments may also be submitted to Mr. John Maloney, Acting Administrator, Business Assistance Division, Department of Commerce, 1424 - 9th Avenue, Helena, Montana 59620, by no later than October 21, 1988.

5. Mona Jamison has been designated to preside over and conduct the hearing.

MONTANA AGRICULTURE DEVELOPMENT
COUNCIL
JIM JENKS, CHAIRMAN

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

Certified to the Secretary of State, September 12, 1988.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF
rule 16.32.110 concerning criteria)	PROPOSED AMENDMENT OF RULE
for granting certificates of need)	
for health care facilities and)	NO PUBLIC HEARING
services)	CONTEMPLATED
	(Certificate of Need)

To: All Interested Persons

1. On October 26, 1988, the Department proposes to amend rule 16.32.110 relating to certificate of need by updating its incorporation by reference of the Montana State Health Plan by substituting the newly adopted 1988 State Health Plan for the 1985 State Health Plan.

2. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined):

16.32.110 CRITERIA AND FINDINGS (1)-(2) Same as existing rule.

(3) The department hereby adopts and incorporates herein by reference the ~~1985--Montana-State--Health-Plan~~ 1988 Montana State Health Plan, adopted by the department in consultation with the Statewide Health Coordinating Council. The Montana State Health Plan sets forth the state's policies, standards and criteria for review of certificate of need applications. A copy of the ~~1985~~ 1988 Montana State Health Plan may be obtained from the Health Planning and--Resource--Development Bureau, Cogswell Building, Capitol Station, Helena, Montana, 59620.
AUTHORITY: 50-5-103, 50-5-304, MCA.
IMPLEMENTING: 50-1-201, 50-5-304, MCA.

3. Section 50-1-201, MCA, requires the Department to prepare and administer the state health plan and Section 50-5-304, MCA, requires the department to review certificate of need applications for consistency with the current state health plan (and other factors). The governor has recently signed the 1988 Montana State Health Plan and the plan is now ready for official incorporation into the certificate of need rules.

4. Interested persons may submit their written data, views, or arguments concerning this proposed amendment no later than October 24, 1988 and may obtain copies of the 1988 State Health Plan by writing to the Health Planning Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

5. If a party who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along

with any written comments he has to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 24, 1988.

6. If the department receives requests for a public hearing under Section 2-4-302, MCA, on the proposed amendment, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be 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 determined to be 25, based on a minimum number of 250 existing and potential health care providers in the state.

John J. Drynan, M.D.
by William J. Opitz

JOHN J. DRYNAN, M.D., Director
by William J. Opitz, Deputy Director

Certified to the Secretary of State September 12, 1988.

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
BEFORE THE MONTANA WHEAT AND BARLEY COMMITTEE

In the matter of the) NOTICE OF AMENDMENT OF ARM
amendment of the rule relating) 4.9.401 RELATING TO THE
to the annual assessment on) ANNUAL ASSESSMENT ON WHEAT
wheat and barley) AND BARLEY

TO: All Interested Persons:

1. On July 28, 1988 the Wheat and Barley Committee of the Montana Department of Agriculture published notice of the proposed amendment of ARM 4.9.401 relating to the annual assessment on Wheat and Barley, on page 1627 of MAR, Issue No. 14.

2. A public hearing was held on August 23, 1988 where all oral and written comments were received. Having reviewed all comments, the committee has adopted the amendments as proposed.

3. Oral and written comments received prior to, during, and after the hearing are summarized as follows, along with the Committee response:

A. COMMENT: Given the poor economic conditions of the producer, the increase would only contribute a greater economic burden.

RESPONSE: To the argument that in hard economic times the increase would be a greater burden to the producer, the Committee agreed to some extent. However, the current assessment was approximately one quarter of one percent of the value of the Montana crops sold in 1987 and that an increase of 4 mills in the assessment, when applied to this year's crop, would be no greater than one quarter of one percent. In any case, the increase of 4 mills will impact the average individual producer in Montana by \$18 to \$32 on this year's crop.

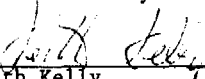
B. COMMENT: The Montana Wheat and Barley Committee should have been better prepared for the drought and prepared its budgets accordingly.

RESPONSE: In response to the concern that the Committee should have been better prepared for the 1988 drought, the Committee feels that the ability to increase assessments in emergency situations was a form of being prepared. But, that point aside, the Committee has had a long-standing policy of retaining 50% of a normal budget in reserve for crop failures. A "normal" budget for the

Committee is approximately \$1,250,000. On July 1, 1988 the reserve amount was \$624,000 or 56% of the budget written in April of 1988 for the July 1, 1988 - June 30, 1989 budget. No one could have anticipated that for this year, 56% would not be sufficient in the face of the poorest Montana crop in the past 50 years.

C. COMMENT: The Committee should reduce expenditures in the current budget rather than increase income to meet the budget.

RESPONSE: In response to the second comment (B), as well as the third comment (C), relating to reducing the current budget to meet expected income for the year, the Committee has reduced budgets from the "normal" level for the past four years. Because of the very poor crop in 1985, and the desire to maintain \$600 - 650,000 in reserve, the Committee, since 1985, has written budgets for 4 years averaging \$999,948. This average of more than \$200,000 a year less-than-expected funding has limited participation by the Committee in a number of important programs, in particular market development for barley.



Keith Kelly
Director
Montana Department of Agriculture

CERTIFIED TO SECRETARY OF STATE 9/12/88

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE FINANCIAL DIVISION

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of a rule pertaining to dollar) 80.307 DOLLAR AMOUNTS
amounts to which consumer loan) TO WHICH CONSUMER LOAN
rates are to be applied) RATES ARE TO BE APPLIED

TO: All Interested Persons:

1. On July 14, 1988, the Financial Division published a notice of proposed amendment of the above-stated rule at page 1295, 1988 Montana Administrative Register, issue number 13.
2. The Division amended the rule exactly as proposed.
3. No comments or testimony were received.

FINANCIAL DIVISION

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 12, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal	)	AMENDED NOTICE OF THE
of Rules 11.7.101, 11.7.102	)	REPEAL OF RULES 11.7.101,
and 11.7.104 and the	)	11.7.102 AND 11.7.104 AND
adoption of Rules 11.7.103,	)	THE ADOPTION OF RULES
11.7.105, 11.7.106, 11.7.107	)	11.7.103, 11.7.105,
and 11.7.108 pertaining to	)	11.7.106, 11.7.107 AND
foster care placement of	)	11.7.108 PERTAINING TO
children	)	FOSTER CARE PLACEMENT OF
	)	CHILDREN

TO: All Interested Persons

1. On June 9, 1988, the Department of Family Services, published notice of the proposed adoption of rules and the repeal of Rules 11.7.101, 11.7.102 and 11.7.104 pertaining to foster care placement of children at page 1052 of the 1988 Montana Administrative Register, issue number 11. On July 28, 1988, a final notice of adoption of rules and the repeal of Rules 11.7.101, 11.7.102 and 11.7.104 was published at 1700 of the 1988 Montana Administrative Register, issue number 14.

In the final notice and administrative order, the numbers assigned to the newly adopted rules were incorrect. This amended notice intends to correct the errors in numbering.

2. The department has renumbered the adopted rules as follows:

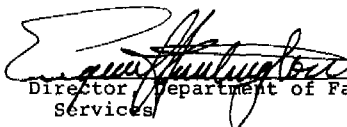
RULE I 11.7.103 DEFINITIONS

RULE II 11.7.105 GENERAL REQUIREMENTS

RULE III 11.7.106 VOLUNTARY PLACEMENT

RULE IV 11.7.107 CRITERIA FOR PLACEMENT

RULE V 11.7.108 PLACEMENT IN RESIDENTIAL TREATMENT


Director, Department of Family
Services

Certified to the Secretary of State September 14, 1988.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF THE
amendment of Rule 18.6.251) AMENDMENT OF RULE 18.6.251
relating to the maintenance) RELATING TO THE MAINTENANCE
of outdoor advertising signs) OF OUTDOOR ADVERTISING SIGNS

TO: All Interested Persons:

1. On July 28, 1988, the Commission published notice of a proposed amendment of rule 18.6.251 relating to the maintenance of outdoor advertising signs at pages 1646 and 1647 of the 1988 Montana Administrative Register, issue number 14.

2. No written comments or requests for public hearing were received by the Commission.

3. The Commission has amended Rule 18.6.251, Repair of Signs, as proposed.

ILERT HELLEBUST, Chairman
Montana Highway Commission

By: 

Certified to the Secretary of State September 12, 1988.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Amendment of) NOTICE OF AMENDMENT OF RULE
Rules for Permissible Utility) 38.5.2405, PERMISSIBLE UTILITY
Charges for Line Raising and) CHARGES FOR THE PURPOSE OF
Pole Moves, Associated with) ACCOMMODATING HOUSE AND OTHER
the Movement of Structures.) STRUCTURE MOVES

TO: All Interested Persons

1. On July 28, 1988 the Department of Public Service Regulation published notice of proposed amendment to rule 38.5.2405 which sets forth the average costs for time and materials expended in line raising and pole moves associated with the movement of structures at pages 1658-1659 of the 1988 Montana Administrative Register Issue Number 14.

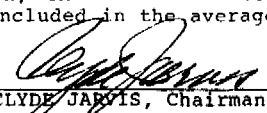
2. The Commission has adopted the rule as proposed.

3. Comments: A comment was received from Pacific Telecom (Northwestern Telephone Systems, Inc.) indicating that the average cost method does not allow the full recovery of actual costs incurred for these activities, including time, travel, waiting and equipment. In addition, there is presently no provision to charge for preparing the initial estimated cost.

Response: The Commission recognizes that, due to the very nature of averaging, some inequities will occur by applying average costs to specific moves. From this perspective, actual costs would be more desirable. Section 69-4-603, MCA, specifically requires, however, that the Commission fix expenses "on the average cost per line or pole." However, through the utility-type categories which are set forth in the rule, some small measure of relief from the inequities of averaging may be realized.

With respect to the cost of the initial estimate, § 69-4-602, MCA, specifically requires the owner of the wires or pole to provide the mover a written cost estimate, but this section does not include the cost of an estimate in the "average cost," which is limited in § 69-4-603(2), MCA, to "the necessary and reasonable expense" of line and pole moves. Under the present statutory scheme, the Commission does not consider it appropriate to include the cost of estimates in the average cost computation.

To the extent that the comment suggests that overhead expenses should be included in the computation of average costs; the Commission acknowledges that some overhead costs may be incurred in connection with structure moves, but does not have any evidence or information available indicating that general loading factors are applicable to this activity. Based upon this lack of information, the Commission believes that overhead costs should not be included in the average cost computation at this time.


CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 12, 1988.

18-9/22/88

Montana Administrative Register

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE AMENDMENT of
of ARM 42.23.403 relating to) ARM 42.23.403 relating to
Treatment of Foreign Taxes.) Treatment of Foreign Taxes.

TO: All Interested Persons:

1. On June 9, 1988, the Department of Revenue published notice of the proposed amendment of ARM 42.23.403 relating to Treatment of Foreign Taxes at page 1168 of the 1988 Montana Administrative Register, issue no. 11.

2. A public hearing was held on June 30, 1988 where written and oral comments were received.

3. As a result of the comments received the Department has adopted ARM 42.23.403 as proposed.

4. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: The proposed amendment does little to alleviate the distortion caused by effectively determining income from a foreign country for purposes of the deduction provisions on a separate accounting basis but determining income for inclusion purposes under an apportionment basis.

RESPONSE: The proposed amendment to 42.23.403 merely provides clarification as to what items of expense are deductible for Montana Corporation License Tax purposes. Specifically, the amendment provides guidance as to what taxes are deductible and what types are not deductible pursuant to 15-31-114. This rule does not address and was not intended to address any perceived distortion problems the taxpayer may feel exists related to the general allocation and apportionment provisions set forth in Title 15, chapter 31, part 3.

COMMENT: The Department could have chosen to adopt federal guidelines on what constitutes a "tax" and thereby given taxpayers some objective standards by which the nature of payments to foreign governments could be determined. Instead, the Department continues to advocate their subjective standards without clearly defining a "tax".

RESPONSE: There is no requirement in the statute nor even an indication that the federal regulations should be used in defining a tax "measured by net income or profits." In addition, the State Tax Appeal Board, in the Mobil case, did not reference federal regulations in reaching the conclusion that the taxes at issue were income taxes. The Board went on to say that the federal regulations were not applicable and not binding upon the State.

COMMENT: ARM 42.23.403(d)(i) is confusing at best. Clearly, very few if any payments would qualify as a "tax" under this definition. A "tax" is an expense of doing business but very few jurisdictions allow taxes to be calculated on an amount remaining after expenses (including taxes) are deducted from gross revenues. Moreover, the Department fails to consider the difference in what constitutes an expense by the various taxing jurisdictions.

RESPONSE: ARM 42.23.403(d)(i) merely states that if a tax is based upon gross revenues less expenses, however defined, then that tax is a tax based upon net income or profits. There is no need to further clarify that statement. This rule clearly does not prohibit the deduction of any tax that is not calculated on net income or profits.

COMMENT: The Mobil Oil case referenced by the Department is but one of several methods used by foreign governments to extract their "take". Others include limitations on deductions as well as high tax rates.

The U.S. Internal Revenue Service has recognized the various forms of foreign "government take" and attempted to deal with them through the foreign tax credit regulations.

RESPONSE: The Department agrees that the Internal Revenue Code has provisions for a foreign tax credit. The purpose of the credit is of no relevance to this proposed amendment to 42.23.403.

COMMENT: The reference in the comments that the proposed rule implements the findings of the Mobil decision is in error. There was no evidence in that case that the Internal Revenue Service had made a finding that the payments made to a foreign country were not taxes. That specific issue has not been addressed in Montana.

RESPONSE: The proposed rule does implement the provisions of the Mobil decision. Mobil stated the following:

1. "...that the taxes levied by the foreign countries were income taxes as defined by the Montana Code and therefore are not deductible."
2. "Federal Internal Revenue Code regulations concerning dual capacity taxpayers were not applicable during the entire period of the audit, but more importantly, are not binding upon the state and if the tax levied by the foreign country is imposed upon or measured by net income or profits, it is not a permitted deduction."

3. "The difference between posted price and the market price does not constitute a tax, Mobil is entitled to the relief it requested under the theory of the Occidental argument."

Each of these points is addressed in the proposed rule.

COMMENT: The proposed amendment should be withdrawn and, in its place, propose a rule that alleviates the distortive effect resulting from including foreign "government take" in a manner fundamentally inconsistent with its method of determining apportioned income.

RESPONSE: It is unclear what is meant by this comment. If the comment is to propose a new rule to allow foreign income taxes to be deducted, such a change would require an amendment to 15-31-114.

COMMENT: If the Department intends to adopt a rule on foreign tax payments, it should, in fairness to all taxpayers, adopt rules which are consistent with federal guidelines on this issue.

RESPONSE: See response to second comment.

COMMENT: It is the taxpayer's position that the taxes imposed by Saudi Arabia, Iran, Dubai and Nigeria do not constitute taxes "according to or measured by income or profits." A revenue ruling has stated that these taxes are based upon posted prices which are arbitrary values and have no relationship to income. These "taxes" are simply not taxes measured by income or profits.

RESPONSE: The proposed rule addresses the taxpayer's concerns. 42.23.403(e) states... "to the extent any portion of the tax paid to foreign governments is imposed upon or measured by the difference between the posted price and the market price for a barrel of oil, then the tax attributable to this increment is not a tax based upon or measured by net income or profits and is therefore deductible."

COMMENT: Texaco, Inc. also contends that the proposed rule calling for the inclusion of these foreign "taxes" as apportionable income grossly distorts any true measure of economic income properly attributable to Montana. If the purported taxes are to be included in apportionable income, these taxes must be adjusted to be more closely consistent with the United States scheme of taxation by the authority of and in accordance with the underlying rationale of Section 18 of the Multistate Tax Compact.

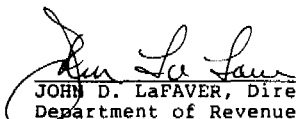
RESPONSE: It appears that the foreign taxes referred to in this comment are the same taxes mentioned in the previous

comment. If that is the case, then as mentioned above, a portion of those taxes are deductible on the Montana return.

COMMENT: Foreign tax payments are most definitely a substantial cost of doing business in the foreign country, in some cases reaching close to 90% of gross revenue. The failure to reflect these costs in the foreign pre-tax income base through a deduction or other adjustment causes the income base to be improperly and unconstitutionally inflated. It is manifest that the foreign pre-tax income which does not include these payments becomes entirely different from that which would be considered pre-tax income in the United States.

Obviously, the extreme overstatement of income from foreign operations causes the income which is attributed to Montana to be grossly overstated as well. By not allowing a deduction or an adjustment to these foreign taxes, the proposed rule has applied an apportionment formula to an excessive income base which fails to fairly represent the extent of a taxpayers business activities in Montana. Moreover, it fails to give adequate weight to the essential elements responsible for the earning of taxpayer's income. See John Deere Plow Co. v. Franchise Tax Board (1951) 38 C. 2d 214, 224.

RESPONSE: To allow a deduction for a portion of these taxes would require an amendment to 15-31-114.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 9/12/88.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.13.301,	)	RULES 46.13.301, 45.13.303,
46.13.303, 46.13.304 and	)	46.13.304 AND 46.13.401
46.13.401 pertaining to the	)	PERTAINING TO THE MONTANA
Montana Low Income Energy	)	LOW INCOME ENERGY ASSIS-
Assistance Program (LIEAP)	)	TANCE PROGRAM (LIEAP)


TO: All Interested Persons

1. On August 11, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.13.301, 46.13.303, 46.13.304 and 46.13.401 pertaining to the Montana Low Income Energy Assistance Program (LIEAP) at page 1788 of the 1988 Montana Administrative Register, issue number 15.

2. The Department has amended Rules 46.13.301, 46.13.303, 46.13.304 and 46.13.401 as proposed.

3. No written comments or testimony were received.

4. These rule changes will be effective October 1, 1988.



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 12, 1988.

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 the 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 statutes 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. 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 list 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 June 30, 1988. This table includes those rules adopted during the period June 30, 1988 through September 30, 1988 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 June 30, 1988, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1988 Montana Administrative Register.

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