



ORIGINAL

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04/25/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0081

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 22-0081

James C Wangerin, CPA

Petitioner/Appellant,

v.

AMENDED

APPELLANT'S BRIEF

State of Montana, Department of Revenue

Respondent/Appellee.

FILED

APR 25 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

On appeal from the Montana Third Judicial District Court,
County of Powell,

Cause No. DV-21-53,

Honorable Ray J Dayton Presiding

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STATEMENT OF THE ISSUES

Is Montana Department of Revenue (Department) interpretation of **15-30-2605, MCA** a “substantive rule” as defined in **2-4-102 (14), MCA**? Record page 380.

Is Department’s interpretation of **15-30-2605, MCA** (Department’s interpretation) of significant interest to the public as defined in **2-4-102 (12), MCA**? Record page 380.

Should Department provide an opportunity for public participation in Department’s interpretation? Record page 380.

Is the Judge’ finding in error that “There are no other reasonable interpretations”? Cause No. DV-21-53 Order page 7.

Is the Judge’ finding in error that “the statute’s intent is not at issue.”? Cause No. DV-21-53 Order page 7.

Is the Judge’s finding in error that the record does not indicate that the Department has relied on the three-year statute of limitations in its denial of appeals? Cause No. DV-21-53 Order page 6.

STATEMENT OF THE CASE

James C Wangerin, CPA’s (Wangerin’s) petition for judicial reviews was a challenge to the way in which a rule had been made. The Department created a rule that extended the statute of limitations. Extending the Statute of Limitations is of

significant interest to the public. Department failed to provide a reasonable opportunity of public to participate in creation of rule.

Article II. Section 8 of the 1972 Montana constitution affords citizens of this State the right to "reasonable opportunity for citizen participation" in affairs of government. The Montana Administrative Procedure Act fulfills this constitutional mandate in the context of a rulemaking proceeding by providing for notice and hearing. See § 2-3-104(3). MCA.

The procedures for rulemaking are set forth in **Title 2, chapter 4, part 3, MCA**. Briefly, the rule making agency is required to publish notice in the Montana Administrative Register of its intention to promulgate a rule on a particular subject. § 2-4-302 (2). MCA. Interested parties must be afforded the opportunity to testify or present in writing their views on the proposed rule. § 2-4-302 (4), MCA. The agency must consider the evidence presented and adopt or reject the proposed rule stating the reasons for its action. § 2-4-305(1). MCA. An adopted rule must then be filed with the Secretary of State. § 2-4-306(1), MCA. See J. McCrory, Administrative Procedures in Montana: A View After Four Years With The Montana Administrative Procedure Act, 38 Mont. L. Rev. 1 (1977). Mont. Atty. Gen. Op. 38-69 (Feb. 28, 1980) (References to statutes were updated.) The case needs to be sent back to Department for consideration of additions to Record and to conduct a rulemaking proceeding pursuant to Montana

Administrative Procedure Act by providing for notice and hearing on Department's interpretation.

The Record indicates that there are many other reasonable interpretations of 15-30-2605, MCA.

The Record indicates that the intent of the statute is at issue.

In cases where Department's interpretation was an issue, the record indicates that the following systemic problems:

- Notice of Determination required to be issued in 30 days after informal review was requested was still NOT issued after 8 months. Record pages 395 to 401.
- 6 months after the original statute of limitations had expired, Chief Administrative Law Judge dismissed cases (decided against taxpayers) based on ex parte communication by Department with Chief Administrative Law Judge. Record pages 395 to 401.

STATEMENT OF THE FACTS

Oral Argument was held on January 20, 2022. Court granted Wangerin's Motion for Additions. Court granted Wangerin's Second Motion for Additions on January 20, 2022. District Court Order page 1.

Department denied Wangerin's Petition to clarify § 15-30-2605, MCA on July 15, 2021. Record page 10 to 14.

Pages 1 to 263 of the Record refer to comments or events that occurred prior to July 15, 2021.

Pages 264 to 374 and pages 375 to 406 of the Record refer to comments or events that occurred after July 15, 2021.

The Department contends that the Department's interpretation of the statute of limitations from § **15-30-2605, MCA**, is not an administrative rule. It is not an "interpretative rule" ... Record page 380.

Dave Burleigh (Burleigh) wrote, "Our interpretation of **15-30-2605** is not just mine, but Department-wide. All Department personnel are required to follow the law as we interpret it. " See Record page 355.

Burleigh wrote, "Though reasonable minds can differ on the interpretation of the legislature intent to make the statute of limitations similar to other Montana tax types or the IRS, the Department's interpretation is the one under which all our personnel operate until they are instructed otherwise. While we understand your position, we will continue to interpret these statutes of limitation as we have been doing until the legislature or other courts instruct us otherwise." Record page 3.

A reasonable person could conclude that the Department's interpretation is a "substantive rule" as defined in **2-4-102 (14), MCA**.

A reasonable person could conclude that Department's interpretation is of significant interest to the public as defined in **2-4-102 (12), MCA**.

Brian Olsen (Olsen), audit unit manager for the five underlying contested cases, wrote, "The statute of limitations applies the timing of when adjustments can be made to returns not the resolution of the audit." Record page 393.

Department's denial of petition to clarify **15-30-2605, MCA** states, "the Department finds that § **15-30-2605, MCA**, is subject to only one reasonable interpretation: that the Department must complete its audit within the three-year deadline." Record page 12.

A reasonable person could conclude that when adjustments can be made to returns is NOT the same as completing the audit.

Olsen wrote, "It's not my interpretation to change." Record Page 392.

Olsen is the audit unit manager responsible for issuing a Notice of Determination in the underlying contested cases.

A reasonable person could conclude that reason for systemic problem of Olsen NOT issuing Notice of Determination for 8 months is because Department's interpretation was NOT his to change.

Burleigh wrote, "...the title of the document is important to us." Record page 182

The title "Notice of Determination" seems more important in interpreting "determined by Department" than "notice of proposed assessment" or "audit adjustment letter".

A reasonable person could interpret “determined by Department” in **15-30-2605, MCA** to mean “Notice of Determination”.

ARM 42.2.510 5 (b) states, “If the department disagrees with the taxpayer, it shall explain the reasons for the disagreement in a Notice of Determination, notify the taxpayer of the dispute resolution procedures, and provide a copy of the Notice of Referral to the Office of Dispute Resolution (Form APLS102F). ...”

On page 38 of Transcript of Proceedings, Dave Burleigh stated, “If the Department issues a determination and informal review is completed on April 14th, three years after the taxes were filed on April 15th, that taxpayer has not experienced prejudice.”

A reasonable person could interpret Burleigh’s statement on page 38 of Transcript of Proceedings to mean that Dave Burleigh interprets “determined by Department” in **15-30-2605, MCA** to mean “Notice of Determination”.

Dave Burleigh wrote, “proposed assessment is NOT a determination.” Record page 367.

Dave Burleigh wrote, “An audit adjustment letter is a proposed assessment.”

Record page 383 response #18.

A reasonable person could conclude that if an audit adjustment letter is a proposed assessment and a proposed assessment is NOT a determination than an audit adjustment letter is NOT a determination.

Burleigh wrote, "To zero in on a generally understood meaning and context of a statutorily undefined term,

the Court "may consider dictionary definitions, prior case law, and the larger statutory scheme in which the term appears." *Giacomelli v. Scottsdale Ins. Co.*, 2009 MT 418, ¶ 18, 354 Mont. 15, 221 P.3d 666. Department's Response to Petitioner's Opening Brief page 7 and 8 Cause No.: DV-21-53

Google's English Dictionary is provided by Oxford Languages. Oxford's English dictionaries are widely regarded as the world's most authoritative sources on current English.

Google's English Dictionary defines determined as having made a firm decision and being resolved not to change it.

Using dictionary definition, a reasonable person could interpret determined by Department in **15-30-2605, MCA** to mean the Final Agency Decision.

Jaret Coles, legislative staff attorney, wrote, "... to define what a determination is, it seems to me like the request is to make it the Department's final decision that is appealable to the Montana Tax Appeal Board the determination (I assume this is the case already, but not positive)." Record page 2 #4 and #4b.

Using Jaret Coles' writing, a reasonable person could interpret determined by Department in 15-30-2605, MCA to mean the Final Agency Decision.

Wangerin interprets **15-30-2605, MCA** as follows: "The date for stopping the statute of limitations for individual income tax for **MCA 15-30-2605** is the date of decision with respect to which all rights of appeal have been waived or exhausted."

Record Page 2

Department admits that they don't follow the dictionary definition of determined meaning having made a firm decision and being resolved not to change it. Record page 380.

15-30-2642, MCA does NOT define the word determine.

15-30-2620(2) states, "If a term is not defined in this chapter, the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code."

When the Legislature intended to use the words "mailing notice of proposed assessment" in the corporate statute of limitations **15-31-509, MCA**, the legislature used the words "mailing notice of proposed assessment." In the individual statute of limitations 15-30-2605, MCA the legislature used the words determined by the department.

Proposed and determined have quite different meanings in plain language.

A reasonable person could conclude that legislature did NOT mean proposed when it stated determined in plain and simple language.

On page 6 of Cause NO. DV-21-53, the Judge highlights that § **15-30-2642, MCA** uses the word determines. § **15-30-2642** also uses the words “of the additional tax proposed to be assessed.” The definition of propose is “put forward (an idea or plan) for consideration or discussion by others.” The definition of determined is “having made a firm decision and being resolved not to change it.” See Oxford Languages Dictionary. A reasonable person could conclude that if the legislative intent was to state proposed assessment, the Legislature would not have used the word determined.

The stated intent of 2017 64th Montana Legislature House Bill No. 379 was to make § **15-30-2605, MCA** uniform with other tax types. Record page 2.

Burleigh wrote, "... reasonable minds can differ on the interpretation of the legislature intent to make the statute of limitations similar to other Montana tax types or the IRS..." Record page 3.

Department Attorney Tony Zammit stated, “The plain language of the IRC provides the same three-year limit to assess a tax as Montana's statute.” Record page 404.

15-30-2605 was revised by 2017 64th Montana Legislature House Bill No. 379 (HB 379) The stated intent of HB 379 was "... to be uniform with other tax types." (See Record page 382.)

The sponsor of 2017 64th Montana Legislature House Bill No. 379 stated that the legislative intent was to make § **15-30-2605, MCA** uniform with the statute of limitations in the Internal Revenue Code. Record page 382.

15-30-2620, MCA Department rules -- conformance with Internal Revenue Code.

(2) If a term is not defined in this chapter, the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code. (See page 402 of the Record 12)

Internal Revenue Manual 4.10.2.2.2 states, "To ensure adherence with **Rev.**

Proc. 57-6, 1957-1 C.B. 729 examination cycle generally allows the audit and all processing (e.g., appeal, assessment, etc.) to be completed within the original statute of limitations." Record page 402.

Rev. Proc. 98-54, IRC 6212(a), IRC 6213 (a), and IRC 6503(a) provide that IRS must issue a notice of deficiency within the original statute of limitations. The notice of deficiency allows the taxpayer to appeal to tax court.

Taxpayer Bill of Rights (9) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have the Montana tax appeal board or a

court, or both, review any final decision of the department assessing an additional tax. **§ 15-1-222, MCA.**

STATEMENT OF THE STANDARD OF REVIEW

§ 2-4-704, MCA provides the standard of review.

SUMMARY OF THE ARGUMENT

The stated intent of 2017 64th Montana Legislature House Bill No. 379 was to make **§ 15-30-2605, MCA** uniform with other tax types.

Burleigh wrote, "Though reasonable minds can differ on the interpretation of the legislature intent to make the statute of limitations similar to other Montana tax types or the IRS, the Department's interpretation is the one under which all our personnel operate until they are instructed otherwise. While we understand your position, we will continue to interpret these statutes of limitation as we have been doing until the legislature or other courts instruct us otherwise." Record page 3.

The Department's interpretation was a rule to implement **§ 15-30-2605, MCA** by making it uniform with other Montana tax types.

The Department creating the rule without going through rulemaking procedures set forth in **Title 2, Chapter 4, Part 3, MCA** violated **Article II Section 8 of the 1972 Montana Constitution, § 2-3-104 (2), MCA, § 2-4-302(2), MCA, § 2-4-302(4), MCA, 2-4-305(1), MCA, and § 2-4-306 (2), MCA.**

James C Wangerin was harmed by being deprived of right to participate in rulemaking regarding **15-30-2605, MCA**.

The sponsor of 2017 64th Montana Legislature House Bill No. 379 stated that the legislative intent was to make § **15-30-2605, MCA** uniform with the statute of limitations in the Internal Revenue Code. Record page 382.

Rev. Proc. 98-54, IRC 6212(a), IRC 6213 (a), and IRC 6503(a) provide that IRS must issue a notice of deficiency within the original statute of limitations. The notice of deficiency allows the taxpayer to appeal to tax court.

The Montana tax type only requires that a Notice of Proposed Assessment be mailed within the original statute of limitations.

The statute of limitations is a restraint on the time within which the Department must assess tax.

By Department creating a rule uniform with Montana tax type instead on the Internal Revenue Code, the Department increased the length of time to assess tax.

Increasing the length of time to assess tax is of significant interest to the public.

The Department failed to comply with **Mont. Code Ann. § 2-3-111(1)**. The required policies and procedures "must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public."

ARGUMENT

Wangerin disagrees with Cause NO. DV-21-53 Order Affirming the Department of Revenue's Decision (see Discussion pages 5 to 7) for the following reasons:

- The Department's interpretation was a rule to implement § 15-30-2605, MCA by making it uniform with other Montana tax types.
- The Department creating the rule without going through rulemaking procedures set forth in **Title 2, Chapter 4, Part 3, MCA** violated **Article II Section 8 of the 1972 Montana Constitution**, § 2-3-104 (2), MCA, § 2-4-302(2), MCA, § 2-4-302(4), MCA, 2-4-305(1), MCA, and § 2-4-306 (2), MCA.
- Petition for Judicial Review on page 4 #25 states, "Montana Supreme Court Decision. *State ex rel. Anderson v. State Bd. of Equalization* (1957), 133 Mont. 8, 319 P.2d 221, declares that a statute of limitations should be construed in favor of a taxpayer. The general rule of law holds that where a tax statute may be susceptible of two constructions, and legislative intent is in doubt, any such doubt should be resolved in favor of the taxpayer and against the taxing authority."
- Page 7 of the order states that there are no other reasonable interpretations. Wangerin has listed numerous other reasonable interpretations in the Statement of the Facts listed above.

In the only docketed case, Appeal to Office of Dispute Resolution was filed on 2/28/2021. **15-1-211, MCA (4) (c)** provides "the right to obtain a final department

decision within 180 days of the date that the dispute was referred to the dispute resolution office”. **ARM 42.2.621 (5)** provides, “If no decision is rendered by the end of the 180-day period specified in **15-1-211, MCA**, the department shall notify the parties that they are entitled to carry their appeal forward by filing a complaint with the appropriate reviewing authority within 30 days after service of the notice.” Decision in the only docketed case was NOT rendered within the 180-day period specified in **15-1-211, MCA** and NO notice entitling taxpayer to carry forward their appeal was issued.

The Director of Department wrote, “the auditor in your client's Office of Dispute Resolution matter, who issued the audit adjustment letter prior to the expiration of the 30 days, was in error.” Record page 381. Dave Burleigh wrote, “The Department ... requested documentation from Taxpayers on ... 6/16/2021.” Record page 384. The original statute of limitations had expired around 2 months prior to 6/16/2021.

Page 395 of the record is one of the requests for informal review made on February 8, 2021. **ARM 42.2.510 (5)** provides, “... The department shall mail written notice to the taxpayer advising the taxpayer of the department's determination within 30 days after receipt of the objection. ... it shall explain the reasons for the disagreement in a Notice of Determination.” 8 months after the request for informal review, and over 5 months after the original statute of limitations had

expired, a Notice of Determination had not been issued for three contested cases where statute of limitations was an issue. Request for Formal Review was filed for 3 of the remaining cases in October of 2021. Record Page 395. Based on ex parte communication with Department of Revenue, Chief Administrative Law Judge dismissed the 3 filed cases. Record page 397. The Office of Dispute Resolution sent a letter stating taxpayer may refile if you complete an informal review with the time allowed by law ... The referral you filed on October 4, 2021 will be considered your request for informal review ... We have forwarded your document(s) to Department of Business and Income Taxes Division. ..." Record page 396.

CONCLUSION

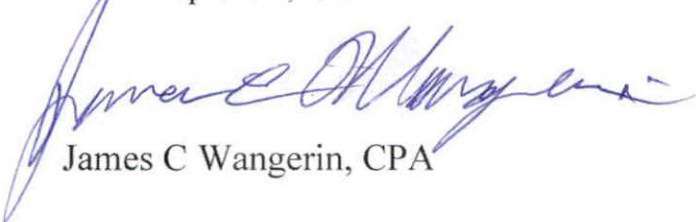
Ben Franklin was asked the question: do we have a monarchy or a republic? His response was that we have a republic if we can keep it.

Department's interpretation is a rule. **ARM 1.3.307** states, "(2) See **2-4-102, MCA**, for the definition of "rule." Because of the difficulty in determining whether an agency action meets the definition of rule, construe the exceptions narrowly and if in doubt, consult legal counsel. Interpretive rules are statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers. Interpretive rules may be made under the express or implied authority of a statute but are advisory only and do not have the force of law."

The Department's interpretation should have went through the procedures for rulemaking set forth in **Title 2, Chapter 4, part 3, MCA**.

The record has had significant additions since the Department denied Wangerin's petition. The petition should be sent back to the Department for consideration of the additional record and creation of a rule interpreting § 15-30-2605, MCA using procedures for rulemaking set forth in **Title 2, Chapter 4, part 3, MCA**.

Dated April 22, 2022

A handwritten signature in blue ink, appearing to read "James C Wangerin", is written over the printed name.

James C Wangerin, CPA

Appellant / Petitioner Pro Se

Appendix

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JILL PAULL, CLERK
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Montana's Third Judicial District
Hotell County

JAMES C WANGERIN, CPA,

Petitioner,

vs.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CAUSE NO. DV-21-53

**ORDER AFFIRMING THE
DEPARTMENT OF REVENUE'S
DECISION**

Order Affirming Agency Decision

Before the Court is a Petition for Judicial Review of an Agency Ruling. Petitioner James Wangerin, CPA, (Wangerin) has requested judicial review after the Montana Department of Revenue (Department) denied Wangerin's petition to adopt a rule to clarify Montana Code Annotated § 15-30-2605. The matter is fully briefed, and oral argument was held on January 20, 2022. During Oral Argument the Court also addressed Wangerin's three pending motions. Wangerin's Motion for Additions to the Record and Wangerin's Second Motion for Additions to the Record were both granted. Wangerin's Request for Rule 5 Order was denied. After reviewing the record, briefing, and hearing oral argument, the Agency Ruling is AFFIRMED.

Procedural History

On March 1, 2021, Wangerin filed a Petition for Declaratory Ruling requesting the Department adopt a new administrative rule to clarify the statute of limitations within MCA § 15-30-2605. This statute allows the Department of Revenue to revise incorrect individual income tax returns and the statute of limitations language states, "the amount of tax due under any return may be determined by the department within 3 years after the return was filed, regardless of

whether the return was filed on or after the last day prescribed for filing.” Mont. Code Ann. § 15-30-2605(3) (2021). Wangerin’s proposed rule to clarify this statute of limitations states, “The date for stopping the statute of limitations for individual income tax for MCA § 15-30-2605 is the date of decision with respect to which all rights of appeal have been waived or exhausted.” On July 15, 2021, the Department denied Wangerin’s petition. Wangerin then filed a Petition for Judicial Review of an Agency Decision with this Court.

Summary of Arguments

Wangerin

Wangerin argues that the Department’s interpretation of MCA § 15-30-2605(3) is incorrect and the three-year statute of limitations applies to the Department’s final decision and not the Department’s audit assessment in the form of an audit adjustment letter.

Wangerin asserts the intent of the statute is in doubt, citing the statutes’ legislative title and legislative intent. He argues the 2015 revision from a five-year statute of limitation to a three-year statute of limitation was intended to conform to the Federal Internal Revenue Code audit procedures which include disputes and appeals. Wangerin notes the Department’s position is that the revision was to conform with other state tax statutes of limitations. Wangerin contends his interpretation is closer to the legislative intent and more favorable to taxpayers.

In further support of his interpretation, Wangerin points to textual distinctions between MCA § 15-30-2605 and § 15-31-509, the section relevant to corporate income tax assessments. Wangerin argues § 15-31-509’s language includes specific reference to a “notice of proposed assessment” and the omission of this language in § 15-30-2605 indicates the statute is not referring to a proposed assessment. Wangerin further contends that the word “determined” within § 15-30-2605 is not in reference to an audit findings or assessments but rather “could be

construed as a final agency decision." Wangerin bases this contention on the textual distinctions between § 15-31-509 (corporate tax statutes) as well as § 15-30-2620(2) which states, "If a term is not defined in this chapter, the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code." § 15-30-2620(2), MCA.

Wangerin asserts he was prejudiced by the Department's incorrect interpretation as he spent additional time representing taxpayers on cases where the statute of limitation had expired, he invested time trying to obtain instructions from court and/or the legislature, and the denial of his proposal made it difficult to deal with multiple tax, judiciary, and legislative professionals and departments. Additionally, Wangerin argues that the Department's interpretation has been inconsistent as well as invalid as it is a rule that was not adopted through the Montana Administrative Procedures Act.

Department of Revenue

Department argues Wangerin's proposed rule was denied because the statute was not ambiguous and, therefore, no interpretive rule was required. It is Department's contention that the language in § 15-30-2605 is clear and subject to one reasonable interpretation. Department asserts that the plain language of the statute and statutory context indicate that the Department must determine the correct amount of tax due on an incorrect return within three years after the date the return is due. Department also asserts that the right to dispute and appeal the assessment are not restricted by § 15-30-2605's statute of limitations.

Department rebuts Wangerin's textual comparisons to Montana corporate tax statutes, arguing they are immaterial. Department also rebuts Wangerin's interpretation of "determined" and states that his definition is not based on the ordinary meaning of the word, but rather federal internal audit procedures not adopted by the Montana legislature. Department interprets a

determination as "the opinion and revision of that return as recorded in a Department auditor's adjustment letter sent to a taxpayer" and contends the audit adjustment letters sent to individuals is the determination that tolls the statute of limitations. Department also notes that adjustment letters include instructions on how to dispute the determination.

Department rebuts Wangerin's assertion that the legislature intended to conform § 15-31-2605 to the federal statute of limitation procedures, arguing that the legislature would have clearly adopted or referred to federal law in the statute. Department further contends Wangerin's proposed rule goes beyond statutory interpretation principles and rewrites the statute in a way that would implement additional procedural and timing restrictions as well as nullify subsequent statutes that outline notice, review, and appellant procedures.

The Department opposes Wangerin's notion that Department is operating under an invalid rule, arguing that its interpretation of an unambiguous statute is not a formal rule subject the Montana Administrative Procedures Act. Department also asserts this interpretation has been consistently implemented. Lastly, Department argues Wangerin's claims of prejudice do not meet the relevant statutory definition.

Standard of Review

The Administrative Procedure Act allows for Judicial Review when a state agency's administrative decision is contested.

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

- (i) in violation of constitutional or statutory provisions;
- (ii) in excess of the statutory authority of the agency;
- (iii) made upon unlawful procedure;
- (iv) affected by other error of law;

- (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 2-4-704, MCA.

Discussion

There is no evidence or argument indicating the Department's denial of the proposed rule was either in violation of constitutional or statutory provisions, in excess of the Department's statutory authority, or a result of unlawful procedure. Based on the record, the denial of the proposed rule was not arbitrary, capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion. The denial was also not clearly erroneous based on the reliable, probative, and substantial evidence on the whole record.

The primary issue is whether the Department's denial of the proposed rule was affected by an error of law. Specifically, whether the Department's interpretation is an error of law. When interpreting statutes, courts pursue the intent of the legislature by looking, if possible, to the plain meaning of the language used. *Saari v. Winter Sports*, 2003 MT 31, ¶ 22, 314 Mont. 212, 64 P.3d 1038. In addition to reading the statute at issue, the court must read other related statutes in order to "effectuate the intent of the statutes as a whole." *Marsh v. Overland* (1995), 274 Mont. 21, 28, 905 P.2d 1088, 1092.

MCA § 15-30-2605 entitled "Revision of Return by Department – Statute of Limitations – Examination of Records and Persons," allows "If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return." § 15-30-2605(1), MCA. The statute further states that "the amount of tax due under any return may be determined by the department within 3 years after the return was filed, regardless of whether the return was

filed on or after the last day prescribed for filing.” § 15-30-2605(3), MCA. Based on the title, content, and subject matter of the statute, the plain meaning of the statute is that the Department has three years from the last day of filing to determine the correct amount of tax that is due on an incorrect filing.

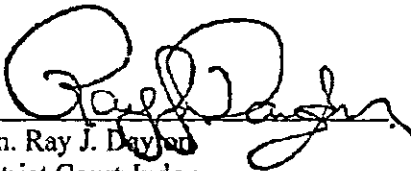
To address whether the term “determined” is undefined and could be construed as a final agency decision, further investigation of the MCA resolves any doubt. Specifically, § 15-30-2642 “Notice of Additional Assessment – Penalty and Interest for Deficiency”, states “If the department *determines* that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the *determination* pursuant to 15-1-211.” § 15-30-2642 (emphasis added). MCA § 15-1-211 allows for alternative dispute resolution through the department’s dispute resolution office and that office is required to issue final department decision that a taxpayer may appeal. §§ 15-1-211; 15-2-302, MCA. As Montana law provides a procedure for obtaining a final department decision after a taxpayer is provided a determination, there is no reason to believe the term could be construed to be a final agency/department decision.

Moreover, there is no language within these separate statutes limiting the review and appeal process to the three-year statute of limitations in § 15-30-2605. It is important to note that the Department’s assessment letters provide a deadline for appealing an assessment and the record does not indicate that the Department has relied on the three-year statute of limitations in its denial of appeals. Whether other internal issues exist with filing a dispute or appealing a tax adjustment letter is not a question for this Court to determine.

In reading the plain language of the statute and in relation to other applicable statutes, it is clear § 15-30-2605's statute of limitations is applicable to the time the Department has to complete an audit adjustment. There are no other reasonable interpretations and the statute's intent is not at issue. The Department's decision to deny the proposed rule was not the result of an error of law nor any other action that would prejudice Wangerin.

The Court AFFIRMS the Department's Decision.

February 9, 2022.


Hon. Ray J. Dayton
District Court Judge

CERTIFICATE OF SERVICE

I certify that I filed this Amended Appellant's Brief with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

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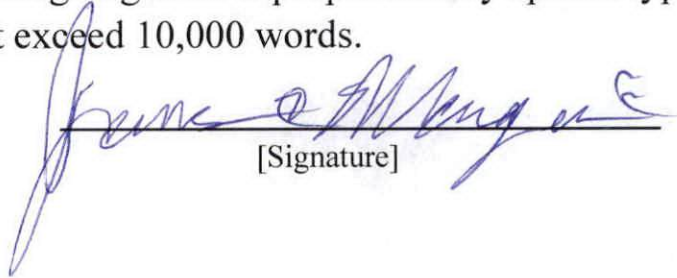
Dated this 22nd day of April, 2022

[Signature]

James C Wangerin, CPA

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.


[Signature]

