Before The Montana Tax Appeal Board

ORIGINAL

PIONEER NEWS GROUP CO. AND SUBSIDIARIES, *Appellant,* v. **STATE OF MONTANA, DEPARTMENT OF REVENUE,** *Respondent.*	CASE №: **IT-2020-40** **SUMMARY JUDGMENT STATEMENT OF FACTS, CONCLUSIONS OF LAW, ORDER AND OPPORTUNITY FOR JUDICIAL REVIEW**

FILED

JAN 20 2022

Montana Tax Appeal Board

STATEMENT OF THE CASE

This is an appeal of a final agency decision issued by the Office of Dispute Resolution on July 16, 2020, affirming the Montana Department of Revenue's ("DOR" or "Department") audit determinations and assessment of additional tax, penalties, and interest on income Pioneer News Group Co. (n/k/a Pioneer Holdings Group Co.) ("Pioneer") received from Big Sky Publishing, LLC ("Big Sky") for tax years 2013 through 2017 ("Audit Period"). We hold Pioneer's apportionment was proper for the reasons stated below and reverse the Department's assessment accordingly. Pioneer's motion for summary judgment is granted. The Department's motion for summary judgment is denied.

ISSUE TO BE DECIDED

Whether Pioneer was permitted to apportion the income it received from Big Sky during the Audit Period under the Multistate Tax Compact codified at Mont. Code Ann. § 15-1-601 ("Compact"). Alternatively, whether Pioneer was required to allocate the income it received from Big Sky to Montana, without apportionment, as reflected in the Department's assessment.

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PIONEER NEWS GROUP CO. AND SUBSIDIARIES v. STATE OF MONT., DEPARTMENT OF REVENUE

EXHIBIT LIST

The following evidence was submitted at the hearing:

a. DOR exhibits:

Ex. A: Big Sky Publishing Returns (filed under seal)

Ex. B: Pioneer News Grp. Returns (filed under seal)

Ex. C: Department's Audit Determination (filed under seal)

Ex. D: Department's Final Determination (filed under seal)

Ex. E: Summary of Income Calculations (filed under seal)

b. Pioneer exhibits:

Ex. 1: Affidavit of Jeffrey Hood

Ex. 2: Pioneer News Group Co. & Subsidiaries 2013 Fed. 1120S Return (filed under seal)

Ex. 3: Pioneer News Group Co. & Subsidiaries 2014 Fed. 1120S Return (filed under seal)

Ex. 4: Pioneer News Group Co. & Subsidiaries 2015 Fed. 1120S Return (filed under seal)

Ex. 5: Pioneer News Group Co. & Subsidiaries 2016 Fed.1120S Return (filed under seal)

Ex. 6: Pioneer News Group Co. & Subsidiaries 2017 Fed. 1120S Return (filed under seal)

Ex. 7: Pioneer News Group Co. & Subsidiaries 2013-2017 California State Tax Returns (filed under seal)

Ex. 8: Pioneer News Group Co. & Subsidiaries 2013-2017 Idaho State Tax Returns (filed under seal)

Ex. 9: Pioneer News Group Co. & Subsidiaries 2013-2017 Montana State Tax Returns (filed under seal)

Ex. 10: Pioneer News Group Co. & Subsidiaries 2013-2017 Oregon State Tax Returns with K-1s (filed under seal)

Ex. 11: Pioneer News Group Co. & Subsidiaries 2013-2017 Utah State Tax Returns (filed under seal)

Ex. 12: Pioneer News Group Co. & Subsidiaries Informal Review Submissions to Montana DOR

Ex. 13: Big Sky Publishing LLC 2013 Montana Partnership Information Return (filed under seal)

Ex. 14: Big Sky Publishing LLC 2014 Montana Partnership Information Return (filed under seal)

Ex. 15: Big Sky Publishing LLC 2015 Montana Partnership Information Return (filed under seal)

Ex. 16: Big Sky Publishing LLC 2016 Montana Partnership Information Return (filed under seal)

Ex. 17: Big Sky Publishing LLC 2017 Montana Partnership Information Return (filed under seal)

Ex. 18: Department of Revenue's Aug. 5, 2019 Final Determination on Informal Review and Revised Audit Schedules (filed under seal)

Ex. 19: Notice of Referral to the Office of Dispute Resolution (ODR)

Ex. 20: ODR July 16, 2020 Order Granting Stipulation for Final Agency Decision

Ex. 21: Department of Revenue's June 9, 2020 Letter to Wiley Barker

Ex. 22: 2017 Montana Form CIT Corporate Income Tax Booklet

Ex. 23: Notice of Adoption of Amendment of ARM 42.26.204 et. al

Ex. 24: ARM 42.26.204 (1993 eff. 1977) pdf

PROCEDURAL HISTORY

Pioneer appealed to the Montana Tax Appeal Board (MTAB) on August 14, 2020, under the authority of Mont. Code Ann § 15-2-302. *Compl.* Dkt. 1. The parties filed cross Motions for Summary Judgment on April 9, 2021. *Motions for Summary Judgment* Dkt. 12, 15. MTAB ordered oral argument on the motions which was conducted in Helena on July 21, 2021, at which the following represented the parties:

a. Katherine Tally, DOR Counsel, and Anthony Zammit, DOR Counsel; and

b. Michael Green, Taxpayer Counsel, and D. Wiley Barker, Taxpayer Counsel.

The record includes all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties prior to the MTAB hearing.

STATEMENT OF UNDISPUTED FACTS

1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

2. The parties do not dispute the material facts in this matter. The agreed upon facts provided by the parties are set forth as follows:

Pioneer's Business Structure and Operations

3. Pioneer is a subchapter S corporation incorporated in Nevada and headquartered in Seattle, Washington. *Hood Aff.* Ex. 1, ¶ 2. It was owned by several individuals during the Audit Period. *Hood Aff.* Ex. 1, ¶ 2; *Pioneer 2013-2017 Fed. Returns* Exs. 2-6, B.

4. Pioneer operated a multistate media and publishing business through various subsidiaries (limited liability companies) in California, Idaho, Montana, Oregon, Utah,

and Washington. *Hood Aff.* Ex. 1, ¶ 2; *Pioneer 2013-2017 Fed. and State Returns* Exs. 2-11, B. These subsidiaries included Big Sky Publishing LLC, which operated in Montana. *Id.*

5. The subsidiaries shared centralized management, functional integration, and economies of scale through Pioneer. *Hood Aff.* Ex. 1, ¶ 3; *Pioneer Informal Review Submissions* Ex. 12. Pioneer owned the substantial majority interest in and controlled each of its subsidiaries, owning more than 84% of all subsidiaries at all times during the Audit Period. *Hood Aff.* Ex. 1, ¶ 3; *Big Sky Publishing 2013-2017 P'ship Info. Return* Exs. 13-17, A. It oversaw their business operations, which were interrelated and contributed to Pioneer's overall media and printing business. *Hood Aff.* Ex. 1, ¶ 3; *Pioneer Informal Review Submissions* Ex. 12.

6. These multistate media businesses had identical organizational structure blueprints (e.g., editorial, print and digital advertising, and circulation departments) and many also had production operations. *Hood Aff.* Ex. 1, ¶ 4; *Pioneer Informal Review Submissions* Ex. 12. Various functions of these companies were integrated and centralized in other states. Accounts payable and payroll processing for all entities was handled in Washington, daily and weekly newspaper page layouts for all subsidiaries were produced by a central staff in Montana for the latter part of the years under audit, and accounts receivable processes were centralized in Idaho. *Id.* All these functions were performed on behalf of the subsidiary entities, including Big Sky Publishing. *Id.*

7. Pioneer and its subsidiaries also had various large-scale contracts, which resulted in substantial cost savings for each individual subsidiary. *Hood Aff.* Ex. 1, ¶ 4; *Pioneer Informal Review Submissions* Ex. 12. These contracts included a multimillion-dollar newsprint contract, a press plate contract, an Associated Press contract, and numerous

other contracts Pioneer negotiated, such as a payroll, human resources, and time reporting software contract. *Id.* Additionally, the companies benefitted from substantial cost savings through the common business structure among the companies and negotiation leverage over contracts covering all media entities. *Id.* Corporate management was also heavily involved in introducing revenue and cost savings initiatives to all subsidiaries. *Id.*

8. The subsidiaries had various degrees of financial success throughout the Audit Period. *Hood Aff.* Ex. 1, ¶ 5; *Pioneer 2013-2017 Fed. Returns* Exs. 2-6, B. Depending on the year, some subsidiaries suffered losses, while others enjoyed gains. *Id.*

Pioneer's Tax Filings

9. Pioneer reported its income on federal and state returns for each year of the Audit Period, as it had done for years before the Audit Period began. *Hood Aff.* Ex. 1, ¶ 6; *Pioneer 2013-2017 Fed. Returns* Exs. 2-6, B. Pioneer was the majority owner of several limited liability companies. *See Pioneer 2013-2017 Fed. and State Returns* Exs. 2-11, B. Because pass-through entities are generally not taxed at the entity level, the income earned by the limited liability companies flowed to Pioneer and the limited liability companies' respective minority owners. *Id.* On the federal level, Pioneer filed IRS Form 1120S for each relevant year, reporting its income on an aggregated basis for its entire multistate business, including income generated by its subsidiary limited liability companies. *Hood Aff.* Ex. 1, ¶ 6; *Pioneer 2013-2017 Fed. Returns* Exs. 2-6, B.

10. At the state level, Pioneer reported this aggregate income on returns to California, Idaho, Montana, Oregon, and Utah, as required by their respective laws. *Hood Aff.* Ex. 1, ¶ 7; *Pioneer 2013-2017 State Returns* Exs. 7-11, B. Washington does not have an income

tax, so Pioneer did not file an income tax return there. *Hood Aff.* Ex. 1, ¶ 7. Pioneer filed this way for many years leading up to the Audit Period. *Hood Aff.* Ex. 1, ¶ 9.

11. During the Audit Period, Pioneer continued to follow the same filing methodology. It filed composite returns and paid composite tax on behalf of its electing owners in all five states with an income tax—California, Montana, Idaho, Oregon, and Utah. *Hood Aff.* Ex. 1, ¶ 8; *Pioneer 2013-2017 State Returns* Exs. 7-11, B. It apportioned its combined apportionable income as permitted and required by state law, using the apportionment factors recognized by each of these states. *Hood Aff.* Ex. 1, ¶ 9; *Pioneer 2013-2017 State Returns* Exs. 7-11, B.

12. In Montana, Idaho, and Utah Pioneer filed and paid composite tax on its multistate income based on three-factor apportionment—sales, property, and payroll factors—subject to state-specific adjustments, as provided by state law. *Hood Aff.* Ex. 1, ¶ 9; *Pioneer 2013-2017 State Returns* Exs. 8, 9, 11, B. In California and Oregon, Pioneer filed and paid composite tax on its multistate income based on the single sales factor and subject to state-specific adjustments, as provided by state law. *Hood Aff.* Ex. 1, ¶ 9; *Pioneer 2013-2017 State Returns* Exs. 7, 10, B. Pioneer also filed a franchise tax return in California, and an excise tax return in Oregon. *Id.* Pioneer made similar tax filings for many years before the Audit Period began. *Hood Aff.* Ex. 1, ¶ 9.

Pioneer's Montana Business, Composite Election, and Returns

13. In Montana, Pioneer operated through its majority-owned subsidiary Big Sky Publishing, a limited liability company. *Hood Aff.* Ex. 1, ¶ 10. Big Sky Publishing was treated as a partnership for state and federal tax purposes and filed Montana Partnership Information and Composite Tax Returns during each year of the Audit Period and issued Montana Schedules K-1 to each of its owners, including Pioneer. *Big Sky Publishing*

2013-2017 P'ship Info. Return Exs. 13-17, A. Big Sky reported its income with an apportionment factor of 100% to Montana for all years during the Audit Period. *Big Sky Publishing 2013-2017 P'ship Info. Return* Exs. 13-17, A (2013: P03157, 2014: P03241, 2015: P03297, 2016: P03342, 2017: P03390). The federal Schedules K-1 show that Big Sky attributed all of its Montana income or loss to Pioneer. *Big Sky Publishing 2013-2017 P'ship Info. Return* Exs. 13-17, A (2013: P03142-P03144, 2014: P03197-P03199, 2015: P03281-P03284, 2016: P03329-P03332, 2017: P03372-P03375). For tax years 2016 and 2017, Big Sky withheld Montana tax on behalf of Pioneer, which was applied to Pioneer's composite tax liability. *Hood Aff.* Ex. 1, ¶ 10; *Pioneer 2013-2017 Mont. Returns* Ex. 9, B; *Big Sky Publishing 2016-2017* Exs. 16-17, A.

14. Pioneer's owners elected to have Pioneer file a composite tax return and pay a composite tax in each of the states in which Pioneer operated. *Hood Aff.* Ex. 1, ¶ 10; *Pioneer 2013-2017 Mont. Returns* Ex. 9, B (2013: P00434-P00433, 2014: P01486-P01500, 2015: P01967-P01979, 2016: P02361-P02372, 2017: P02992-2999). In Montana, Pioneer filed composite tax return Form CLT-4S annually for each year of the Audit Period and remitted composite tax on behalf of its owners, who were all nonresidents. *Id.* All of Pioneer's owners were participants for each year under audit.

15. Montana's composite tax liability is calculated by aggregating the tax obligation of the consenting owners of the S corporation through the following formula:

> (i) determining the tax that would be imposed, using the rates specified in [Mont. Code Ann.] § 15-30-2103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

Mont. Code Ann. § 15-30-3312(2)(a).

16. Pioneer applied this formula for each year of the Audit Period. *Pioneer 2013-2017 Mont. Returns* Ex. 9, B. Pioneer included its distributive share of income from Big Sky in its gross income. *Id.* Pioneer reported no other Montana business activity or source income, and its ownership interest in Big Sky was the only link it had with Montana. *Id.* Pioneer determined its Montana source income through three-factor apportionment set out in the Compact. *Mont. Code Ann.* § 15-1-601; *Pioneer 2013-2017 Mont. Returns* Ex. 9, B. Pioneer also complied with all other duties associated with the composite tax election, made quarterly estimated payments to the Department, filed a composite return, and paid composite tax on behalf of its owners annually. *Hood Aff.* Ex. 1, ¶ 10; *Pioneer 2013-2017 Mont. Returns* Ex. 9, B.

17. In 2017, Pioneer sold its operating media business, including Big Sky, which resulted in a gain. *Hood Aff.* Ex. 1, ¶ 11; *Pioneer 2017 Fed. Returns* Ex. 6, B. For tax purposes, Pioneer apportioned this gain to Montana and the other states in which it operated in the same manner described above, as it had done for many years. *Hood Aff.* Ex. 1, ¶ 11. Since Pioneer's estimated taxes paid in Montana and Big Sky's withholdings on behalf of Pioneer exceeded the amount due, Pioneer requested a refund of $597,907 on its 2017 Montana tax return. *Hood Aff.* Ex. 1, ¶ 11; *Pioneer 2013-2017 Mont. Returns* Ex. 9, B.

Audit and Appeal

18. In 2018, the Department completed an audit of Pioneer's Montana tax returns for the Audit Period. *DOR's Aug. 5, 2019 Final Determination* Exs. 18, D. The Department

determined that Pioneer was not permitted to apportion the income that Pioneer received from Big Sky. *Id.* Instead, the Department zeroed out the apportioned income and allocated all of the income Pioneer received from Big Sky during the Audit Period to Montana. *Id.*

19. On this basis, the Department denied Pioneer's refund request for 2017 and assessed additional tax, penalties, and interest for all tax years during the Audit Period. *DOR's Aug. 5, 2019 Final Determination* Exs. 18, D. The parties engaged in an informal review and attempted to resolve the matter, but the Department did not change its determination. *DOR's Aug. 5, 2019 Final Determination* Exs. 18, D; *Hood Aff.* Ex. 1, ¶ 12. On July 16, 2020, the Department issued its Final Determination, reaffirming its audit decision. *ODR July 16, 2020 Order* Ex. 20. The Department denied Pioneer's refund of $597,907 and assessed an additional $391,911 of tax, penalties, and interest (with additional interest accruing) against Pioneer. *DOR's Aug. 5, 2019 Final Determination* Exs. 18, D. The Department had concluded that Pioneer was prohibited from apportioning its income under the Compact because the Department determined Pioneer was not a taxpayer subject to an income tax and the "composite tax is not an income tax imposed upon a pass-through entity." *DOR's June 9, 2020 Letter* Ex. 21. Pioneer appealed the matter to the Office of Dispute Resolution in a final attempt to resolve the issue with the Department but was unable to do so. *Hood Aff.* Ex. 1, ¶ 12; *Notice of Referral to ODR* Ex. 19.

20. Pioneer timely appealed the Department's final agency decision to the Board on August 14, 2020. *Compl.* Dkt. 1. The parties filed cross-motions for summary judgment on April 9, 2021, followed by response and reply briefs. Oral argument was held on August 5, 2021, at the Board's office located at 560 N. Park Ave. in Helena. During the oral argument, Pioneer provided an analysis of the calculations the Department included in

its reply brief. The Department requested additional time to review and respond to these comments in writing, which the Board granted. The Department submitted that response on October 22, 2021. Both parties submitted proposed summary judgment orders on October 22, 2021.

JURISDICTION AND STANDARD OF REVIEW

21. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. *Mont. Const.* art. VIII, § 7; *Mont. Code Ann.* § 15-2-101. Pioneer filed a timely appeal of the Department's decision to MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter, which is a direct appeal to MTAB from a decision of the DOR. *Mont. Code Ann.* § 15-2-302.

22. This appeal is governed by the contested case provisions of the Montana Administrative Procedure Act. *Mont. Code Ann.* § 15-2-302(5).

23. Summary judgment shall be granted if the pleadings, discovery, and affidavits show that no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. *Mont. Code Ann.* § 25-20-56(c)(3).

24. The Board is authorized to decide matters on summary judgment. *Matter of Peila*, 249 Mont. 277, 280-81, 815 P.2d 139, 144-45 (1990). It determines undisputed facts at summary judgment in the same manner as a district court. "[I]t is inappropriate for a district court to enter 'findings of fact' when addressing a summary judgment motion. Rather, the courts simply should set forth the undisputed facts relevant to the legal issues raised, as well as any disputed facts which may preclude entry of summary judgment." *Wurl v. Polson School Dist. No. 23*, 2006 MT 8, ¶ 11, 330 Mont. 282, 127 P.3d 436.

25. "The moving party has the burden of establishing the absence of a genuine issue of material fact, and entitlement to judgment as a matter of law." *Smith v. Burlington Northern & Santa Fe Ry.*, 2008 MT 225, ¶ 10, 344 Mont. 278, 187 P.3d 639.

26. Once the moving party satisfies its burden to establish that no genuine issue of material fact exists, the opposing party must identify a genuine issue of material fact. *Lucas Ranch, Inc. v. Mont. Dep't of Revenue*, 2015 MT 115, ¶ 12, 379 Mont. 28, 347 P.3d 1249 (citing *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 39, 345 Mont. 12, 192 P.3d 186).

27. To identify a genuine issue of material fact, the opposing party must set forth specific facts and cannot rest upon the allegations or denials of the pleadings. *Lucas Ranch,* ¶ 12; Mont. Code Ann § 25-20-56(c)(3). If no issue of material fact exists, the ultimate determination is whether the facts entitle the moving party to judgment as a matter of law. *Id.*

28. "When there are cross-motions for summary judgment, a district court must evaluate each party's motion on its own merits." *Kilby Butte Colony, Inc. v. State Farm Mut. Auto Ins. Co.*, 2017 MT 246, ¶ 7, 389 Mont. 48, 403 P.3d 664. "'The fact that both parties have moved for summary judgment does not establish, in and of itself, the absence of genuine issues of material fact.'" *Hajenga v. Schwein*, 2007 MT 80, ¶ 18, 336 Mont. 507, 155 P.3d 1241 (quoting *Mont. Metal Bldgs, v. Shapiro*, 283 Mont. 471, 477, 942 P.2d. 694). "Consequently, in evaluating cross motions for summary judgment, [this Board] must evaluate each party's motion on its own merits." *Hajenga* at ¶ 19.

29. The Board's order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann.* § 15-2-302(6).

CONCLUSIONS OF LAW

30. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

31. The statutes and rules in effect for tax years 2013 - 2017 govern this matter.

32. The DOR is an agency of the executive branch of government created and existing under the authority of Mont. Code Ann. § 2-15-13. The DOR is charged with the administration and enforcement of the Montana Code Annotated, Title 15, including Chapter 30 (Individual Income Tax) and Chapter 1 (Tax Administration), which incorporates the Compact, as well as the ancillary Administrative Rules of Montana Title 42, Chapters 9 and 15.

33. "If, in the opinion of the [D]epartment, any return of a taxpayer is in any essential respect incorrect, it may revise the return." *Mont. Code Ann.* §15-30-2605(1).

34. "'Taxable income' means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter." *Mont. Code Ann.* §15-30-2101(32).

35. "[G]ross income means all income from whatever source derived, including (but not limited to) … [c]ompensation for services, including fees, commissions…." *26 U.S.C.* § 61.

36. "[A]djusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62," and includes certain additions. *Mont. Code Ann.* § 15-30-2110(1).

37. "Under Montana law, in computing net income, deductions are generally those permitted by 26 U.S.C. §§ 161 and 211. Mont. Code Ann. § 15-30-2131(1)(a)." *Robinson v. DOR*, 2012 MT 145, ¶ 13, 365 Mont. 336, 281 P.3d 218.

38. "Tax deductions are a matter of legislative grace and it is the taxpayer's burden to clearly demonstrate the right to the claimed deduction." *Robinson,* ¶12 (Quoting *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992)).

39. DOR is entitled to a "presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful." *Dep't of Revenue v. Burlington N. Inc.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976). However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).

40. The taxpayer bears the burden of proving the error of DOR's decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines, Inc.*, 149 Mont. at 353.

41. When construing a statute, it is the Board's role to "determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted." *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 332 P.3d 235; *Mont. Code Ann.* § 1-2-101. "Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." *Mont. Code Ann.* § 1-2-101.

42. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it." *Mont. Code Ann.* § 1-2-102.

43. "Rulemaking is a quasi-legislative power intended to add substance to the acts of the Legislature to complete absent but necessary details and resolve unexpected problems." *Mont. Indep. Living Project v. DOT*, 2019 MT 298, ¶ 32, 398 Mont. 204, 454 P.3d 1216 (citing *McGree Corp. v. Mont. P.S.C.*, 2019 MT 75, ¶ 34, 395 Mont. 229, 438 P.3d 326).

44. "When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration." *Dep't of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978) (citing *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).

45. "[W]hen a taxing statute is susceptible to two constructions, doubt should be resolved in favor of the taxpayer…[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer." *Western Energy Co. v. State, Dep't of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 990 P.2d 767.

46. However, the rules of statutory construction require the language of a statute to be first construed according to its plain meaning; if the language is clear and unambiguous, the court may not look beyond this and apply other means of interpretation. *Lucas Ranch,* ¶ 21; See also, *State v. Wolf,* 2020 MT 24, ¶ 15, 398 Mont. 403, 457 P.3d 218 (citing *State v. Gatts,* 279 Mont. 42, 47, 928 P.2d 114, 117 (1996)).

47. "Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority." *Bick v. State, Dep't of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).

48. "A valid and enforceable agency rule cannot exceed its enabling statute...." *Glendive Med. Ctr., Inc. v. Mont. Dep't of Pub. Health & Human Servs.*, 2002 MT 131, ¶ 29, 310 Mont. 156, 49 P.3d 560.

49. "[A]dministrative regulations interpreting the statute made by agencies charged with the execution of the statute are entitled to respectful consideration." *Dep't of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 266, 587 P.2d 1282, 1288 (1978).

50. The Board "may not amend or repeal any administrative rule of the department," but may enjoin its application if the Board concludes the rule is "arbitrary, capricious, or otherwise unlawful." *Mont. Code Ann.* § 15-2-301(5).

51. A small business corporation or S corporation is defined in Mont. Code Ann. § 15-30-3301 and authorized by 26 U.S.C § 1362. As an S corporation, Pioneer is subject to the Montana laws governing the taxation of S corporations, found in Title 15, Chapter 30 of the Montana Code Annotated.

52. S corporations are pass-through entities, meaning the income earned and losses incurred by the corporations pass through to and are realized by its shareholders. *Mont. Code Ann.* § 15-30-3302; *26 U.S.C.* § 1366. Although S corporations are generally not subject

to income tax at the state or federal level, they are required to file annual informational returns. *26 U.S.C.* 1363(a); *Mont. Code Ann.* § 15-30-3302.

53. An "S corporation may elect to file a composite return and pay a composite tax on behalf of participants." *Mont. Code Ann.* § 15-30-3312(1). Filing a composite return eases the administrative burden on both the Department and the owners by allowing an S corporation to file a single return on behalf of all electing owners, rather than requiring each owner to separately file and pay tax in Montana. This means if there are 21 shareholders participating in the composite election, there would generally be 20 fewer separate returns filed each year.

54. Under Mont. Code Ann. § 15-30-3312(4), once an entity elects to file a composite tax return and pay composite tax on behalf of its owners, the electing entity: "(a) shall remit the composite tax to the department; (b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return; (c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return; (d) shall make quarterly estimated tax payments and be subject to the underpayment interest as prescribed by 15-30-2512(5)(a) computed on the composite tax liability included in the filing of a composite return; and (e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant."

DISCUSSION

55. The question before the Board is a straightforward legal inquiry—whether Pioneer was permitted to apportion its income under the Compact during the Audit Period, as

reflected on Pioneer's originally filed returns. Alternatively, the Board has considered whether Pioneer was required to allocate the income it received from Big Sky to Montana, without apportionment, as reflected in the Department's assessment. There is no dispute as to whether or not S corporations may apportion and allocate their income in general. The Department's administrative rules in effect during the Audit Period recognize that pass-through entities apportion and allocate their income similar to C corporations. *Mont. Admin. R.* 42.15.120 (2013-2017).[1] Additionally, Form CLT-4S, Montana S Corporation Information and Composite Tax Return, shows separate lines to report apportioned income and allocated income, as can be seen on Pioneer's tax returns filed during the Audit Period. *Big Sky Publishing 2013-2017 P'ship Info. Return* Exs. 13-17. The Department's argument is that Pioneer may not apportion and allocate the subject pass-through income *under the Compact.*

Pioneer was authorized to apportion its income under the Compact

56. The Compact was drafted as a model law to assist member states in administering tax laws for businesses that operate in multiple states. In 1969, the Montana Legislature adopted the Compact, which is codified at Mont. Code Ann. § 15-1-601. Article I of the Compact states: "The purposes of this compact are to: (1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes; (2) promote uniformity and compatibility in significant components of tax systems; (3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration; (4) avoid duplicative taxation."

[1] This provision, as it relates to pass-through entities, is currently found at ARM 42.9.112 following an amendment to Department rules in 2018.

57. Article XII of the Compact states: "This compact shall be liberally construed so as to effectuate the purposes thereof."

58. Article III(1) of the Compact states: "Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the law of a party state...may elect to apportion and allocate...in the manner provided by the law of such state...or may elect to apportion and allocate in accordance with Article IV" of the Compact.

59. The Department argues the Compact does not apply based on its position that as an S corporation, Pioneer is not a taxpayer "subject to" an income tax. *DOR's Reply Br.* Dkt. 24, at 5-7.

60. The Compact defines the term "taxpayer" as "any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state." *DOR's Reply Br.* Dkt. 24, at 6; *Mont. Code Ann.* § 15-1-601 art. II(3). The Board finds that Pioneer and its owners fall within the broad definition of "taxpayer" which includes *any* corporation or person. To adopt the Department's definition would be to ignore the term "any," which is not a permissible interpretation of statute under *State v. Minett*, ¶ 12 and Mont. Code Ann. § 1-2-101. To correctly interpret the statute, we must construe it according to its plain meaning, which would be to give effect to, and not ignore, the term "any."

61. With regard to its argument that Pioneer is not "subject to" an income tax, the Department points to the general statement in Mont. Code Ann. § 15-30-3302(1) that states, "[e]xcept as otherwise provided...an S corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31." The Department includes language from (b) in its

argument. However, the Department ignores the fact that Mont. Code Ann. § 15-30-3302(1)(a), immediately preceding (b), uses similar language with regard to partnerships where it states "[e]xcept as otherwise provided...a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31." Yet the definition of "taxpayer" under Article II of the Compact specifically includes partnerships. *Mont. Code Ann.* § 15-1-601, art. II(3). This Board declines to narrowly read Mont. Code Ann. § 15-30-3302(1) in such a way as to preclude S corporations from apportioning their income under the Compact. Read as a whole, the statute does not support the Department's argument. This Board finds the plain meaning of the statute and terms as applied to this matter clear and unambiguous. However, if this Board were to find the statute or terms unclear or ambiguous, the Board would follow its directive to resolve doubt in favor of the taxpayer, which in this case and for this purpose would be Pioneer. *Western Energy Co.*, ¶ 10. Further, the purposes of the Compact cannot not be ignored. The Compact is to be liberally construed to effectuate its purposes, one of which is the promotion of uniformity and compatibility in significant components of tax systems. For these reasons, the Board finds the Department's reading of Mont. Code Ann. § 15-30-3302(1) and these terms improperly narrow.

62. The term "income tax" includes a "tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income." *Mont. Code Ann.* § 15-1-601 art. II(4). Both the individual income tax and the composite tax are measured by net income, and therefore fall within the broad definition of "income tax" in the Compact. *See Mont. Code Ann.* § 15-30-2103 (imposing individual income tax based "upon the taxable income of each taxpayer"); *Mont. Code Ann.* § 15-30-3312(2)(a)(i) (stating the composite tax is based on "income from all sources as determined for federal income tax purposes").

63. The Department argues that the election of Pioneer's participating owners to file a composite tax return and pay composite tax does not impose a separate income tax on Pioneer. *DOR's Reply Br.* Dkt. 24, at 3-6. Pioneer argues that the Department has applied this law in a hypertechnical manner, elevating form over substance. *Pioneer's Resp. Br.* Dkt. 19, at 4-6. This Board finds that although an election to file a composite tax return does not amount to the imposition of a separate tax liability upon a pass-through entity, the composite return and payment of the composite tax is made "on behalf of" the electing owners, and therefore Pioneer represents the interests of its participating owners in all matters relating to the composite tax. *Mont. Code Ann.* §§ 15-30-3302(1)(b), 15-30-3312. The composite tax is simply a convenient way for Pioneer to ensure the *income tax* is paid. Once the composite tax election was made, Pioneer was required to file a composite return, pay the composite tax, be responsible for assessments, represent its owners in appeals and refund claims, make estimated payments, and "retain powers of attorney executed by each" owner. *Mont. Code Ann.* § 15-30-3312(1), (4). Whether Pioneer is responsible for paying the composite tax on behalf of its owners or Pioneer's owners are ultimately responsible for paying tax individually, the *income tax* is due and owing and therefore the "subject to" requirement is met.

64. For the foregoing reasons, this Board finds that Pioneer was permitted to apportion its eligible business income under the Compact.

Apportionment and Allocation under the Compact

65. The Department argues that income derived from Big Sky's activities was generally Montana source income as defined by Mont. Code Ann. § 15-30-2101(18). However, a review of Form CLT-4S, Montana S Corporation Information and Composite Tax Return, indicates that total Montana source income is calculated by adding the income

apportioned to Montana using the three-factor apportionment formula to the income allocated to Montana for the year. *Big Sky Publishing 2013-2017 P'ship Info. Return* Exs. 13-17. If Pioneer was required to allocate Big Sky's income to Montana for each year during the Audit Period, then Big Sky's income would be Pioneer's Montana source income as the Department argues. However, if Big Sky's income was included in Pioneer's apportionment formula, then the appropriate calculations under the apportionment formula need to be completed to determine Pioneer's Montana source income for each year during the Audit Period. The amount of income sourced to Montana each year must be calculated by determining allocated and apportioned income.

66. Apportionment under the Compact was designed to address the determination of the proper income and state tax liability of multistate taxpayers. The Compact provides for a three-factor formula for multistate businesses to fairly apportion their income to the states in which they are taxed.

67. The apportionment factors selected by the Montana Legislature, and employed by Pioneer, include sales, property, and payroll factors. Article IV(9)-(17) of the Compact sets forth the calculations to be applied for each of the three factors to determine the percentage of Pioneer's business income apportionable to Montana.

68. Whether or not Pioneer used the correct apportionment factors is not at issue. The Department's argument focuses on the fact that both Big Sky and Pioneer are pass-through entities. The Department argues that Pioneer must allocate the income it received from Big Sky under ARM 42.9.107 to Montana. *DOR's Reply Br.* Dkt. 24, at 7-11. Montana's Administrative Rule 42.9.107 states: "...'operations income' means the income of a pass-through entity from its own operations or activities and 'flow-through

income' means its separately and nonseparately stated distributable share of income from other pass-through entities." It further states that each pass-through entity must separately determine whether its operations income is business or nonbusiness income (as defined in ARM 42.26.206), and then it must determine what part of its business and nonbusiness income is Montana source income. The rule goes on to state that the pass-through entity's flow-through income retains its original character as business or nonbusiness income and its character as Montana source income "regardless of how many other tiers of pass-through entities through which the income is passed" until it reaches a taxpayer. *Mont. Admin. R.* 42.9.107(1)-(3). The Department claims this Administrative Rule is necessary to preserve the source and character of the income and specifically applies to pass-through income because, as the Department argues, pass-through income is not specifically addressed by the Compact. *DOR's Reply Br.* Dkt. 24, at 7-11.

69. The Department's argument, however, fails to consider that electing to apportion and allocate under the Compact is an alternative to apportioning and allocating under other Montana state law. Pursuant to the Compact, a taxpayer may "elect to apportion and allocate the taxpayer's income in the manner provided by the laws of [Montana]...without reference to this [C]ompact or may elect to apportion and allocate in accordance with Article IV" of the Compact. *Mont. Code Ann.* § 15-1-601, art. III(1). The Compact further states that "[a]ny taxpayer having income from business activity which is taxable both within and without this state...shall allocate and apportion the taxpayer's net income as provided in this article." *Id.* at art. IV(2). The Department's administrative rules in effect during the Audit Period also recognized that taxpayers may elect to apportion under the Compact regardless of ARM 42.9.107. *Mont. Admin. R.* 42.15.120 (2013-2017). Montana's Administrative Rule 42.15.120 (2013-2017) states "[t]he reporting requirements in ARM 42.9.107 are in addition to and not in lieu of any

rules referred to in...the provisions of the Multistate Tax Compact as adopted in 15-1-601, MCA." Pioneer elected to file under the Compact.

70. As a matter of law, the Department's rules cannot change the Compact in such a way that ignores the intent of the Compact. "Administrative rules must be strictly confined within the applicable legislative guidelines. It is axiomatic in Montana law that administrative regulation cannot change a statute. Rules adopted by administrative agencies which conflict with statutory requirements or exceed authority provided by statute are invalid." *Mont. Indep. Living Project v. Dep't of Transp.*, 2019 MT 298, ¶ 31, 398 Mont. 204, 454 P.3d 1216 (citations omitted); see also *Bick v. Dep't of Justice*, 224 Mont. 455, 458, 730 P.2d 418, 421 (1986) (stating that administrative rules "must not engraft additional and contradictory requirements on the statute, and...must not engraft additional non-contradictory requirements on the statute which were not contemplated by the legislature").

71. The Department also cites federal tax law to support its argument that ARM 42.9.107 requires Pioneer to allocate, rather than apportion, the income it received from Big Sky. *DOR's Op. Br.* Dkt. 12, at 7-8. Specifically, the Department cites 26 USC § 702(b) and 26 USC § 1366(b) to support its position that the character of income derived by a lower-tier pass-through entity does not change. *Id.*

72. The Board disagrees with the Department's argument that these federal laws support the Department's position. These sections indicate that income, gain, loss, deduction, or credit retain their original character when included in the distributive share of a partner or shareholder. *26 U.S.C.* §§ 702(b), 1366(b). This means partners or shareholders report their distributive share of income as income, losses as losses, gains as gains, etc. on their own returns. Federal courts have read these statutes in the same way. "Each member's

share of the LLC's gains, losses, income, deductions, and credits will then appear on the member's individual tax return as if the member had realized them directly." *Marx v. Morris*, 2019 WI 34, ¶ 32, 386 Wis.2d 122, 925 N.W.2d 112. The Department did not argue that Pioneer changed the character of any of these items (gain, loss, income, deductions, and credits) but instead cites to these statutes to support its argument that Pioneer must allocate, rather than apportion, the income it received from Big Sky because these statutes would include "Montana source" as a "character" for purposes of reporting income. This Board disagrees with the Department's argument that 26 USC §§ 702(b) and 1366(b) supports its position that ARM 42.9.107 requires Pioneer to allocate, rather than apportion, the income it received from Big Sky. Federal law does not address state sourcing of income, nor does it address apportionment or allocation of income because there is no apportionment or allocation of income at the federal level.

73. While ARM 42.9.107 may be applicable in other situations not at issue here, this Board declines to read this rule in a manner that contradicts or adds to the Compact.

74. Pioneer also argues that it is unitary with its subsidiary companies, and as such it was entitled to apportion its multistate unitary business income under the unitary business principle. Pioneer argued that the United States Supreme Court has stated that the existence of a unitary business may be evidenced by three objective factors: (1) functional integration, (2) centralization of management, and (3) economies of scale of the multistate business. *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768, 781 (1992). "Because of the complications and uncertainties in allocating the income of multistate business to the several States, [the Court] permit[s] States to tax a corporation on an apportionable share of the multistate business carried on in part in the taxing state." *Id.* at 778.

75. Based on the undisputed facts, Pioneer operated a multistate media and publishing business through various subsidiaries, which shared centralized management, functional integration, and economies of scale through Pioneer. Pioneer owned the substantial majority interest in and controlled each of its subsidiaries. It oversaw their business operations. The operations of these companies were interrelated. Major functions of the businesses were centralized in different states and performed on behalf of all subsidiaries--accounts payable, payroll processing, daily and weekly newspaper page layouts, and accounts receivable processes. Corporate management was also involved in revenue and cost savings initiatives for all subsidiaries. Pioneer and its subsidiaries benefitted from large-scale contracts and the resulting cost savings, which Pioneer claims would not have been otherwise possible for any single subsidiary.

76. The Department does not dispute those facts. However, the Department argues that unitary principles apply only to C corporations and not S corporations. The Department, citing to Mont. Code Ann. § 15-31-141 and ARM 42.26.204, argues that the concept of unitary business is "a tax accounting concept used as a prerequisite for a C corporation to file a consolidated return." *DOR's Response Br.* Dkt. 19, at 4. Mont. Code Ann. § 15-31-141(2) states:

> Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. **For purposes of this section**, a 'unitary business operation' means one in which: (a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or (b) all of the

> corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year. (Emphasis added).

While Montana's Administrative Rule 42.26.204 states: "If a particular trade or business is carried on by a taxpayer and one or more unitary affiliated corporations owned greater than 50 percent, the taxpayer is required to file a "combined report" whereby the entire apportionable income of such trade or business is apportioned in accordance with 15-31-305 through 15-31-311, MCA." While this statute and this rule describe certain filing requirements for C corporations, neither state that the unitary business principle is exclusive to C corporations.

77. Pioneer countered, arguing that unitary business relationships can be found in entities other than C corporations, citing case law to demonstrate that numerous jurisdictions have applied unitary principles to passthrough entities. *Pioneer's Reply Br.* Dkt. 23, at 5-6 (citing *Malpass v. Mich. Dep't of Treas.*, 833 N.W.2d 272 (Mich. 2013); *Blue Bell Creameries, LP v. Roberts*, 333 S.W.3d 59 (Tenn. 2011); *Lee v. Or. Dep't of Rev.*, 14 OTR 460 (Or. Tax Ct. 1998); *Bunzl Distribution USA, Inc. v. Franchise Tax Bd.*, 27 Cal. App. 5th 986 (Cal. App. Ct. 2018)). Moreover, Pioneer argued that the U.S. Supreme Court has recognized this principle as the "'unitary business principle,' not the unitary C corporation principle." *Id.* at 4 (citing *MeadWestvaco Corp. v. Ill. Dep't of Revenue*, 553 U.S. 16 (2008); *Allied-Signal, Inc. v. N.J. Div. of Taxation*, 504 U.S. 768 (1992); *Container Corp. of Am. v. Franchise Tax Board*, 463 U.S. 159 (1983); *Mobil Oil Corp. v. Comm'r of Taxes of Verm.*, 445 U.S. 425 (1980)). Based on the arguments and evidence presented, this Board declines to read Mont. Code Ann. § 15-31-141 and ARM 42.26.204 as reserving the status of "unitary business" exclusively to C corporations and

agrees with Pioneer that that the unitary business principle may apply to businesses other than C corporations.

78. During oral argument for this matter, the Board inquired with the Department regarding its seemingly contradictory position before this Board in *Gannett Satellite Information Networks, Inc. v. Department of Revenue*. *MTAB Hrg. Transcr.* 30:15-31:8. In that matter, the Department prevailed in its argument that the taxpayers' companies were unitary because they were reported as a unitary group in Montana and other states and had common ownership, centralized management, and functional integration. *Order, Gannett Satellite Information Networks, Inc. v. Department of Revenue*, Docket No. CT-2003-5, at 6-9 (Mont. Tax App. Bd. May 16, 2007). In response to the Board's inquiry during oral argument for this matter, the Department defended its differing positions, stating the company at issue in *Gannett* was a C corporation and Pioneer is an S corporation, and S corporations cannot be unitary. *MTAB Hrg. Transcr.* 30:15-31:8.

79. The Department next argued that Pioneer does not rise to the level of a unitary business. *MTAB Hrg. Transcr.* 31:23-32:11. However, the Department offered no specific facts to contradict Pioneer's assertion, nor did it offer legal support for its position. Therefore, the Board concludes Pioneer operated a unitary business and was entitled to apportion the income it received from its subsidiary companies, and as such ARM 42.9.107 is not applicable in this situation.

Composite tax

80. Pioneer filed composite tax returns and paid composite tax on behalf of its owners for each year of the Audit Period.

81. The composite tax, which was calculated by and submitted to the Department by Pioneer on behalf of its participating shareholders, is the sum of each participant's individual composite tax liability, which is calculated separately for each participant starting with their share of the entity's income from all sources as determined for federal income tax purposes. *Mont. Code Ann.* § 15-30-3312(2). Each participant's share of income from all sources is reduced by the standard deduction and one exemption in lieu of other deductions or exemptions that the nonresident taxpayer may otherwise be entitled to claim if they were filing an individual income tax return. *Id.* The tax calculation mirrors the nonresident tax in Mont. Code Ann. § 15-30-2104, by first calculating the income, then applying the rates under Mont. Code Ann. § 15-30-2103, and then multiplying that amount by the composite tax ratio. The composite tax ratio is determined by dividing a numerator which is the sum of all Montana source income recognized by the entity, by a denominator which is the entity income from all sources.

82. The dispute regarding the composite tax is about which income to use in the numerator. Pioneer argues that since it is the electing entity, and not Big Sky, the composite ratio must be based on Pioneer's income attributable to Montana divided by Pioneer's federal taxable income, as follows:

$$\text{Composite Tax Ratio} = \frac{\text{Pioneer's income attributable to Montana}}{\text{Pioneer's federal taxable income}}$$

83. The Department argues the ratio should be based on Big Sky's income because Big Sky operated within Montana and reported generating only Montana source income. The Department argues that since Big Sky apportioned 100% of its income to Montana on its Montana Partnership Information and Composite Tax Return for each year from 2013-2017, it essentially directly allocated all of this income to Montana. *See Big Sky*

Publishing 2013-2017 P'ship Info. Return Exs. 13-17 (See line 19 on the return for each of these years respectively at P03157, P03241, P03297, P03342, P03390).

84. The evidence presented demonstrates that Big Sky earned more income than Pioneer's other subsidiaries operating in different states during the Audit Period. Some of the other subsidiaries operated at a loss in some years, thereby reducing Pioneer's overall federal taxable income each year. *Compare Big Sky Publishing 2013-2017 P'ship Info. Return* Exs. 13-17, A, at line 21 (2013: P03157, 2014:03241, 2015:03297, 2016:03342, 2017: 03390) and *Pioneer 2013-2017 Fed. and State Returns* Exs. 2-11, B, at line 14 (2013:00400, 2014:01489, 2015: 01967, 2016: 02361, 2017: 02992). When calculating the composite tax, the Department caps the numerator at 100% of federal income when there is income generated in Montana and losses incurred in another state. This means that a business would not pay tax on more than 100% of its federal income. For example, if a business reports federal income of $70,000, which is the result of $100,000 of income earned in Montana and a $30,000 loss in another, if the income earned in Montana is allocated to Montana, the composite ratio for the Montana tax return would be $70,000/$70,000 or 100% rather than $100,000/$70,000. If income is being apportioned, the different states apply their apportionment factors to the $70,000 to determine how much of the $70,000 is taxable in each state. The amount taxable in that state would be the numerator and $70,000 would be the denominator. Thus, the issue here is not with the composite ratio itself, but whether the numerator should be calculated based on the allocable income or the apportionable income.

85. If Pioneer apportions the income it received from its multistate subsidiaries across all states in which it operated, the amount of tax due to Montana is lower than it would be if it allocated Big Sky's income to Montana. Thus, this dispute between the parties regarding the correct income to use as the numerator in the composite tax calculation is

based on whether allocation or apportionment of the income it received from Big Sky is proper. Pioneer argues that by electing to follow the Compact it is required to apportion all its multistate business income, including that which it earned from Big Sky, among the various states in which it operates.

86. In its reply brief, the Department provided an example to demonstrate how apportioning income similar to the subject income can result in a dilution of income and underpayment of taxes. *DOR's Reply Br.* Dkt. 24, at 17-18. Pioneer countered by demonstrating that the Department's example failed to consider the income apportioned to the other state in the Department's hypothetical. *Pioneer's Oral Argument Power Point* Dkt. 30, at 6-7; *MTAB Hrg. Transcr.* 12:17-13:21. Pioneer's demonstration showed that in order to get a full picture of how income that is earned across multiple states is taxed, one must look at the reporting of income and payment of tax in each state at issue and not focus on what happens in only one state, as the Department did in its example. This Board was not persuaded by the Department's argument. Because this Board finds that Pioneer was entitled to apportion its multistate unitary business income, we find it unnecessary to further discuss the income tax consequences to Pioneer of allocating the income it received from Big Sky.

Constitutional arguments

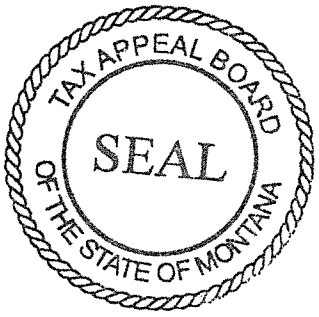
87. In light of the foregoing determinations of law, this Board finds it unnecessary to reach a decision regarding the Constitutional arguments raised by Pioneer.

ORDER

88. PIONEER NEWS GROUP CO. AND SUBSIDIARIES's motion for summary judgment is granted. Department of Revenue's motion for summary judgment is denied. The Department is ordered to reverse its final audit determination to reflect the findings of this opinion and order, to remove penalties and interest assessed as a result of the audit determination, and issue the refund requested by Pioneer for tax year 2017 with interest.

Dated this 20th day of January 2022.

David L. McAlpin, Chairman



Amie Zendron, Member

Daniel Zolnikov, Member

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2). The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §15-2-303(2).

Before The Montana Tax Appeal Board
PIONEER NEWS GROUP CO. AND SUBSIDIARIES v. STATE OF MONT., DEPARTMENT OF REVENUE

Certificate of Service

I certify that I caused a true and correct copy of the foregoing Final Decision to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on January 20, 2022, to:

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