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To: City of Three Forks, Ordinance Committee, Mayor
Date: September 9, 2015
RE: Business License Exceptions for Public Accountants and Real Estate Brokers, Realty Establishments 

SUMMARY

The City of Three Forks is statutorily prohibited from imposing a municipal business license fee on qualified public accountants. A “public accountant” as defined by Montana law and the Board of Public Accountancy, is a certified public accountant, a licensed accountant, or a person holding a practice privilege in the State of Montana. An enrolled agent of the Internal Revenue Service is not a public accountant according to Montana law. There is no statutory or regulatory prohibition against the imposition of a municipal business license fee for persons who do not qualify as a public accountant defined by the State of Montana.

The City of Three Forks is statutorily prohibited from imposing a municipal business license fee on real estate brokers and sales people. There is no statutory prohibition against the imposition of a municipal business license fee for a realty establishment doing business in the city. There is no statutory prohibition against the imposition of a municipal business license fee on property managers.

Public Accountants

Montana Code Annotated (“MCA”) § 37-50-316 prohibits “certificate(s), permit(s), [and] license fees...imposed as a condition upon the practice of public accountancy.” In order to qualify for the public accountancy exemption to the municipal business license fee, a person must be a practicing public accountant as defined by MCA § 37-50-101(10).

The “(p)ractice of public accounting” means performing or offering to perform, **by a person 1) certified under 37-50-302, MCA; 2) licensed under 37-50-303, MCA; or 3) holding a practice privilege under 37-50-325, MCA** for a client or potential client one or more types of services involving the use of accounting or auditing skills, including: (a) the issuance of reports or financial statements on which the public may rely; (b) one or more types of management advisory or consulting services; (c) the preparation of tax returns; or (d) furnishing advice on tax matters.

Thus, a public accountant exempt from municipal business licensing fees must either be:

- 1) certified by the State of Montana and the Board of Public Accountants,
- 2) licensed by the State and the Board, or
- 3) hold a practice privilege from a qualifying state recognized by the State and the Board.

The State of Montana recognizes the Board's authority to set the standards for qualifying as a public accountant. The Board also writes the rules ("ARM") that govern certification, licensing, and registration. According to the ARM and Montana statute, there are three ways a person can be recognized as a public accountant in Montana who are exempt from municipal business licensing fees.

First, a person could be a certified public accountant ("CPA") pursuant to MCA § 37-50-302. A CPA has taken the certified public accountant exam as required by the Board and holds a permit to practice as a CPA from the State. If a person is certified as a CPA and performs the types of services involving the use of accounting set forth in MCA § 37-50-101(10), he or she is exempt from municipal business licensing fees.

Second, a person could be a licensed public accountant ("LPA") pursuant to MCA § 37-50-303. An LPA has met one of two Board requirements: a) the LPA was a public accountant prior to his or her military service or, b) the LPA has completed the requisite portions of the certified public accountant exam. An LPA holds a permit to practice from the State. If a person is licensed as an LPA and performs the types of services involving the use of accounting set forth in MCA § 37-50-101(1), he or she is exempt from municipal business licensing fees.

Third, a person could hold a practice privilege pursuant to MCA § 37-50-325. A practice privilege holder¹ is a non-resident (i.e. a person whose principal place of business is not in Montana) who has qualified as a CPA in a different state that Montana recognizes has accountancy standards equivalent to our own. A practice privilege holder is treated the same as a CPA and an LPA. If he or she performs the types of services involving the use of accounting set forth in MCA § 37-50-101(1), he or she is exempt from municipal business licensing fees.

A question has been raised as to whether or not enrollment to practice before the IRS as an enrolled agent (EA) qualifies for the public accountancy exemption from municipal business license fees. Current Montana law and ARM regulations do not recognize EAs as public accountants. Therefore, EAs are not exempt from municipal business license fees.

Real Estate Brokers and Sales People

MCA § 37-51-312 prohibits "license fees or license tax(es)...imposed on a real estate broker or salesperson as a condition to the practice of the broker's or sales person's profession." A real estate broker, as defined by MCA § 37-51-102(4), is a person who negotiates, promotes, aids in, or conducts the sale, lease, or disposition of real estate. Real estate is simply a lease or any other interest in estate or land. A sales person, as defined by MCA § 37-51-102(20), is a person who is associated with a broker and who can sell, purchase, or negotiate for real estate. Current Montana law prohibits the imposition of an additional license fees or taxes on individual people who are licensed as real estate brokers or salespeople pursuant to MCA § 37-51-312(1).

Municipalities are not prohibited from imposing a municipal business license fee on realty establishments doing business within the jurisdiction of the municipality according to MCA § 37-51-312(2). A realty establishment is a business enterprise, such as a realty office like Berkshire

¹ "Practice privilege holder" means an individual who avails him or herself of the practice privilege. Admin. R. Mont. 24.201.301(25).

Hathaway.

Property managers are in the business of leasing or renting real estate. Unlike real estate brokers and sales people, property managers' business transactions do not transfer property title. Property managers are not included in the real estate broker and sales person exemption from municipal business license fees pursuant to Montana law.