

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

JUN 16 2017

Montana Tax Appeal Board

CASE No: PT-2017-6

JEM LLC,

Appellant,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**

Respondent.

**Findings of Fact,
Conclusions of Law, Order,
and Opportunity for Judicial
Review**

On May 23, 2017, the Montana Tax Appeal Board (MTAB) heard the appeal between JEM LLC (“JEM”) and the State of Montana, Department of Revenue (DOR). The only issue before the Board at that hearing was whether JEM timely appealed the DOR’s AB-26 determinations to the Yellowstone County Tax Appeal Board (YCTAB).

This Board affirms the YCTAB’s finding that JEM did not timely appeal the DOR’s AB-26 determinations to the YCTAB. Further, JEM failed to articulate a good cause basis for the YCTAB or this Board to hear its late filed appeals. JEM’s appeals to this Board, therefore, are denied for untimeliness and this Board will not address the merits of JEM’s appeals.

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FINDINGS OF FACT

1. JEM LLC is a business operated and represented by Jerry T. Ray.
2. The subject properties involved in this appeal are described as follows:
 - a. Billings Original Townsite, S33, T01 N, R26 E, Block 65, Lot 11 – 12, Billings, Yellowstone County, State of Montana, geocode 03-1033-33-3-25-07-0000.
 - b. Billings Original Townsite, S33, T01 N, R26 E, Block 37, Lot 18A, Amnd LTS 13-24 & Frac Vac N 21st, Billings, Yellowstone County, State of Montana, geocode 03-1033-33-3-27-30-0000.
3. In July 2015, JEM received the assessment notice for both properties. YCTAB Hrg. Transcr. 5:3 – 4 (February 15, 2017).
4. On December 2, 2015, JEM filed a “Request for Informal Classification and Appraisal Review” – also known as the AB-26 review¹ – pursuant to Mont. Code Ann. § 15-7-102 for both of the above properties. JEM sought a reduction of the DOR’s appraised values for both properties.
5. Because JEM requested its AB-26 reviews on December 2, 2015, they were filed beyond the statutory thirty days to be heard for the 2015 tax year. YCTAB Hrg. Transcr. 5:5 – 6; 11:13 – 25. As a result, the DOR

¹ See “Request for Informal Classification and Appraisal Review” form, available at <http://revenue.mt.gov/Portals/9/property/forms/AB26.pdf> (accessed on June 5, 2017). The top right corner of the form identifies the form by the initials AB-26.

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accepted JEM's AB-26 requests not for 2015, but instead for 2016; meaning for the second year of the two-year appraisal cycle. *Id.*

6. As part of the AB-26 review, on October 17, 2016, the DOR completed a site visit of both properties.
7. For geocode 03-1033-33-3-27-30-0000, on November 14, 2016, the DOR signed and mailed its AB-26 determination to JEM. DOR Ex. D. The DOR did not reduce the property value. *Id.*
8. For geocode 03-1033-33-3-25-07-0000, on November 17, 2016, the DOR signed and mailed its AB-26 determination to JEM. DOR Ex. B. The DOR did not reduce the property value. *Id.*
9. Both of the AB-26 determinations the DOR mailed to JEM were two pages: the first page announced the DOR's final determination and the second page explained JEM's right to appeal the "informal classification and appraisal review." DOR Ex. B and D; *See also* fn. 2.
10. On January 3, 2016, JEM appealed the DOR's AB-26 determination letters for both properties to the YCTAB.
11. The YCTAB held a hearing on February 15, 2017. Mr. Ray, along with his wife Connie Ray, were present on behalf of JEM. Both testified to the timeliness of their two appeals.
12. Before the YCTAB, Mr. Ray and Mrs. Ray testified as follows:

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- a. Mr. Ray admitted, as to the late filing date of his appeal that he “kinda put it off.” YCTAB Hrg. Transcr. 9:7.
 - b. When asked by a board member why he did not file his appeal in mid-December, Mr. Ray stated, “You know, that’s a good question. I think I’ve got 100 and some properties to keep up with and I have my wife is working with me trying to get it done, it’s a [sic] tough to keep up with this you know. Wasn’t done intentionally.” YCTAB Hrg. Transcr. 12:6 – 9.
 - c. Mr. Ray then asked the rhetorical question to his wife Mrs. Ray, “Why were you late on it? My secretary...haha.” YCTAB Transcr. 13:14. To which Mrs. Ray responded, “Why was I late?” YCTAB Hrg. Transcr. 13:15.
 - d. Mr. Ray did not provide any good cause basis for his late filing, even though the Board expressly asked Mr. Ray whether he had any recent health issues. YCTAB Hrg. Transcr. 12:10 – 13:8.
 - e. After the Board reached its decision, Mrs. Ray stated, “Now I know how it works, now I know how it works. I didn’t know how it worked before.” YCTAB Hrg. Transcr. 18:13 – 14.
13. The YCTAB dismissed JEM’s appeals for being untimely. In dismissing the appeals, the YCTAB found no good cause had been presented to equitably excuse JEM’s late filed appeals. YCTAB Hrg. Transcr. 13:16 – 14:15.
 14. JEM appealed the YCTAB’s decision to this Board.
 15. This Board held a hearing in this matter on May 23, 2017.
 16. The DOR was represented by attorney Nicholas Gochis.

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17. Mr. Ray represented JEM and appeared telephonically.
18. At the hearing, Mr. Ray testified on behalf of his company JEM. His wife, Connie Ray, also testified for JEM.
19. Mr. Ray did not submit any exhibits.
20. The following witness testified for the DOR:
 - a. Paula Montague, DOR area manager for Yellowstone County.
21. The DOR submitted the following five exhibits, which this Board admitted:
 - a. Exhibit A: Request for Informal Classification and Appraisal Review for property with the geocode 03-1033-33-3-25-07-0000 (filed December 2, 2015);
 - b. Exhibit B: AB-26 Determination Letter for property with geocode 03-1033-33-3-25-07-0000 (dated November 17, 2016);
 - c. Exhibit C: Request for Informal Classification and Appraisal Review for property with the geocode 03-1033-33-3-27-30-0000 (filed December 2, 2015);
 - d. Exhibit D: AB-26 Determination Letter for property with geocode 03-1033-33-3-27-30-0000 (dated November 14, 2016);² and

² At the hearing when the DOR initially introduced exhibit D, the exhibit had only one page. This differed from Exhibit B which has two pages. MTAB Hrg. Transcr. 15:9 – 16. Page two of Exhibit B informs the taxpayer of his or her appeal rights.

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- e. Exhibit E: Property Tax Appeal to Yellowstone County Clerk and Recorder (filed January 3, 2017).
22. At the beginning of the hearing, this Board informed the parties it would first need to decide whether JEM's appeal was timely filed or if good cause existed for it being late filed. MTAB Hrg. Transcr. 3:24 – 4:3.
23. The Board informed the parties if it overruled the YCTAB's decision, the Board would then set another hearing date to address the merits of JEM's appeal. *Id.*
24. As the appellant, Mr. Ray presented his case first. MTAB Hrg. Transcr. 4:19 – 25 (May 23, 2017).
25. Mr. Ray admitted he had previously appealed cases and asserted in the past the YCTAB accepted his late filed appeals and heard the merits of his appeal. MTAB Hrg. Transcr. 6:15 – 7:16, 23:2 – 5, 25:23 – 24, 27:21 – 28:6.

Id. At the hearing, the DOR added the second page to the exhibit. MTAB Hrg. Transcr. 15:15 – 23. Ms. Montague also testified the original AB-26 determination which it mailed to Mr. Ray on November 14, 2016 included the second page informing him of his appeal rights. MTAB Hrg. Transcr. 16:17 – 21. This Board finds the DOR provided sufficient evidence Mr. Ray, in receiving the AB-26 determination for property with geocode 03-1033-33-3-27-30-0000, received both the first and second page and thus received notice of his appeal rights for the property.

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26. Mr. Ray stated he had undertaken the AB-26 review for twelve properties in 2015. MTAB Hrg. Transcr. 23:23 – 24:2. Mr. Ray stated the property values of eight of those properties had been reduced during their respective AB-26 reviews. MTAB Hrg. Transcr. 24:1 – 6.
27. When Mr. Ray received the AB-26 determination letters for the two properties at issue here, Mr. Ray stated “and some way or another we overlooked two of them here. And I have no idea why that took place.” MTAB Hrg. Transcr. 6:22 – 23.
28. Mrs. Ray testified the AB-26 determination letters were received and he “just threw it in the basket and thought maybe I would take care of it from there. If you know what my day was like, I mean, it just got lost in the shuffle.” MTAB Hrg. Transcr. 25:15 – 16.
29. As for good cause for his late filing, Mr. Ray stated his wife, due to his daughter getting married and no longer helping him manage his properties, had been overwhelmed which resulted in the appeal being filed late. MTAB Hrg. Transcr. 6:17 – 20, 23:3 – 4, and 24:10 – 16.
30. Mr. Ray, in his closing arguments, then stated “well, the reason I think we were late is we were busy . . . It just happened. It got moved away into a basket of mail . . . [I] could lay a BS story about whatever being late, but it happened and here we are and I’m sorry.” MTAB Hrg. Transcr. 28:5 – 13, 28:20 – 22.

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CONCLUSIONS OF LAW

31. This Board has jurisdiction to decide whether the YCTAB erred in finding JEM's appeals were late filed. Mont. Code Ann. § 15-2-301; *see also BNSF Ry. Co. v. Cringle*, 2010 MT 290 ¶ 18, 359 Mont. 20, 25, 247 P.3d 706, 710 ("Procedural time bars . . . remain subject to constitutional review and equitable principles.").
32. "A final decision or order adverse to a party in a contested case must be in writing and must include findings of fact and conclusions of law." Mont. Admin. Reg. 1.3.224.
33. Mont. Code Ann. § 15-2-301(5) states, "in connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision."
34. Mont. Code Ann. § 15-7-102(3)(a) states
If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an informal classification and appraisal review by submitting an objection on written or electronic forms provided by the department for that purpose.

The above informal appraisal review is referred to as the AB-26 review based on the title of the form used by the DOR.

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35. After the taxpayer receives the DOR's AB-26 determination – i.e. the DOR's final finding provided to the taxpayer at the conclusion of the AB-26 review – Mont. Code Ann. § 15-15-102(4) provides,

A taxpayer who receives an informal review by the department of revenue as provided in 15-7-102(3) may appeal the decision of the department of revenue to the county tax appeal board as provided in 15-7-102(6). The taxpayer may not file a subsequent application for reduction for the same property with the county tax appeal board during the same valuation cycle.

36. Regarding the taxpayer's right to appeal the AB-26 determination to the county tax appeal board, Mont. Code Ann. § 15-7-102(6) states

If a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, **must be filed within 30 days from the date on the notice of the department's determination.** *Emphasis added.*

37. The requirement to file an appeal “30 days from the date on the notice of the department's determination” is known as a period of limitation. “Periods of limitation are scattered throughout the Montana Code Annotated.” *Cringle*, 2010 MT at ¶ 17, 359 Mont. at 24, 247 P.3d at 710.

38. Periods of limitation exist to advance “the cause of justice by bringing predictability to [the legal] process.” *Forsythe v. Leydon*, 2004 MT 327, ¶ 9, 324 Mont. 121, 102 P.3d 25. “Generally, a litigant who properly

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raises a procedural time bar may expect the time bar to be applied regularly and consistently.” *Cringle*, 2010 MT ¶¶ 17-18.

39. “Good cause for such relief [from a period of limitation] requires a [party to present evidence of a] legally sufficient reason.” *BNSF Railway Company v. Cringle*, 2012 MT 143, ¶ 21, 365 Mont. 304, 311, 281 P.3d 203, 207. In the context of a Human Rights Act’s appeal, the Montana Supreme Court ruled a party asserting a good cause exception for a late filed appeal must show the party “acted with reasonable diligence to preserve their legal rights but [the party was] prevented from doing so by circumstances reasonably beyond their control.” *Id.* at ¶ 22; *contrast with Weidow v. Uninsured Employers’ Fund*, 2010 MT 292, 359 Mont. 77, 246 P.3d 704.
40. Here, the DOR’s AB-26 determinations were mailed on November 14, 2016 and November 17, 2016. *See* DOR Exhibits B and D. JEM had until December 14, 2016 and December 17, 2016 to appeal the DOR’s AB-26 determinations to the YCTAB. Mont. Code Ann. § 15-7-102(6).
41. Instead, JEM appealed the AB-26 determinations for both properties on January 3, 2017.
42. JEM filed both appeals, 17 days and 20 days respectively, past the statutory 30-day period of limitation. DOR Exhibit E; Mont. Code Ann. § 15-7-102(6).

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43. The Board fails to find a good cause basis for hearing JEM's late filed appeals. At the hearing, JEM failed to present evidence it had been "reasonably diligent" in "preserving [its] rights" and that its appeals were filed late due to "circumstances reasonably beyond [its] control." See MTAB Hrg. Transcr. 6:17 – 20, 23:3 – 4, 24:10 – 16, 28:5 – 13, and 28:20 – 22. Therefore, JEM did not present any evidence of an appropriate good cause basis for either the YCTAB or this Board to hear the merits of its late filed appeals. *Id.*

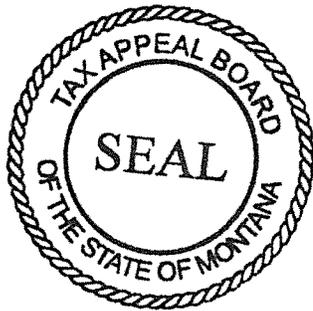
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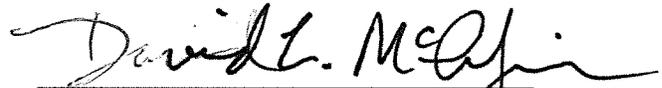
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ORDER

44. This Board affirms the YCTAB's decision finding JEM's January 3, 2017 appeals were late filed and no good cause basis exists to accept and hear the merits of JEM's late filed appeals.
45. Consistent with the DOR's AB-26 determinations, this Board orders the following for the remainder of this appraisal cycle:
- a. The property identified by geocode 03-1033-33-3-25-07-0000 is valued at \$119,175.
 - b. The property identified by geocode 03-1033-33-3-27-30-0000 is valued at \$183,340.

Ordered this day 16th of June, 2017.




David L. McAlpin, *Chairman*
MONTANA TAX APPEAL BOARD


Stephen A. Doherty, *Member*
MONTANA TAX APPEAL BOARD


Valerie A. Balukas, *Member*
MONTANA TAX APPEAL BOARD

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).

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on June 16, 2017 to:

Jerry T. Ray
2646 Grand Ave., Suite 1
Billings, MT 59102

Nicholas J. Gochis
Montana Department of Revenue
Legal Services Office
P.O. Box 7701
Helena, MT 59604-7701



Lynn Cochran, Admin. Paralegal
MONTANA TAX APPEAL BOARD