

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

JUL 25 2018

EASTERN MONTANA HUMANE
SOCIETY,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

Montana Tax Appeal Board

CASE No: SPT-2018-7

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND NOTICE OF
OPPORTUNITY FOR JUDICIAL
REVIEW

Before the Montana Tax Appeal Board, Eastern Montana Humane Society is appealing the State of Montana, Department of Revenue's (DOR) decision to deny their requested property tax exemption.

This Board held a hearing on May 2, 2018.

For the reasons provided below, this Board denies Eastern Montana Humane Society's appeal.

ISSUES TO BE DECIDED

1. Whether the DOR improperly denied the Eastern Montana Humane Society's charitable use property tax exemption.

FINDINGS OF FACT

2. The land involved in this appeal is described as follows:

A tract of land located in the NE ¼ SE ¼ of Sec. 27, Two 8 North, Rane 59 East, Fallon County, Montana, now known as Lot 1 of the Humane Subdivision to Fallon County; geocode 39-1752-27-4-01-0000.

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3. The land is located about “five miles northwest” of Baker, Montana. DOR Ex. F.
4. On July 10, 2006, the Eastern Humane Society applied for a real property tax exemption. MTAB Hrg. 8:45 – 9:03; 30:40 – 30:46; DOR Ex. D.
5. On March 16, 2007, the DOR sent a letter to the Eastern Montana Humane Society which granted the following real property tax exemption:

. . . under 15-6-201(2)(b)(iii), MCA, up to 15 acres of vacant land owned by a charitable organization that is not used for a charitable purpose is entitled to property tax exemption for up to 8 years while it is being developed for the charitable use. If the property has not been converted to a charitable use within 8 years, or if it is sold or transferred before it is placed in a charitable use, it will be placed on the tax roll. The owner of the property will then be required to pay the current years taxes and an amount equal to the current years taxes time the number of years the property was exempt under the statute. DOR Ex. E; MTAB Hrg. 31:54 – 32:05; 33:48 – 34:09.
6. On or about 2007, Eastern Montana Humane Society added improvements to the land for its animal shelter. MTAB Hrg. 5:40 – 5:47; 7:50 – 8:35; DOR Ex. B. The shelter consisted of “an unfinished building and outdoor kennels for the dogs, and an adjoining mobile home for the cats.” DOR Ex. F.
7. In 2010, the animal shelter was condemned by Fallon County due to “unacceptable” conditions and the inability to remedy the shelter’s various deficiencies. MTAB Hrg. 5:48 – 6:02; 6:50 – 6:55; DOR Ex. F.

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8. Since 2010, the Eastern Montana Humane Society has not reopened its animal shelter. MTAB Hrg. 6:20 – 6:48.
9. Despite the 2010 condemnation, the property’s title remained with the Eastern Montana Humane Society. MTAB Hrg. 11:25 – 12:05.
10. Due to statutory changes, on December 4, 2015, the DOR sent a form letter to all tax-exempt property taxpayers, including the Eastern Montana Humane Society, informing them it was “time to reapply for [their] nonprofit property tax exemption.” DOR Ex. A; MTAB Hrg. 35:39 – 35:48.
11. As a result, On February 22, 2016, the Eastern Montana Humane Society filed a “Real Property Tax Exemption Application” with the DOR. DOR Ex. B.; MTAB Hrg. 37:20 – 37:22. In the application, the Eastern Montana Humane Society stated the property was not currently being used as an animal shelter, but the shelter’s buildings will be repaired, and the property will return to its charitable use in the future. DOR Ex. B; MTAB Hrg. 41:40 – 41:58.
12. On December 15, 2017, the DOR completed its review of the Eastern Montana Humane Society and issued a final decision denying the property tax exemption. DOR Ex. C. The DOR denied the Eastern Montana Humane Society’s requested property tax exemption because the “Property does not meet the use requirements of 15-6-201, MCA.” *Id.*; MTAB Hrg. 50:25 – 50:31.

MTAB Hearing

13. On January 11, 2018, Eastern Montana Humane Society appealed the DOR’s decision to this Board.
14. On May 2, 2018, this Board held a hearing.

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15. Lisa Passmore represented the Eastern Montana Humane Society. She appeared telephonically. She called no witnesses and admitted no exhibits at the hearing.
16. Nicholas Gochis represented the DOR. The following witnesses testified:
 - a. Linda Sather, a DOR management analyst; and
 - b. Lisa Rieger, a DOR appraiser, who appeared telephonically.
17. The DOR submitted and this Board admitted the following exhibits at the hearing:
 - a. DOR Ex. A: Property tax exemption letter dated December 4, 2015;
 - b. DOR Ex. B: Real property tax exemption application received February 22, 2016;
 - c. DOR Ex. C: Property tax exemption letter dated December 15, 2017;
 - d. DOR Ex. D: Application for real property tax exemption received July 10, 2006;
 - e. DOR Ex. E: Property tax exemption letter dated March 16, 2007; and
 - f. DOR Ex. F: Billings Gazette newspaper article dated July 13, 2010.
18. Ms. Passmore admitted the property is not currently being used as an animal shelter and that several buildings need significant repairs so the shelter can reopen. MTAB Hrg. 5:58 – 6:12; 9:50 – 10:01; 16:40 – 17:50. However, Ms. Passmore argued the Eastern Montana Humane Society is a non-profit organization, that it still owns the property, and the only use for the property will be for a non-profit purpose as an animal shelter. MTAB Hrg. 10:04 – 10:45. Ms. Passmore testified that the Eastern Montana Humane Society has remained a non-profit organization and has not lost its non-profit status. MTAB Hrg. 14:18 – 14:26.

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19. The DOR testified in 2015 there were amendments to MCA § 15-6-231 when the legislature passed HB 398. When HB 398 became law, it required the DOR to review all tax-exempt properties throughout Montana and determine if they qualified as tax-exempt under the new version of MCA § 15-6-231. MTAB Hrg. 35:49 – 35:56. As a result of these statutory changes, the DOR sent the Eastern Montana Humane Society a letter in December 2015 requiring them to reapply for a property tax exemption. MTAB Hrg. 36:53 – 37:19.
20. The DOR testified it conducted site visits of the Eastern Montana Humane Society property on November 14, 2016, January 22, 2018, April 25, 2018, and April 30, 2018. MTAB Hrg. 20:58 – 21:27; 23:10 – 23:24. The DOR testified during its site visits, it saw no employees, no animals, the property had overgrown grass, and the buildings were all in poor condition; nothing indicated the property was being used as an animal shelter. MTAB Hrg. 21:40 – 22:55; 23:30 – 24:18. During the last site visit, the DOR testified the condition of the property had not changed and there was no evidence the property was being repaired or about to reopen as an animal shelter. MTAB Hrg. 23:30 – 26:20.
21. According to the DOR, because the property was not being used for its charitable purpose on January 1st of the tax year and there was no evidence the property was going to be used for its charitable purpose in a reasonable amount of time, the DOR rejected the Eastern Montana Humane Society's requested tax exemption. MTAB Hrg. 29:25 – 30:13; 39:09 – 42:38; 45:43 – 46:06; 48:50 – 48:58; DOR Ex. C.
22. The DOR testified that Eastern Montana Humane Society can reapply each year for the property tax exemption, but to be granted the

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exemption the property must be in charitable use by January 1st of the tax year in which they are applying for the exemption. MTAB Hrg. 50:32 – 51:20.

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

CONCLUSIONS OF LAW

24. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
25. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. MCA § 15-2-302.
26. The granting of a property tax exemption is a matter of grace and not a right, and so the legislative language is to be strictly and narrowly construed. *Gary Drilling Co. v. Dept. of Revenue*, 250 Mont. 313, 318, 820 P.2d 428, 432 (Mont. 1991); *BA Props. V. Gov't of the United States V.I.*, 299 F.3d 207, 210 (3rd Cir. App. 2002).
27. The person claiming exemption from taxation has the burden to show that property claimed to be exempt belongs to a class which is specifically exempt. *See Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 175, 103 S. Ct. 2933, 2945, 77 L. Ed. 2d 545 (1983); *Poorman v. State Bd. of Equalisation*, 99 Mont. 543, 45 P.2d 307 (1935); *In re Miller Land & Livestock Co.*, 56 F. Supp. 34 (D. Mont. 1944).
28. MCA § 15-6-201(1)(i) states the following property is tax exempt:
- [S]ubject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public

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charity if the property is directly used for purely public charitable purposes. *Emphasis added.*

29. MCA § 15-6-231 states:

(1) Owners of real property shall apply to the department for a property tax exemption under 15-6-201(1)(b), (1)(e) through (1)(g), (1)(i), (1)(k), (1)(l), (1)(n), and (1)(o), 15-6-203, 15-6-209, 15-6-221, and 15-6-227.

(2) The department shall administer the provisions of subsection (1) by requiring real property owners or entities to submit:

(a) a renewal application and the accompanying fee provided for in 15-6-233 for each real property that is receiving tax-exempt status on April 30, 2015; and

(b) any further information deemed necessary by the department as established by rule for the purpose of making a determination of continued eligibility for tax-exempt status.

(c)

(i) The initial renewal application must be submitted to the department no later than March 1, 2016. Subject to subsection (2)(c)(ii), the department shall require uniform renewal applications to be submitted on a cyclical basis as established by rule, and cyclical review must occur at least every 6 years.

(ii) A real property owner or entity that received a new exemption within 2 calendar years of the uniform renewal application deadline is not required to submit a renewal application during the property's first review cycle.

(3) The department shall review the information provided and shall approve or deny the application for exemption. If the department determines that the real

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property or a portion of the real property is no longer eligible for a property tax exemption, it shall send the owner or entity claiming the exemption a notice of the real property or portion of the real property that is subject to loss of eligibility by posted mail, by e-mail, or electronically. The owner or entity may seek review of the department's final determination with the state tax appeal board.

(4) The department shall provide public notice to real property owners or entities for which it has a last-known address of their obligation to reapply for tax-exempt status under the provisions of subsection (2) by:

(a) sending through posted mail, by e-mail, or electronically a notice to real property owners or entities for which it has a last-known address; and

(b) publishing notices on its website and in publications of general circulation in Montana.

(5) The department shall establish uniform deadlines for owners or entities to reapply for tax-exempt status while maintaining consistency, uniform standards, and an orderly review process. The department shall consider the timeframe for certification of taxable value to taxing authorities under 15-10-202 when it establishes deadlines under this section.

(6) The department may grant a reasonable extension of time for a real property owner to comply with this section whenever, in its judgment, good cause exists.

30. Regarding "use for purely public charitable purpose," ARM 42.19.506 states:

(1) For property tax exemptions which require a use test, the following criteria apply:

(a) the applicant must state the actual or proposed use of the property in the form of an affidavit or letter;

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(b) the applicant shall provide supporting documentation for the stated actual or proposed use of the property;

(c) examples of supporting documentation include, but are not limited to:

(i) site plans;

(ii) soil surveys;

(iii) building permits;

(iv) sewer permits;

(v) environmental studies;

(vi) requests for zoning changes;

(vii) architectural planning;

(viii) grant applications for construction;

and

(ix) physical inspections of the property by the local Department of Revenue staff;

and

(d) the ratio of the exempt to non-exempt use is used to determine the portion of the property that will receive the exemption.

(2) The documentation shall be sufficient to demonstrate that the property is either currently in, or will be put to, the stated use within a reasonable time period.

(3) An example of the application of the use test in (1) is when 25 percent of a building was used for educational purposes in the current year and the remainder of the building was used for commercial purposes. The applicant owns the property on January 1 and applies for an exemption on March 1 of the current year. For the current year and until the use changes, the property receives a 25% exemption for the land and the building.

(4) If the use of a property that is exempt because it has met a prior use test changes during the year, the exemption for the property is reviewed and the exemption adjusted accordingly on January 1 of the tax year following the change in use.

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(5) This rule applies to exemptions that require an application for exemption, which includes properties listed in 15-6-201, 15-6-203, and 15-6-209, MCA.

31. Eastern Montana Humane Society failed to meet their burden of proof showing their property should be deemed tax exempt for the current tax year. The evidence presented showed the Eastern Montana Humane Society's property is not currently being used as an animal shelter. Furthermore, the evidence presented showed that given the condition of the property, it is not going to be used as an animal shelter in a reasonable amount of time. Based on the statutes and corresponding regulations reviewed above, the DOR properly denied the Eastern Montana Humane Society's property tax exemption application.
32. As the testimony at the hearing revealed, the Eastern Montana Humane Society can reapply for a tax exemption once the property is returned to its intended charitable use. Therefore, this Board's decision does not prevent the Eastern Montana Humane Society from reapplying for a property tax exemption in the future.

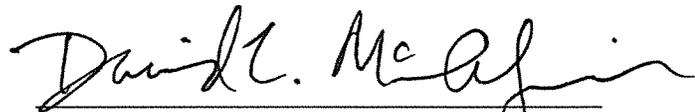
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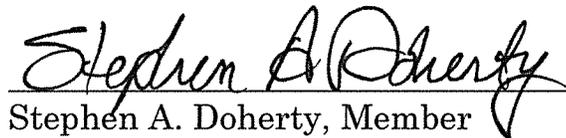
ORDER

1. Eastern Montana Humane Society's appeal is denied.
2. This Board affirms the DOR's December 15, 2017 final decision denying the Eastern Montana Humane Society's requested property tax exemption.

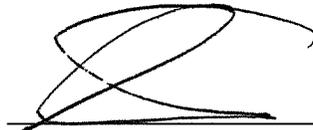
Ordered July 25th, 2018.



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. MCA § 15-2-303(2).

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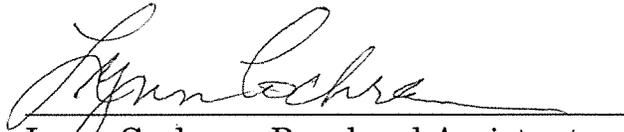
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Certificate of Service

I certify that I caused a true and correct copy of the foregoing *Scheduling Order* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on July 25, 2018 to:

Eastern Montana Humane Society
Box 1286
Baker, MT 59313

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


Lynn Cochran, Paralegal Assistant
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