

THE MONTANA TAX APPEAL BOARD

JAMES and SHANNON HADLEY,)	
)	
Appellants,)	DOCKET NO. IT-2014-4
)	
-vs-)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
THE DOR OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

Statement of the Case

This case comes to this Board through a direct appeal by Taxpayers James and Shannon Hadley from an adverse decision of the Office of Dispute Resolution (ODR) of the Department of Revenue (DOR) dated September 29, 2014. A hearing in front of this Board was held on January 27, 2015. James Hadley represented Taxpayers, and testified on his own behalf. Tax Counsel Elizabeth Roberts, Field Audit Unit Manager Douglas Peterson, and DOR Auditor Sylvia Headley represented the DOR. By agreement of the parties, the ODR decision and transcript were considered by this Board. The Board, having fully considered the testimony, exhibits, evidence, and all matters presented, finds and concludes as follows:

Issue

The issue involves adherence to the 30-day deadline prescribed in ARM 42.2.510 for responding to the first Statement of Account (SOA), and whether the Taxpayers' untimely objection should be allowed based on reasonable cause under ARM 42.2.510 and 42.3.105.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present oral and documentary evidence.
2. Many of the facts are not in dispute and will be taken from the September 29, 2014 Findings of Fact, Conclusions of Law, and Order of the DOR's Office of Dispute Resolution Hearing Examiner, Laura Cunningham (ODR decision).
3. In a letter dated January 3, 2014, Auditor Sylvia Headley informed the Hadleys that the DOR was conducting a review of the energy conservation installation credit claimed on their 2011 Montana individual income tax returns. In order to verify the credit, the DOR requested additional information about their expenditure on the residential HVAC system they installed, including receipts, brand names and model numbers, and efficiency ratings. The last two paragraphs stated:

Please send the requested information by February 2, 2014. Please be aware, if we do not receive the information, we may disallow this credit and make adjustments to your tax return. If appropriate, additional tax, interest, and/or penalties may be assessed.

I will be happy to assist you if you have any questions. Please contact me at the telephone number or address shown below.

ODR decision ¶2.

4. Auditor Headley sent a second inquiry letter dated February 5, 2014, in which she repeated her information request regarding the energy conservation installation credit claimed on the Hadley's 2011 individual income tax returns. The letter also cautioned the Taxpayers that if they did not respond by March 7, 2014, the DOR may disallow claimed amounts for lack of verification. ODR decision ¶3.
5. On March 13, 2014, Auditor Headley issued identical adjustment letters to James (Jim) and Shannon Hadley disallowing the Hadley's energy credit. Under the "Explanation of Adjustment(s)" was the text, "No documentation was submitted to support the deduction." Enclosed with the letter was a Statement of Account (SOA) showing the following tax, penalties and interest were due and owing by Jim Hadley, and Shannon Hadley, respectively:

Filing Period	Net Liability	Interest	Late Payment Penalties	Total Amount
2011	\$500.00	\$70.96	\$60.00	\$630.96
2011	\$499.00	\$70.74	\$59.90	\$629.64

The letter also set out objection procedures, and stated in relevant part:

You will need to send us your written objection by April 12, 2014. If we do not receive your written objection by this date, you will lose your right to appeal our adjustments. For your convenience, you can use our Request for Informal Review form (APLS101F), available online at revenue.mt.gov. You can send us your written objection electronically to SOAObjections@mt.gov or by mail to SOA Objections, PO Box 7149, Helena, MT 59604-7149.

ODR decision ¶4.

6. On April 2, 2014, the DOR again mailed separate SOAs to each Taxpayer setting forth the total amount the DOR audit determined was due and owing for the 2011 tax year. DOR Exhibits E & F.
7. On May 22, 2014, the DOR's Accounts Receivable and Collections Unit sent the Helena, Montana, Postmaster information requests, seeking to verify whether the DOR was sending mail to the correct address listed for the Hadleys. ODR decision ¶5.

8. On June 2, 2014, the DOR again mailed separate SOAs to James and Shannon Hadley setting forth the total amount the DOR audit determined was due and owing for the 2011 tax year. ODR decision ¶6.
9. In a letter dated June 5, 2014, the DOR's Accounts Receivable and Collections Unit sent a letter to the City of Helena's personnel office, requesting contact information verification for James Hadley. The letter listed the same address that was on the information request sent to the Postmaster. ODR decision ¶7.
10. An identical information request, also dated June 5, 2014, was sent to the State Compensation Insurance Fund Human Resources Division in Helena, Montana, seeking address verification for Shannon Hadley. The letter also depicted the same address as listed on the information request to the Postmaster. ODR decision ¶8.
11. The Hadleys submitted a Request for Informal Review, Form APLS101F, along with three pages of invoices to the DOR on June 16, 2014. In the space provided for Taxpayers to state their basis for objection was the text, "Please review invoices provided." ODR decision ¶9.
12. Field Auditor Unit Manager Douglas Peterson responded to the Hadley's Request for Informal Review on June 18, 2014. He stated that although he had reviewed their request to consider the additional information, he agreed with Auditor Headley's adjustments to their 2011 Montana individual income tax returns. Mr. Peterson also stated in relevant part:

I have reviewed your account and determined that you did not file a timely objection to the audit assessment. Administrative Rules of Montana (ARM) 42.2.510(2) and 42.2.613 (19) state that a request for informal review or a written objection to the Statement of Account (SOA) must be filed with the DOR within 30 days from the date of the first SOA; and that failure to file a written objection within the 30 days shall be deemed an admission that the customer agrees the debt stated in the SOA is due and owing. Your first notice was sent March 13, 2014. Your deadline to file an objection was April 14, 2014. Additional statements were sent April 2nd, May 1st, and June 2nd, 2014. Your request for informal review was received June 17, 2014. Therefore, you have missed your deadline to appeal and to have additional information considered.

The letter also set out appeal procedures available to Taxpayers when protesting an informal review determination, and enclosed Form APLS102F, notice of referral, for that purpose. ODR decision ¶10.

13. On June 26, 2014, the Office of Dispute Resolution received a Form APLS102F dated June 20, 2014, from the Taxpayers. Under the basis for objection was the following text:

Letters don't state what we are supposed to appeal.

Paid my taxes for 2011.

Have receipts for HVAC system.

Didn't understand what the bill was for.

ODR decision ¶11.

14. ODR issued an Initial Conference Report and Order which scheduled a September 15, 2014, hearing to determine the issue of the timeliness of the Hadleys' response and corresponding dates for the exchange of exhibits. At the hearing in front of this Board, Mr. Hadley testified that he did not have copies of the DOR Exhibits during the September 15, 2014 ODR Hearing. Mr. Hadley produced a copy of the Initial Conference Report and Order which stated "should the parties wish to refer to any supporting documents during the hearing that are relevant to the arguments they intent to raise, they shall provide those documents to this Office and each other no later than Wednesday September 10, 2014." Hadley Exhibit 1.
15. Mr. Hadley produced a USPS Delivery Notice Reminder dated September 11, 2014, showing that the mail carrier had been unable to deliver a Certified Mail Large Envelope to the Hadleys because no one was available to sign for the mail. The notice stated that the envelope would be available for pick up at the post office after 9:00 am on September 12, 2014. Hadley Exhibit 1. Mr. Hadley testified that he picked up this envelope after the ODR hearing on September 15, 2014 and that it contained the exhibits the DOR relied upon during the ODR hearing.
16. In response, the DOR produced a copy of an email chain dated September 17, 2014 wherein the Hearings Examiner authored an email to all of the parties documenting a phone conversation she had with Mr. Hadley. In the

email, the Hearings Examiner stated that she offered to hold another hearing wherein Mr. Hadley could respond to or question any of the DOR's submitted documents but that Mr. Hadley declined on the grounds that he did not think another hearing would be helpful. DOR Exhibit O.

17. Mr. Hadley testified that the mailing address listed on all of the DOR correspondences is the current and correct mailing address for himself and his wife. Mr. Hadley does not deny that the DOR mailed the letters introduced as DOR Exhibits A-J to him and his wife at the correct mailing address.
18. Mr. Hadley testified that he does not recall receiving or opening any of the letters from the DOR. He stated that he and his wife pay all of their bills electronically and so much of the mail they receive is duplicative. Therefore, it is likely the letters from DOR were thrown away.
19. Auditor Headley testified that she did not attempt to contact the Taxpayers by telephone during the audit period but that each letter she sent to the Taxpayers contained a request that the Taxpayer's contact her. Each letter provided her contact information including her direct phone number.
20. Mr. Hadley stated that it was not until he received a phone call from the Accounts Receivable and Collections office of the DOR collections unit in mid-June 2014 that he became aware of the DOR's audit regarding the energy installation conservation credit claimed on their 2011 return. He immediately contacted Auditor Headley by telephone and told her that he could produce

the receipts for a heat pump to support the claimed energy credit. Both Mr. Hadley and Auditor Headley testified that during this phone call Auditor Headley notified Mr. Hadley that the audit was closed and it was too late to submit documentation concerning the claimed energy credit.

21. Mr. Hadley subsequently filed his ALPS 102F Notice of Referral to the Office of Dispute Resolution and attached copies of receipts for an installed heat pump. ODR determined that the Hadleys did not respond to the 2011 audit inquiry within the timeframe provided for Taxpayers to appeal audit findings and thus upheld the DOR's assessment.
22. The Taxpayers timely appealed the September 15, 2014 ODR decision to this Board.

Principles of Law

1. If, in the opinion of the Department, a return of a Taxpayer is in any essential respect incorrect, the agency may revise the return. The amount of any tax due under a return may be determined by the Department within five years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing under authority of §15-30-2605(1) ; 15-30-2605(3), MCA.
2. The Department has developed an administrative procedure whereby Taxpayers can contest tax liabilities asserted by the Department. §15-1-211,

M.C.A. (Uniform Dispute Review Procedure); §15-1-222, M.C.A. (Taxpayer Bill of Rights).

3. As part of the administrative procedure, if the DOR determines the Taxpayer owes additional tax, it must mail an SOA to the Taxpayer that states they must file a written objection to the first SOA within 30 days and a warning that the failure by the Taxpayer to timely file a written objection shall be deemed an admission that the Taxpayer concurs that they owe the debt stated in the SOA. A.R.M. 42.2.510.
4. A.R.M. 42.3.105 gives the Department discretion to waive the penalty and interest on taxes due for reasonable cause. This rule enumerates reasonable causes such as delays caused by death or extended illness, misinformation from the DOR, destruction of records by fire or casualty or where a Taxpayer is unable, for reasons beyond the Taxpayer's control, to obtain the records necessary.

Board Discussions and Conclusions of Law

The Taxpayers appealed the DOR's final audit determination denying an energy credit claimed on their 2011 state income tax return. The audit determination resulted in the imposition of additional taxes, penalties, and interest.

The Board is left with the task of sifting through the evidence presented and applying the law. Our Constitutional charge is to act as an independent buffer between the DOR and the Taxpayer, providing a neutral and informal forum to

resolve disputes before the Courts are used. We must follow Montana laws and rules as proscribed by the policy decisions made by the Legislature and the administrative rules enacted to flesh out those policies. We are not free to stray past those boundaries no matter where our sympathies may lie.

The salient facts of this case are not in dispute and are found in the exhibits admitted in the hearing before this Board. On January 3, 2014 and again on February 5, 2014 the DOR sent Taxpayers a letter requesting documentation for the energy credit claimed on their 2011 state income tax return to which they did not respond. On March 13, each Taxpayer received a third letter stating that a failure to respond by April 12, 2014 would mean the DOR would disallow the energy credit and that the Taxpayers would waive any opportunity for the Taxpayers to prove the legitimacy of the credit. The DOR also sent each Taxpayer their first Statement of Account on March 13, 2014 setting forth the amount of tax due. The SOA again notified the Taxpayers that they would be time barred from appealing the auditor's determination if they did not respond to the March 13 letter within 30 days. All of these letters were sent to the Taxpayers by regular mail. Taxpayers do not allege that they failed to receive any of these letters.

When the Taxpayers failed to respond to the first Statement of Account within 30 days, the DOR deemed that failure to be an admission by the Taxpayers that the tax liability was correctly determined to be due and owing as provided for in A.R.M. 42.2.510. At the beginning of the following three months, April, May and June, the

DOR sent duplicate monthly invoices (also called Statements of Account) showing the tax amount due and owing to each Taxpayer individually, by regular mail.

Exhibits D, E, F, G, K, and L. These monthly statements notified the Taxpayers of the amounts of taxes, late fees and penalties then due and owing. The DOR posited that the underlying audit determination that the Taxpayers were not entitled to the energy credit, was settled by the 30-day first SOA time bar.

In June, the DOR added another component to its collection efforts by contacting the Taxpayers' employers to verify employment and the Post Office to verify Taxpayers' address. Exhibits I, J, M and N. The DOR's records also show it made repeated attempts (several times a month) to contact the Taxpayers by telephone since May 15, 2014. Exhibits S & T. On June 16, 2014, Mr. Hadley phoned auditor Headley to enquire why he was being billed. Mr. Hadley testified that he was not aware of the audit and adjustment notice and 30-day objection deadline until this phone call. Once he was aware of the situation, he acted diligently to resolve it. Taxpayers filed a Request for Informal Review with the DOR on June 16, 2014 within four days of the DOR phone call. DOR-HADLEY 000157. Taxpayers contended that the heat pump they installed in 2011 did qualify for the energy conservation installation credit and provided receipts for the same.

Two days later on June 18, 2014, the DOR notified the Taxpayers that they failed to file a timely objection to the audit assessment and the assessment would

stand. Exhibit P. Taxpayers were also notified they could appeal this decision to the DOR's Office of Dispute Resolution. *Id.* They did appeal. Exhibit Q.

The DOR's Office of Dispute Resolution Hearings Examiner heard the dispute on September 15, 2014. See Exhibit R, Findings of Fact, Conclusions of Law, and Order. The ODR hearing was confined to the issue of whether there was reasonable cause for the Taxpayers' failure to object in a timely manner, essentially why there was no contact with the DOR from January 3, 2014 to June 16, 2014. At the Hearing, the DOR and Taxpayer Hadley testified and entered documents into evidence.

The Taxpayer did not claim that he failed to receive any of the DOR's notices; rather he explained that his household paid bills electronically so that they likely threw away the bills and the notices unopened. The Hearings Examiner found that the Taxpayer's testimony was candid and forthright as to the explanation of what may have happened to the notices, however, the end result was that Taxpayers did not respond to the notices.

The Hearings Office understood the Taxpayers' position that they were simply unaware of the multiple notices and audit adjustment and appeal deadline. Findings at 12. The Hearings Examiner was however, constrained by the administrative rules; none of the explanations offered qualified as reasons beyond the Taxpayers' control which could toll the deadline for objecting to a notice of determination and the Statement of Account. *Id.* at 12, 13. Accordingly, she found for the DOR and ordered that the taxes, penalty and interest were due and owing. Thus, on a total

\$1,000 tax credit claimed and denied, the Taxpayers owed, as of the June, 2014 Statement of Account, \$1,280.75. Taxpayers timely filed an appeal with this Board. This Board heard the matter *de novo*.

At the hearing before this Board, which was limited to the issue of timeliness and reasonableness for the Taxpayers' failure to respond, the DOR offered documents and the testimony of the file's auditor and her supervisor. All exhibits offered by the DOR were entered into evidence without objection by the Taxpayer. Taxpayer also cross-examined the DOR's witnesses.

Before this Board, the Taxpayer candidly testified that he was unaware of the multiple notices. He offered no satisfactory explanation why he was unaware of the notices. Once he became aware of the situation in June, he acted quickly to provide information to the DOR and to protect his rights. He believed that he and his wife had legitimately claimed the energy credit.

Taxpayers, through Mr. Hadley, intimated that they were being treated unfairly. He testified that because the DOR had violated a scheduling order in this case – it had not provided him with its exhibits in advance of the ODR hearing on September 15, 2014 and therefore, it would be unfair to hold him to the strict deadline while not holding the DOR to the same strict standard.

The witnesses then described the following chain of events, none of which were referenced in the September 15, 2014 ODR hearing transcript or subsequent Findings and Order. The DOR's witness testified that she mailed the Taxpayer a

copy of the DOR's proposed exhibits on September 9, 2014. Taxpayer produced a copy of a USPS delivery notice asking him to collect a piece of certified mail. This notice was dated September 11, 2014. Exhibit 1. The DOR's witness explained that it was standard practice to send the documents, return receipt requested, on the eve of the hearing. The ODR Scheduling Order set September 10, 2014 as the final date to exchange exhibits.

The Taxpayer testified that he did not receive the documents on the date specified in the scheduling order, September 10, 2014. He further testified that he did not receive a copy of the proposed exhibits and had participated in the ODR hearing without being able to refer to the documents that the DOR relied upon as exhibits to support its case. The Taxpayer received the documents two days after the hearing on September 17, 2014. *See* DOR Exhibit O.

The DOR did not describe these events in its case-in-chief before this Board. When pressed by the Board, the DOR produced a copy of a chain of emails memorializing an ex parte conversation between the Hearings Examiner and the Taxpayer and ex parte communications between the Hearings Examiner and DOR employees. DOR Exhibit O. Apparently, the Taxpayer told the Hearings Examiner that he did not have the exhibits in his possession during the hearing in a telephone conversation that occurred two days after the hearing. The Hearings Examiner offered to order a re-hearing, but clarified that it would be limited to the facts addressed in the first hearing. The Taxpayer responded that he wanted a resolution of

the matter and that another hearing on the same issue would not be helpful. See DOR Exhibit O. In further testimony before this Board, Taxpayer corroborated in all respects the conversation described in the Hearings Examiner's email.

These events raise, as the Hearings Examiner noted, due process and fairness issues. DOR Exhibit O. This Board fully recognizes the importance and necessity of a fair process. Whether the DOR failed to comply with the scheduling order for the exchange of documents thus prejudicing the Taxpayers and whether the Hearings Examiner should have ordered another hearing are reasonable questions. However, any sound inquiry does not stop at this point. Even assuming that the treatment of the Taxpayers at this step in the overall process did not give the Taxpayers all the process they were due, the question then becomes whether that assumed injury was remedied by the *de novo* hearing before this Board. This Board conducts its own inquiry into the facts and may accept or reject the findings of the Hearings Examiner. §15-2-302, M.C.A.; *Puget Sound Energy, Inc. v. Dept. of Revenue*, 2011 MT 141 ¶29, 361 Mont. 39, 255 P.3d 171 (2011).

This Board finds that the Taxpayers did have adequate notice and opportunity to be heard in front of the Board. The Taxpayers could, and did, present their case before the Board and raised new issues that were not considered by the Hearings Examiner. Because of this Board's fact-finding function, independent from the DOR, we find that the *de novo* hearing in front of this Board cured any procedural injury that may have occurred at the ODR hearing. §15-2-302, M.C.A.; *Puget Sound* ¶30.

DOR uses regular mail to contact taxpayers of their deadline obligations under Rule 42.2.510, A.R.M. Our authority does not allow us to decide whether the DOR should use a better method to notify taxpayers of a deadline affecting their rights, such as using return receipt requested mail as opposed to using regular mail for the March 13, 2014 notice.

DOR attempted contact by telephone only after the matter was one of collection. Our authority does not allow us to require the DOR to send return requested receipt mail much earlier before their collection stage, as is the practice of the other agencies like the IRS. We can only urge the DOR to consider the IRS practice of using return requested receipt mail where a deadline could prejudice the rights of the Taxpayer as opposed to its use of the regular mail.

DOR contested an adjustment of taxes paid three years previously. Section 15-30-2605(1), MCA and Section 15-30-2605(3) allow the Department a five-year window to make adjustments even though this practice may be inconvenient to the taxpayer.

The Board finds that on the facts of this case the Taxpayers experienced no irreparable prejudice and had a full and fair opportunity to contest the DOR's findings at the Board hearing.

The Board can find no statutory authority by which a reasonable cause exception can be granted to the Taxpayers by this Board, and finds no other reason to overturn the DOR's determination. The limited record before us does not indicate

that the DOR failed to communicate its intentions or the consequences of inaction to the Taxpayers throughout the pendency of this matter, nor is there evidence that the Taxpayers were mistreated or denied the opportunity to appeal. Without any authority with which to grant relief, the Board has no other option but to affirm the ODR's decision.

Conclusion

This Board affirms ODR's decision disallowing the energy installation conservation credits on the grounds of timeliness.

Order

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the Taxpayers' appeal and complaint be denied.

DATED this 20th day of March 2015.

BY ORDER OF THE
MONTANA TAX APPEAL BOARD



DAVID L. McALPIN, Chair



STEPHEN DOHERTY, Member



VALERIE BALUKAS, Member

(S E A L)

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

I certify that on this 20th day of March 2015, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

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