

BEFORE THE MONTANA TAX APPEAL BOARD

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JEAN H. TYSON,	)
	) Docket No. PT-2014-2
Appellant,	)
-vs-	)
	) FINDINGS OF FACT,
	) CONCLUSIONS OF LAW
DEPARTMENT OF REVENUE	) ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	) FOR JUDICIAL REVIEW
	)
Respondent.	)

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**Statement of Case**

Jean H. Tyson (Taxpayer) appealed the final decision of the Department of Revenue (DOR) concerning the Department's denial of her application for the Property Tax Assistance Program (PTAP).

The DOR sent a letter dated July 10, 2014 to the Taxpayer informing her that she did not qualify for PTAP, and rescinding a prior letter granting her property tax assistance under the program. The Taxpayer appealed. As requested by the Taxpayer, this appeal was considered on the record without a hearing in Helena. Taxpayer and DOR submitted written exhibits for this board to consider in our opinion. The Board, having fully considered the exhibits and any other written submissions, finds and concludes the following:

### **Issue**

The issue before this Board is whether the Department of Revenue appropriately denied approval of the Taxpayer's application for property tax assistance for tax year 2014.

### **Summary**

Jean H. Tyson is the taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the final decision of the Department of Revenue.

### **Evidence Presented**

1. The Property Tax Assistance Program is a statutory program that allows a low-income taxpayer to pay reduced property tax. This law requires taxpayers to have owned and occupied the property as their primary residence for at least seven months during the preceding calendar year. §15-6-134(4)(a)(i), MCA.
2. This matter was heard on the record, and both parties were afforded the opportunity to submit exhibits and documentation to the Board.
3. Ms. Tyson timely applied for property tax assistance on January 9, 2014. Her application was processed by DOR at the Lake County office. DOR Exh. B.
4. DOR notified Taxpayer in writing on February 20, 2014 that she had met the eligibility requirements for property tax assistance. DOR Exh. B.

5. The DOR sent a follow-up letter on July 10, 2014 denying Taxpayer's property tax assistance. This determination reversed the prior approval for this assistance due to a "clerical error." The July decision rescinded eligibility for the assistance because "the property did not meet ownership and/or occupancy requirements established by law." DOR Exh. B.
6. Department of Revenue Office supervisor Debra Doney attested that a new employee had failed to present her work for review during her training period and had mistakenly qualified Taxpayer for property tax assistance. Doney Aff. ¶ 5-6; DOR Exh. A.
7. When a taxpayer submits an application for PTAP, the application is approved or denied based upon residency and income information from the prior year. Doney Aff. ¶ 13; DOR Exh. A.
8. Upon review of the Taxpayer's Warranty Deed, the DOR determined the Taxpayer had not occupied the property long enough to meet the legal requirement for property tax assistance. *See* Warranty Deed dated July 25, 2013, conveying the property to Jean and Charles Tyson. DOR Exh. B.
9. DOR's denial of the assistance rests on the fact that if Taxpayer did not own the property until July of 2013, as evidenced by the date on the Warranty Deed, seven months of occupancy could not have elapsed in 2013 to qualify her for the 2014 PTAP program. DOR Exh. B.

10. Taxpayer timely appealed the DOR decision directly to this Board on July 23, 2014. In a letter to the Board requesting relief she wrote: “the board should approve me for this year because this was the property tax office’s fault, not mine.”

### Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-302, MCA.
2. The Property Tax Assistance Program reduces the property taxes of low-income taxpayers who have owned and occupied the property as their primary residence for at least seven months during the preceding calendar year. §15-6-134(4)(a)(i), MCA.
3. 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 Equalization*, 99 Mont. 543, 45 P.2d 307 (1935); *In re Miller Land & Livestock Co.*, 56 F. Supp. 34 (D. Mont. 1944).
4. DOR may not grant property tax assistance to any taxpayer who does not meet statutory requirements for residency. §15-6-134(4)(a)(i), MCA.

### Findings of Fact, Conclusions of Law and Board Discussion

The Board must determine, based on a preponderance of the evidence, whether the DOR properly denied Ms. Tyson property tax assistance for tax year 2014. See *Family Promise of Greater Helena v. Dept. of Revenue*, Montana Tax Appeal Board decision, May 23, 2013, (<http://mtab.mt.gov/decisions/taxexempt.aspx>), and WL 2300626; *Bolis v. Dept of Revenue*, Montana Tax Appeal Board decision, March 28, 2013, (<http://mtab.mt.gov/decisions/propertytax.aspx>), and WL 1287970. Based upon a preponderance of the evidence, we find that denial of property tax assistance is correct in this instance.

We find the evidence presented indicates the Taxpayer did not meet the legal requirements to qualify for the PTAP program as set out in §15-6-134(4)(a)(i), MCA. The Taxpayer has not provided any legal arguments or credible evidence to prove that she did qualify.

The Warranty Deed dated July 24, 2013 demonstrates that Ms. Tyson was not the owner of record for the property during the seven months of 2013, as required in §15-6-134(4)(a)(i), MCA. See Exh. B. The late July purchase indicates she occupied the property at most, five months in 2013. Therefore, we find that she did not meet the statutory requirement for property tax assistance. No other evidence was provided to contradict this finding.

Ms. Tyson's only argument is that the mistake by DOR in granting assistance should not be corrected until the following tax year. In fairness to other Montana taxpayers, allowing a taxpayer to use a tax reduction program, without qualifying, provides a tax burden to other taxpayers even though the taxpayer initially received the exemption in error.

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 (1991); *BA props. v. Gov't of the United States V.I.*, 299 F.3d 207, 210 (2002). This Board has no authority to circumvent the directive of the statute as set by the Montana Legislature, which requires owner residency in the property for a period of time before qualifying for property tax assistance. See §15-6-134(4)(a)(i), MCA. Thus, we uphold the DOR's determination of denial of assistance.

The DOR has requested retroactive payment of property taxes owed. We would note that it would be improper for the DOR and local government to require penalties and interest owed in this instance when a low-income taxpayer was granted assistance in error by the government. We would urge the Department to assist this Taxpayer with lenient repayment options.

**ORDER**

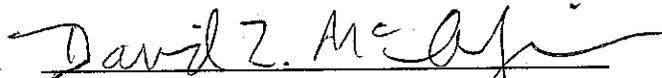
IT IS HEREBY ORDERED by the Montana Tax Appeal Board that the application by Jean H. Tyson for qualification under the Property Tax Assistance Program for 2014 be denied.

DATED this 12<sup>th</sup> day of December, 2014.

BY ORDER OF THE  
MONTANA TAX APPEAL BOARD

(SEAL)

  
KAREN E. POWELL, Chairwoman

  
DAVID L. McALPIN, Member

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

The undersigned hereby certifies that on this 15<sup>th</sup> of December, 2014, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S.

Mail and addressed as follows:

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