

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JOHN R. BOLIS,)	
)	Docket No. PT-2012-38
Appellant,)	
-vs-)	
)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW
DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

John R. Bolis (Taxpayer) appealed the final decision of the Department of Revenue (DOR) concerning the denial of application for Property Tax Assistance Program (PTAP). The matter was heard before the State Tax Appeal Board on the record using written submissions from the Taxpayer and the DOR.

The Board having fully considered the testimony, exhibits, written submissions and all matters presented, finds and concludes the following:

Issue

The issues before this Board is whether the Taxpayer timely filed his application for Property Tax Assistance and whether the Department of Revenue appropriately denied the Taxpayer's application for tax year 2012.

Summary

John R. Bolis is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board affirms the final decision of the Department of Revenue.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. Both parties were afforded the opportunity to submit additional written statements to the Board.
2. DOR records indicate that Mr. and Mrs. Bolis have filed for and received PTAP assistance for at least five years prior to 2012 and that an application for Property Tax Assistance for 2012 was mailed to the Taxpayer on or about February 8, 2012. (DOR Exh. A.)
3. By statute, PTAP applications are due on April 15. (§15-6-134(4)(a)(iii),MCA.)
4. DOR records indicate that the Taxpayers did not file a PTAP application until December 5, 2012. In the course of several contacts between the Taxpayers and the DOR office, differing explanations were offered for the delay. At first Mrs. Bolis thought it had been mailed, but then later said she had forgotten to mail the application. Mr. Bolis later said they had never received an application from the DOR but elsewhere says he did not know that the DOR did not receive it, suggesting he believes he mailed it. (Affidavit of Debra Reesman.)
5. The DOR denied the Taxpayers' 2012 application for Property Tax Assistance because it was not received by the statutory deadline. (DOR Exh. E.)
6. The Taxpayers appealed to this Board on December 31, 2012. Mr. Bolis' letter explained the cause of the untimeliness was due to his unawareness that the DOR had not received his application. (Appeal Letter.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-302, MCA).
2. The State Tax Appeal Board must give administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)
3. The Property Tax Assistance Program reduces the property taxes of taxpayers with income below certain levels. (§15-6-134(2)(b)(i), MCA.)
4. Applications for the PTAP are due on or before April 15 of the year the benefit is requested. (ARM 42.19.401(1), §15-6-134(4)(a)(iii),MCA.)
5. Under the Department's rules, applications received after April 15 will not be considered for the year unless two circumstance exist: (1) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness; or (2) the applicant qualified for PTAP assistance in the prior year and suffered confusion from an infirmity which caused the applicant's failure to timely file the application. In those circumstances, the deadline can be extended to July 1. (ARM 42.19.401(1)(a),(2).)

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 the Taxpayers' PTAP application for tax year 2012.

In this instance, the facts are not at issue. The Taxpayer submitted an application to the DOR requesting property tax assistance. Unfortunately, the application was submitted well after April 15 of the year for which the assistance was requested. The Taxpayers' explanations for the failure to file have varied

from time to time and lack documentation so there is no evidence or consistent testimony that the application was timely filed. The Taxpayers' explanation for the tardiness of the submission failed to meet any of the circumstances for a waiver of the due date provided in the rules which focus on illness or hospitalization. Even if such extenuating circumstances exist, the application must be filed by July 1 of the applicable year.

This Board has no authority to waive the statutory deadline for the application, or to order the Department to do so. While there is no indication in the record that Mr. and Mrs. Bolis would fail to qualify for the PTAP assistance, which they have received in the past, the unfortunate failure to file a timely application cannot be waived under the language of the statute.

Thus, we uphold the decision of the DOR.

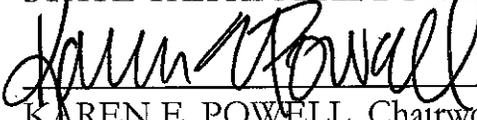
ORDER

IT IS HEREBY ORDERED by the State Tax Appeal Board of the State of Montana that the application by the Taxpayer for qualification under the Property Tax Assistance Program for 2012 be denied.

DATED this 28th day of March, 2013.

(SEAL)

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman


SAMANTHA SANCHEZ, Member


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

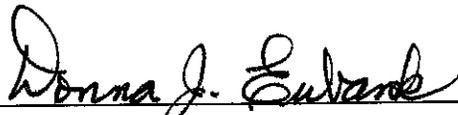
The undersigned hereby certifies that on this ~~28th~~ of March, 2013, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S. Mail and addressed as follows:

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