

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

BRIAN WILCOX,)	DOCKET NO.:	EPT-2012-2
)		
Appellant,)		
)		
-vs-)	FACTUAL BACKGROUND,	
)	CONCLUSIONS OF LAW,	
)	ORDER and OPPORTUNITY	
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW	
OF THE STATE OF MONTANA,)		
)		
Respondent.)		

Statement of Case

Brian Wilcox (Taxpayer) appealed a final decision of the Department of Revenue (DOR) denying Property Tax Assistance Program (PTAP) on his residential property in Yellowstone County, Montana. On September 12, 2012, DOR filed a request to dismiss this appeal because Mr. Wilcox submitted his application for assistance beyond the statutory deadline and because the property does not meet the minimum statutory requirements necessary to qualify for the assistance.

Issue

The issue before this Board is whether the Department of Revenue properly denied property tax assistance when calculating the Taxpayer's property taxes.

Summary

Brian Wilcox 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.

Background and Evidence Presented

1. Due, proper and sufficient notice was given of this matter. The DOR filed a motion to dismiss before a hearing was set. The Taxpayer was notified that he should respond to the motion filed. He failed to file any further information with this Board.
2. The subject property is a residential dwelling within the city limits of Billings, Montana, with the following legal description:

Lots 1 and 2, Block 219, Billings Second Addition, Section 3, Township 01S, Range 26E, in the City of Billings, County of Yellowstone, State of Montana. (DOR denial letter dated August 31, 2012.)
3. For tax year 2012, the Taxpayer applied for property tax assistance on his property. The value assessed on the property is not at issue in the case.
4. The DOR determined the Taxpayer did not qualify for property tax assistance because his application was received on August 25, 2012, well after the due date of April 15. (ARM 42.19.406 (4).) The DOR will grant filing extensions for extenuating circumstances, including Mr. Wilcox's cited medical condition, if the DOR is notified of the need for such extension. Mr. Wilcox did not notify the DOR of his medical condition prior to the April 15 deadline (DOR request to dismiss appeal, September 12, 2012.)
5. Additionally, the taxable value of Mr. Wilcox's property increased by only 14.26 percent from last cycle to the present cycle. Section 15-6-193

- (5) (a), MCA, dictates the percentage increase in taxable value between the prior cycle and this cycle must be greater than 24% before the property can qualify for the extended property tax assistance program.
6. Mr. Wilcox is in the process of building a second home on his property. According to Section 15-6-193 (3) (b), MCA, a rate adjustment under the extended property tax adjustment program may not be granted when there is a value change of greater than 25%. Mr. Wilcox's new construction will result in a value change of 89%, which also disqualifies him from the program benefits. (DOR request to dismiss appeal, September 12, 2012.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-302, MCA.)
2. It is the duty of the Department of Revenue to accomplish the appraisal of all taxable city and town lots. (§15-7-101 MCA.)
3. All property in this state is subject to taxation. (§15-6-101(1), MCA.)
4. By statute, the percentage increase in taxable value between the prior cycle and this cycle must be greater than 24% before the property can qualify for the extended property tax assistance program. (§15-6-193(5)(a), MCA.)
5. Property qualifying under the extended property tax assistance program is taxed at the rate of its taxable market value multiplied by a percentage figure based on the income for the preceding calendar year of the owner or owners who occupied the property as their primary residence. (§15-6-193(5)(a).)

6. For purposes of this benefit, a rate adjustment under the extended property tax adjustment program may not be granted when there is a value change of greater than 25%. (§15-6-193 (3) (b), MCA.)
7. In order to receive the tax rate adjustment, the qualified residence property owner of record, the qualified residence property owner's agent, or a qualifying entity of a qualified residence must annually complete and forward an application to the Department of Revenue, P.O. Box 8018, Helena, Montana 59604-8018. Beginning with tax year 2010 and all subsequent tax years, the completed application must be postmarked no later than April 15 in order for an applicant to receive the tax rate adjustment for the year the tax rate adjustment is sought. (ARM 42.19.406 (4).)
8. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

Finding of Fact and Conclusions of Law

The Taxpayer initially indicated that he missed the April 15 filing deadline due to a medical condition. The record indicates that he did not notify the DOR of his need for a filing deadline extension.

Upon receipt of the DOR's request to dismiss the appeal, the Board allowed a period of ten days in which Mr. Wilcox could respond to the issues raised in the dismissal request. Mr. Wilcox did not respond during this time period, nor does the record contain any discussion by Mr. Wilcox of the fact that his property is disqualified for assistance under this program as noted in EP # 5 and 6. (§15-6-193 (3) (b) and § 15-6-193 (5) (a), MCA.)

We do not find the Taxpayer provided any evidence that the administrative rule or governing statute is in some manner unlawful, or that

the DOR incorrectly applied statutes or administrative rule which govern EPTAP administration. As a result, this Board concludes the evidence presented by the DOR supported the correct application of the EPTAP statutes. The DOR's motion to dismiss is hereby granted.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Taxpayer's appeal is denied.

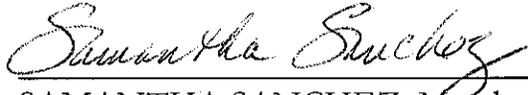
Dated this 23rd day of October, 2012.

BY ORDER OF THE
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman

(SEAL)



SAMANTHA SANCHEZ, Member



KELLY FLAHERTY-SETTLE, 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 t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of October, 2012, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Brian Wilcox
P.O. Box 30454
Billings, Montana 59107

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail

Courtney Jenkins
Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

U.S. Mail, Postage Prepaid
 Hand Delivered
 E-mail
 Interoffice


DONNA EUBANK
Paralegal