

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

FAMILY PROMISE OF GREATER HELENA,)	
)	DOCKET NO.: SPT-2012-8
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of Case

Family Promise of Greater Helena (Taxpayer) appealed a final decision of the Department of Revenue (DOR) denying property tax exemption on the subject property in Lewis and Clark County, Montana. The matter was heard before the State Tax Appeal Board on the record without objection from the parties.

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

Issue

The issue before this Board is whether the Department of Revenue properly denied property tax exemption for 2012.

Summary

Family Promise of Greater Helena is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board reverses the final decision of the Department of Revenue.

Background and Evidence Presented

1. Due, proper and sufficient notice was given of this matter. All parties were afforded opportunity to present documentary evidence.
2. The subject property is owned by a charitable organization, qualified under section 501(c)(3) of the Internal Revenue Code, whose mission is to help children and their families in a homeless situation regain sustainable independence. The property is within the city limits of Helena, Montana, with the following legal description:

Lot 12, Block 15, Hershfield Addition, 2814 North Cooke,
City of Helena, County of Lewis and Clark, State of
Montana, Geocode 05-1888-20-2-13-14-0000. (Notice of
Appeal, DOR Exh. A.)
3. The property was purchased for use in the organization's exempt purpose. (Flynn Letter of January 2, 2013.)
4. The DOR admits that the property meets the statutory criteria for tax exemption, but claims that the Taxpayer failed to timely file an application for exemption from property tax. (DOR Supplemental Filing, March 25, 2013.)
5. An assessment notice was mailed to the Taxpayer on May 11, 2012. The copy of the notice submitted to this Board by the DOR contains no notice to the Taxpayer of the need to file an application for charitable exemption, nor does the assessment notice indicate that the owner of a

- tax exempt property must file an application to be granted that status.
(DOR Exh. A.)
6. The assessment notice states “THIS IS NOT A TAX BILL. For details about your property taxation values, please visit your local Department of Revenue office or call (406) 444-4000.” Beneath the assessment data, a further sentence states: “If you have questions or concerns, please contact your local Department of Revenue office. We welcome hearing from you.” (DOR Exh. A.)
 7. The assessment notice otherwise contained only the property identification and valuation information. The notice contained no warning that taxpayer would lose the charitable exemption provided in the statute if no application form was filed within 30 days. (DOR Exh. A.)
 8. Taxpayer received a tax bill in October, 2012 and shortly thereafter filed an exemption application with the DOR on October 31, 2012. (DOR Exh. B; ARM 42.20.102(1).)
 9. The DOR determined the Taxpayer did not qualify for property tax exemption for 2012 because the application was received after the due date but granted it for 2013 and the years following. The denial letter stated that the due date was March 1 or within 30 days of the Assessment Notice sent May 4, 2012. The letter states that it is a final decision of the DOR. “You have the right to appeal this decision to the State Tax Appeal Board (within 30 days of this letter.)”(Sather letter of December 12, 2012.)
 10. Taxpayer filed a timely appeal, stating that the property was used at all times for an exempt purpose and that the delay in filing the exempt application was due to the “relative inexperience” of the Director and

Board of the organization. The letter asks waiver of the deadline to avoid depriving the organization of funds that have been raised to assist homeless families. (Flynn Letter of January 2, 2013.)

11. The Department submitted a Motion to Dismiss, citing the Taxpayer's failure to file an application for exemption within the 30-day limit imposed by the regulations in ARM 42.20.102(1). (DOR Motion to Dismiss, February 4, 2013.)
12. This Board denied the motion to dismiss, set the matter to be heard on the record and specifically requested evidence of notice of appeal rights that were given to the Taxpayer. (February 22, 2013 Order.)
13. The Department did not file any evidence demonstrating that the Taxpayer received notice of the need to file an application for exemption.
14. DOR filed a brief stating: "All persons have constructive notice of authoritative sources of law, such as statutes and regulations." *U.S. v. Vasarajs*, 908 F. 2d 443, 449 (9th Cir. 1990). (DOR Supplemental Filing, March 25, 2013.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-302, MCA.)
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111 MCA.)
3. Exempt property is defined to include "property that is owned . . . by institutions of purely public charity if the property is directly used for purely public charitable purposes" (§ 15-6-201(1)(i), MCA.) To qualify, the organization must offer its goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization

under the provisions of §501(c)(3), IRC, and the organization must accomplish its activities through absolute gratuity or grants. (§15-6-201(2)(i), MCA.)

4. By administrative rule, the property owner of record must make application through the department in order to obtain a property tax exemption. (ARM 42.20.102.)
5. 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 Board must determine, based on a preponderance of the evidence, whether the DOR correctly applied the property tax assistance exemption statute regarding the Taxpayer's property.

The Taxpayer's primary argument is that the March 1 filing deadline was missed because "of the relative inexperience of the Family Promise Executive Director and Board of Directors in matters of real estate and taxation." We note that nothing in the assessment notice provided to the Board informs the Taxpayer that an application for exemption must be made, to whom, or by what deadline. It was not, therefore, until the tax bill arrived that the Taxpayer realized it had to act and request an exemption under the statute.

The Board concludes the assessment notice to the Taxpayer was inadequate in providing actual notice of exemption filings and appeal rights. The 2012 assessment notice did not reasonably notify the Taxpayer that the receipt of the assessment notice triggered the statute of limitations for filing for a tax exemption and that rights created by the legislature would be lost by

failure to file. The assessment notice even goes so far as to say: "THIS IS NOT A TAX BILL. For details about your property taxation, please visit your local Department of Revenue or call..."

In fact, in the materials provided to us by the DOR, there is no indication on the assessment notice of any appeal process at all. The Board specifically requested all materials provided to the Taxpayer, and there appears to be no notice regarding an appeal process or rights of any kind. This does not seem to comport with the typical materials that this Board has reviewed in other tax assessment matters.¹ It is unclear whether this is a failure in this specific instance, or a more global issue, but the Board will assume that this is the sole Taxpayer who failed to receive actual notice of appeal rights.

The Board recognizes there is a responsibility for taxpayers, who are requesting an exemption, to understand the process under which they expect to receive an exemption. In this case, however, when we look at the evidence presented, we find no way for the taxpayer to know that an application was required for the new property to qualify for the charitable institution exemption or how to obtain the form. The only information on the appeal process sent to the Taxpayer was in the denial letter of December 12, and that enabled the Taxpayer only to appeal the denial. Taxpayer received nothing suggesting an application for the exemption was required prior to the expiration of any deadline. In fact, until the tax bill was received, there was no indication that taxes would be owed that might have alerted

¹ Enclosures with Assessment Notices presented to this Board have typically instructed the recipient on "Reviewing Your Property's Market Value and Classification", complete with deadlines for filing AB-26 requests or filing an appeal with the County Tax Appeal Board. In addition, four property tax assistance programs are mentioned with contact information and deadlines. None of this information, however, deals with applications for a charitable exemption. Nor was any material that included any exemption or appeal information provided in this particular case.

Taxpayer. There is no indication in the evidence of a method for a charitable institution to receive notice that an application for exemption exists, or must be filed to receive a property tax exemption.

In *Great Northern Railroad Co. v. Roosevelt County*, 134 Mont. 355, 364, 332 P.2d 501, 506 (1958), the Court stated, “even when required and given, notice must be such that it is reasonably calculated to apprise a person of proceedings adversely affecting his property interests, otherwise it denies him due process of law.” (See also *Geil v. Missoula Irrigation District*, 2002 MT 269, P 58, 312 Mont. 320, 59 P.3d 398l; Mont. Const. Art. III, § 27.) As we stated in a similar case, *Hope Lutheran Church v. Department of Revenue*, (SPT-2008-4, 12/15/09), “we do not conclude that the [administrative] rule as written violates the taxpayer’s due process. It is the failure of the assessment notice to give sufficient notice of the rule that causes concern in this matter.”

Because adequate notice was not given, the deadline for applying for exemption passed. Once a tax bill was received, the Taxpayer tried to correct the oversight by filing the exemption application on October 31, 2012, which was beyond the 30-day deadline specified in A.R.M. 42.20.102. The DOR suggests that constructive notice, which presumes that all citizens know the law, is sufficient without actual notice to the Taxpayer. The statute, however, imposes no application requirement and is, therefore, silent on the issue of notice to the Taxpayer of the need to apply. The statutory language exempting property used for charitable purposes requires only that the organization and the actual use of the property meet the charitable definition and even states that land purchased for the purpose is exempt “at the time of its purchase even if the property must be improved before it can be directly used for its charitable purpose,” and allows up to eight years for the land to be so used. (§15-6-201(2)(c)(iii), MCA.) The application requirements are

contained in the regulations, and they are also silent on the matter of notice to the Taxpayer of the need to apply. While it is reasonable for the regulations to set out the requirements for administering the statutory provision, it imposes a requirement that is unfamiliar and unanticipated by the property owner and does so without any notice to the Taxpayer whose property in every way meets the statutory test of the type of property the Legislature has declared exempt. Further, there was no notice of general appeal rights to even indicate that receipt of the appraisal notice might trigger any legal deadlines or require any action at all.

The Board finds the facts demonstrate no benefit to the public by taxing an entity, for one year, which clearly met the criteria of exempt property in Montana, and further finds that the evidence does not support denial of the exemption. It is without question that, if the Taxpayer had completed the application in a timely manner, the DOR would have granted the exemption for the 2012 tax year. The Taxpayer was denied a right granted to them by the legislature in § 15-6-201, MCA.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Taxpayer's appeal is granted and the decision of the Department of Revenue is reversed.

Dated this 23rd day of May, 2013.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(SEAL)


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 23rd day of May, 2013, 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:

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