

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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HOPE LUTHERAN CHURCH	)	
	)	DOCKET NO.: SPT-2009-4
	)	
Appellant,	)	
	)	
-vs-	)	
	)	
THE MONTANA DEPARTMENT OF REVENUE,	)	ORDER and OPPORTUNITY FOR JUDICIAL REVIEW
	)	
Respondent.	)	

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**STATEMENT OF CASE**

This matter comes before the State Tax Appeal Board (Board) as an appeal of the final decision of the Department of Revenue regarding 2008 taxes assessed on church property in Bozeman, Gallatin County, Montana.

The parties stipulated to the facts and exhibits in this case and were allowed oral arguments in front of the State Tax Appeal Board (Board) on December 8, 2009. The Appellant, Hope Lutheran Church (Taxpayer), was represented by attorney Jason A. Delmue and the Department of Revenue (DOR) was represented by attorney Brendan R. Beatty.

**Factual History**

1. In 1950, Hope Lutheran Church acquired a church building and the land that the building occupied at 201 S. Grand Avenue in Bozeman, Gallatin County, Montana.
  
2. From the time of its acquisition in 1950, the S. Grand property has been treated as exempt from taxation.

3. The Department of Revenue was aware that Hope Lutheran Church is a religious organization whose buildings and land are eligible for exemption from taxation pursuant to § 15-6-201(1)(b), MCA.
4. In 2006, Hope Lutheran Church purchased a vacant lot to be the eventual site of a new church building (the "Property").
5. The Property is:

Address: 2152 W. Graf St., Bozeman, MT 59718

Geocode: 06-0798-23-4-01-01-0000.

Parcel number: RGG41789.

Legal Description: Lot 3 of Minor Subdivision No. 235, located in the SE1/4 of Section 23, Township 2 South, Range 5 East, P.M.M., Gallatin County.

6. For 2007, the Department of Revenue assessed the property as non-exempt because, as of January 1, 2007, Hope Lutheran was not "using" the property as that term was understood with respect to tax exemptions under § 15-6-201(1)(b), MCA.
7. During the late summer/early fall of 2007 Hope Lutheran Church began construction of a new church building on the property.
8. As of January 1, 2008, construction of the new church building was proceeding.
9. As of January 1, 2008, Hope Lutheran Church was "using" the property as that term is understood with respect to tax exemptions under § 15-6-201 (1)(b), MCA.
10. As a result, had an application for tax exemption been filed within the time allowed by A.R.M. 42.20.102, the building would have been exempt from 2008 property taxes and so would the land that the building occupied as well as so much of the adjacent land that was reasonably necessary for convenient use of the building.

11. On or about February 1, 2008, the Bozeman office of the Department of Revenue became aware, from a field visit by one of its employees, that Hope Lutheran Church was approximately 35% complete in constructing a church building on the property.
12. The 2008 Assessment Notice for the property was dated July 28, 2008.
13. According to A.R.M. 42.20.102, and using the date of the Assessment Notice, the deadline for applying for a property tax exemption for 2008 was August 27, 2008.
14. Hope Lutheran Church filed an Application for Real Property Tax Exemption (Form AB-30R Rev. 2/99) on September 26, 2008, which was beyond the deadline computed according to A.R.M. 42.20.102.
15. On December 5, 2008, Hope Lutheran Church paid under protest the first half of 2008 taxes for the property.
16. On May 29, 2009, Hope Lutheran Church paid under protest the second half of 2008 taxes for the property.
17. On June 18, 2009 the Department of Revenue, via letter from Management Analyst Virgil Byford, issued its final decision on Hope Lutheran's exemption application. The exemption was granted as to the building and 12.77 of the 17.77 acres of land; it was not granted as to 5 acres of the land. The exemption was effective for the 2009 tax year. The Department informed Hope Lutheran Church that the application was considered too late to qualify for an exemption for the 2008 tax year.
18. Hope Lutheran Church timely appealed the Department's final decision on July 17, 2009.
19. Hope Lutheran Church contends that it should be allowed to receive the tax exemption for 2008 notwithstanding the provisions of A.R.M. 42.20.102.

## Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (Section 15-2-201(d) MCA).
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (Section 15-8-111 MCA).
3. Buildings together with the land that are owned by a church, which must be identified in the application, are exempt from taxation. (Section 15-6-201(1)(b) MCA).
4. The property owner of record must make application through the department in order to obtain a property tax exemption. (A.R.M. 42.20.102).

## CONCLUSIONS OF LAW AND BOARD DISCUSSION

The Board must determine, based on the preponderance of evidence, whether the property in question qualified for a tax exemption for tax year 2008. To qualify for an exemption the taxpayer must show that the property clearly meets the terms and conditions of exemption set forth in the statute. Statutes of exemption will be strictly construed by reviewing courts. *Old Fashion Baptist Church v. Dept. of Revenue*, 206 Mont. 451, 671 P.2d 625 (1983); *see also Double Arrow Ranch Homeowners' Association v. Department of Revenue*, SPT-2006-2, 09/15/06.

The Taxpayer has been recognized by the DOR as a religious organization whose buildings have been tax exempt since 1950. *FOF 2*. This tax exemption was granted for property located at 201 S. Grand Ave., Bozeman, MT and not the subject property.

The subject land was purchased by the Taxpayer in 2006 for the purpose of building a new church. *FOF 4*. The Taxpayer paid the assessed taxes on the vacant lot for 2007 with the understanding it did not fit the exemption statute § 15-6-201(1)(b), MCA. *FOF 6*. The Taxpayer started construction on a new church building in the fall of 2007 and believed by

January 1, 2008 they were using the subject property under the requirements of § 15-6-201(1)(b), MCA. *FOF 9*. Unfortunately for the Taxpayer, the Taxpayer did not file the appropriate application in a timely manner, as required by DOR's administrative rule (A.R.M.) 42.20.102, to receive tax exempt status for 2008. *FOF 10*.

The Taxpayer received the 2008 assessment notice on July 28, 2008, and the DOR testified that because there was a taxable market value listed, this was adequate notice to the Taxpayer that the subject property would be taxed for the 2008 tax year.

The Board concludes the assessment notice to the Taxpayer was inadequate. The 2008 assessment notice did not reasonably notify the taxpayer that the new church building (and adjacent land) was currently considered taxable and that the receipt of the assessment notice triggered the statute of limitations for filing for a tax exemption. The assessment notice does very little for the Taxpayer, whose property has been exempt for nearly 60 years, to determine a new application is required for tax exempt status for their newly constructed church. The instructions and explanations on the assessment notice only deal with the appeal process of property values. The assessment notice even goes so far as to say: "CHANGES IN THE VALUE OF YOUR PROPERTY MAY OR MAY NOT AFFECT THE ACTUAL TAXES BILLED". *Stipulated Exhibit B*. There is nothing on the assessment notice or the instructions that indicates anything about an exemption notice, how to file an exemption notice, or that receipt of the assessment notice triggered the statute of limitations for filing an exemption application.

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 a new application was required for the new church property and improvements to qualify for the religious institution exemption. In fact, until the tax bill was received, there was no indication that taxes would be owed. There is, in fact, no indication in the

evidence of a method for a religious institution to receive notice that an application for exemption exists, or must be filed to receive a property tax exemption<sup>1</sup>.

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, sec 27.

In this instance, the property assessment fails to provide adequate notice to the taxpayer that the administrative rule will prevent the religious institution from timely filing for an exemption. The exhibits clearly demonstrate that DOR appraisers certainly recognized the Taxpayer’s property as a church and at no time during the appraisal process indicated to the Taxpayer that a new application would be required to continue their exempt status for the 2008 tax year. We do not conclude that the 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. The Taxpayer tried to correct the oversight by filing the exemption application on September 26, 2008, which was beyond the 30 day deadline outlined in A.R.M. 42.20.102. *FOF 14.*

The Board finds no benefit to the public by taxing an entity, for one year, which clearly met the criteria of exempt property in Montana. It is without question that if the Taxpayer had completed the application in a timely manner the DOR would have granted

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<sup>1</sup>There is no indication in the record as to whether a religious institution receives an assessment notice on exempt property during the reappraisal cycle, or upon purchase of a new building. Thus, we can make no judgment on whether Hope Lutheran was on notice from property tax statements for its other property.

the exemption for the 2008 tax year. The Taxpayer was denied a right granted to them by the legislature in § 15-6-201(1)(b) MCA.

For the reasons discussed above, the appeal of the Appellant is hereby granted and the decision of the Department of Revenue is reversed.

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**ORDER**

Upon review of the facts, exhibits, and the arguments of the parties, the appeal of the Appellant is granted, and the decision of the DOR denying exemption on the subject property for tax year 2008 is reversed.

Dated this 15<sup>th</sup> day of December 2009.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

/s/ \_\_\_\_\_  
DOUGLAS A. KAERCHER, Member

/s/ \_\_\_\_\_  
SAMANTHA SANCHEZ, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-70-111, MCA, and 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court of Lewis and Clark County within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 15<sup>th</sup> day of December, 2009, 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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