

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DENNIS and LINDA MENHOLT)	
)	DOCKET NO.: IT-2007-6
Appellant,)	
)	<u>ORDER</u>
v.)	
)	
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
Respondent.)	

The parties request a decision from this Board on a summary judgment motion and agree that the sole issue before the Board is whether the assessments made are barred by the statute of limitations for tax years 1999 and 2000. The Board, having determined that the uncontested facts are dispositive in this matter, incorporates those facts into this decision.

Statement of Issue

The Department of Revenue (DOR) issued a statement of account for tax years 1999-2002 on September 18, 2006. The Taxpayer contends that under the relevant statute of limitation, §15-30-145(3), MCA, the assessment for tax years 1999 and 2000 should be dismissed. The taxpayer does not dispute assessment for tax years 2001 and 2002.

The issue presented is whether the assessments made by the DOR for tax years 1999 and 2000 are barred by the statute of limitations set forth in §15-30-145(3), MCA.

Facts

1. On December 14, 2004, the DOR issued the first Statement of Account concerning tax years 1999-2002. (DOR Reply Brief Exhibit A).
2. A timely request for informal review was made by the taxpayer on January 10, 2005. (DOR Reply Brief Exhibit C).
3. An informal review was held on March 17, 2005. (DOR Reply Brief Exhibit D).
4. The DOR requested additional information from the Taxpayer on April 11, June 16, and December 22, 2005. Corresponding responses from EideBailly CPAs were received April 18, August 3, 2005 and January 13, 2006. (DOR Reply Brief Exhibit D).
- 5.. On May 4, 2006, the DOR issued an adjusted statement of account to the Taxpayer. (DOR Reply Brief Exhibit D, page E39-A).
6. The Taxpayer submitted a Notice of Appeal with the Office of Dispute Resolution on July 12, 2006. (DOR Motion for Summary Judgment and Brief in Support, p. 2).
7. Further documentation was received by the DOR from the Taxpayer in August 2006. (DOR Motion for Summary Judgment and Brief in Support, page 5).
8. The DOR issued an adjusted Statement of Account on September 18, 2006. (DOR Reply Brief Exhibit D, page E45-A).
9. Formal proceedings began in the Office of Dispute Resolution in November 2006. (DOR Reply Brief, page 5).

10. On November 26, 2007, the Department's Hearing Examiner issued an order granting summary judgment to the DOR. (Taxpayer original filing with STAB.)

Legal Standard

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56 (c), M.R.Civ.P. Once the moving party has established both the absence of genuine issues of material fact and entitlement to judgment as a matter of law, “the opposing party must present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact.” Hanson v. Water Ski Mania Estates, 2005 MT 47, P11, 108 P.3d 481, 484 (2005). In the case at hand, the Department of Revenue moved for summary judgment, and neither party has disputed available facts.

Conclusions of Law

The State Tax Appeal Board has jurisdiction over this matter. Section 15-2-302, MCA.

The legislature enacted certain limitations, including a statutory time limitation for assessment of tax liability: Section 15-30-145, MCA.

Board Discussion

The Taxpayer argues that because the adjusted Statement of Account (SOA) dated September 18, 2006, was sent after the expiration of the statute of limitations for tax years 1999 and 2000, the assessment for those years is barred.

The Department contends they notified the Taxpayer in March 2003 of their intent of pending audit, properly sent a timely SOA in 2004, and subsequently amended it in 2006. The Department argues that sending the amended SOA does not trigger a new statute of limitations. In this instance, we agree.

The evidence indicates the Taxpayer filed for informal review as required by the initial SOA. Through the informal appeal process, the DOR and the Taxpayer cooperated in the review of the audit until the last Statement of Account was issued on September 18, 2006. This cooperation resulted in a reduction to the final assessment by the DOR.

The DOR and the Taxpayer participated in the resolution process in good faith, even though this process has taken longer than the statute of limitations set forth in § 15-30-145 MCA. The original assessment was completed in a timely manner, both parties appeared to constructively agree to an extension of time, and the end result is a reduction of taxes to the Taxpayer. This appears to be a mutual extension to the objection period set forth in

administrative rules. See 42.2.510(4), ARM. The Taxpayer timely appealed to this Board.

Because the Board has determined that the 2006 final SOA is not barred by a statute of limitations, the Board finds the DOR is entitled to judgment as a matter of law.

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Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Motion for Summary Judgment is granted. As this issue was the sole issue on appeal, this Order shall be deemed a final Order in favor of the Department of Revenue.

DATED this 23rd day of April, 2008.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____
KAREN E. POWELL, Chairwoman

(S E A L)

/s/ _____
SUE BARTLETT, Member

/s/ _____
DOUGLAS A. KAERCHER, Member

Notice: You are entitled to judicial review of this Order in accordance with §15-2-303, MCA.

CERTIFICATE OF SERVICE

I certify that on this 23rd day of April, 2008, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

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