

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

PERRY INDUSTRIES, INC.,)	
)	DOCKET NO.: PT-2010-7
Appellant,)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Statement of Case

Perry Industries, Inc. (Taxpayer) appealed a decision of the Gallatin County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of personal property. The Taxpayer argued the DOR improperly valued the personal property and seeks a reduction in value assigned by the DOR and elimination of the late-filing penalty. At the State Tax Appeal Board (Board) hearing held on April 14, 2011, the Taxpayer was represented by Gary L. Perry, President of Perry Industries, Inc., who provided testimony and evidence in support of the appeal. The DOR, represented by Teresa G. Whitney, Tax Counsel. Rocky Haralson, Regional Manager, Patty White, Area Manager, and Janice McGuire, Property Value Specialist, presented testimony and evidence in opposition to the appeal.

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 valued the subject personal property appropriately for tax purposes for tax year 2010 and correctly assessed the penalty for failure to complete reporting form.

Summary

Based on a preponderance of the evidence, the Board modifies the decision of the Gallatin County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present verbal and documentary evidence.
2. Perry Industries, Inc. is the Taxpayer in this proceeding and, therefore, has the burden of proof.
3. Perry Industries, Inc. is a Subchapter-S Corporation, manufacturing products under patents held by Gary Perry. The patents were sold on December 8, 2008 and the business ceased production on August 31, 2009. The buildings and equipment were no longer used and sat idle through the summer of 2010. (Perry testimony.)
4. The subject personal property was classified by the DOR as commercial, industrial, heavy equipment, miscellaneous furniture, fixtures and hand tools used in the operation of Perry Industries, Inc. (DOR Exhs. C & D.)
5. For tax year 2010, the DOR used an estimate of the market value to assess the subject personal property because the Taxpayer neglected to submit the required Property Reporting Form in appointed time. This resulted in a value of \$353,210 which included a 20 percent penalty, of the total

market value, for non-filing or late-filing of the required form. (Appeal form, DOR Exh. D.)

6. The Taxpayer realized the error upon finding the reporting form at the unattended business property and admits it was clearly past due. He completed the first page of the reporting form on April 15, 2010 and presented it in person to the local DOR appraisal office. (Perry testimony.)
7. The Taxpayer only completed the first page of the Reporting Form because the business had been closed and interpreted the directions to mean that no assessment would be issued against a closed business. (Perry testimony.)
8. The Taxpayer received the 2010 Estimated Revised Assessment Notice on June 3, 2010 which included a penalty of \$58,514 for failure to report under §15-1-303 MCA. (Perry testimony, DOR Exh. D.)
9. The Taxpayer filed a Request for Informal Review (AB-26) on June 30, 2010, asking for an informal review meeting to provide additional information. (AB-26 Forms.)
10. The DOR requested further information in a letter dated July 1, 2010. The Taxpayer relayed the information in a phone conversation with DOR appraiser Cheri Larsen. (Exh. 6.)
11. Appraiser Larsen responded to the AB-26 in a letter dated July 21, 2010 and denied the Taxpayer's request for revision. (AB-26 Form attachment, Exh F.)
12. The Taxpayer contends the DOR improperly denied the right to an informal review by issuing a decision without giving an opportunity for the Taxpayer to present further evidence. (Perry testimony.)
13. The Taxpayer filed an appeal with the Gallatin County Tax Appeal Board (CTAB) on August 20, 2010, stating:

“Valuation by Dept is unreasonable. Penalty assessment unreasonable. Request for informal Review denied - Therefore no chance to explain AND Business sold out Ø Revenue!!! .” (Appeal Form.)

14. The Gallatin CTAB heard the appeal on October 13, 2010. During the CTAB hearing, the Taxpayer requested the CTAB set the value of the personal property at \$71,725. (Appeal Form, CTAB Transcript.)
15. The Gallatin CTAB adjusted the DOR’s value to \$285,829, which included \$238,546 for the personal property and a 20 percent penalty for late filing. (Appeal Form.)
16. The Taxpayer appealed to this Board on November 10, 2010, stating;

“Adjustment was made only for equipment no longer owned. No consideration was given to the fact that business shut down 8/31/09, nor to valuations, not to penalty. Chair of the Board told my wife & me after hearing that the board could do nothing about valuations or penalty, that they had no power to adjust either.” (Appeal Form.)
17. The Taxpayer testified that certain items are categorized improperly and the DOR has not supplied sufficient evidence as to how the industrial property was valued. (Perry testimony.)
18. The DOR was directed by the Board to submit, post-hearing, the depreciation tables used to value industrial property and the calculations showing how these tables were used to arrive at the assessed value. (DOR Post-hearing Submission.)
19. After receiving the post-hearing submissions from the DOR, the Taxpayer concluded the calculation used in valuing the property to be correct. (Taxpayer Post-hearing Submission.)
20. The Taxpayer still contends certain items need to be re-categorized as they were in 2009. The Taxpayer also believes DOR value calculations only produce an estimated market value based on purchase price rather than actual fair market value for used equipment. (Taxpayer Post-hearing Submission.)

21. The Taxpayer requests the penalty be removed from the assessment as he did not willfully refuse to supply information required on the Property Reporting Form and that extenuating circumstances were involved.
(Taxpayer Post-hearing Submission.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
3. Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.
(§15-8-111(2)(a), MCA).
4. Property used in the manufacturing process and not treated as land or industrial improvements to land, which includes such items as manufacturing machinery and equipment whether permanently or temporarily in place, shall be placed in class eight. ARM 42.22.1305(1).
5. Class eight property includes all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools. §15-6-138(1)(d) MCA.
6. When deciding an appeal brought under this subsection, the state tax appeal board has the authority to modify the assessment only; it may not reduce the penalty to less than 20% of the assessment. §15-1-303(2)(b) and (2)(c) MCA.
7. All property other than land or industrial improvements to land shall be valued by trending the original installed cost to a current replacement cost,

then depreciating on an age/life basis to compensate for ordinary physical deterioration and/or functional obsolescence. ARM 42.22.1306(1).

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.)

Board Discussion and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject personal property for tax year 2010, and whether the imposition of a penalty was appropriate under law.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

Personal Property Value

We will first address the valuation of the personal property at issue. Initially the Taxpayer argued that, because the business was closed, there should be no assessment of the personal property. Through the informal review and appeal processes, the Taxpayer now agrees there is a tax due and would pay the tax if the calculations for valuation were correct and in accordance with state law. It was unfortunate the Taxpayer was not supplied a reasonable explanation of the valuation methodology used by the DOR until the appeal before this Board. With a more complete explanation, a lengthy appeal might have been avoided.

After receiving an acceptable explanation of valuation methodology, the Taxpayer still argues for certain items to be re-categorized on the assessment and also argues the DOR method of appraisal does not reflect true market value based on current sales of specific items. The Board finds the Taxpayer has not supplied sufficient evidence to determine if certain personal property items on the assessment were categorized improperly. The DOR relies on ARM 42-22-1306(1), which trends the original cost of an item of personal property to a current replacement cost. The Board finds the evidence demonstrated it would be very difficult for the DOR to collect enough sales information about the wide variety of personal property in Montana to accurately appraise using a market approach. We find and conclude that use of the administrative rule satisfies the legal requirement to determine a market value.

This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayer has not provided enough evidence to demonstrate that the DOR 2010 appraised value for the subject personal property is not fair market value.

Failure to Submit Form

The Taxpayer, in this instance, does not dispute the fact that the Property Reporting Form was filed late. The only argument presented to justify the late filing was that the business was closed and no one monitored the mail on a daily basis, thus resulting in the form being missed. The Taxpayer completed the form immediately upon discovery, however, he failed to complete the form in its entirety because the instructions lead him to believe that a business being “closed” or “sold” only had to complete the first page to verify closure. The Board finds the Taxpayer’s willingness to correct this issue shows there was no intentional refusal to submit the form, but rather the

taxpayer missed the submittal deadline. There is no indication in the file, the testimony, or the evidence to indicate that a substantial penalty of \$58,514 is proper in this matter. Under section 15-1-303, MCA, however, the Board does not have the legal authority to reduce the penalty set by the DOR, when the Taxpayer essentially admitted the filing was untimely. This Board urges the DOR to review the situation, reduce the penalty in this matter, and allow for a lenient payment schedule.

Thus it is the opinion of this Board that the assessed value adjusted by the decision of the Gallatin County Tax Appeal Board be upheld.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject personal property value shall be entered on the tax rolls of Gallatin County at a 2010 tax year value of \$238,546 as adjusted by the Gallatin County Tax Appeal Board.

Dated this 1st day of June, 2011.

BY ORDER OF THE
STATE TAX APPEAL BOARD

KAREN E. POWELL, Chairwoman

(S E A L)

DOUGLAS A. KAERCHER, Member

SAMANTHA SANCHEZ, 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 2nd day of June, 2011, 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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/s/ _____
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