

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ROBERT RAULINAITIS,)	
)	DOCKET NO. IT-2013-2
Appellant,)	
)	
-vs-)	
)	<u>DISMISSAL ORDER</u>
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

This case comes to us through a direct appeal by Taxpayer Robert Raulinaitis from an adverse decision of the Office of Dispute Resolution (ODR) of the Department of Revenue (DOR).

The Board now rules on the pending Department of Revenue Motion to Dismiss. The Board, having considered the Department's motion and the Taxpayer's response, hereby dismisses this appeal for the Taxpayer's untimely objection to the Department's assessment.

ISSUE

The Montana Department of Revenue has filed a Motion to Dismiss the appeal of the Taxpayer pursuant to Rule 12(b)(6), Mont.R.Civ.P., arguing that Mr. Raulinaitis' untimely objection to the Department's assessment should lead to a dismissal of this matter.

STANDARD OF REVIEW

The Department's Motion to Dismiss is filed pursuant to Rule 12(b)(6), Mont.R.Civ.P. The Department's Motion is based on the failure by the Taxpayer

to state a claim against the Department upon which relief can be granted. The Department's motion is similar to a summary judgment motion. The purpose of summary judgment is to dispose of those actions which fail to raise genuine issues of material fact, thereby eliminating the burden and expense of an unnecessary trial. *Berens v. Wilson*, 46 Mont. 269, 806 P.2d 14 (1990). Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Miller v. Herbert*, 272 Mont. 132, 137, 900 P.2d 273, 276 (1995). Once the movant demonstrates that no genuine issue of material fact exists, the burden shifts to the non-moving party to prove, by more than mere denial and speculation, that a genuine issue of material fact exists. *Bruner v. Yellowstone County*, 272 Mont. 261, 264, 900 P.2d 901, 903 (1995). The Board has authority to grant summary judgment in appropriate cases under the Montana Administrative Procedures Act. *Matter of Peila*, 249 Mont. 277, 280, 815 P.2d 139, 144 (1990).

DISCUSSION

The DOR states that the sole issue is whether there is reasonable cause to excuse Mr. Raulinaitis' untimely objection to the Department's assessment. The DOR tax assessment was based on disallowance of certain alternative energy systems credits for tax years 2009 and 2010. The basic facts are not at issue in this matter. The Taxpayer has not contested that he failed to object to the DOR assessment within the time allotted. The Taxpayer and the DOR agree that the Taxpayer had medical issues during the time in question. The DOR notes, however, while the Taxpayer has been incapacitated by health issues during the period when he could have objected to the statement of account, the Taxpayer has provided no credible evidence to explain a lack of communication or attempt to request further extension of the deadlines for health reasons during a five-month period in 2012.

This Board is sympathetic to health conditions of any taxpayers which may prevent them from performing normal functions of daily life. However, during the 30-day window in time when Mr. Raulinatis could contact the DOR for an extension of time to object to the statement of account, he neither requested an extension, nor submitted a written objection to the Assessment. ARM 42.2.510 (2). The Board can find no statutory authority by which a reasonable cause exception could be granted to the Taxpayer by this Board, and finds no other reason to overturn the DOR's determination. The limited record before us reflects no indication the DOR failed to communicate its intentions or the consequences of inaction to the Taxpayer throughout the pendency of this matter, nor any evidence that the Taxpayer was mistreated or denied the opportunity to appeal. Without any authority with which to grant relief, the Board has no other option but to grant the motion to dismiss.

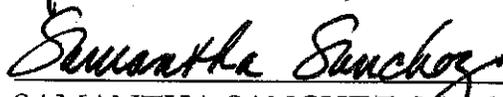
Based on the DOR's Motion to Dismiss, the above-captioned appeal is hereby dismissed.

DATED this 17th day of July, 2013.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)


KAREN E. POWELL, Chairwoman


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

I certify that on this 17th day of July, 2013, 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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