

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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TODD BRANDOFF,	)	
	)	
Appellant,	)	DOCKET NO.: PT-2008-3
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard March 26, 2008, in the City of Missoula, in accordance with an order of the Montana State Tax Appeal Board (the Board). The notice of the hearing was given as required by law.

The Appellant, Todd Brandoff, provided testimony in support of his appeal. The Department of Revenue (DOR), represented by Rocky Haralson, Regional Manager and Wes Redden, Area Manager, presented testimony in opposition to the appeal. In addition to testimony, exhibits were received from both parties and the Board accepted all exhibits and transcripts from the Missoula County Tax Appeal Board hearing.

## **Summary**

The issue before the Board is whether the Appellant's 2007 adjusted gross income exceeded the income guidelines established in Section 15-6-211, MCA, (allowing certain disabled or deceased veterans a property tax exemption) . The pertinent portion of the statute provides that: "For the purposes of the exemption under this section, the income referred to in subsections (2) and (4) is the taxpayer's federal adjusted gross income, as reported on the latest federal income tax return." (§ 15-6-211(5), MCA).

## **Findings of Fact**

1. Due, proper and sufficient notice was given of the hearing on this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The Appellant was wounded in 1967 in the Vietnam War and did not become eligible for 100% disability until 1998. (Appellant Testimony).
3. The Appellant has received the property tax exemption under Section 15-6-211, MCA prior to this calendar year. (Appellant Testimony).
4. The Appellant filed a form PPB-8A (Disabled American Veteran Application) with the DOR on April 7, 2008, in Missoula County. (Exh. A, p. 2). The form indicated adjusted gross income in excess of the statutory guideline set at \$51,076. The application was supported by a copy of the Appellant's 2007 federal tax return

which was a joint filing with his wife. (Exh. A, p. 3).

5. The DOR denied the application on April 16, 2008, for the following reason:  
“Federal adjusted gross income exceeds the income levels \$44,266 Single, \$51,076 Married or \$38,591 Surviving Spouse.” (Exh. A, p. 4).
6. The Appellant filed a Property Tax Appeal Form with the Missoula County Tax Appeal Board on October 7, 2008, stating that: “I had no income in 2007 – The [increase in] adjusted gross income was caused by an inheritance of a taxable annuity from my wife’s mother.” (Exh. A, p.1)
7. The Missoula County Tax Appeal Board held a hearing on November 19, 2008, and concluded that the Appellant’s adjusted gross income was above the limit and denied the Appellant’s appeal.
8. The Appellant appealed to this Board on January 5, 2009, stating, “This decision is totally unfair & not in keeping with the intent of the law.” (Property Tax Appeal Form).

### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (§ 15-2-301, MCA).
2. Section 15-6-211, MCA, exempts “certain disabled or deceased veterans' residences” from property tax based on the amount of the taxpayer’s federal adjusted gross income.

3. Montana Administrative Rule (ARM 42.19.501) allows a property tax exemption for qualified disabled veterans.

### **Board Discussion and Conclusions of Law**

The Board must determine, based on a preponderance of the evidence, whether the DOR correctly denied the Appellant the right to claim the disabled veteran's tax exemption on his residence for 2008.

The Appellant asserts that the Montana law is supposed to give 100% disabled veterans a tax break on their homes. He also contends that the law was originally written to use an earned income figure for calculations, and not the adjusted gross income as currently in law. If the Department reviewed only earned income, the Appellant would have little or no income. (Exh. 1) The Appellant also feels that he should not be penalized by losing his property tax exemption for 2008 after he has already paid income taxes on the inherited annuity.

The DOR contends that it applied the Montana statute correctly in this case. The DOR requires disabled veterans to apply annually for the property tax exemption. (ARM 42-19-501(7)). To receive this exemption, veterans must certify their annual adjusted gross income and support it with a federal income tax return. (§ 15-6-211(5), MCA). In this case, the Appellant's adjusted gross income exceeded the income limits set by law. The Department noted that the determination is only for a single tax year, and that the Appellant may re-apply for the next year.

The Legislature specifically set forth adjusted gross income to establish the property tax exemption. The law is clear that the income is the taxpayer's federal adjusted gross income, as reported on the latest federal income tax return. (§ 15-6-211(5), MCA). This Board has no authority to circumvent the clear directive of the statute as set by the Legislature. While the Appellant may believe that the statute should pertain to something other than adjusted gross income, the proper forum to change the current statute is with the Legislature itself.

The evidence presented in this case demonstrates that the Appellant's adjusted gross income exceeded the amount set for property tax exemption, and the Department properly denied the application for exemption from property tax.

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**Order**

IT IS THEREFORE ORDERED that the application by the Appellant for qualification under the disabled veteran's property tax exemption for 2008 is denied and the decision of the Missoula County Tax Appeal Board is upheld.

Dated this 2nd day of April, 2009.

By order of the State Tax Appeal Board:

//s// \_\_\_\_\_  
Karen E. Powell, Chairwoman

//ss// \_\_\_\_\_  
Sue Bartlett, Member

//ss// \_\_\_\_\_  
Douglas A. Kaercher, 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 3<sup>rd</sup> day of April, 2009, the foregoing Order of the Board was served on the parties hereto by the method indicated below and addressed as follows:

Todd Brandoff  
P.O. Box 790  
Lolo, Montana 59847-0790

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 E-mail

DOR Regional Office  
Attn.: Wes Redden, Area Manager  
2681 Palmer Street Suite I  
Missoula, Montana 59808-1707

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 E-mail  
 Interoffice

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DONNA EUBANK  
Paralegal