

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

CURTIS COX,)	
)	DOCKET NO.: PT-1997-49
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 4th day of August, 1998, in the City of Thompson Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The taxpayer, represented by Curtis Cox, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Sheryl Vinson, office supervisor, Edward Thompson, appraiser, and William Haines, appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of this appeal is described as follows:

Personal property, various items of equipment including a Cat D4D bulldozer, batch plant, tractor-loader, and a forklift.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$32,950. (Ex A)

4. The taxpayer appealed to the Sanders County Tax Appeal Board requesting a reduction in value to \$0.

5. The county board denied the appeal.

6. The taxpayer then appealed that decision to this Board.

7. The issue of ownership of the described property is central to this appeal.

8. The DOR has made an estimated assessment on the subject property.

TAXPAYER'S CONTENTIONS

Mr. Cox argued that the Cat bulldozer was not in Sanders County on January 1, 1997 nor was it owned by him on

that date; therefore, in his opinion, it is not taxable in Sanders County nor is it properly taxable to him personally. He stated the engine in the subject bulldozer needs to be replaced and because of that the value is greatly diminished. His estimate of value, if it were located in Sanders County, would be approximately \$4,000. The bulldozer was purchased for \$16,500 from "Cummings" at "closer to ten years than one year" ago.

The subject bulldozer had to be repossessed for Mr. Cox by the sheriff of Mineral County from its location in Mineral County. Mr. Cox stated that 1804, Inc. was the legal owner of the property on January 1, 1997. The repossession was actually described by him as a return of stolen property, since there had been no sale of the bulldozer to the party who removed it from Sanders County.

Mr. Cox testified that the tractor-loader was purchased from the John Deere dealer in Missoula, Montana by 1804, Inc. for \$3,200, approximately sometime in the middle of the year prior to the January 1, 1997 lien date. He stated that the tractor which has a diesel engine is not currently running and is not worth more than the \$3,200 paid for it at the time of purchase.

Mr. Cox addressed the cement plant, assessed by the DOR at \$1,000, as not owned by him personally nor does it

reside on land owned by him. He stated the equipment is run by an electric motor that requires three phase electric power. That amount of power is not available at the location where the cement plant is located. Mr. Cox estimated it would cost \$3,000 to have that kind of electrical power made available to that location. As such, he argued the equipment has \$0 value in its current location. The cement plant is owned by 1804, Inc, according to Mr. Cox and is, therefore, not taxable to him.

The subject forklift is an electrically powered forklift that operates on batteries. He testified that the batteries that are in the forklift at this time need to be disposed of and replaced. He estimated that it would cost in excess of \$10,000 to replace the batteries. As such the forklift has a value of \$0 in its current condition. He added that the forklift is not owned by him personally and is, therefore, not subject to taxation to him. He identified the owner of the forklift as "Pasta Pacifica", a Wyoming corporation with which he has involvement. The forklift is currently located on land owned by 1804, Inc.

Mr. Cox believes no one has management or control over the forklift since "it ain't going to go nowhere." (Mr. Cox testimony) Pasta Pacifica obtained the forklift in 1985 when "Mrs. Reese Macaroni Co" was acquired by Pasta Pacifica, and it

came into Montana in 1990 or 1991. Mr. Cox was unable to differentiate between ownership and management and control of the forklift.

Mr. Cox testified that he did not file a personal property reporting form indicating that he was the owner of the property. He also stated that 1804, Inc. did not file a personal property reporting form for the equipment nor was it asked to. 1804 Inc., is a corporation, the shareholders of which is a trust in California. He stated that he responded to the assessment notice sent to him personally within the 30 days required by filing an appeal with the Sanders County tax appeal board. He stated that as the "assistant secretary" for 1804, Inc., he was never asked by the DOR to file a personal property reporting form. The officers of the 1804, Inc. corporation rotate through the various corporate offices, and without the corporate documents Mr. Cox could not testify as to who was the holder of those various offices on January 1, 1997.

DOR'S CONTENTIONS

The DOR mailed Mr. Cox a personal property reporting form early in 1997 with instructions to fill out the form and return it to the Sanders County DOR office. He failed to do so, and the DOR performed an estimated assessment for the subject property. (Ex A) Each piece of equipment that has been

assessed and the value of each is listed on exhibit A. The DOR presented photographs of the Case tractor (Ex B), the forklift (Ex C), and the cement batch plant (Ex D) taken when Mr. Haines and Mr. Thompson discovered the property. Ms. Vinson testified that the DOR was unsure as to many of the particulars concerning the property such as age, purchase date, or purchase amount.

The D4D bulldozer value was determined by the DOR from the value placed on it for the Twentieth Judicial District Court in cause #DV-97-38, Cox v. Middlemiss. (Ex F)

Ms. Vinson stated that a 10% penalty should have been added to the assessment but that was "missed" by the clerk and there is not a penalty applied on the assessment. Since the equipment was not reported as had been requested, the equipment has been valued to the best of the DOR's "knowledge".

BOARD'S DISCUSSION

Mr. Cox was very careful in the argument that the property was not owned by him personally but did answer questions concerning who the owner of the subject property was on January 1, 1997. It is apparently his argument that if the DOR cannot determine ownership, and that if the DOR mistakenly mails the required form to the wrong entity, albeit entities that are not clearly identified to them through proper reporting, that the error is the DOR's and, as such, the

property is not properly assessed. He did not argue that the property was not subject to taxation, only not taxable to him personally. It would have been much simpler to merely straighten out the ownership issues, determine the party in interest with the DOR, provide the required reporting so the assessment was mailed to the proper owner, than to involve the appeal system to the extent done here.

Mr. Cox apparently acquired the D4D Cat bulldozer sometime between January 1, 1997 (the lien date) and February 1, 1997, a date upon which Mr. Cox claimed ownership in an affidavit filed with the Twentieth Judicial District Court on the matter of Cox v. Middlemiss, DV 97-38. (Ex C, CTAB hearing) It is obviously a difficult task to maintain an up to date ownership list when the property seems to change ownership on such a rapid basis. It is also obvious that statements of value may vary in such short time spans since the estimated value of the D4D cat to 1804, Inc., on January 1, 1997, is \$4,000 according to Mr. Cox, yet for the Court action referred to above, the value is stated as \$16,500. We know it is the same piece of equipment because Mr. Cox identified it as such in response to questions from this Board. He opined that the difference in value is in the operating condition of the equipment. It was not in operating condition on January 1, 1997, is his testimony. The difference he explained is in the

value in which it was returned to him.

It is the opinion of this Board that the batch plant, regardless of the proximity of three phase power, does have value. The functionality may in fact be impaired, but it is not valueless. The three items of subject equipment that were identified by Mr. Cox as being in the ownership of 1804, Inc. are: the Cat D4D bulldozer, the cement batch plant, and the tractor-loader are subject to taxation as assessed by the DOR.

The forklift with the stated owner as Pasta Pacifica, Inc. was located in the State of Montana and is taxable property. As a result of the hearing before this Board, the DOR has the correct information to properly assess the subject property for taxation for the tax year 1997 and should do so according to the proper and legal procedures as allowed.

This appeal, is therefore, granted in part and denied in part. The appeal as to ownership of the property is granted in so far as Mr. Cox, personally, is not the owner of the property; however, Mr. Cox, because of his various positions and identity with the corporations that he has indicated as the owners, has the capacity to see to it that, once assessed, the taxes, and penalties and interest (if any) are paid by the owner. The appeal as to the value of the subject property is denied since the taxpayer failed to prove that the values as determined by the DOR are in error. A cooperative atmosphere

as far as completion of the personal property reporting form would have been helpful in arriving at the value initially.

CONCLUSIONS OF LAW

1. 15-8-301, MCA. (1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1.

The statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of the person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which the person is a member;

(c) all property belonging to, claimed by, or in the possession or under control or management of any corporation of which the person is president, secretary, cashier, or managing agent;

(d) the county in which the property is situated or in which the property is liable to taxation and, if liable to taxation in the county in which the statement is made, also the city, town, school district, road district, or other revenue districts in which the property is situated;

2. 15-8-306, MCA. Upon discovery, any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation must be assessed at not exceeding 10 times its value, and the assessment so made must not be reduced by the county tax appeal board.

3. 15-8-309, MCA. (1) Every person who refuses to furnish the statement hereinbefore required or to make and subscribe such affidavit respecting his name and place of residence or to appear and testify when requested so to do by the department, as above provided, for each and every refusal and as often as the same is repeated forfeits to the people of the state the sum of \$100 to be recovered by action brought in the name of the state in any city or justice's court.

4. 15-8-409, MCA. All other taxable property must be assessed in the county, city, or district in which it is situated.

5. 15-8-501, MCA. (1) If the owner or claimant of any property not listed by another person is absent or unknown, the department must make an estimate of the value of such

property.

(2) If the name of the absent owner is known to the department, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject personal property shall be entered on the tax rolls of Sanders County by the assessor of that county at the 1997 tax year value of \$32,950 as determined by the Department of Revenue and affirmed by the Sanders County Tax Appeal Board.

Dated this 10th of November, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, 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.