

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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LEVI I. and SHEILA L. DOLL,	)	DOCKET NO.: IT-2009-7
	)	
Appellants,	)	
	)	FACTUAL BACKGROUND,
-vs-	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
DEPARTMENT OF REVENUE	)	<u>FOR JUDICIAL REVIEW</u>
OF THE STATE OF MONTANA,	)	
	)	
Respondent.	)	

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**Statement of the Case**

Levi and Sheila Doll (Taxpayers) appealed a decision of the Office of Dispute Resolution (ODR) of the Department of Revenue denying them a tax credit claimed on their 2006 Montana Individual Income Tax Returns due to their failure to supply requested documentation in a timely fashion. The Dolls request that this Board accept the documentation, grant the tax credit and abate the interest and penalties that have accrued. The Taxpayers are represented by Sheila Doll. The Department of Revenue (DOR) is represented by Teresa Whitney, Special Assistant Attorney General. The appeal was heard on the record with proper notice and opportunity to submit additional evidence and testimony pursuant to the requirements of an informal proceeding under §2-4-604, MCA.

The Board, having fully considered the exhibits and submissions and all matters presented to it, finds and concludes the following:

### **Issue**

The issue before this Board is whether the Taxpayers' failure to respond to the DOR's request for documentation bars them from making a submission approximately 6 months after the deadline.

### **Summary**

Levi and Sheila Doll are the Taxpayers in this proceeding and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board affirms the Nov. 9, 2009 decision of the Hearing Examiner barring the late submission of evidence and modification of tax liability.

### **Findings of Fact**

1. Taxpayers Levi and Sheila Doll claimed the Montana Energy Conservation Installment Credit on their 2006 tax return for improvements made on their home.
2. Auditor Cheryl Yauger of the DOR wrote letters to each of the Taxpayers on December 18, 2008 requesting receipts of their expenditures and a completed Form ENRG-C within 30 days. The letters informed Taxpayers that failure to submit the requested documentation could result in a denial of the credit and possible penalties and interest. Taxpayers did not respond.
3. Ms. Yauger again wrote on January 26, 2009, requested the forms and receipts within 14 days, and again included a warning about failure to respond. The Taxpayers did not respond.
4. On February 19, 2009, Ms. Yauger again wrote to the Taxpayers, informing them that as a result of their failure to respond, she was disallowing the credit and adjusting their taxes accordingly. With penalties and interest, Mr. Doll's taxes were increased \$684 and Mrs. Doll's increased \$644.16. A Statement of Account (SOA) for each Taxpayer was included. The Taxpayers did not respond.

5. Subsequent SOAs were sent on March 3, April 1, May 1 and June 1, 2009. On June 15, Taxpayers responded, sending a credit card statement, an invoice and photos of their home improvements.
6. On June 17, Ms. Yauger acknowledged receipt of the documentation but stated that their taxes had already been adjusted. She told Taxpayers that they could request the Field Audit Unit Manager, Douglas Peterson, to review their case.
7. On June 26, Taxpayers wrote to Douglas Peterson and explained their delay had resulted from Sheila Doll having surgery on November 25, 2008 and returning to work a week later. Mrs. Doll, a CPA, suffered extreme fatigue after the surgery but testified later she continued to work 50 hours a week. Mr. Peterson rejected the Taxpayers' request as untimely.
8. Taxpayers appealed that decision to the Office of Dispute Resolution (ODR) on July 13, 2009. Sheila Doll repeated her previous statement that there had been no intent to disregard the rules but it was "simply an oversight by someone who often has to push aside her own personal items to meet work deadlines."
9. The ODR conducted a telephonic hearing on September 23, 2009, presided over by Howard Heffelfinger, hearing examiner. Mr. Heffelfinger, in his decision, explained that although Sheila Doll was undoubtedly experiencing discomfort and fatigue, she returned to work six days after her surgery. The first letter from the DOR came nearly three weeks after her return to work and letters followed monthly for six months without a response from the Dolls. He noted a response would have taken a matter of minutes. Mr. Heffelfinger concluded that the rationale offered by the Taxpayers did not satisfy the requirement of reasonable cause for delay as provided in the Administrative Rules. His decision that the appeal be disallowed was issued November 9, 2009. This decision was the final decision of the DOR.
10. Taxpayers appealed ODR's decision to this Board, requesting the credit be allowed and penalties and interest be cancelled.

## **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (Section 15-2-302, MCA).
2. The DOR has the authority to audit returns, as well as waive penalties and interest for “reasonable cause.” Reasonable cause is defined in 42.2.304(51) as “the customer exercised ordinary business care and prudence and was nevertheless unable to file the return or pay the tax within the prescribed time.”

## **Board Discussion**

The Board, having examined the record, concludes the Taxpayers received full and adequate notice that their tax liability was being audited and required their attention. They received seven separate notices and failed to respond to the first six. Mrs. Doll was fatigued from her surgery but still managed to work, doing other people’s taxes, 50 hours per week. By her own account, she was just too busy. Mr. Doll has not offered any explanation for his failure to respond. It cannot be said the Taxpayers exercised “ordinary business care and prudence” in failing to respond to a tax notice, with deadlines clearly noted. On the other hand, the DOR’s communications were clear, frequent and responsive.

We see nothing in the record that suggests the Hearing Examiner’s conclusion that there was no reasonable cause for their failure to respond was unjustified.

**ORDER**

It is therefore ordered by the State Tax Appeal Board of the State of Montana that the tax assessed by the Department is due and owing.

Dated this 17th day of March, 2010.

By Order of the  
State Tax Appeal Board

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

( S E A L )

/s/ \_\_\_\_\_  
DOUGLAS A. KAERCHER, Board Member

/s/ \_\_\_\_\_  
SAMANTHA SANCHEZ, Board 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 17th day of March, 2010, a true and correct copy of the foregoing has been 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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