

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ROBERTA FRANCINE GILMORE,)	
)	
Appellant,)	DOCKET NO.: SPT-2005-1
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on December 8, 2005 in the City of Kalispell, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The hearing was conducted for the Board by member Joe Roberts with the full Board participating through the recorded transcript of the hearing, the pleadings submitted by the parties in the case file, and the exhibits admitted at the hearing and, in the case of Appellant, subsequent to the hearing. The notice of the hearing was given as required by law.

The Appellant, Roberta Gilmore, provided testimony in support of her appeal. Scott Williams, Region Lead, represented the Respondent, Department of Revenue (DOR) and provided testimony in opposition to the appeal. He was assisted at the hearing by Nina Woolard of the regional DOR staff. Testimony was presented and exhibits were received from both parties. State's Exhibit B, a

legal memorandum from the Department of Revenue legal staff, was admitted into evidence with the proviso that Appellant would have an opportunity to reply to it after the hearing. Appellant's reply was received on January 10, 2006; the matter is deemed submitted and ready for decision.

STATEMENT OF THE ISSUE

The issue before the Board in this appeal is whether the Appellant meets the income guidelines established in Section 15-6-134, MCA, to qualify for property tax assistance. The pertinent portion of the statute provides that a single person not exceed \$15,000 in "total income from all sources, including net business income and otherwise tax-exempt income of all types...." (Section 15-6-134 (1)(c))

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary, and Appellant was afforded the opportunity to make a post-hearing submission.
2. Appellant Roberta Gilmore filed with the DOR the form entitled "Property Tax Assistance" on March 15, 2005. (State's Exhibit A) The form indicated two positive sources of income: \$18,000 in the category of "Other Income" beside which Appellant had written "dividends". The other area of positive income noted on

the form was \$200 in the category of "Interest Income".

3. Consistent with its view of the statute (see below), the DOR did not allow for any deductions on the form it used. However, in the category of "Net Business Income Before Depreciation and/or Depletion" Appellant had listed negative income of \$12,144. The income was listed as negative by being enclosed in parentheses.
4. The form providing for the property tax assistance also states that in stating the "Net Business Income" the applicant should provide copies of IRS Schedules C,E,or F. Only Schedule E was provided by Appellant but it did not reference the amount that was claimed on the form. The Schedule E provided by the applicant/Appellant was for the amount of \$1690 of income through a business known as "Glacier Sea Kayaking, Inc.".
5. Sometime after filing her 2004 federal income taxes Appellant updated her filing to reflect the actual figures for 2004. (Appellant's Exhibit 3). In this document Appellant acknowledges income in the amount of \$29,206 for 2004 and claims a deduction of \$24,221 as a Schedule D carryover capital loss.
6. DOR denied the request for tax assistance because it does not recognize capital losses against the income referenced in Section 15-6-134 of the property tax assistance program. Without

the recognition of such a capital loss, taxpayer's income would exceed the amount to qualify for property tax reduction.

TAXPAYER'S CONTENTIONS

Taxpayer asserts that DOR has taken a very restrictive view of the definition of "income" for purposes of applying the property tax assistance program. Taxpayer refers to a definition of "income" used by the department in its legal memorandum (Exhibit B) as referring to income as "the true increase in amount of wealth which comes to a person during a stated period of time." (quoting from Black's Law Dictionary).

It seems clear to Taxpayer that any common understanding of "income" would be total revenues minus expenses. Taxpayer notes that both the federal and state income tax forms 1040 and associated schedules recognize losses as well as gains in order to arrive at a determination of "income".

In arriving at "income", and particularly "adjusted gross income", both federal and state tax forms recognize a variety of deductions and losses. It is only appropriate, according to the Taxpayer, that similar calculations should be applied when determining "income" for the purposes of the property tax assistance program.

Taxpayer asserts that DOR has no lawful basis to refuse to recognize her capital loss carryover.

DOR CONTENTIONS

DOR contends that a careful and proper reading of the

statute which establishes the property tax assistance program does not allow for the offset of capital losses against the income of a taxpayer. It is basically gross income which is referred to, and "gross income" does not allow for deductions or losses against it.

As argued in their legal memorandum (Exhibit B), DOR asserts that if the Legislature had intended to allow an offset for capital losses and other deductions, it could have done so by referring to "adjusted gross income".

In DOR's view, the meaning of the statute is clear and plain: only income is looked to, including capital gains. Capital losses are not allowable as an offset for this statute, though of course they may be when filing for income taxation purposes. Using the broader term of "adjusted gross income" is certainly beyond the intent of the statute, and could easily have been used by the Legislature if that was their true intention.

It seems clear that the Legislature intended this to be a very limited program to help only the neediest people of the state in meeting their property tax obligation.

BOARD DISCUSSION

Section 15-6-134, MCA, provides for a partial tax exemption for those taxpayers "whose total income from all sources, including net business income and otherwise tax-exempt income of all types...is not more than \$15,000 for a single person..." This is the meat of the statute and it is the task of this Board to give it meaning under the facts of this case.

It is first noted that the scope of the income is very broad

as it refers to "income from all sources" and includes income that would otherwise be "tax exempt income of all types." The only area that allows for any deductions is in the calculation of "net business income". This is apparently why the DOR form for property tax assistance requires the filing of the Schedule E to document the legitimate business costs that are used in arriving at a net business income. Appellant did not submit any Schedule E that would document the determination of net business income, and the capital losses which she has attempted to deduct would not qualify as business losses in any event. It should also be noted that the statute providing for the inclusion of "tax exempt income" does allow for the exclusion of "social security income paid directly to a nursing home." Section 15-6-134(1)(c). This specific reference simply underscores that the Legislature intended to define "income", for purposes of this particular exemption, very broadly.

It seems clear that the Taxpayer is reading the statute in this instance to allow the computation of Adjusted Gross Income as that term is used in state and federal income taxation. The computation of Adjusted Gross Income would seem to admit the deduction of capital losses, although, even then, it is interesting to note that the capital loss can only be applied against current income in the amount of \$3,000 per year.

It is this Board's view that the Legislature knew exactly what it was doing in establishing the property tax exemption the way that it did. The legislators apparently wanted this tax exemption

to apply in only a limited number of cases, so they established that the income would be considered "from all sources" and that it would even include income that was otherwise "tax exempt". If the legislators had meant to use the Adjusted Gross Income standard, which Taxpayer urges upon this Board, they could have easily done so. The fact that they did not indicates that they had a much more inclusive definition of income in mind.

While Taxpayer may fervently believe that the statute should pertain to something akin to Adjusted Gross Income, the proper forum to obtain such a result is with the Legislature itself.

We believe that, as written, the statute is clear about the income that is included, and the fact that capital losses cannot be applied against it, for determining whether the income requirements of the property tax exemption statute have been met.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. Sections **15-2-302, MCA, 15-6-134(1),MCA and 15-6-191, MCA** .
2. Section 15-6-134(1) refers to "income from all sources" in the determination of the amount of annual income to consider under the property tax exemption statute. Other than with "net business income", which must be substantiated by filing a Schedule E, the statute does not admit of any deductions for losses or expenses. It also provides for the inclusion of income that would otherwise be "tax exempt".

State of Montana that the application by the taxpayer for qualification under the Property Tax Assistance Program for 2004 is denied.

Dated this 25th day of January, 2006.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

JOE R. ROBERTS, Member

SUE BARTLETT, 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 25th day of January, 2006, 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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