

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

NANCY B. MARKS,)	
)	DOCKET NO.: PT-2010-1
Appellant,)	
)	FACTUAL BACKGROUND,
-v-)	CONCLUSIONS OF LAW,
)	ORDER AND OPPORTUNITY
DEPARTMENT OF REVENUE)	<u>FOR JUDICIAL REVIEW</u>
OF THE STATE OF MONTANA)	
)	
Respondent.)	

The Taxpayer, Nancy B. Marks, brought an appeal to this Board from the denial of her qualification for the Property Tax Assistance Program by the Department of Revenue (DOR). The subject property is located at 3597 Highway 284, Townsend, in Broadwater County. Taxpayer does not dispute the value of the property. The matter was heard in a telephonic hearing on July 20, 2010. The Taxpayer, Nancy Marks, represented herself and the DOR was represented by Michele Crepeau, Tax Counsel, and Sherri Diemert, Central Office Specialist.

The Board having fully considered the testimony, exhibits, post-hearing submissions and all matters presented, finds and concludes the following:

Issue

The issue before this Board is whether the DOR correctly denied the Taxpayer's request for property tax assistance.

Summary

Nancy B. Marks is the Taxpayer in this matter and, therefore, bears the burden of proof. Based on a preponderance of the evidence the Board affirms the decision of the DOR.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. Taxpayer was denied property tax assistance by the DOR because her income exceeded the maximum allowable level to qualify for the program. (DOR Letter of May 5, 2010.)
3. Taxpayer requested an informal review on May 21, 2010 in which she stated that she had qualified in 2009 and that the Broadwater County Assessor had explained that the rules for qualifying had changed. She contested the new calculations and requested review. (Attachment to Request for Informal Review, May 21, 2010.)
4. The DOR denied her request and the Taxpayer appealed to this Board. (Property Tax Appeal Form, June 21, 2010.)
5. Taxpayer argued that she has low income from her social security and her ranch, after expenses and depreciation and should qualify as she did last year. (Marks Testimony.)
6. The DOR pointed out that the code section, §15-6-134, MCA, under which she qualified last year was amended by the Legislature in 2009 so that losses and depreciation are not deducted when computing income for the tax assistance program. As a result, her income calculations for 2010 exceeded the amount

allowed and she no longer qualifies. (Diemert Testimony, §15-6-134(4)(b), MCA.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. The Property Tax Assistance Program reduces the property taxes of taxpayers with income below certain levels by a sliding scale percentage of the regular tax bill. (§15-6-134(2)(b)(i), MCA.)
3. The qualifying income level is defined to include all income without regard to losses and depreciation deductions. (§15-6-134(4)(b), MCA.)

Board Discussion and Conclusions

The facts of this case are not in dispute, nor does the Taxpayer disagree with the valuation of her property. She submitted her federal tax returns as evidence of her income and expenses and the DOR does not dispute any of those figures.

The law was changed by the Legislature so that the Taxpayer no longer qualifies for this assistance and the Board affirms the DOR disallowance of the claim.

Order

IT IS THEREFORE ORDERED that the decision of the Department of Revenue is affirmed.

Dated this 26th day of July, 2010.

By Order of the
State Tax Appeal Board

/s/_____
KAREN E. POWELL, Chairwoman

(S E A L)

/s/_____
DOUGLAS A. KAERCHER, Member

/s/_____
SAMANTHA SANCHEZ, 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 28th day of July, 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:

Nancy B. Marks
3597 Highway 284
Townsend, Montana 59644

U.S. Mail
 Hand delivered
 E-Mail
 Telecopy

Michele Crepeau
Office of Legal Affairs
Department of Revenue
Mitchell Building
PO Box 7701
Helena, Montana 59604-7701

U.S. Mail
 Hand delivered
 Interoffice delivery
 E-Mail
 Telecopy
 Telecopy

/s/ _____
DONNA EUBANK
Paralegal