

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF JUSTICE)		
OF THE STATE OF MONTANA,)		DOCKET NO.: PT-1999-50
)		
Appellant,)		
)		
-vs-)		FACTUAL BACKGROUND,
)		CONCLUSIONS OF LAW,
RONALD & LAUREEN MASHEK,)		ORDER and OPPORTUNITY
)		<u>FOR JUDICIAL REVIEW</u>
Respondents.)		

The above-entitled appeal was heard on September 8, 2000, in the City of Helena, 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 Department of Justice (DOJ), represented by Attorney Brenda Nordlund and Training and Development Supervisor of the Motor Vehicle Division, Nancy L. Hargrove, presented testimony in support of the appeal. The taxpayers, represented by Ron Mashek, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. 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:

STATEMENT OF ISSUES

The issues before this Board are (1) the timeliness of the filing of the appeal; and (2) the proper valuation of a motor vehicle.

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.

2. The taxpayers are the owners of the property which is the subject of this appeal and which is described as follows:

1994 Suzuki Sidekick JX sport utility
vehicle, Vehicle Identification Number
2S3TDO3VXR6412442

3. For the 1999 tax year, the value assessed to the subject vehicle by the DOJ was \$9,432.93.

4. The taxpayer appealed to the Lewis and Clark County Tax Appeal Board on November 8, 1999, requesting a reduction in value to \$6,325 for the 1999 tax year. No reasons for appeal were stated on the form. The notation "see attached" followed the \$6,325 taxpayer's requested value on the form, but no documentation was attached to the appeal form submitted to STAB.

5. In its April 21, 2000 decision, the county board adjusted the taxpayer's requested value to \$6,235, stating:

The board found the true market value to be \$6,235 by the evidence introduced by the Dept. of Justice.

6. The DOJ, through its attorney, Brenda Nordlund, appealed that decision to this Board on May 30, 2000, stating:

The CTAB's determination of the vehicle's true market value is contrary to the requirements of 61-3-503 and the evidence submitted by DOJ regarding the vehicle's MSRP & depreciated value for taxation using the vehicle age & type.

TIMELINESS ISSUE

On May 31, 2000, the Board sent the taxpayers a letter acknowledging receipt and acceptance of the DOJ appeal. On June 5, 2000, Mr. Mashek responded to the notification with the following letter, reprinted in pertinent part:

I have received your notification of the impending hearing on my case. At this time, I would like to request that you reevaluate your granting of this hearing request. See enclosed. The tax appeal form clearly states that any appeal to the decision must be filed within 30 calendar days. The state did not appeal the decision until 39 days after receipt. This appears to be a violation of my due process rights and the provisions of MCA 15-2-301. At this time I am making a motion that the states (sic) request to appeal this decision be denied...

The Board responded on June 9, 2000 with an order denying the taxpayer's motion, stating, in pertinent part:

The Department of Justice filed an appeal in the above referenced matter on May 30, 2000. Attached to the appeal form was a copy of the envelope from the Lewis and Clark County Tax Appeal Board postmarked May 3, 2000. The appeal to STAB was filed within the prescribed timelines pursuant to 15-2-301 MCA. The motion to deny the State's request to appeal is hereby denied...

On June 14, 2000, the Board received a letter and enclosure from Mr. Mashek, reprinted in pertinent part, as follows:

At this time, I am requesting that this hearing be dismissed as untimely. See enclosed letter. Also, please forward me a legible copy of the envelope you are referring to and have the original available at the hearing (if conducted).

Governor, STAB, DOJ, Senator Burns,

...This letter is regarding the pending appeal of my case before the STAB. I appealed my vehicle taxes at the county level and won. The appeal form allowed 30 calendar days to appeal the decision. Per the information completed on the form by the DOJ, they filed their appeal late – on day 39. The DOJ filed an untimely appeal. The timing of the filing of this appeal is critical. If the DOJ did not timely file an appeal, the STAB has NO jurisdiction in this matter. Because of the untimely appeal request, I made a motion to the STAB to dismiss the hearing. The STAB has denied this request, stating that the envelope attached to the appeal request was postmarked May 3, 2000 (12 days after mailing). They did not provide me a copy of this envelope for verification. They want me to believe that it took 12 DAYS mail time to get a letter 1 mile across town. Needless to say, I find this hard to believe. Here's why.

I contacted the County Tax Appeal Board and spoke to the clerk ... She stated that she sometimes hand carries the orders to state agencies, but normally mails the documents the same day they are signed, in this case April 21st. This date appears correct, based on the date my copy was postmarked, April 27th. If she mailed in (sic) on the 21st, which was a Friday, it may not have been sent to the post office until Monday, April 24th. It is hard to believe that the state did not receive their postmarked copy until 12 days after mailing. It is hard to believe the (sic) the DOJ would receive their copy a week after mine is postmarked. Is the STAB/DOJ asking me (and you) to believe is (sic) that it takes 12 days for a letter to get from the County Building on Park Ave. to the state capital complex? Are they asking me to believe is (sic) that it takes a week longer for a letter to get to the DOJ, which is a few blocks from my house? AT THIS TIME, I AM REQUESTING A COPY OF THIS ENVELOPE. I need this before the hearing, because if the appeal was not timely filed, the STAB has no jurisdiction in this matter and the hearing should be dismissed.

These timeframes appear to violate normally accepted legal timeframes for regular mail service. Per Montana's rules of Civil Procedure 25-20-Rule 6(e) Additional Time for Service by Mail. It requires that if service by mail is done, three (3) days be added to the time to appeal. Using the above info, if the document was mailed on April 21st, service would have been done on April 26th and the appeal time would have expired May 26th. If the mail was not sent until April 24th, service time would have been the 27th and the appeal time would have been May 27th. And, I am using work days (not Saturday), and not calendar days for the service. Either way, the DOJ did not meet the time requirements for appeal...

The Board responded to the taxpayer's letter on June 15, 2000, stating, in pertinent part:

Enclosed is a copy of the envelope mailed from the Lewis and Clark County Tax Appeal Board to Brenda Nordlund of the Department of Justice. Please note the postmark is May

3, 2000 and the envelope was date stamped as received by the Department of Justice on May 4, 2000. Your request to dismiss this appeal as untimely is denied...

Mr. Mashek testified that the appeal form indicated that the DOJ had received the form on April 21, 2000, but the appeal was not filed until May 30, 2000. The DOJ was allowed thirty calendar days in which to appeal, and they did not meet that deadline. He stated that he now understands that *"they probably put down the date that this thing was dated...but the clerk that sat in the hearing said when these are done they're signed, and she normally does all the mailings the same day that they're signed. If not the same day they're signed, then the next day..."*

Ms. Nordlund testified that on the appeal form she wrote down the date of the order, April 21, 2000, rather than the date it was received, because she *"didn't read the form very carefully."* She had submitted to the Board and to the taxpayer a copy of the envelope in which the DOJ had received the order, and it was postmarked May 3, 2000. The DOJ received it on May 4th. Mr. Mashek testified that his copy was postmarked April 27th, but later testified that he believed that was the date he had received it. The Board received the appeal from the DOJ on May 30th.

Although the Board does not understand why the county board clerk might have mailed the taxpayer's and the DOJ's

copies of the appeal form at different times, the DOJ has provided testimony and evidence that it received the form on May 4th and filed the appeal with this Board on May 30th. According to **§15-2-301, MCA**, "...a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal **within 30 calendar days after the receipt of the decision of the county board.**" (Emphasis added.)

It is the ruling of this Board that the DOJ filed the appeal in a timely manner.

DOJ'S CONTENTIONS

Ms. Nordlund requested that the Board take judicial notice of several statutes, presented as Exhibits A, B and C. The statutes, in pertinent part, as highlighted by the DOJ, are as follows:

15-8-111. Assessment? market value standard-exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided...

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except... (c) as otherwise authorized in Titles 15 and 61.

15-8-202. Motor vehicle assessment by department of justice. (1)(a) The department of justice shall assess all light vehicles, subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation in accordance with 61-3-503.

61-3-503. Assessment. (2)(a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the vehicle determined from the following table...

Ms. Nordlund provided further information about the previous three exhibits by testifying that Exhibit A sets out the general rule for taxation using market value and providing explicit exceptions for those matters in Title 61; Exhibit B puts the responsibility for tax assessment for light vehicles on the DOJ; and Exhibit C sets forth the formula by which the DOJ determines tax assessment. That formula is based on depreciated manufacturer's suggested retail price (MSRP) and the age of the vehicle. Ms. Nordlund explained that the three statutes cited provided the basis for the determination of the subject vehicle's value.

DOJ's Exhibit D is a nine-page exhibit consisting primarily of print-outs of computer screens from the DOJ Motor Vehicle Division's data base. Page 1 of Exhibit D contains a complete description of the subject vehicle, a 1994 red Suzuki Sidekick sport utility vehicle. The vehicle value, which is the manufacturer's suggested retail price before any options, is \$14,079.00. Page 2 shows that the vehicle's owners are Ronald L. and Laureen H. Mashek, and indicates the vehicle's current license plate number. Page 3 is the registration history of the vehicle and indicates the fees that were charged when the Masheks registered the vehicle on October 27, 1999. The taxable value shown is \$9,432.93. Ms. Hargrove explained that this value is based

on the manufacturer's suggested retail price of \$14,079, less depreciation. The age of the vehicle is determined to be five years old, obtained by subtracting the model year of 1994 from the registration year of 1999. The chart in Exhibit C (§61-3-503 {2}{a), MCA) is then used to determine the percentage multiplier for the depreciation of a five-year old sport utility vehicle. This number is 67 percent. The MSRP of \$14,079 is multiplied by .67, resulting in a taxable value of **\$9,432.93**. Pages 4, 5 and 6 of Exhibit D provide the registration information for the subject vehicle for the years 1998, 1997 and 1996.

Page 7 is a breakdown of the subject vehicle's VIN (vehicle identification number) from a software package called VINassist. Each digit in the 17-digit VIN gives pertinent information about the particular vehicle. The VIN of the subject vehicle is 2S3TD03VXR6412442. In summary, the digits of this VIN provide the following information:

<u>Digit</u>	<u>Description</u>	<u>Meaning</u>
2	Country of origin	CANADA
S	Manufacturer	SUZI SUZUKI
3	Vehicle Type	MULTIPURPOSE VEHICLE
TD	Line	SIDEKICK 4WD 4DR
0	Engine	1.6L 4 CYL
3	Design Sequence	DESIGN SEQUENCE
V	Body style	HARD TOP
X	Check digit	CHECK DIGIT VALID
R	Year	1994
6	Assembly plant	CAMI. CANADA
412442	Sequence number	IN RANGE

Ms. Hargrove explained that the "sequence number" indicates the "way it came off the assembly line." She also pointed out that on the bottom of page 7, it states that "VIN indicates a 1994 Suzuki Sidekick four-wheel drive, four-door." Ms. Hargrove explained that there is a method on the motor vehicle mainframe by which she can enter a vehicle's VIN, vehicle type, year and make, and it will respond with the vehicle's MSRP. Page 8 of Exhibit D is the screen print-out of this inquiry, indicating an MSRP of \$14,079. Through the use of this program, as well as VINassist, the DOJ has accurately identified, for tax purposes, the year of the vehicle and its MSRP.

Ms. Hargrove testified that the DOJ obtains MSRP information from National Market Reports, a nationally-known firm, which obtains the MSRPs directly from the manufacturers. The information is provided on tapes, which are tested for accuracy prior to going onto the mainframe, as well as in hard-copy format.

Page 9 of Exhibit D is a copy of the relevant page from the National Market Reports hard-copy book describing the 1994 Suzuki Sidekick four-door JX hardtop four by four. The MSRP used by the DOJ is the "Suggested Factory S.R.P.," or suggested retail price, found in column nine. The S.R.P. for the subject vehicle is \$14,079. Ms. Hargrove stated that the

number in the far-left column, the average finance value, is not used by the DOJ. The value shown for the subject vehicle, \$6,235, is the amount that a financing institution would loan on the vehicle.

Ms. Nordlund summarized the DOJ's case by stating, "*the Constitution gives the Legislature the ability to set our taxation schedule and our taxation methods. The Legislature has set how they determine that vehicle taxes will be done in Senate Bill 57. It's a different approach than they took in prior years, and we can anticipate a different approach yet again in the upcoming years. But the reality here is, the Department of Justice has treated Mr. Mashek exactly as the law requires. We have considered the manufacturer's suggested retail price of his vehicle. We have determined its age versus the tax year, and we have applied the statutorily-set depreciation factor to arrive at a taxable value. That's what the law requires. The law does not require that we assess fair market value. The legislature knows how to assess fair market value as the measuring stick for taxation, and it specifically chose not to do it as applied to light vehicles. That's a legislative choice. We're here as the executive agency who is executing what the law requires, and we have done it correctly.*"

TAXPAYER'S CONTENTIONS

Mr. Mashek opened his presentation by stating that, as he discovered in a previous tax appeal case, "*The law's the law, and that's the way it's gonna be, even though all evidence points to the contrary.*" He referred to DOJ Exhibit C, containing the chart with the four vehicle categories, and said that the problem with the sport utility category is that it contains large, expensive vehicles as well as cheap, little vehicles that don't hold their value well. By assigning his Suzuki to the same category as "*Suburbans and Tahoes, it minimizes the depreciation value of it, because it, in fact, depreciates far faster than the other rigs in this category.*" As an example, Mr. Mashek stated that he owns a 1996 Explorer, which is his wife's vehicle, and he presented Taxpayer's Exhibit 1, which is the current "Montana vehicle registration and payment receipt" for the Explorer. He pointed out that this vehicle is also considered to be a sport utility vehicle, and its taxable value, according to Exhibit 1, is \$17,396. Taxpayer's Exhibit 2 is a print-out of the internet appraisal report Mr. Mashek had found for the Explorer. The information, which was obtained from the NADA (National Automobile Dealers' Association) Appraisal Report dated September 7, 2000, indicates that for a 1996 Ford Explorer, 1/2 ton V6,

4-door, four-wheel drive, the average trade-in is \$13,550, average retail is \$16,050, and high retail is \$17,365. With the optional XLT trim added, the above values would increase by \$600, resulting in the average trade-in of \$14,150, average retail of \$16,650 and high retail of \$17,975. The value assigned by the DOJ to Mrs. Mashek's vehicle is "*right in the middle of those and is pretty accurate,*" according to Mr. Mashek. He also testified that the current NADA Blue Book (January, 2000) indicates a retail value of \$18,325 for the Explorer, considerably higher than the taxable value. The Explorer is an example of a sport utility vehicle that "*holds its value well,*" unlike Mr. Mashek's Suzuki.

Taxpayer's Exhibit 3 is a print-out of the NADA appraisal report that Mr. Mashek had obtained from the internet for his 1994 Suzuki, indicating an average trade-in value of \$4,150, average retail value of \$5,800 and high retail value of \$6,725. Mr. Mashek pointed out that "*the high retail value is about \$2,600 less than the DOJ is trying to tax me at.*" Taxpayer's Exhibit 4 is a copy of the relevant page from the January 2000 NADA Blue Book. It indicates a retail value of \$6,375 and a trade-in value of \$4,650 for the subject vehicle, considerably less than the DOJ's taxable value.

Mr. Mashek stated that it is unfair for him to have to pay taxes on a vehicle that is valued much higher than it is actually worth. He referred to a recent Supreme Court decision in which the Court ruled that, in the case of real property, "you cannot tax a guy for more value than is there." Although he recognizes the need for a formula because it would be too cumbersome to appraise every vehicle, "the current formula results in such a great disparity that it should be changed. They were using year five at 67 percent of value. If you look at those and the actual value of my rig, they should be assigning these cheap SUVs in the car category, 41 percent of value, and you would've come up with a value of about \$6,200 if they assigned this as an automobile instead of a sport utility. And if their ultimate aim here is to assign an accurate value, then they need to move my little rig over to the automobile side."

Mr. Mashek expressed concern that if a taxpayer loses an appeal before the Board and appeals it on to the district court and the Supreme Court, the taxpayer must bear the costs of the appeal. Even if the taxpayer prevails, there is no mechanism for reimbursement of the costs incurred. He stated that "I can understand if you went to district court and lost or to the Supreme Court and lost. You must not have

had a good case to begin with. But, if you feel strongly in your case, finances would limit your pursuit of justice."

BOARD'S DISCUSSION

Mr. Mashek is correct when he states, "*the law's the law.*" In the case of assessing motor vehicles for taxation purposes, the law is very specific. A vehicle is taxed on the depreciated value of the manufacturer's suggested retail price. The evidence presented by the DOJ shows that the subject vehicle's MSRP of \$14,079 is consistent in the National Market Reports and the VINassist program. The age of the subject vehicle has been determined correctly by subtracting the model year (1994) from the current year (1999). The vehicle has been correctly identified as a sport utility vehicle, based upon its classification by the manufacturer and the statutory definition of an SUV. §61-1-140, MCA defines sport utility vehicle as "*a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use. The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.*" The four motor vehicle categories listed in §61-3-503(2)(a), MCA were determined by the legislature, leaving no discretion to the DOJ. Mr. Mashek contends that the vehicle would be more accurately valued had it been

"assigned a 41 percent value in the passenger car class." By definition, the DOJ was required to place the subject vehicle in the sport utility vehicle category.

After identifying the vehicle as a sport utility vehicle, the percentage of depreciation for a five-year old SUV (67%) was correctly determined by the DOJ from the matrix in §61-3-503(2)(a), MCA. The formula was applied correctly, and the DOJ's math was accurate. Mr. Mashek does not dispute this. His concern is that the value of the vehicle for tax purposes is well above the actual resale value of the vehicle. For tax purposes, it is categorized with other sport utility vehicles that are larger, more expensive, and hold their resale value better than his Suzuki.

The inequities inherent in this statute, as enacted by the legislature, are beyond the scope of this Board, which is an administrative body with no authority to change or overrule statutes. Past legislatures have repeatedly adjusted laws relating to motor vehicle taxation, and will undoubtedly continue to do so, resulting in different types of disparities. Although the Board recognizes the inequities that are created by assessing many different vehicles in only the four categories provided by statute, it has no discretion in this case. The law is clear, and the DOJ acted

within the law in setting the assessed value of the subject vehicle.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-2-301, MCA. Appeal of county tax appeal board decisions.** (1) ... a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board.

3. **§15-2-301, MCA. Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

4. **§61-3-503, MCA. Assessment.** (2)(a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the vehicle determined from the following table... (b) The age for the light vehicle is determined by subtracting the

manufacturer's model year of the vehicle from the calendar year for which the tax is due.

5. The appeal of the Department of Justice is hereby granted and the decision of the Lewis and Clark County Tax Appeal Board is reversed.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject vehicle shall be entered on the tax rolls of Lewis and Clark County by the Assessor of that county at the value of \$9,432.93 for the tax year 1999 as determined by the DOJ. The appeal of the DOJ is therefore granted, and the decision of the Lewis and Clark County Tax Appeal Board is reversed.

Dated this 22nd day of September, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JAN BROWN, Member

JEREANN NELSON, 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 22nd day of September, 2000, 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:

Ronald and Laureen Mashek
1630 Jerome Place
Helena, Montana 59601

Motor Vehicle Division
Department of Justice
Second Floor, 303 N. Roberts
P. O. Box 201430
Helena, Montana 59620

Treasurer's Office
Lewis and Clark County
County Courthouse
Helena, Montana 59601

Gene Huntington
Lewis and Clark County Tax Appeal Board
725 North Warren
Helena, Montana 59601

DONNA EUBANK
Paralegal