

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

MONTANA REFINING COMPANY,)	
)	DOCKET NO.: SPT-1996-12
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 was heard on the 19th day of February, 1997, in the City of Great Falls, Montana, in accordance with the order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The taxpayer was represented by attorney Richard F. Gallagher; and witnesses, Environmental Engineer Ray Martinich and Environmental Coordinator Dexter Busby, presented testimony in support of the appeal. The Department of Revenue (DOR) was represented by attorney Deborah Harten; and a witness, Valuation Specialist III Bonnie Ambuehl, presented testimony in opposition to the appeal.

Testimony was presented, exhibits were received, and a post hearing briefing schedule adopted. The Board then took

the appeal under advisement; and the Board having fully considered the testimony, exhibits, post hearing briefs, and all things and matters presented to it by all parties, finds and concludes as follows:

STATEMENT OF THE ISSUE

The taxpayer, MONTANA REFINING COMPANY, brings this appeal to the Board based on the issue of the Company's entitlement to reclassification of pollution control equipment, 15-6-135, MCA, class five property, for tax years 1994 and 1995. The taxpayer seeks a refund of taxes which were paid under protest for the second half of 1994 and all of 1995.

FINDINGS OF FACT

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

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as:

Pollution Control Equipment located at Montana Refining Company in Great Falls, MT. Assessment Code # - 1876725.

3. Dates of actions by both parties which affect the subject appeal:

- 7-8-94 The taxpayer received the 1994 tax assessment and classification notice.
- 4-18-95 Four applications for reclassification of pollution control equipment were filed by the taxpayer.
- 5-23-95 The taxpayer paid the second half of the 1994 taxes under protest; the amount protested is \$34,063.25. The reason for protest: Change in tax classification. Certain properties have pending applications for certification as pollution control equipment.(Taxpayer exhibit #1)
- 7-7-95 The taxpayer received the 1995 tax assessment and classification notice.
- 11-2-95 The Department of Environmental Quality (DEQ) certified taxpayer's equipment to the DOR for the valuation of the equipment.
- 11-15-95 The taxpayer paid the first half of the 1995 taxes under protest; the amount protested is \$36,725.91. The reason for protest: Change in tax classification due to certification of units by Department of Environmental Quality as pollution control equipment.(Taxpayer exhibit #2)
- 1-96 The DOR reclassified the taxpayer's pollution control equipment for 1996 tax year.
- 5-13-96 The taxpayer paid the second half of the 1995 taxes under protest; the amount protested is \$36,725.91. Reason for protest: Change in tax classification due to certification of units by Department of Environmental Quality as pollution control equipment.(Taxpayer exhibit #3)
- 6-3-96 The taxpayer filed an AB-26 Property Review Form, (Taxpayer exhibit #4) appealing tax

assessments for 1994 and 1995, stating:

Certain Mach/Equip listed on attached Exhibit A were assessed as NEI - Mach/Equip, taxable at 4.5%. MRC has requested a change in tax classification due to certification of these units by the Montana Department of Environmental Quality as pollution control equipment, taxable at 3%.

Montana Refining Company submitted a tax certification request application in 1995 under MCA 15-6-135(2) to the Montana Department of Environmental Quality, Air Quality Division, which was allowed and forwarded to the Montana Property Assessment Division. As of this date, MRC has paid property tax to Cascade County under protest for the 2nd half of 1994 and for all of 1995.

- 6-19-96 The DOR responded to questions from the taxpayer stating in summary from taxpayer's exhibit #5:
 - #1) The pollution control applications were filed with us on April 20, 1995. Prior to that, for the years 1993 and 1994, the qualifying equipment was placed in new and expanding industry. Applications are not retroactive, so no change in classification will be made for either 1993 or 1994. Beginning in 1995, however, all of the qualifying equipment for both those years plus 1995 was placed in the pollution control classification in year three (code number "6603") because the project began three years ago in 1993, and those items had already been on the tax roll. In other words, the applications were not filed timely for either 1993 or 1994. Please refer to page 4 of the DEQ Administrative Rules.
 - #2) If a taxpayer is dissatisfied with apportionments or denials of pollution control equipment, an appeal should be filed with the County Tax Appeal Board wherein the property is located, naming the Department of Environmental Quality as respondent. If assessed valuation is the problem, then the Department of Revenue should be named the respondent. See paragraph d, page 66 of the Montana Annotated Code, Section 15.
- 7-7-96 The DOR responded to the AB-26 Property Review Form on July 7, 1996, stating #4:

Incorrect Assessment Notice mailed on, or about, May 9, 1996 has been replaced with the correct assessment notice as of today. Pollution control equipment has been placed on the pollution control codes for 1995. Since pollution control application was dated 4/20/95 and is not retroactive, no change can be made in classification for 1994, either.

- 8-9-96 The taxpayer filed a complaint, appealing the DOR's failure to reclassify the pollution control equipment for years 1994 and 1995. The Complaint was filed with three entities: the county board, the state board, and the district court.

4. The taxpayer and the DOR filed a Joint Motion with the District Court for staying this matter until a decision is rendered from this Board. District Judge Thomas M. McKittrick ordered the "matter shall be stayed until further Order of the Court."

5. "Dexter Busby explained to the Board that MRC delayed seeking classification of the above-described air pollution control equipment until 1995 pending the results of monitoring the effectiveness of the equipment and the results of a similar application which had been earlier filed with DOR by the Cenex refinery in Billings. However, as Mr. Busby testified and as alleged in the Petition and admitted by DOR in its Answer filed herein, the fact of and the nature of the above-described refinery improvements were well known to DOR because MRC had applied for and received expanding industry tax

relief beginning in 1994 under §15-24-1404, MCA for the same property." (petitioner's opening brief, pg. 2)

6. Montana Refining Company (MRC) applied for and was granted expanding industry tax relief for the subject property beginning in 1994, in accordance with 15-24-1401, MCA.

7. The market value of the subject property is not at issue before this Board.

8. The Board has jurisdiction over this matter pursuant 15-2-302, MCA, and 15-6-135, MCA.

TAXPAYER'S CONTENTIONS

Montana Refining Company seeks property tax classification of air pollution control equipment installed in 1992 and 1993 as Class 5 property in accordance with the provisions of 15-6-135, MCA. In addition, Montana Refining Company seeks a refund of taxes which were paid under protest for the second half of 1994 and all of 1995.

DEPARTMENT OF REVENUE'S CONTENTIONS

The DOR argues that the taxpayer did not file in a timely manner the applications for reclassification of pollution control equipment or the appeals with this Board for tax years 1994 and 1995. Further, the fact that the taxpayer

has paid taxes under protest does not grant the taxpayer the ability to appeal the classification of the subject property for the years in question

BOARD DISCUSSION

The issue before the Board is whether or not the taxpayer is entitled to class five designation for pollution control equipment for tax years 1994 and 1995.

The taxpayer's briefs indicate that the proper statute for the subject property is Title 15, Chapter 23, which addresses centrally assessed property. The Board does not dispute that the MRC owns and operates centrally assessed property which is the pipeline located in several Montana counties. The air pollution control equipment, however, is located only in Cascade County; therefore, it is not centrally assessed property and not subject the provisions cited in Title 15, Chapter 23.

MRC filed applications titled "Application For Certification Of Property For Tax Classification" on April 18, 1995; and, therefore, that is the date which MRC initiated the action. The Board does not agree with the taxpayer's argument of waiting for the operational effectiveness, certification and/or classification results for the Cenex refinery as a issue

of applicability in this case. The appeal deadline, as outlined in 15-2-302, was clearly not met by the taxpayer for year 1994. The applications for certification of pollution control equipment were filed approximately one month prior to the payment of the second half of 1994 taxes. It is the Board's opinion, therefore, that the taxpayer slept on its rights for tax year 1994.

There has been no dispute that MRC was granted tax relief as defined in 15-24-1401 & 15-24-1402, MCA.

15-24-1402. New or expanding industry - assessment - notification

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 77-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. (emphasis applied)

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualified for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

The New and Expanding Industry is defined in 15-24-1401 and 15-24-1402. The application is made with the DOR, but it's the local taxing jurisdiction which makes the final decision of approval or denial. The application of class five

property is entirely a separate process and is addressed in a different statute: 15-6-135.

The market value of the subject property does not change from class eight property to class five property, but the taxable percentages do change from 9% to 3% of their market values, respectively.

When is an application consider timely filed? DOR's response brief states:

The rules promulgated by the DEQ are found in ARM 16.9.101 through 106. While these rules do not contain a date upon which an application for reclassification of equipment is due, the Department directs the Board's attention to § 15-8-201, MCA. Which indicates a general assessment date of January 1. It would follow that anyone wishing to have equipment reclassified would want to have it done before January 1 of any year in order to get the classification for that year...

Based on the evidence and testimony, the subject property was in place prior to general assessment day for tax year 1995. The Board disagrees with the DOR's determination that the application deadline for tax year 1995 must be prior to January 1, 1995. The statute and rules are silent to application applicability dates.

From the taxpayer's exhibit #5:

The pollution control applications were filed with us on April 20, 1995. Prior to that, for the years 1993 and 1994, the qualifying equipment was placed in new and expanding industry. Applications are not retroactive, so no change in classification will be made for either 1993 or 1994. **Beginning in 1995, however, all of the**

qualifying equipment for both those years plus 1995 was placed in the pollution control classification in year three (code number "6603") because the project began three years ago in 1993, and those items had already been on the tax roll. In other words, the applications were not filed timely for either 1993 or 1994. Please refer to page 4 of the DEQ Administrative Rules. (emphasis supplied)

When reading the above bolded excerpt, it would appear the subject property was granted class five determination for tax year 1995.

From DOR's exhibit G:

Pollution control equipment has been placed on the pollution control codes for 1995. Since pollution control application was dated 4/20/95 and is not retroactive, no change can be made in classification for 1994, either.

When reading the above bolded excerpt, one could conclude that class five was granted in the first sentence and denied in the second.

The Board agrees with the DOR, that it cannot classify pollution control equipment until DEQ determines certification. As previously mentioned, the equipment was in place prior to January 1, 1995, the applications were filed in April of 1995 and DEQ certified the equipment in November of 1995. It is the Board's opinion, therefore, the applications were filed timely for tax year 1995.

CONCLUSIONS OF LAW

1. 15-6-135, MCA, Class five property - description

- taxable percentage states in pertinent part:

1 (b) air and water pollution control equipment as defined in this section;

2 (b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the application is in substantial compliance with all applicable rules, laws, orders or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including time frames for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment...

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent. (emphasis applied)

2. 15-24-1402. New or expanding industry - assessment - notification states in pertinent part:

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. (emphasis applied)

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate

local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualified for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

3. 16.9.101-106 ARM, outline the procedures and criteria for the certification of air and water pollution control eligibility.

4. It is the opinion of this Board that the taxpayer, Montana Refining Company, has failed to meet the burden that the applications for pollution control equipment were filed in a timely manner and thus are not due a refund of taxes paid under protest for tax year 1994.

5. It is the opinion of this Board that the taxpayer, Montana Refining Company, has met the burden that the applications for pollution control equipment were filed in a timely manner and are entitled a refund of taxes paid under protest for tax year 1995.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the Assessor of said County for tax year 1994 as class eight property as determined by the Department of Revenue. For tax year 1995, the subject property shall be entered on the tax roll as class five property as determined by the Board.

Dated this 17th day of June, 1997.

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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of June, 1997, 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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c/o Richard F. Gallagher
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