

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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CYNTHIA E. TAYLOR,	)	
	)	DOCKET NO.: SPT-2001-2
Appellant,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	<u>FOR JUDICIAL REVIEW</u>
	)	
Respondent.	)	

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The above-entitled appeal was heard on February 8, 2002, in the City of Hamilton, 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.

Cynthia E. Taylor (the Taxpayer) presented testimony in support of her appeal. The Department of Revenue (DOR), represented by Jim Fairbanks, Regional Lead, Debbie Reesman, Unit Manager and Dennis Vick, Customer Assistance, presented testimony in opposition to the appeal. In addition to testimony, exhibits were received in evidence. Ms. Taylor is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence, this Board finds as follows:

### **STATEMENT OF THE ISSUES**

There are two issues before the Board. The first is whether the Taxpayer actually filed an application for property tax assistance for 2001. Secondly, was the DOR correct in denying the Taxpayer's filed form of application for such assistance based on the failure of the Taxpayer to timely supply year 2000 income information and failure of the residential occupancy requirements pursuant to Sections 15-6-134 (1)(c) and 15-6-191, MCA.

### **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 the opportunity to present evidence, oral and documentary.
2. The Taxpayer signed and dated her application titled "Application For Property Tax Assistance Program" on March 7, 2001.
3. The application is stamped "Received" on what appears to be March 13.
4. The DOR denied the Taxpayer's request in writing stating, "*No income provided as of 6/15. Does not appear to meet occupancy req. for this year*".
5. The Taxpayer appealed that decision to this Board on July 7, 2001 which was received by the Board on July 16, 2001.

### TAXPAYER'S CONTENTIONS

The Taxpayer contends that she filed the application for property tax assistance, timely supplied the financial information required and complied with the statutory occupancy requirements. In support of her contentions the Taxpayer offered the following testimony and evidence.

As stated in the MONTANA DEPARTMENT OF REVENUE APPLICATION FOR PROPERTY TAX ASSISTANCE PROGRAM form PPB-8 (Rev 11/00) it must be returned to the local DOR field office by March 15<sup>th</sup> or no reduction could be allowed. The Taxpayer signed and dated her application on March 7, 2001. She included her social security number, phone number and other information but did not include total annual income information as outlined on the form. She returned the signed application to the local DOR field office and it was date stamped as "Received" on what appears to be March 13, 2001. A yellow sticky note was attached to the income information section of this form stating "Need Income." Also attached was another yellow note from Ms. Taylor stating "Income information to be given upon completion of tax return (self-employed)."

The Taxpayer testified that this application had been filed as she had done since first requesting property tax assistance in 1992 and each year thereafter. Each year she filed the signed form writing on the form that financial

information would be supplied as soon as her accountant completed her tax return. For those years her tax return was not completed until sometime after April 15 and at least in one year not until August. Each year she or her accountant would send or take a copy of her tax return to the local DOR office where DOR personnel would take the information from Schedule C and write the required information on her application and each year until 2001 this procedure had been approved and property tax assistance provided.

The Taxpayer stated DOR employees told her she must be careful to return the signed application by March 15 of each year but she could supply the financial information when it was available, i.e. when her tax return was prepared. The Taxpayer presented testimony of a witness who said she had used the same procedure for the past several years. The Taxpayer was also called by DOR personnel reminding her to supply this information. She intended to follow the same procedure in 2001, however, she received a letter dated May 2, 2001 from the DOR saying the financial information must be received within 10 days (or other arrangements made) or it would be "necessary" to deny the application. She replied that she would have her taxes done by the end of June but DOR did not state it agreed to this. The Taxpayer's application was denied by the DOR on June 15, 2001 in writing as stated above.

For a number of months of the year 2001 the taxpayer was out of state but she occupied her residence for all of 2000. Subsequent to the denial the Taxpayer testified she called the DOR and inquired about sending in the information on Schedule C on her tax return but was told it was unnecessary, as her application had been denied. This appeal followed.

#### **DOR'S CONTENTIONS**

The DOR contends the taxpayer did not file an application and that it properly denied what was filed as an application for property tax assistance based on the failure of the Taxpayer to timely supply year 2000 income information and failure of the Taxpayer to meet the statutory occupancy requirement. In support of its contentions the DOR offered the following testimony and evidence. The DOR testified that the application at issue was filed on March 13 but that it was "blank" and that ...a blank filed form is tantamount to a form not filed." DOR conceded that the application was signed and completed as the Taxpayer so testified but that the application lacked information and "an application lacking information is not an application." The remainder of DOR's testimony generally agreed with that of the Taxpayer. The information regarding the income of the Taxpayer must be included, however, on the application to be returned on March 15 of the year in question. This is because of the requirements of ¶ 42.19.401

ARM. Approximately thirty people received DOR's May 2, 2001 letter stating that requested financial information must be received by DOR within ten days or it would be necessary to deny their applications. One other person's application was denied for failure to submit the information within this time period. Approximately seven hundred applications are filed with the local DOR office. The DOR acknowledged that its May 2, 2001 letter itself did not comply with the statutory and ARM deadline of March 15, 2001 and that it had acted contrary to its own statute and ARM in past years. The DOR also said an April 15 deadline would serve its purpose of providing tax collection information to counties in a timely fashion and that the first Monday in June would be a desirable date to supply such information. If a few taxpayers went beyond this date, it would not create a problem. This year the DOR intends to have a procedure whereby the applicant would submit "something by April 15" providing "some income" and that the application will be figured on that income. Finally, it appears to be DOR's position that the statutory occupancy requirement is to be met in the year the application is made. This requirement states that the taxpayer must have "occupied that same residence for at least 7 months a year."

## BOARD'S DISCUSSION

For the past seven years at least the Taxpayer has filed her application in a manner approved and apparently as directed by the DOR and in each year her application has been approved. Her signed and completed application, except for requisite financial information, was returned to the DOR local office by March 15 of each year or before that date including her application filed for 2001. The DOR admitted it had not followed its own statute or ARM during this lengthy time period. The Taxpayer is self-employed and since her accountant had not completed her tax return by April 15 she asked for and received time extensions to file her returns, including Schedule C, which contained the required financial information for the DOR. Only if the Taxpayer was an employee and not self-employed would she have likely received a W-2 form before March 15. This form would have allowed her to file a completed form with required income information by March 15. The DOR offered no reason for the selection of the date of March 15 as the due date for filing the application and appears to intend changing that date to at least April 15 this year for the submission of at least some financial figures. The position of the DOR that the seven-month occupancy test must be met the year the application is filed cannot be complied with and therefore cannot be sustained. March 15 of course occurs in

the third month of the year and so the taxpayer cannot have occupied the property for seven months prior to that date for an application filed for a given year. The Taxpayer's income is tested for the preceding taxable year and if the occupancy test is to be measured on a yearly basis this too must be measured for the preceding tax year. The Taxpayer occupied her residence for all of the tax year 2000 and thus satisfied this requirement. It is the conclusion of the Board that the DOR's adopted procedures for 2001 relative to the issues presented amounted to the arbitrary, capricious or otherwise unlawful adoption of a new ARM rule while at the same time abrogating their own ARM rule in effect for such time period. This renders such adopted new rule arbitrary, capricious or otherwise unlawful. The DOR admitted that it didn't follow its own rule during this lengthy time period and that it also did not comply with its own rule again in granting a ten-day extension of time to file the information in its May 2, 2001 letter to the Taxpayer. Therefore the Taxpayer did file a timely application for property tax assistance in 2001 and met the requirements of Sections 15-6-134(1)(c) and 15-6-191, MCA, with regard to supplying year 2000 income information and the occupancy requirement.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over this matter in accordance



**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Taxpayer's Application For Property Tax Assistance for 2001 shall be approved.

DATED this 12th day of March, 2002.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JEREANN NELSON, Member

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MICHAEL J. MULRONEY, 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 12th day of March, 2002, 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:

Cynthia Taylor  
524 Golf Course Rd.  
Hamilton, MT 59840-3237

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, MT 59620

Jim Fairbanks  
Regional Lead  
Department of Revenue  
2681 Palmer, Suite I  
Missoula, MT 59808

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DONNA EUBANK  
Paralegal