

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

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|---------------------------|---|----------------------------|
| DAN TERRELL, |) | DOCKET NO.: PT-1998-21 |
| |) | |
| 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. |) | |

The above-entitled appeal was heard on September 8, 1999, in the City of Hamilton, 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 taxpayer, Dan Terrell, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraisers Scott Spear and Candace Jerke, 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:

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 taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Parcel "B", Survey #2531, Stevensville, Ravalli County, State of Montana, and the improvements located thereon; geo code #1764-16-3-01-03-0000. (Assessor code #278600).

3. For the 1998 tax year, the DOR appraised the subject property at a value of \$36,785 for the land and \$175,400 for the improvements.

4. The taxpayer appealed to the Ravalli County Tax Appeal Board on an undated appeal form, which was received by the county board on July 14, 1998, requesting a reduction in value to \$140,000 for the improvements, stating:

The value of my building is appraised to (sic) high. The Dept. of Revenue is using \$33,000 worth of improvements to double the appraised value - which bypasses the current phase-in valuations.

5. In its September 10, 1998 decision, the county board approved the taxpayer's requested value of \$140,000 for the improvements, stating:

We do not feel the DOR adequately supported their appraisal. Information provided by the taxpayer showed that his appraisal by DOR was unjustifiably (sic) high compared to appraisals of surrounding properties.

6. The taxpayer appealed that decision to this Board on October 12, 1998, stating:

I have applied for the low-income tax deduction. The DOR has arbitrarily only given me 1/3 of the allowed deduction. There is no legal justification for applying (sic) only part of the deduction.

TAXPAYER'S CONTENTIONS

Mr. Terrell stated that at the County Tax Appeal Board hearing it was agreed to let the Department of Revenue in Helena look at the low-income provision of the law and how that would be applied in this case, but he had heard nothing back from Helena as of this date. He believes that "the Department of Revenue should follow the existing law as it's written, and I think that giving me only a third on the allowable deduction is an arbitrary choice." He testified that it was his understanding that the Department of Revenue looked at the building he lives in and divided it up into residential and commercial space, and he didn't believe there was a basis in law to do that. He believes that the law is specific, and it says "5 acres and up to \$100,000."

Taxpayer's Exhibit 1 is a two-page exhibit with excerpts from the Administrative Rules of Montana (ARM), **42.19.401 LOW INCOME PROPERTY TAX REDUCTION**, sections (1)

through (4), and 42.19.402 INFLATION ADJUSTMENT FOR LOW INCOME PROPERTY TAX RELIEF, Sections (1) through (3). The date on this exhibit is June 30, 1988. (These rules have since been updated, in 1989, 1992 and 1996.)

Taxpayer's Exhibit 2 is a highlighted copy of **15-6-134, MCA. Class four property - description - taxable percentage.**

"(1) Class four property includes ... (c) the first \$100,000 or less of the market value of any improvement on real property..."

Taxpayer's Exhibit 3 is a highlighted copy of **15-6-151, MCA. Application for certain class four classifications.**

Taxpayer's Exhibit 4 is a copy of page 45 of Senate Bill 184 from the 1999 legislative session. Section (c) is highlighted and reads as follows:

"(c) the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than \$15,000 for a single person or \$20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both."

Mr. Terrell concluded his brief testimony by stating that he does qualify for the low-income deduction according

to the way he reads these laws, and he is asking that "it be applied the way that it's written".

DOR'S CONTENTIONS

The DOR had prepared Exhibits A through F, which referred to the valuation of the subject property. However, since the DOR had not filed a cross appeal, the value was not at issue in this hearing so they chose not to admit some of those exhibits into evidence.

DOR's Exhibit A, which was admitted, is a copy of the property record card for the subject property. It includes a photograph of the subject improvements. Mr. Spear explained that he was introducing this exhibit to support the DOR's claim that the property is "predominantly constructed as a commercial-type structure." He further described the property as follows: "The subject property is what we have termed as a shell warehouse. Its gross dimensions are 68 feet by 90 feet. The upper floor is the portion that is to eventually be fully transformed into residential living quarters. The dimensions for the upper floor are gross dimensions of 32 feet by 90 feet. The lower area has 6,120 square feet; the upper loft area has 2,712 square feet of useable space."

Mr. Spear then explained that the method used by the

DOR to apply the property tax assistance benefit to the subject property was based upon the value of the upper floor area (the residential area) in relation to the total improvement value. This method is further explained in Exhibit J, a three-page summary of the history and details of this appeal. Page 2, subsection G of Exhibit J states:

At issue is whether the entire property (which contains both a residential and a commercial use) is eligible for the Property Tax Assistance program.

15-6-151(b)MCA states "...that the person maintains the land and improvements as the person's primary residential dwelling."

15-6-134(c)MCA states "...the first \$100,000 or less of the market value of any improvement ...and appurtenant land not to exceed 5 acres...and actually occupied for at least 7 months a year as the persons (sic) primary residential dwelling..."

We do not contest that the upper floor of the warehouse is being utilized as Mr. Terrell's residence, even though it is not constructed as a residence. The main level, however, has been utilized as a commercial shop, was initially constructed as a commercial shop, is currently FOR LEASE..., and is generally a commercial use property in nature, based upon design and income producing capability. As such, the commercial component of the property is deemed to not be eligible for the Property Tax Assistance benefit, which appears designed to benefit residential properties only.

To allocate the PTA reduction to the upper floor only we utilized a ratio for the CAMA base value, per floor. Exhibit A-2 details the RCNLD (Replacement Cost New Less Depreciation) of the subject property on a per floor basis. Cost estimates of the main level are \$126,860 and the upper floor are \$53,650 for a total RCNLD (prior to deduction for the lack of concrete on the main level) total \$180,510. \$53,650 divided by \$180,510 = 29.7% of the improvement value deemed eligible for the PRA reduction. As up to 5 acres of land is also eligible for the PTA reduction, an arbitrary decision was made to apply the PTA benefit to 1 acre of the land value as well. Since the land is primarily commercial in character and the PTA program appears designed to benefit residential properties only, this 1 acre judgement was made as a compromise in the appellants (sic) favor, in the light of the lack of direction provided by MCA and ARM."

Mr. Spear testified that the DOR believes "the property is commercial property and would be viewed as such in the marketplace if it was placed for sale". He stated that the DOR would like guidance on the intent of the law regarding low-income property tax assistance in cases such as this, where the property consists of both residential and commercial space.

Exhibit G is a marked copy of two relevant code sections: **15-6-134 (c)** and **15-6-151 (b)**, **MCA**. Mr. Spear testified that the DOR's interpretation of these statutes is that a person must maintain the land and improvements as the person's primary residential dwelling to be eligible to apply for property tax assistance. He does not dispute the fact that Mr. Terrell is using the upper floor area as a residence, but the main level was originally constructed as a commercial shop, has been utilized as a shop, and is currently for lease and, thus, has income-producing potential. Therefore, the main floor would not be covered by the residential stipulations in MCA 15-6-134 and 15-6-151.

DOR's Exhibit H is a 19-page document containing a history of Mr. Terrell's personal property tax appeal and various income and expense reports. Ms. Jerke referred to page H-10, a copy of her field audit notes of May 21, 1998, when she visited the subject property to inform Mr. Terrell

that he needed to file his personal property reporting form. She indicated that at that time Mr. Terrell was conducting an auto sales and repair business, which he called Shadetree Automotive, on the main floor of the subject building.

Since Mr. Terrell's land benefit had been calculated in the same manner as agricultural land, Ms. Jerke explained that when the DOR processes agricultural applications for property tax assistance, the applicants are only allowed a reduction on the one-acre farmstead and the residence, not on any additional property. She presented DOR Exhibit K, a two-page exhibit of information taken from the DOR's *Policy and Procedures Manual*, establishing guidelines to determine the restrictions applicable to real property owned by qualified property tax assistance applicants. In pertinent part, this exhibit states: "Property tax assistance tax reductions apply only to the first \$100,000 or less of the market value of any improvement on real property, including trailers or mobile homes, and appurtenant land not exceeding five acres." The explanatory questions and answers on the exhibit include the following:

1. Does the \$100,000 apply to the improvement value only, or to the total land and improvement value?

The total land value (not exceeding five acres) and the total improvement value.

2. If the land value is \$20,000 and the improvement

value is \$89,000, for a total of \$109,000, how do you apply the reduction?

You could place the total improvement value (\$89,000) at the reduced tax rate and a portion of the land value (\$11,000) at the reduced tax rate; OR

You could place the total land value (\$20,000) at the reduced tax rate and a portion of the improvement value (\$80,000) at the reduced tax rate. The important thing is that the total land and improvement value receiving the tax reduction does not exceed \$100,000.

3. If the qualified applicant owns agricultural land and a one-acre farmstead, is the reduction given on the one-acre farmstead and four agricultural acres?

No. The reduction should only be given on the one-acre farmstead and the residence.

Mr. Spear explained that these guidelines are part of the DOR's internal policies and procedures and are designed to help the DOR "promote equity and insure uniform compliance of the tax burden." They are not part of the Montana codes nor of the Montana administrative rules, although they are based on the codes and the rules, and they have been thoroughly reviewed by the DOR's legal staff.

Mr. Spear concluded his testimony by stating that there are many types of commercial properties that may include some living space. It is his belief that "just by the sole fact that someone happens to live in or utilize a portion of these properties as a residential use doesn't necessarily make them residential properties; and it's my opinion, as an employee of the DOR, that these properties are not eligible

for the property tax assistance reduction."

BOARD'S DISCUSSION

The Board did not discuss the value of the subject property since it is not at issue in this appeal. The Board noted that Taxpayer's Exhibit 4 is a 1999 legislative amendment to existing statute and, therefore, was not in effect at the time this appeal was filed.

The Board believes that the evidence presented supports the DOR's claim that the subject property is primarily commercial, rather than residential, property. Mr. Terrell testified that he had applied for a commercial building permit because he thought "the building would be worth more in the long run if it has a commercial building permit."

The Board discussed various types of property that may be commercial yet also contain residential space, including an owner-occupied four-plex, a home-based day care center, a doctor's office building that contains a bedroom and bathroom for personal use, and main street properties with residential apartments above retail space. The DOR precedent has been to grant the low-income assistance for only the residential area, as was done in this case. The Board has no record of any prior appeals being filed on such properties.

The Board studied the statutes and administrative rules referred to by both the taxpayer and the DOR, including: **15-**

6-134, MCA, which states: (1) Class four property includes: ... (c) the first \$100,000 or less of the market value of any improvements on real property ... and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, ... is not more than \$15,000 for a single person, or \$20,000 for a married couple or a head of household..." (emphasis added); 15-6-151, MCA, which states: "(1) A person applying for classification of property under the property tax assistance program described in 15-6-134(1)(c) shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating: ... (b) the fact that the person maintains the land and improvements as the person's primary residential dwelling..." (emphasis added); and ARM 42.19.402 INFLATION ADJUSTMENT FOR PROPERTY TAX ASSISTANCE PROGRAM, which states: (1) Section 15-6-134 (2)(b), MCA, provides property tax relief to low income homeowners. (emphasis added)

The Board agrees with the DOR contention that the property tax assistance program was designed to assist low-income residential property owners. The Board also agrees with the method used by the DOR in applying the property tax assistance benefit to the subject property.

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.** (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.

3. The appeal of the taxpayer is hereby denied, the decision of the Ravalli County Tax Appeal Board is affirmed, and the DOR's method of applying the property tax assistance benefit to the subject property is affirmed.

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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 Ravalli County by the Assessor of that county at the value of \$36,785 for the land and \$140,000 for the improvements as determined by the Ravalli County Tax Appeal Board. The DOR shall apply the property tax assistance benefit to the subject property in the manner it has previously determined. The appeal of the taxpayer is therefore denied, the decision of the Ravalli County Tax Appeal Board is affirmed, and the DOR method of applying the property tax assistance benefit is affirmed.

Dated this 4th of October, 1999.

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.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of October, 1999, 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:

Dan Terrell
4079 N. Highway 93
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