

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

TSI, INC.,)	DOCKET NO.: CT-2003-1
TSI LEASING, INC.)	DOCKET NO.: CT-2003-2
CONSULTING ASSOCIATES, INC.,)	DOCKET NO.: CT-2003-3
M CORP & SUBSIDIARIES)	DOCKET NO.: CT-2003-4
)	
Appellants,)	
)	
-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 March 29, 2004, in the City of Helena, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of hearing was duly given as required by law.

Mr. Paul McCann of Great Falls (taxpayer) appeared on behalf of himself and the corporate entities involved in these appeals. Mr. McCann is a principal stockholder in each of the corporate entities involved in these combined appeals. The Department of Revenue (DOR), represented by tax counsel Brendan Beatty, presented testimony through its witness, Melissa Kopps, Auditor, in opposition to the

appeal. In addition to testimony, exhibits were received in evidence.

The corporations noted above are the appellants in this proceeding and, therefore, have the burden of proof. Based on the evidence and testimony the Board finds that the decision of the Department of Revenue is affirmed.

STATEMENT OF ISSUE

At the outset of the hearing the taxpayer informed the Board that he wished to delete from the appeal certain of the adjustments made by the department to the various corporation returns, in order to focus the appeal on the gifts which were made to the Paul J. McCann Foundation. Consequently, the taxpayer did not present any testimony in support of his appeal of the TSI Leasing (CT-2003-2) and Consulting Associates, Inc.(CT-2003-3)appeals. That portion of the appeals by TSI, Inc and M Corp & Subsidiaries which did not relate to a charitable gift to the Paul J. McCann Foundation were also unsupported by taxpayer testimony.

The issue on which the taxpayer presented his testimony and argument in this appeal is the tax credit claimed by M Corp & Subsidiaries for tax year ending 1998 in the amount

of \$10,000; and the tax credit claimed by TSI, Inc. in the amount of \$10,000 for tax year ending 1997.

FACTUAL BACKGROUND

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

2. The Taxpayer is a principal stockholder in both TSI, Inc. and M Corp and Subsidiaries which are involved in this appeal. Both of these corporate entities claimed the 50% credit for a charitable contribution to the Paul J. McCann Foundation. However, the Paul J. McCann Foundation is not a "qualified endowment" pursuant to Section 15-30-165, Montana Code Annotated.

3. The Paul J. McCann Foundation in turn made a donation to the University of Montana Endowment Fund, and that entity would satisfy the "qualified endowment" requirement found in Montana law. Both the taxpayer and department agree that the Paul J. McCann Foundation could qualify for the tax credit, but as a 501(c)(3) entity it would be of little value to the foundation.

TAXPAYER'S CONTENTIONS

Taxpayer basically concedes that the "letter of the law" was not followed in this case, but argues that form should not be allowed to override the substance of the transaction. The substance of the transaction, in his view, is that the University of Montana Foundation, a qualified endowment under Montana law, ultimately received the charitable contribution. The Paul J. McCann Foundation was merely a pass-through entity, and is irrelevant to the true transaction. Taxpayer argues that the true transaction here was a charitable gift from M Corp and TSI to the University of Montana Foundation, and that this transaction would qualify as a credit under Montana law.

DOR'S CONTENTIONS

DOR contends that the requirements to qualify for a charitable tax credit under Montana law must be strictly complied with. As such, this transaction does not qualify due to the initial transfer to the Paul J. McCann Foundation, that does not meet the test of a "qualified endowment" under Section 15-30-165, MCA. The fact that the Paul J. McCann Foundation in turn made donations to a qualified entity (the University of Montana Foundation) does not heal the fatal breach of the initial transaction.

BOARD'S DISCUSSION

The issue the Board must resolve is whether the contributions involved in these two instances can qualify as a charitable contribution under Montana law in order to obtain the tax credit provided in Section 15-31-161, MCA. Montana law is clear that the recipient entity must be a "qualified endowment" as defined in Section 15-30-165. Both sides to this appeal basically agree, and this Board finds, that the Paul J. McCann Foundation is not such an entity. But taxpayer argues that we should look beyond this initial transaction and see that the ultimate recipient of the contributions was a qualified endowment, namely the University of Montana Foundation. While this argument holds some appeal to the Board, the Board can find no basis in law for arriving at such a legal conclusion. The law in Montana is really quite clear that the recipient of a contribution must qualify under the strict terms of a "qualified endowment." The Board feels it has no discretion to hold otherwise.

CONCLUSIONS OF LAW

1. §15-2-302, MCA. Direct appeal from department decision to state tax appeal board - hearing. (2)(a) Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision.

2. Section 15-30-165(2)(a), MCA. "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that (i) is a tax-exempt organization under 26 U.S.C. 501(c)(3)

3. Section 15-31-161, MCA.(1997) A corporation is allowed a credit in an amount equal to 50%of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, in 15-30-165.

4. The appeal of the Taxpayer is hereby denied in part and the decision of the Department of Revenue is upheld.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the adjustments to the tax returns involved in these appeals shall be implemented.

Dated this 5th day of April, 2004.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

JOE R. ROBERTS, 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 5th day of April, 2004, 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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