

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

PHILIP ANDREW WOLF,)	
)	
Appellant,)	DOCKET NO.: IT-2011-1
)	
v.)	
)	
THE DEPARTMENT OF REVENUE)	<u>ORDER</u>
OF THE STATE OF MONTANA,)	
Respondent.)	

STATEMENT OF CASE

This matter comes before the State Tax Appeal Board (Board) for administrative review of the Final Agency Decision and Order entered by the Montana Department of Revenue (DOR) pursuant to §15-2-302, MCA. Philip Andrew Wolf (Taxpayer) requests review and reversal of the DOR final determination granting Summary Judgment and assessing tax, interest and penalties against the Taxpayer for failing to pay the taxes due on the gain realized from the 2004 sale of real property in Montana. The Board set the appeal as an informal proceeding on the record pursuant to §2-4-604, MCA, without objection by the parties.

FACTUAL HISTORY

The following history was derived from the Taxpayer's Complaint, the DOR's answer to the Board and the Department of Revenue's Office of Dispute Resolution Findings of Fact, and Conclusions of Law, which is considered the final agency action. There were no contested facts in this matter.

The Department determined that Wolf had sold several parcels of real property listed in his and various family members' names in January 2004 for a lump sum amount of \$2,225,000. The transfers had occurred in Flathead County, Montana. The DOR concluded that Wolf, a resident of Colorado, had been required to file a Montana Individual Income Tax Return for tax year 2004 due to gain realized from the transfers, entailing Montana source income exceeding the threshold amount of income designated in §15-30-142, MCA (2003) for filing.

The DOR asked the Taxpayer to either file an original, signed Montana Individual Income Tax Return or remit the stated period balance from the Statement of Account (SOA). The SOA reported tax due, interest, late payment penalty, and a late filing penalty as an amount due of \$237,621.43 plus interest and penalty.

The Taxpayer attempted to pay the DOR with a “Bonded Promissory Note” for the taxes due and owing in full, which the DOR did not accept. The Taxpayer then demanded the DOR discharge his obligation because they did not send him notice of dishonor of the Bonded Promissory Note.

The Taxpayer argued in his appeal to this Board that there is no gain or tax liability because the purchasers of the real property later obtained a judgment against him in an amount larger than the sale price.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND BOARD

DISCUSSION

The State Tax Appeal Board has jurisdiction over this matter pursuant to §15-2-302, MCA. After considering the record, this Board upholds the final decision of the DOR imposing liability on the Taxpayer.

We find and conclude that the following material facts are beyond dispute. The Taxpayer owned the designated real property at issue in Flathead

County, Montana. He purchased the property for \$1,000,000 in 2003 and sold it in 2004 for \$2,250,000. As a result of the selling price, he realized a gain on the sale. The gain is taxable to Montana as Montana source income and the Taxpayer did not file a 2004 Montana Individual Income Tax Return reporting the gain from the sale. In October 2007, the purchasers of the property obtained a compensatory judgment against the Taxpayer in Montana District Court in the amount of \$2,357,171. The DOR filed on July 9, 2010 with ODR and was subsequently granted a Motion for Summary Judgment and dismissal of the case. This Board received the Taxpayer's appeal on January 4, 2011.

The Taxpayer argues that a subsequent monetary judgment against him increased his basis and therefore reduced his gain from the sale of the property. Thus, he insists that whatever gain he realized from the property sale at issue in 2004 has been offset by this judgment. We find no provision of the Internal Revenue Code, nor state code, that permits a reduction in basis by virtue of any subsequent award of compensatory and punitive damages against the seller of property, nor did the taxpayer cite any such provision. Furthermore, while the Montana District Court ordered the Taxpayer to fulfill his contractual obligations with the buyers of the property, there is no evidence that he has done so. Only funds that actually were expended on capital improvements of the property could have been added to basis.

The Board finds the Taxpayer has submitted no evidence and there is nothing in the record that would legally "void," "abrogate," or "nullify" the "taxable event" of the gain received, as Taxpayer claims. We find the gain should have been reported on a Montana Individual Income Tax Return filed by the Taxpayer in 2004. The Boards also finds no payment has been received for any such liability and no document has been presented for payment that the law recognizes as bona fide legal tender.

The Board concludes the Taxpayer's claims are unsupported by any evidence and therefore nothing more than a dilatory tactic.

Thus, it is the opinion of this Board that the DOR correctly determined the Taxpayer's 2004 tax liability including accruing interest and penalties.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Taxpayer's appeal and complaint be denied and the tax, interest, and penalties, as assessed by the Department, are properly due and owing.

DATED this 22nd day of July, 2011.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ _____
KAREN E. POWELL, Chairwoman

(S E A L) /s/ _____
DOUGLAS A. KAERCHER, Member

/s/ _____
SAMANTHA SANCHEZ, 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

I certify that on this 22nd day of July, 2011, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

Philip Andrew Wolf
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Teresa G. Whitney
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/s/ _____
DONNA EUBANK
Paralegal Assistant