BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DOUGLAS S. HADNOT Appellant, -vs- THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent	DOCKET NO.: PT-2005-1 **NUNC PRO TUNC** FACTUAL BACKGROUND, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW

Findings of Fact

The taxpayer, Douglas Hadnot, owns two contiguous properties totaling 100 acres, Lots 1 and 5 in the Towe Farms Addition in Custer County. In November 2001, Mr. Hadnot submitted an application for agricultural classification to the Custer County assessor. The agricultural designation was granted because the property was deemed to have met all the requirements for agricultural classification. Tr. 4. The land is leased to a neighbor who uses the land for grazing horses. Mr. Hadnot receives an annual income stream of less than $1500 per year for the 100 acres. There are no improvements on the property other than a partial fence line. Tr. 4.

Mr. Hadnot appealed his 2005 property tax assessment to the Custer County Tax Appeal Board based on a classification change of his property from qualified agricultural land to non-qualified agricultural land. The Custer County Tax Appeal Board denied his appeal. Mr. Hadnot timely filed his appeal with the State Tax Appeal Board. Property Tax Appeal Form.

The Board held a hearing in this matter on January 10, 2006. The appellant, Douglas Hadnot, appeared on his behalf. The respondent, Department of Revenue, was represented by Tax Counsel Michele Crepeau and Keith Jones and Management Specialist Dallas Reese.

When Mr. Hadnot received his appraisal in 2005, the value of his property was set by the Department of Revenue at $4,324. Tr. 2. The property has not been developed for any commercial or residential use and does not have any buildings or improvements other than a fence line on a portion of the property. Tr. 4. Mr. Hadnot testified that his taxes on the property were $51 in 2004 and that the taxes increased to $528 without any change to the use or value of the property. Tr 4.

DOR reclassified Mr. Hadnot's property from qualified agricultural land to non-qualified agricultural land based on a newly implemented administrative rule. Property Tax Appeal Letter, CTAB Exh. 1.

Mr. Hadnot testified that agricultural property is classified under Montana Code Annotated 15-7-202 and is broken into three different classifications based on acreage. In regard to his property, acreage less than 160 but more than 20 acres is valued, assessed and taxed as agricultural land if the land is used primarily for raising and marketing agricultural products including livestock. Under the terms of the statute, a parcel is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family makes no less than $1500 in annual gross income. Tr. 6.

The owner of land that does not make $1500 in annual gross income is not presumed to qualify for agricultural classification. Agricultural classification may still be

granted if the landowner verifies to the Department that the land is used primarily for raising and marketing agricultural products. Mr. Hadnot testified that he certified that his property qualified as agricultural land and that he made the appropriate application for agricultural classification. Tr. 6. Mr. Hadnot noted that land under 20 acres must, under the statutory construction, meet the $1500 income requirement.

Mr. Hadnot further testified that, in September 2004, the Department of Revenue implemented a new administrative rule, 42.20.625. Paragraph 9 of the rule established a requirement that the land have a certain productivity level in order to be qualified. Under the new rule, if the land is used primarily to raise and market livestock (as is Mr. Hadnot's land), the land must support 30 or more animal unit months of grazing. The rules further define how that calculation of AUM will be determined. Tr. 7.

Mr. Hadnot argues that the production requirements set forth in the new administrative rule go beyond the statutory intent and have, in essence, changed the law. He argues that the effect of this change is to deny appropriate classification of his property. He argues that pursuant to § 2-4-305, MCA, a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out provisions of the statute. He notes, however, that the administrative rule, as drafted and implemented, is not consistent with the statute and is in fact in conflict with it. Mr. Hadnot notes that under §2-4-305, MCA, adoption of an administrative rule is not valid or effective unless it is consistent and not in conflict with a statute. Tr. 7. Mr. Hadnot urges the State Tax Appeal Board to set the Department's rule aside and return

the property to the appropriate agricultural classification.

Mr. Hadnot also testified regarding the soil productivity requirements that DOR used to determine AUM for his property. He testified that the Department calculated between 24 and 25 AUM for his property – about 6 AUM short of the requirement for agricultural designation. He also notes that 31 acres of his property are given no credit for production under DOR calculations. Mr. Hadnot testified that if that land was given any credit for AUM's, his total property would qualify for agricultural status. Tr. 13. Mr. Hadnot argues that there are a number of flawed assumptions in the calculation of soil productivity and that the application of the administrative rule is flawed.

Finally, Mr. Hadnot presented a letter he received from the Department of Revenue on November 27, 2001, from the Custer County Appraiser. The letter indicated that an application for agricultural classification had been received and approved. The letter states that "[t]he new classification for this property will be effective for tax year 2002 and subsequent years, providing the use has not changed." Exh. 7. Mr. Hadnot argued that the DOR provided a written confirmation of their decision regarding classification of the property and then subsequently changed their position.

He requested that this Board set aside the administrative rule and determine that it is not consistent with and conflicts with the state statute. In the alternative, Mr. Hadnot requests that the Board determine that his property would qualify for agricultural status if the rule were equitably applied to his property. Tr. 14.

Following the presentation by Mr. Hadnot, legal counsel for the Department of Revenue informed the Board that DOR counsel had not seen the letter from the Custer County appraiser (Exh. 7) prior to the hearing.

The Department of Revenue legal counsel informed the Board that because Mr. Hadnot had an approved application and had not reapplied for reclassification, the Department may not reclassify Mr. Hadnot's property. Tr. 15. The Department of Revenue further noted that due to the oversight, the Department would refund Mr. Hadnot's 2005 taxes and reinstate the original classification. In addition, the Department noted that an application must be granted the status of agricultural land in perpetuity until the land is reclassified or a change of use occurs. The Department noted that Mr. Hadnot should not have been made to reapply and to qualify under new rules that did not exist at the time of his original application. Tr. 16.

The Department informed the Board that it would immediately file an AB-44 form to allow a refund of Mr. Hadnot's excess taxes paid. Tr. 16. The Department requested that Mr. Hadnot then dismiss his appeal. Chairman Thornquist noted that the Department would put together the paperwork, submit a copy to the Board and Mr. Hadnot, and if satisfactory to Mr. Hadnot, he could move to dismiss the appeal. Tr. 17. The record was kept open to allow for this process.

About six weeks after the hearing, Mr. Hadnot informed the Board that he had received a refund of his taxes and that Mr. Reese was drafting a letter outlining the agreement. Email from Mr. Hadnot, dated February 24, 2006.

Over the next ten months, the staff of the State Tax Appeal Board contacted counsel for DOR to determine the

status of this matter. DOR repeatedly informed staff of the Board that the letter to Mr. Hadnot would be coming shortly. On October 3, 2006, upon request by staff of the Tax Appeal Board, the Department faxed a copy of the letter sent to Mr. Hadnot to the Tax Appeal Board. Letter from Wilke, dated September 27, 2006. Upon receipt of the letter, the staff of the Tax Appeal Board queried Mr. Hadnot as to whether he wished to withdraw his appeal.

In November 2006, the Board received a request from Mr. Hadnot to withdraw his appeal. Mr. Hadnot noted that the Department had refunded his 2005 taxes paid and reclassified the property to qualifying agricultural property. The Department, however, failed to provide Mr. Hadnot with a letter confirming the perpetuity of his qualifying agricultural status until there is a change in the use of the property. Instead, the Department provided Mr. Hadnot with a letter from Randy Wilke, Administrator of the Property Assessment Division, who was not present at the hearing, discussing general statutory valuation of property in Montana and informing Mr. Hadnot that Mr. Hadnot had asked the department to "issue a letter stating that the method of valuing your property will not change so long as the use to which you put the property does not change."

The letter further noted that "the Department is unable to comply with your request. All property within the state will be classified and valued pursuant to the law and administrative rules in effect at the time of valuation." The letter continues on to query whether Mr. Hadnot will continue his appeal of the issue. Wilke letter, dated Sept. 27, 2006.

In his request for dismissal, Mr. Hadnot notes that the letter from Mr. Wilke does not comport with the settlement agreement he reached with DOR. He also notes that continuing his appeal would be too costly and time consuming so he requested dismissal of his appeal. Request for Dismissal, Nov 27. 2006.

Board Discussion

The Legislature created the Montana Tax Appeal Board to provide a venue for a person aggrieved by the Department of Revenue. Section 15-2-101, MCA, *et seq*. In addition, the legislature has seen fit to provide methods to attempt to equalize administration and enforcement of tax laws. *See e.g.* §§ 15-1-201 and 202, MCA. These and other legislative efforts, such as the Taxpayer Bill of Rights, are designed to create fair and equal treatment of taxpayers in Montana.

It is in instances such as this matter that the duties of this Board are of critical importance. Here, the Department entered into a binding settlement with a taxpayer on the record and before this Board. Subsequent to that settlement, the Department did not comply with its own settlement agreement. It is only fair that the Department be required to comply with the agreement, and it falls to this Board to enforce that agreement.

The Department of Revenue stated during the hearing that, because the taxpayer had an approved agricultural classification application and had not reapplied for reclassification, the Department may not on its own reclassify the property and would reinstate the original classification. Tr. 15.

As stated on the record by the Department during the hearing, the appellant's land must be granted the status of agricultural land in perpetuity until the land is reclassified or a change occurs. Tr. 15. The Department indicated that it would immediately file an AB-44 with the county to allow the county commissioners to refund the portion of taxes paid under protest.

In addition, the Department indicated that the most appropriate manner for conclusion of the case would be for the Department to file the AB-44 and then Mr. Hadnot could file a motion to dismiss the appeal based on settlement. Tr. 17. If Mr. Hadnot was not amenable to that suggestion, the Department suggested that the Board draft a "brief order indicating that the Department conceded based on the information in the letter that we erroneously reclassified or required a reapplication and that by law Mr. Hadnot is not required to be forced to change his status." Tr. 17.

The Department failed to conclude this case as was indicated to this Board. In fact, ten months after the hearing before this Board, a member of the Department who did not attend the hearing sent Mr. Hadnot a letter which appears to directly contradict the position taken at the hearing before this Board.

The Department conceded at the hearing that it had erroneously reclassified or required a reapplication and that by law Mr. Hadnot is not required to change the status of his agricultural property. Without further discussion or justification, the Department of Revenue then rescinded its position to the detriment of the taxpayer.

The law on issues of settlement makes clear that it is appropriate to require the Department to be bound by its stated settlement position. A party to a settlement is

bound if he or she has manifested assent to the agreement's terms and has not manifested an intent not to be bound by that assent. Lockhead V. Weinstein, 2003 MT, 360, P12, 319 Mont. 62, 65, 81 P.3d 1284, 1287. *See also*, Hetherington v. Ford Motor Co. (1993), 257 Mont. 395, 849 P.2d 1039; §28-2-501, MCA; §37-61-401(1), MCA. Not only is the settlement enforceable, but a party is bound by a stipulation made by counsel in open court and on the record, as occurred in this matter. *See* Daniels v. Dean, 253 Mont 465, 470, 833 P.2d 1078, 1081. *See also* Counts v. Chapman (1979), 180 Mont. 102, 589 P.2d 151.

The Department of Revenue failed to treat Mr. Hadnot with consistency and has required Mr. Hadnot to spend almost two years of his time to argue over approximately $450 worth of taxes for a 100 acre parcel that does not even garner $1500 worth of income each year. In addition, with a letter from the Department stating that Mr. Hadnot's land will receive agricultural status in perpetuity and after a concession on the record, the Department failed to follow through with the settlement set forth before this Board and on the record which merely upheld the statements already repeatedly made by the Department.

It should not be the duty of an individual taxpayer, representing himself, to ensure that the Department of Revenue comply with its own terms of an initial statement, subsequent concession and settlement. If this decision is appealed by the Department, this Board would urge the District Court to consider the issue of time and expense for the taxpayer who may have to defend this issue.

Other

Although it need not be addressed in this appeal due to the concession and settlement by the Department of

Revenue in this matter, the Board would note a serious concern with Rule 42.20.625, ARM, and its application to agricultural land between 20-160 acres.

Mr. Hadnot's argument appears to have merit. It is the clear intent of the legislature that land used for agricultural purposes be granted agricultural classification. A requirement for a specific AUM or other measurement of capacity is not required by statute. *See* §15-7-201, MCA.

There is no indication that the legislature intended that the Department of Revenue have broad rulemaking authority to set specific requirements beyond those in the statute and the effect appears to be to deny owners of agricultural acreage larger than 20 acres and less than 160 acres the ability for an agricultural classification when the property is clearly being used for agricultural purposes as set forth in § 15-7-201, MCA, and § 15-1-101, MCA.

ORDER

The Board finds as follows:

The settlement agreement entered into by Mr. Hadnot and the Department of Revenue on the record and before the State Tax Appeal Board shall be upheld.

Pursuant to the settlement agreement, the taxpayer has already received a refund of his 2005 taxes paid under protest, and the Department has classified his land as agricultural as required under the terms of the settlement.

The taxpayer's property classification shall remain as agricultural land until a change in the use of the land or a change in the law occurs.

Dated this 8th day of January, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

/s/_____
KAREN E. POWELL, Chairman

/s/_____
JOE R.ROBERTS, Member

/s/_____
SUE BARTLETT, 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 8th day of January, 2007, 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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