

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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SKALKAHO LODGE,	)	
	)	DOCKET NO.: MT-2000-2
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 August 6, 2002, in the City of Missoula, 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.

Skalkaho Lodge (the Taxpayer), represented by Elizabeth A. O'Halloran, Attorney, presented testimony through its co-owner, Sandra M. Rose, in support of the appeal. The Department of Revenue (DOR), represented by tax counsel Mark J. Prichard and Scott D. Hagan, presented testimony through its witness, Sylvia Headley, Auditor, in opposition to the appeal. In addition to testimony, exhibits were received in evidence.

Skalkaho Lodge is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence

and testimony the Board finds that the decision of the Department of Revenue shall be modified.

**STATEMENT OF ISSUE**

The issue before the Board is whether the Taxpayer's business operations are subject to the Lodging Facility Use Tax (accommodation tax) for the years 1995, 1996, and 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 licensed outfitter in Montana and was so during the tax years in question. This allows the Taxpayer to provide outfitting services to customers in Montana for fishing, big game hunting, bird hunting, use of motorized and non-motorized watercraft, pack and saddle, personal guide and transportation services. The Taxpayer has been an outfitter for some 30 years.

3. As part of its services offered to its customers, the Taxpayer offers "package deals" that include food (three meals), lodging and guide service for one or two hunters for 6-7 days.

4. Lodging and food service is provided to the Taxpayer's customers at Skalkaho Lodge near Hamilton,

Montana. Lodging and meals are provided in the normal course of the Taxpayer's business operations. The Taxpayer also has a private trout pond for summer use.

5. Taxpayer's commercial insurance policies have described Taxpayer's business as "Bed and Breakfast" and "Hotels and Motels (w/o restaurant - up to 10 units)."

6. Shortly after Montana enacted the Lodging Facility Use Tax (accommodation tax) in 1987, the Taxpayer's co-owner, Mrs. Rose, testified she contacted the DOR by telephone. She was told, she testified, that outfitting activities such as those described by the Taxpayer were not subject to the accommodation tax. Accordingly, this tax was not collected from the Taxpayer's customers. Some time passed and at the urging of her co-owner husband, Mr. Rose, Mrs. Rose again contacted the DOR by telephone and was again informed that the Taxpayer was not subject to the accommodation tax. This information was not reduced to writing.

7. In June 1997, the Taxpayer received a "form letter" from the DOR describing the Taxpayer's facility as a "Lodging Facility", although the Taxpayer's name was not used. The letter stated, in part and in effect, that a lodging facility was subject to the accommodation tax if its Average Daily Accommodations Charge (ADAC) was \$21.84 or

more. The Taxpayer concluded its ADAC was less than that sum. Accordingly, since the Taxpayer concluded it was a public lodging facility with less than the requisite ADAC, it was exempt from collecting and paying the accommodation tax. Therefore, the Taxpayer did not file accommodation tax returns or pay the tax on its 1995, 1996, or 1997 returns.

8. On May 6, 1999, the Taxpayer was informed by Ms. Headley of the DOR that, based on information supplied by the Taxpayer and upon her consultations with personnel in the DOR, she concluded that the Taxpayer's business operations were subject to the accommodations tax and assessments were made for the years at issue.

9. The DOR's conclusions were based on its assessment that the Taxpayer's facility was best described as more closely associated with the operation of a resort, condominium inn, dude ranch, or guest ranch facility rather than activities associated in the operation of hotels, motels, hostels, public lodging houses, and bed and breakfast facilities. The exclusion applicable to the taxpayer's business is to be determined by the length of the rental period. If rented solely for 30 days or more, an exemption applies. Since the Taxpayer's rental periods are for 6-7 days, the exemption does not apply and the Taxpayer is subject to the accommodation tax.

10. On June 26, 2000, the Hearing Examiner before the Office of Dispute Resolution of the DOR ruled in favor of the DOR on all issues before it. The matter was subsequently timely appealed to this Board.

11. A hearing before this Board was held on August 6, 2002 in Missoula, Montana.

#### **TAXPAYER'S CONTENTIONS**

The Taxpayer contends that its business operations are those of a public lodging house and that since its ADAC was less than the threshold amount for the years in question it is not subject to the accommodation tax. In support of its position the Taxpayer cites the form letter of June of 1997 addressed to a "Lodging Facility" and its insurance business description as a "Bed and Breakfast" and "Hotels and Motels (w/o restaurant - up to 10 units)." Further, the Taxpayer contends the DOR told it twice in phone calls that it was not subject to the accommodation tax and (apparently) should be bound by such interpretation.

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

DOR contends that the business operations of the Taxpayer are most closely akin to those of a resort, condominium inn, dude ranch, or guest ranch facility and, because the rental period is less than 30 days, are not exempt from the accommodation tax. The DOR refers to its

letter of June 1997 addressed to a "Lodging Facility" and not to the Taxpayer by name as merely a "form letter" sent to numerous facility owners. The DOR contends that the insurance business description on Taxpayer's insurance policies as "Bed and Breakfast" and Hotels and Motels (w/o restaurant - up to 10 units)" are simply descriptions supplied by the Taxpayer to its insurer and in no way binding evidence as to the real nature of the Taxpayer's business operations. Finally, the DOR contends the real nature of the taxpayer's business is not lodging but that of an outfitter, lodging being a part of the business but not the business as in a motel or hotel or bed and breakfast. Also, considering the occupancy for the years in question the Taxpayer had more than 10 units. The Taxpayer also supplied meals consumed by their customers including breakfast, box lunch and family style dinners.

#### **BOARD'S DISCUSSION**

The question to be decided is whether the Taxpayer is best described as the operation of a resort, condominium inn, dude ranch or guest ranch facility rather than those associated in the operation of a hotel, motel, hostel, public lodging house, or bed and breakfast facility. The lodging activities performed by the latter group of businesses are the primary focus of their business activity.

The lodging facilities of the Taxpayer are supplemental to its outfitting business. This conclusion is buttressed by the changes in the applicable Administrative Rules of Montana that were subsequently adopted by the DOR in December of 1999. At that time the term "outfitting facility" was added to A.R.M. 42.14.102(2)(c) as included in the definition of "resort, condominium inn, dude ranch, guest ranch, or outfitting facility..." Therefore, the length of the rental period is the determining factor in deciding if a resort, condominium inn, dude ranch, or guest ranch is the determinative factor in deciding if a resort, condominium inn or dude ranch is subject to the accommodations tax for lodging. The testimony of Mrs. Rose was that the lodging facilities are not rented for 30 days or more but for 6-7 day periods, which is the duration of most hunts. Her testimony also reflected that rafting and fishing activities are usually for one day only. Accordingly, the Board finds that the Taxpayer's business activities are those of a resort, condominium inn, dude ranch, or guest ranch and thus subject to the accommodation tax.

Taxpayer Exhibit #4, dated January 6, 1999, is a document prepared by the DOR asking the Taxpayer to provide

information to assist the DOR in calculating the accommodations tax.

Taxpayer Exhibit #5, dated February 15, 1999, is a document prepared for the DOR by the Taxpayer's accountant. This document was prepared in response to Exhibit #4. Nowhere in the document is income or gross receipts addressed. There are expenses listed totaling \$7,999 for year 1998, but no supporting documentation was provided. Neither the Taxpayer nor the DOR dispute that hunters pay a package price depending on the number of days. In addition, neither party disputes that hunters are provided lodging as a part of the packaged hunt. The Taxpayer's accountant states in Exhibit #5, "*...The final item requested concerns the accommodation tax. As stated at the audit, the taxpayer charges a nominal value for lodging. The clients pay for the hunting experience not the lodging...*". Lodging is undoubtedly a part of the hunting package and expenses certainly are incurred with the lodging that is provided. A prudent operator of this property or a like property would anticipate or build in income associated to this portion of the package. The Board has been provided no credible evidence to support Exhibit #5.

ARM 42.14.105 Combined Charges For Services, addresses the varying methods that are used by the DOR to calculate

the tax when charges or services are combined such as those associated with the taxpayer's facility. In calculating the appropriate tax there must be cooperation on the side of the operator as well as the department. The DOR asserted that they were not provided sufficient information.

*ARM 42.14.110 Failure to Furnish Requested Information*

*(2) If a return is not filed or information is not supplied, the department will estimate the tax from available information. It is the Board's opinion that the DOR calculated the tax based on the best information it had available at the time. The Taxpayer did not convince this Board that the DOR's method of calculating the tax is erroneous.*

Mrs. Rose testified that on two occasions she was told by the DOR that the Taxpayer was not subject to the accommodation tax. Unfortunately, this was never reduced to writing.

Even so, it seems appropriate that a taxpayer should be able to rely upon the advice of a government representative. The Board determines that the Taxpayer should not be assessed penalties and interest.

## 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 15-65-112, MCA. Montana Administrative Rules require the owner or operator of a "lodging facility" to collect the accommodations tax from the users of the lodging facility, and report quarterly to the Department the gross receipts collected during that quarter.

3. Section 15-65-101(4), MCA. The term "facility" includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, public lodging house, or bed and breakfast facility. Owners and operators of lodging facilities are liable for all amounts required to be collected as accommodation tax ARM 42.14.102(3).

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

**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject assessment shall be modified to reflect the removal of interest and penalty discussed above.

Dated this 11th day of September, 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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JERE ANN 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 11th day of September, 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:

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