

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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GALE R. and SUSAN G. GUSTAFSON,	)	DOCKET NOS.: PT-2010-6A
	)	through 6E
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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**Statement of the Case**

Gale R. and Susan G. Gustafson (Taxpayers) appealed a decision of the Pondera County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of their property. The subject properties consist of multiple parcels all of which are located in Pondera County, Montana. Taxpayers claim the subject property does not have the productivity as appraised by the DOR and affirmed by the CTAB. The Taxpayers argue the land should be valued at a level no greater than the last reappraisal cycle. Gale Gustafson represented the Taxpayers at the telephonic hearing held before this Board on January 13, 2011. The DOR, represented by Amanda L. Myers, Tax Counsel, Dallas Reese, DOR Management Analyst, and Wanda Bandow, DOR Commercial Appraiser, testified on the valuation.

The duty of this Board, having fully considered the exhibits, evidence submissions and all matters presented, is to determine the appropriate market value for the property based on a preponderance of the evidence.

### **Issue**

The issue before this Board is whether the Department of Revenue determined the subject properties' proper productivity for tax purposes for tax year 2010.

### **Summary**

Gale and Susan Gustafson are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board upholds the findings of the Pondera County Tax Appeal Board.

### **Findings of Fact**

1. Due, proper and sufficient notice was given of this matter. This matter was heard in pursuant to §15-2-301(2), MCA.
2. The property in question is 1,933 acres, described in the following GEO codes:  
26-3985-15-1-01-01-0000  
26-3985-21-4-01-01-0000  
26-3985-22-3-02-03-0000  
26-3985-23-2-02-01-0000  
26-3985-23-3-03-03-0000  
26-3985-24-2-03-01-0000  
(Appeal forms, Exhs. B1 through B6.)
3. Only the land valuation is being appealed. The DOR valued the 1933 acres of land at \$251,003 for the 2009 reappraisal cycle. (Exhs. B1 through B6.)
4. The Taxpayers filed a Request for Informal Review (AB-26) on September 23, 2009. The DOR made no adjustment during the AB-26 process and responded with a written comprehensive review on December 15, 2009. (Exhs. A1 & A2.)

5. The Taxpayers filed multiple appeals with the CTAB on May 26, 2010. The reason for appealing is stated as:

“I refute the DOR’s determination that my March 31, 2010 appeal filed with it the same date was untimely. I did not receive the adverse determination by the County Assessor claimed to have been sent to me on Dec. 15, 2009 until after my inquiry on Feb. 26, 2010. I received this adverse determination on March 2, 2010 for the first time, and my notice said I sard (*sic*) I had until June 1<sup>st</sup> or 30 days after receiving, whichever was later, to appeal. I did not receive my last or second notice of adverse determination dated May 19, 2010 until May 25, 2010. See attached letter of May 19, 2010.”(Appeal form and Attachment).

6. A hearing was held on August 30, 2010 and the CTAB upheld the DOR’s valuation stating:

“We find in favor of the DOR. The appellant failed to produce documentation showing the subject land was not capable of producing the yields determined by the DOR formula under average management conditions. Also, no recommendation on appraised value was provided by the taxpayer. We remind the taxpayer of his right to appeal this decision to the State Tax Appeal Board.” (Appeal form attachment.)

7. The Taxpayer filed a timely appeal to this Board on October 12, 2010, stating:

“because (*sic*) it failed to take into consideration the fact that we have not changed any land uses and that the 226.96 acres in CRP were subject to a 28% in rental rate in 2006 when re-enrolled for another 10 year term and more restrictive Managed Haying & Grazing Regulations which also adversely affected profitability of our ranch operations. Consequently, our native pasture were also adversely impacted due to unavailability of CRP grazing and extended 12 year drought. We also object to DOR’s failure to phase in tax increase over six(6) year period. Appraised value should remain same as prior to 2008.” (Appeal form.)

8. The Taxpayers asked for the value of the subject properties to be reduced to the 2002 reappraisal cycle value. (Gustafson Testimony.)

9. The Taxpayers believe climate conditions should be taken into account since Pondera County has been in drought for 12 years. (Gustafson Testimony.)
10. During the 2008 reappraisal cycle, the DOR reclassified portions of the Taxpayers' land from one use to another based on updated information. (Reese Testimony.)
11. Currently, 862.2 acres of the subject property is under CRP contract with Conservation Credit Corporation (CCC) and has been since 1987. These same acres were contracted again in 2006. (Gustafson Testimony, CTAB Exh 6.)
12. The CRP program is a voluntary program which reimburses the landowner to remove the land from the current agricultural use and place it in a different agricultural use which lessens erosion and encourages wildlife habitat. (Gustafson Testimony.)
13. The subject property was classified as summer fallow land before it was put in CRP. (Gustafson Testimony.)

#### **Calculating Productivity for Agricultural Land**

14. Agricultural property, including the subject property, is subject to reappraisal every six years. §15-7-111 (5), MCA.
15. For the first time since the 1960's, the Department initiated a comprehensive review of all agricultural lands for tax purposes during the recent reappraisal cycle. (Reese Testimony.)
16. The Governor's Agricultural Advisory Committee was appointed and met from 2006 through 2008 to make recommendations to the 2009 Legislature on the reappraisal of agriculture land. (Reese Testimony, Exh. C.)

17. Pursuant to those recommendations and statutory requirements, the DOR uses Natural Resources and Conservation Service (NRCS) soil mapping, Montana Agricultural Statistics, and local information to produce a county average spring wheat yield. (Reese Testimony, CTAB Exh. D.)
18. The DOR recognized the NRCS soil survey information for spring wheat production was based on high levels of management by a producer. The DOR adjusted the NRCS production by applying an adjustment based on a 12 year county average to each county reflecting “average management.” (Reese Testimony, CTAB Exh. F.)
19. In this case, NRCS soil survey production averages 32.28 bushels an acre and the 12 year county average production is 28.73 bushels an acre in Pondera County. This difference reflects an 11% reduction in calculating production for Pondera County. (Reese Testimony.)
20. The Department uses spring wheat production and commodity pricing to arrive at gross income for valuation of agricultural land. Spring wheat is used as the base commodity in all Montana counties as it is the only commodity that can be grown in all areas. (Reese Testimony.)
21. The Taxpayers argued that the growth of certain sage plants indicate a drought condition on grazing land. The Taxpayers, however, did not submit any evidence to dispute the productivity assigned by the DOR on their grazing land. The Taxpayers also admitted much of their grazing land production had been reduced by the DOR during this appraisal cycle. (Gustafson Testimony.)

## Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. Agricultural land must be classified according to its use. Classifications include but are not limited to irrigated use, non-irrigated use, and grazing use. (Section §15-7-201(2), MCA).
3. Agricultural land tax value is determined according to the productivity of the land as set out in §15-7-201(3)(4), MCA.
4. Within each class, land must be sub-classified by production categories. Production categories are determined from the productive capacity of the land based on yield. (§ 15-7-201(3), MCA.)
5. Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs. (§ 15-7-201 (5)(b)(ii), MCA.)
6. Land under the CRP, the Integrated Farm Management (IFM) program, or any other program that reimburses the landowner to remove the land from the current agricultural use and place it in a different agricultural use shall be classified and valued in the same land use category the acreage was in when it became eligible for the programs. (42.20.640 (5) ARM.)
7. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (Section 15-2-301(4), MCA.)
8. It is true, as a general rule, the Department of Revenue appraisal is presumed to be correct and that the taxpayer must overcome this presumption. *Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3 (1967). The Department of Revenue should, however, bear a certain burden of providing

documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (Mont. 1995.)

### **Board Discussion**

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation based on productivity for the subject property for tax year 2009.

The DOR is assigned by the legislature to mass appraise nearly four hundred thousand parcels of agricultural land during the reappraisal cycle. The legislative intent is very clear: agricultural land must be classified according to its use. Agricultural land must also be sub-classified by production categories. The department does this by compiling data and developing valuation manuals adopted by administrative rule. They are assisted in this endeavor by the Governor's Agriculture Advisory Committee, which makes recommendations on how the process should work. (§15-7-201 (7), MCA.)

The Taxpayers contends the DOR did not take into account climate conditions when calculating the production on the subject property. They further contend the valuation increase from last appraisal cycle to the current reappraisal cycle is out of line and unjustified.

DOR's management analyst testified that the DOR uses an adjustment factor for each county which varies depending on actual growing conditions. (FOF 18.) For purposes of developing productivity values, each parcel of land is assigned a soil type through the NRCS soil mapping process and an average production is derived for this soil type by collecting data from producers, the Farm Services Agency and Montana agricultural statistics. (FOF 17.) An adjustment factor for the particular county is

applied which is derived from an average production for each individual parcel of land. (FOF 19.)

The evidence does not support the Taxpayers' contention that the DOR has not accounted for climate condition in determining the production of the subject property. Not only does the NRCS soil mapping contain a 30 year climate average, the DOR uses a 12 year county average that also reflects local growing conditions. Furthermore, the Board finds the method used by the DOR to value the subject land is in accordance with Montana statutes and rules and the evidence presented by DOR is more than sufficient to show an accurate production valuation. The Board finds the Taxpayers failed to provide any evidence which would indicate the DOR value was incorrect.

The Taxpayers also argue the net income for the subject CRP property is set by a contract and the value of the contract should be considered when determining production requirements for tax purposes. The Taxpayers also believe that, since their CRP renewal contracts were decreased in value, their property should be reduced accordingly.

The statute, however, is very clear, agricultural land must be classified according to its use. (§15-7-201(2), MCA). Further, ARM 42.20.640 specifically addresses land in CRP, and states that CRP land shall be classified and valued in the same land use category the acreage was in when it became eligible for the program. The Board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. There is no evidence in this matter indicating the rule is arbitrary, capricious or otherwise unlawful. Thus, the Department's classification of the subject property is correct.

The assessed value set by the DOR is correct and the decision of the Pondera County Tax Appeal Board is affirmed.

**Value Before Reappraisal Issue**

This decision does not address any issues relating to VBR or phase-in for agricultural property and should not be construed to affect any rights of the parties relating to “value before reappraisal,” “phase-in” or any similar issues addressed in the *Lucas* litigation in the 14<sup>th</sup> Judicial District.

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**Order**

IT IS THEREFORE ORDERED that the subject property has the proper productivity and is properly classified agricultural land. The decision of the Pondera County Tax Appeal Board is affirmed.

Dated this 25th of January, 2011.

By order of the  
State Tax Appeal Board

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

/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

The undersigned hereby certifies that on this 27th day of January, 2011, 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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11628 Coalmine Road.  
Conrad, Montana 59425

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 Hand delivered  
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Amanda Myers  
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/s/ \_\_\_\_\_  
DONNA J. EUBANK, paralegal