

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

FREDERICK F. and MARY KINDLE,)	DOCKET NO.: PT-2009-109,
)	110 & 111
Appellants,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,)	ORDER and OPPORTUNITY
)	FOR JUDICIAL REVIEW
Respondent.)	

Statement of the Case

Frederick F. and Mary Kindle (Taxpayers) appealed a decision of the Phillips County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR's) valuation of their properties. The subject properties consist of three parcels located in Phillips County, Montana. Taxpayers claim the subject property productivity is too high as appraised by the DOR. The Taxpayers were represented by Bryan Kindle, who has Power of Attorney for Frederick and Mary Kindle, at the telephonic hearing held before this Board on October 18, 2010. The DOR was represented by Teresa Whitney, Tax Counsel, Charles Pankratz, DOR Region 2 Manager, and Terry Lodmell, DOR Appraiser.

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

Issue

The issue before this Board is whether the Department of Revenue determined the proper productivity for the subject properties for tax year 2009?

Summary

Frederick F. and Mary Kindle are the Taxpayers in this action and therefore bear the burden of proof. Based on a preponderance of the evidence, the Board affirms the valuation set by the DOR.

Evidence Presented and Findings of Fact

1. Due, proper and sufficient notice was given of this matter. This matter was heard in Helena pursuant to §15-2-301(2), MCA.
2. The properties in question are described as 493.673 acres with the following GEO codes:
 - 11-4241-06-4-01-01-0000
 - 11-4241-07-4-01-01-0000
 - 11-4241-17-1-01-02-0000(Appeal forms.)
3. The Taxpayers filed multiple appeals with the CTAB on May 28, 2010. The reason for appealing is stated as: "Hay production figures to high and values to (sic) high. The 93A and 903A soils produce an average of 1.25 Ton with fertilizer." (Appeal forms.)
4. The CTAB upheld the DOR values as set in statute. They recommended the State make adjustments to the Taxpayers' issues through legislation. (CTAB letter attached to Appeal Form.)
5. The Taxpayers filed timely appeals to this Board on September 7, 2010, stating: "Irrigated production to high on 93A & 903A soils. Gross hay production ave.(sic) 1.25 ton. Soils are not suited for alfalfa production.

- The yield I'm being taxed on is much higher than is stated in Phillips County soil survey." (Appeal form.)
6. The Taxpayers argue a different commodity such as Blue Joint or native wheatgrass would be more appropriate choice to use on these specific soil types. (Kindle Testimony.)
 7. 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. (Lodmell CTAB Testimony.)
 8. 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. (Lodmell CTAB Testimony.)
 9. By statute, the base crop for valuation of all irrigated land, including the subject properties, is alfalfa hay adjusted to 80 percent of the sales price. (Lodmell CTAB testimony, *see also* § 15-7-201(5)(c), MCA.)
 10. Based on changes to the productivity calculations, specifically the capitalization rate, all irrigated land taxes increased substantially, regardless of changes in productivity determinations. The minimum value per acre for Phillips County increased from \$218.25 to \$411.48. (Lodmell CTAB Testimony.)
 11. 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. See POL 6, 7 & 8 below)

12. The DOR submitted maps of the subject property showing the individual parcels, soil types and the potential production for valuation purposes. (Exhs. A, B & C.)
13. The Department of Revenue met repeatedly with Mr. Kindle to review and adjust the productivity on his land. (Lodmell CTAB Testimony.)
14. In Phillips County, all irrigated land, including the subject properties, received a 49% reduction due to low productivity. (Lodmell CTAB Testimony. See also ARM 42.20.604(2)(b).)
15. Using the soil types set by the Department on the subject properties and the county-wide reduction for all irrigated land, the subject properties are currently valued at the lowest valuation available under law, which is \$411.48 per acre. (See Exhs. A,B,C, Lodmell CTAB testimony, ARM 42.20.675 (11).)
16. 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 MT Agricultural statistics. In this case, however, the adjustment factor for Phillips County is a reduction of 49 percent, which reduces all irrigated agriculture land in Phillips County below the minimum value set by administrative rule. (*see* POL 7.)

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§ 15-2-301, MCA.)
2. Agricultural property, including the subject property, is subject to reappraisal every six years. §15-7-111, MCA.

3. Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, non-irrigated use, and grazing use. (§ 15-7-201(2), 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. Productivity is determined using the Natural Resource Conservation Service (NRCS) soil surveys. The productivity determination is specific to the agricultural land use classification under average management practices. (ARM 42.20.604(1).)
7. The base crop for valuation of irrigated land is alfalfa hay adjusted to 80% of the sales price. (§15-7-201(5)(c), MCA.)
8. For irrigated lands, the soil survey productivity for tons of irrigated alfalfa hay per acre is adjusted on a county-by-county basis to reflect producer responses received during the 2008-2009 map-mailing process and information obtained from irrigation districts. (ARM 42.20.604(2)(b).)
9. The minimum value of irrigated land is \$411.48 as determined by using 23 bushels of spring wheat and the non-irrigated continuously-cropped farmland methodology. (ARM 42.20.675(11).)
10. The state tax appeal board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. (§ 15-2-301(4), MCA.)
11. As a general rule, the DOR 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 DOR 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 (1995).

Findings of Fact, Conclusions of Law and 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 subject properties currently receive the lowest valuation available under law, which is \$411.48 per acre. (See FOF 15, POL 9.) The DOR is assigned by the legislature to mass appraise nearly one million parcels of land during the reappraisal cycle. The legislative intent is very clear: agricultural land must be classified according to its use. Agricultural land is also 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 recommends the capitalization rate. (§15-7-201, MCA). To achieve equalization of taxes from one part of the state to another, all land is valued by the amount of alfalfa or spring wheat that can be produced on that soil. Agricultural land is not valued on how much is actually produced, which can vary with farm management techniques.

The Taxpayers believe the DOR has done a good job during the reappraisal cycle, but should take into account local conditions and use different commodities, rather than alfalfa, when determining production. They argue the production assigned to their land does not reflect an accurate production for the soil types when using alfalfa.

The DOR contends it is bound by Montana statutes when determining production on given classifications of agricultural land. The DOR also argues it uses an adjustment factor for each county which varies depending on growing conditions.

The Taxpayers argue the production on the subject properties, as set by the DOR, is too high for their land, thus making the value too high. The Department demonstrated the value established for the subject properties was in accordance with Montana statutes and administrative rule and is already reduced to the minimum valuation permitted by statute. The Taxpayers failed to submit any relevant evidence to demonstrate that this Board should ignore or overturn current statutes and administrative rule, which specifically set out the minimum valuation per acre for irrigated agricultural land. While the Taxpayers may believe the statute pertaining to the DOR method of appraisal is incorrect, the proper forum to change the statute is with the Legislature.

Thus it is the opinion of this Board that the assessed value set by the DOR is correct and the decision of the Phillips County Tax Appeal Board as it applies to Taxpayers' valuation is affirmed.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties' shall be entered on the tax rolls of Phillips County at a 2009 tax year value as determined by the Department of Revenue and affirmed by the Phillips County Tax Appeal Board.

Dated this 27th of October, 2010.

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.

