

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

GARY R. SPAULDING,)	
SOUTH HILLS RANCH)	
)	
Appellant,)	DOCKET NO.: PT-2004-18
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONSIDERATION OF TIMELI-
)	NESS, AND ORDER
)	
Respondent.)	

The above-entitled appeal was set for hearing on May 17, 2006, in accordance with an order of the State Tax Appeal Board of the State of Montana. The notice of the hearing was given as required by law. The Taxpayer, Gary R. Spaulding, represented himself. The Department of Revenue (DOR) was represented by Dallas Reese, Management Analyst; Lori Casey, Area Manager; and Mark A. Bumgarner, Appraiser.

In this appeal of the classification of his property, the Taxpayer also questioned the timeliness of the hearing held on this matter by the Jefferson County Tax Appeal Board (CTAB). Consequently, at the time set for hearing, the State Tax Appeal Board (Board) heard testimony and received exhibits from both parties on the issue of timeliness.

STATEMENT OF THE ISSUE

The threshold legal issue is whether or not the CTAB held a hearing on the Taxpayer's appeal of the classification of his property within the time frames specified and allowed by law.

FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. On July 22, 2003, The Taxpayer applied for agricultural classification for his property identified by geocodes 51-1785-09-3-01-01-0000 (Assessor Code 8126) and 51-1785-08-4-01-05-0000 (Assessor Code 7377). (Exhibit C). The DOR disapproved agricultural classification on May 27, 2004, and approved classification as non-qualified agricultural land. (Exhibit C).
3. The Taxpayer filed an AB-26 requesting an informal review of the classification of the subject property on June 25, 2004. (Exhibit J). No adjustment was made in the classification as a result of the informal review. The DOR documented their decision on December 1, 2004. (Exhibit J).

4. The Taxpayer appealed the non-qualified agricultural classification to the Jefferson County Tax Appeal Board on December 30, 2004. (Property Tax Appeal Form).
5. Chronologically the next entry in the record is a letter from the Taxpayer to the Jefferson County Treasurer dated November 23, 2005. (Exhibit 1). The Taxpayer states that he is paying his 2005 real property taxes due to Jefferson County, a portion of which he is paying under protest. He indicates that he also paid a portion of his real property taxes under protest in 2004 and that he had appealed the classification of the land on which the taxes were due. He notes that no hearing was held on his appeal in 2004. The Taxpayer also sent a copy of this letter to the Jefferson County Appraisal/Assessor Office.
6. On December 20, 2005, the CTAB sent a Notice of Hearing to the Taxpayer, setting a January 9, 2006, hearing on his classification appeal. (Exhibit A-1).
7. The CTAB heard this matter on January 9, 2006. By letter dated January 16, 2006, the CTAB reported their decision upholding the DOR's non-qualified agricultural land classification on the subject property. (Exhibit A).
8. On February 21, 2006, the Taxpayer appealed to the Board, stating in part:

1. The Jefferson County Tax Appeal Board was negligent under Administrative Rules regulating the CTAB and STAB Hearings. This 2004 hearing was not timely heard by Jefferson County. It was not heard until 2006.

2.-8. . . .

I request that item number one (1) be judged and ruled upon prior to the other points of contention.
(Attachment to Appeal Form)

9. On May 17, 2006, the Board received testimony and evidence on the issue of the timeliness of the CTAB hearing.

BOARD DISCUSSION

The substantive issue that brought this appeal to the Board is a disagreement over the classification of the Taxpayer's property in Jefferson County (identified by geocodes 51-1785-09-3-01-01-0000, Assessor Code 8126, and 51-1785-08-4-01-05-0000, Assessor Code 7377). Before the Board can address the substantive issue, however, we must determine whether or not the CTAB hearing on this appeal was held within the time frames required by state law.

To decide the issue of timeliness, we must review the dates on which different steps took place in this appeal and the deadlines set out in law for different steps in the appeal process.

In July 2003, the Taxpayer applied for agricultural classification for his property in Jefferson County. Ten months later (May 27, 2004), the DOR disapproved agricultural

classification, instead approving non-qualified agricultural as the correct classification. The Taxpayer then submitted a Request for Informal Review (Form AB-26) on June 25, 2004, within the 30-day time limit for a taxpayer to request a review after receiving notice of a classification from DOR (Mont. Code Ann. § 15-7-102(3)). Five months later (December 1, 2004), DOR sent the results of this informal review to the Taxpayer. DOR did not adjust the classification of the subject property, but retained the non-qualified agricultural classification previously assigned.

On December 30, 2004, the Taxpayer appealed the classification of his property to the Jefferson County Tax Appeal Board. The Taxpayer's appeal was within the 30-day time limit set by Section 15-7-102(6), Montana Code Annotated.

Nothing further happened for close to eleven months. Then, as the deadline approached for payment of 2005 real property taxes, the Taxpayer sent a letter dated November 23, 2005, to the Jefferson County Treasurer and enclosed a check for the taxes on the subject property. The Taxpayer indicated that he was paying part of the taxes under protest, as he had in 2004. He also stated that he had appealed the classification of his property but no hearing was held in 2004. The Taxpayer sent a copy of this letter to the Jefferson County Appraisal/Assessor Office.

Approximately one month later, on December 20, 2005, the CTAB sent the Taxpayer a notice setting a hearing on this matter for January 9, 2006. The hearing was held on that date, and the CTAB denied the appeal and upheld the DOR classification of non-qualified agricultural as the correct classification for the subject property.

The CTAB notified the Taxpayer of their decision by a letter dated January 16, 2006. The Taxpayer's appeal to this Board indicates that he did not receive the CTAB decision until February 21, 2006, which is also the date of his appeal to this Board. In response to a question from the Board Chairman during the hearing, Dallas Reese, DOR Management Analyst, stated that he thought the Taxpayer had followed all the requirements in bringing his appeal to the Board. Mr. Reese indicated that there was no issue with the appeal filing dates.

In his appeal, the Taxpayer not only questioned the classification decision of the CTAB but also asserted that the CTAB hearing was not timely. He asked the Board to decide the timeliness issue before hearing the classification issue. Accordingly, on May 17, 2006, the Board heard the issue of whether the CTAB hearing had been timely. Based on the evidence, the Board concludes that the CTAB hearing was not held in a timely manner as required by Montana law.

Several statutes bear on the question of whether or not the CTAB hearing was held within the time period allowed by the law. The CTAB is authorized to meet from July 1 to December 31 of each tax year to hear appeals from the decisions of the DOR (Mont. Code Ann. § 15-15-101(2)). The law recognizes, however, that the DOR may not reach a decision in the informal review (AB-26) process in time for the CTAB to hear a case by December 31 of a given year (Mont. Code Ann. § 15-15-102). That occurred in this case. The DOR decision in the informal review process was sent to the Taxpayer on December 1, 2004. The Taxpayer signed his appeal to the CTAB on December 30, 2004. Obviously, it was not feasible for the CTAB to hear the appeal the next day, December 31, 2004.

Under these circumstances, the CTAB is authorized to review the appeal during the next tax year. Their decision would still apply to the previous year, the year in which the request for an informal review was made (Mont. Code Ann. § 15-15-102). In the Spaulding case, the CTAB should have held a hearing during 2005. In fact, the CTAB was **obligated** to hear this appeal in 2005: "[T]he appeal **must** be reviewed during the next tax year. . . ." (Mont. Code Ann. § 15-15-102, emphasis added). But the CTAB failed to hear this appeal at any time in 2005.

Finally, in regard to the issue of timeliness, one other possibility exists. This Board may authorize a CTAB to meet

after December 31 when there is good cause for such an extension (Mont. Code Ann. § 15-2-201(1)(b)). However, the Board is unable to find in its files any indication that the Jefferson CTAB requested an extension or that this Board granted an extension for either 2004 or 2005.

At the time of this appeal, the remedy provided when a CTAB failed to hear an appeal was to grant the classification sought in the Taxpayer's application (Mont. Code Ann. § 15-15-103(2)). It is the opinion of this Board that the Jefferson County Tax Appeal Board failed to hear this appeal within the time frames required by law. As a result, by operation of law, the agricultural classification sought by the Taxpayer is granted for tax years 2004 and 2005. The Taxpayer is entitled to a refund of the taxes he protested in those years. (Mont. Code Ann. § 15-2-306).

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. § 15-2-301, Montana Code Annotated.
2. Notice of classification and appraisal to owners - appeals. § 15-7-102, Montana Code Annotated.
3. The application [for reduction in valuation] must be submitted [to the CTAB] on or before the first Monday in June or 30 days after receiving a . . . determination after

review under 15-7-102(3) from the department, whichever is later. § 15-15-102, Montana Code Annotated.

4. The county tax appeal board . . . shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear protests concerning assessments made by the department until the business of hearing protests is disposed of and, as provided in 15-2-201, may meet after December 31. § 15-15-101(2), Montana Code Annotated.
5. If the department's determination after [informal] review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. § 15-15-102, Montana Code Annotated.
6. (1) It is the duty of the state tax appeal board to:
 - (a) . . .
 - (b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal. § 15-2-201(1)(b), Montana Code Annotated.

7. (2) . . . [I]f a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. § 15-15-103(2), Montana Code Annotated (2003).

8. Board may order refund. § 15-2-306, Montana Code Annotated.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Jefferson County by the local Department of Revenue office for tax years 2004 and 2005 in the same classification as the property was classified in tax year 2003. It is further ordered that the taxes protested in 2004 and 2005 on the basis of the classification of the subject property be refunded to the Taxpayer.

Dated this 30th day of May 2006.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JOE R. ROBERTS, Member

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 30th day of May, 2006, 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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