

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

CHARLES A. and DONALD A. HULL,)	DOCKET NO.: PT-2009-48
)	
Appellants,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of the Case

Charles A. and Donald A. Hull (Taxpayers) appealed a decision of the Liberty County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR’s) valuation of their property. The subject properties consist of multiple parcels all of which are located in Liberty County, Montana. Taxpayers claim the subject property productivity is too high as appraised by the DOR. The Taxpayers were represented by Charles and Donald Hull at the hearing held before this Board on June 3, 2010 in Helena. The DOR was represented by Teresa Whitney, Tax Counsel, Charles Pankratz, DOR Region 2 Manager, and Marlyann Verploegen, DOR Area Manager.

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 property 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 property for tax year 2009?

Summary

The Taxpayer in this action bears the burden of proof. Based on a preponderance of the evidence, the Board affirms the valuation set by the DOR.

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 property in question is described in the following GEO codes:
 - 48-4430-01-1-01-01-0000
 - 48-4430-02-1-01-01-0000
 - 48-4430-12-1-01-01-0000
 - 48-4430-11-1-01-01-0000
 - 48-4431-06-3-01-01-0000
 - 48-4539-35-3-01-01-0000
 - 48-4540-19-2-01-01-0000
 - 48-4540-32-3-02-02-0000
 - 48-4540-31-3-03-03-0000
 - 48-4540-31-1-01-01-0000(Appeal forms.)
3. The Taxpayer filed multiple appeals with the CTAB on November 28, 2009. The reason for appealing is stated as: “this land is not as productive asset(*sic*)” (Appeal forms.)
4. A hearing was held on March 18, 2010 and the CTAB upheld the DOR’s valuation, and made this statement: “Start with the old VBR value and phase-in the difference of the 2009 value @ 16.66% over the next 6 years. According to Montana Code Annotated 2009 15-7-111 paragraph (3).” (Appeal form.)

5. The CTAB also attached a letter outlining their feelings that their recommendations should be considered in calculating the productivity values for agricultural land. (Appeal Form Attachment.)
6. The Taxpayer filed a timely appeal to this Board on April 21, 2010, indicating the CTAB did not address production on the land. (Appeal form.)
7. The Taxpayer is protesting approximately 2700 acres of agricultural property classified as summer fallow land, which 900 acres are located in southern Liberty County and 1700-1800 acres are in the northern part of the county. (Charles Hull Testimony.)
8. The Taxpayers contend their production between the north farm and the south farm, which are about 17 miles apart, varies as much as 25% due to the effects of rainfall. Both properties are assessed on the same production figures resulting in similar taxable values. (Charles Hull Testimony.)
9. The Taxpayer believes adjustments should be made to the DOR calculations to reflect local conditions, such as rain fall. (Charles Hull Testimony.)
10. The DOR submitted exhibits submitted by the taxpayer to the CTAB. This included maps showing the DOR's current assigned production and a sample of the Taxpayers' crop insurance proven yields. (Exh. A.)

Calculating Productivity for Agricultural Land

11. Agricultural property, including the subject property, is subject to reappraisal every six years. §15-7-111, MCA.

12. 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. (Pankratz Testimony.)
13. 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. (Pankratz Testimony.)
14. Pursuant to those recommendations and statutory requirements the DOR uses Natural Resources and Conservation Service (NRCS) soil mapping, Montana AG Statistics, and local information to produce a county average. The DOR then applies an adjustment to reflect growing conditions in each county. (Pankratz Testimony.)
15. County crop averages are derived from the Montana AG Statistics and (NRCS) soil production maps. (Pankratz Testimony.)
16. The only changes in calculating the productivity of agricultural land in the last 46 years were the introduction of new commodity prices. (Pankratz Testimony.)
17. The Department uses spring wheat commodity price to arrive at gross income. This price is from a seven year Olympic average of prices in the years 2001 through 2007. (Pankratz Testimony.)
18. A capitalization rate is set by recommendation of the Montana Agricultural Advisory Board and applied to the crop share adjusted net income to establish a price per acre. (Pankratz Testimony.)

Valuing the Subject Property

19. The Taxpayer's 10 year insurance average is very close to the DOR's assessed production valuation. For example, the Taxpayers' approved

insurance yield, for spring wheat, was 25 bushel per acre and the average DOR assigned yield on the Taxpayers' property was 22 bushels per acre. (Exh. A, p. 2. & CTAB Exh. E.)

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, which classifications include but are not limited to irrigated use, non-irrigated use, and grazing use. (§ 15-7-201(2), MCA.)
3. 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.)
4. It is true, 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).
5. As long as a taxpayer's property is not overvalued in the reappraisal process, he cannot secure a reduction in his own appraisal on the ground that another taxpayer's property is under appraised. *Patterson v. Department of Revenue*, 171 Mont. 168, 557 P.2d 798 (1976).

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 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 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, MCA).

The Taxpayer argues the production assigned to his land does not reflect an accurate production when comparing their two farms in Liberty County based on rain fall. They further contend both farms have similar taxable values even though the north farm produces up to 25 percent less than the south farm. (FOF 8 & 9.)

The DOR contend it uses an adjustment factor for each county which varies depending on growing conditions. (FOF 14.) 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 AG statistics. (FOF 15.) An adjustment factor for the particular county is applied which is derived from an average production for each individual parcel of land. (FOF 14.)

This Board concludes the productive value set by the DOR on the subject property is slightly lower than the evidence submitted on the actual production. This Board also concludes the DOR applies adjustment factors for each county and it would be impractical, if not inaccurate, to collect data on smaller production units within each county. This Board also disagrees with the Taxpayers' contention that the subject property should be lowered based on higher productive property being taxed the same. (*See* POL 5.)

Thus, it is the opinion of this Board the assessed value set by the DOR is correct and the decision of the Liberty County Tax Appeal Board as it applies to Taxpayer's valuation is affirmed.

DOR Cross Appeal

The DOR filed a cross appeal in this matter. The Department argued that the Liberty County Tax Appeal Board decision improperly set the "value before reappraisal" and the "phase-in" for the subject property. See §15-7-111, MCA and accompanying administrative rules.

This Board dismissed the cross-appeal prior to the hearing because those matters were not part of the holding. Those issues were not addressed by the Taxpayer or the Department of Revenue before the Liberty County Tax Appeal Board. The Liberty County Tax Appeal Board sent a letter on this matter that is not a binding holding, nor a specific directive which may be considered a decision under §15-2-301, MCA. It merely states the law. The letter does not comport with the authority of the County Board to provide a "change in assessment" as described in §15-15-101, MCA, and Rule 2.51.307, ARM.

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 14th Judicial District.

Order

IT IS THEREFORE ORDERED the subject property has the proper productivity for summer fallow agricultural land. The valuation as set by the DOR is affirmed.

Dated this 14th of June, 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of June, 2010, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S.

Mail and addressed as follows:

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