

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

WANKEN FARMS, et al.)	DOCKET NO.: PT-2009-49
)	
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

Wanken Farms (Taxpayer) 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 and owners all of which is located in Liberty County, Montana. Taxpayer claims the subject property productivity is too high as appraised by the DOR. The Taxpayer was represented by Todd Wanken, an officer in Wanken Farms and FM Farms, at the hearing held before this Board on May 20, 2010 in Helena. The DOR was represented by C. A. Daw, Chief Legal Counsel and 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

Wanken Farms is the Taxpayer in this action and therefore 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 as the following GEO codes and ownership:

48-4429-25-4-01-01-0000	FM Farm Co.
48-4430-25-1-01-01-0000	FM Farm Co.
48-4430-26-4-01-01-0000	FM Farm Co.
48-4430-29-2-02-01-0000	FM Farm Co.
48-4430-30-2-01-01-0000	FM Farm Co.
48-4431-01-2-02-02-0000	Francis Wanken
48-4431-02-1-01-01-0000	Francis Wanken
48-4431-02-1-02-01-0000	Francis Wanken
48-4431-04-1-01-01-0000	Wanken Farms
48-4431-05-1-01-01-0000	Wanken Farms
48-4431-08-1-01-01-0000	Wanken Farms
48-4431-09-2-02-02-0000	Wanken Farms
48-4431-11-4-02-01-0000	Shettle & Wanken Farms
48-4431-12-2-01-01-0000	Shettle & Wanken Farms
48-4431-16-2-02-02-0000	Wanken Farms
48-4431-17-1-01-01-0000	Wanken Farms
48-4431-21-1-08-01-0000	Wanken Farms
48-4431-20-1-01-01-0000	Shettle & Wanken Farms
48-4432-08-3-03-01-0000	Shettle & Wanken Farms
48-4432-08-3-03-02-0000	Shettle & Wanken Farms
48-4540-27-3-02-01-0000	FM Farm Co.
48-4540-33-1-01-01-0000	Wanken Farms
48-4540-35-3-03-01-0000	Francis Wanken
48-4540-35-4-03-01-0000	Shettle & Wanken Farms

(Appeal forms.)

3. Todd Wanken is an officer in Wanken Farms and FM Farm Co. and is authorized to represent the corporations in this matter. Francis Wanken gave written permission to Todd Wanken to represent him in these proceedings. (Wanken Testimony; Francis Wanken letter.)
4. The “Jerry & Helen Shettle property” is under contract for purchase by Wanken Farms. (Wanken Testimony.)
5. The Taxpayer filed a multiple appeals with the CTAB on November 27, 2009. The reason for appealing is stated as: “Production is valued too high.” (Appeal forms.)
6. The Taxpayer asked for a reduction in production and calculated a reduction based on each property appealed. (Appeal Forms.)
7. 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.)
8. The CTAB also attached a letter outlining their feelings that the following recommendations should be considered in calculating the productivity values for agricultural land. (Appeal Form Attachment.)
9. The Taxpayer filed a timely appeal to this Board on April 21, 2010, indicating the CTAB did not take into account submitted production records. (Appeal form.)
10. Todd Wanken, as an officer of the Taxpayer Corporations, consented to waive legal counsel and appear on behalf of the corporations. (Wanken Testimony.)
11. The Taxpayer is protesting approximately 7500 acres of agricultural property classified as summer fallow land. (Wanken Testimony.)

12. The Taxpayer contends his property values increased by 25.7% overall and the increase is too much. (Exh. 1, pg. 3, Wanken Testimony.)
13. The Taxpayer believes adjustments should be made to the DOR calculations to reflect local conditions, such as rain fall and heat units. (Wanken Testimony.)
14. The Taxpayer submitted an exhibit with eleven pages comparing the DOR's production averages to a 10 year actual production of the subject property. (Exh. 1.)
15. The DOR submitted maps of the subject property showing the individual parcels and the taxable production. (Exh. A.)

Calculating Productivity for Agricultural Land

16. Agricultural property , including the subject property, is subject to reappraisal every six years. §15-7-111, MCA.
17. 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. (DOR closing statement.)
18. 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.)
19. 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.)

20. County crop averages are derived from the Montana AG Statistics and (NRCS) soil production maps. (Pankratz Testimony.)
21. The only changes in calculating the productivity of agricultural land in the last 46 years were the introduction of new commodity prices. (DOR closing statement.)
22. 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.)
23. The DOR applies an average Montana crop share of 12.5% to the gross income of summer fallow land to arrive at a crop share adjusted net income for each acre per year. (Pankratz Testimony.)
24. 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.)
25. The price per acre multiplied by the number of acres is the assessed productivity value. (Pankratz Testimony.)

Valuing the Subject Property

26. The Taxpayer's 10 year insurance average is very close to the DOR's assessed production valuation. For example, on taxpayer's north farm, south unit, the 10 year insurance average demonstrated a 24.9 average yield, and the DOR production calculation was 21. (Exh. 1, p. 1.)
27. All of the fields at issue demonstrate that the difference between the 10 year insurance average and the DOR production calculation are very small. Compare the 10 year production on Exh. 1, pgs. 1, 2 and 7. (DOR cross examination of Wanken.)

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. Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs. (§ 15-7-201(5)(b)(ii), MCA.)
5. 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).
6. 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).

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 recommends the capitalization rate. (§15-7-201, MCA).

The Taxpayer believes the DOR has done a good job during the reappraisal cycle, but should take into account local conditions. He argues the production assigned to his land does not reflect an accurate production for Liberty County's average rain fall and heat units needed to grow crops.

The DOR contends it uses an adjustment factor for each county which varies depending on growing conditions. (FOF 19.) 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 20.) An adjustment factor for the particular county is applied which is derived from an average production for each individual parcel of land. (FOF 20.) Next the DOR applies an average spring wheat price to the particular acre production to get a gross income average. (FOF 22.) The gross income is then multiplied by .125 which represents typical crop share, or rent, received in Montana. This results in an average net income for the landlord. (FOF 23.) The net income is divided by the capitalization rate set by

Montana Ag Advisory committee to arrive at a value per acre based on productivity. (FOF 24.)

The taxpayer argues the value set by the DOR is too high for his land. To support his argument, the Taxpayer submitted crop insurance maps reflecting a 10 year average crop production on the subject property. The Department demonstrated, however, the actual production was very close to the assigned DOR production. (FOF 26 & 27.) The Board finds the Taxpayer's evidence not to be persuasive.

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

Dated this 27th of May, 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 27th day of May, 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:

Todd Wanken _____X_____ U.S. Mail, Postage Prepaid
PO Box 396 _____ Interoffice
Chester, MT 59522 _____ Hand delivered

Francis Wanken _____X_____ U.S. Mail, Postage Prepaid
Wanken Farms _____ Interoffice
PO Box 609 _____ Hand delivered
Chester, MT 59522

C.A. Daw _____ U.S. Mail, Postage Prepaid
Michele Crepeau _____X_____ Interoffice
Tax Counsel _____ Hand delivered
Office of Legal Affairs
Department of Revenue
PO Box 7701
Helena, MT 59604-6601

Liberty County Appraisal Office _____X_____ U.S. Mail, Postage Prepaid
PO Box 690 _____ Interoffice
Chester, MT 59522 _____ Hand delivered

Liberty County Tax Appeal Board _____X_____ U.S. Mail, Postage Prepaid
c/o Robert Mattson _____ Interoffice
P.O. Box 338 _____ Hand delivered
Chester, Montana 59522

/S/ _____
DONNA J. EUBANK, paralegal assistant