

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE, OF THE STATE OF MONTANA,)	DOCKET NO.: PT-2009-26
)	
Appellant,)	
)	
-vs-)	
)	
BERNICE F. WINTERS and, EUGENE WINTERS,)	FACTUAL BACKGROUND, CONCLUSIONS OF LAW
Respondents.)	ORDER and OPPORTUNITY <u>FOR JUDICIAL REVIEW</u>
)	

The above-entitled appeal was heard on May 13, 2010, via telephone in accordance with an order of the State Tax Appeal Board (Board). The notice of the hearing was duly given as required by law. The Department of Revenue (DOR) was represented by Tax Counsel Brenda Gilmer and Department Agricultural Valuation Specialist Dallas Reese . The taxpayers, represented by Norman Winters, presented evidence in opposition to the appeal.

The duty of the Board is to determine whether the subject property qualifies as agricultural land for tax purposes.

Findings of Fact

Due, proper and sufficient notice was given of this matter, and the time and place of the hearing. All parties were afforded opportunity to present oral and documentary evidence.

The subject property is described as follows:

Land located in Golden Valley County, comprising 120 acres, Geocode 53-1913-13-4-02-01-0000 assessment code 7305000000. (AB-26 form).

The property is located in Golden Valley County, the south half of the southeast quarter and the northwest quarter of the southeast quarter, Section 13, Township 10 North, Range 21 East. (CTAB trans. 2.)

Mr. Winters, owner of the subject property, appealed his assessment and denial of agricultural status to the Golden Valley County Tax Appeal Board (County Board). The County Board held a hearing on February 5, 2010. The County Board found in favor of Mr. Winters and determined that the State arbitrarily set criteria for agricultural land production at an unreasonable level for Golden Valley County. The DOR appealed the decision of the Golden Valley County Tax Appeal Board.

The Department asked the Board to take judicial notice of several reports, legislative materials, Montana laws and rules. Specifically, requirements for qualified agricultural land were changed by the legislature during the last legislative session. *Compare* § 15-7-202, MCA (2005) and §15-7-202, MCA (2009).

Mr. Winters testified that he owns 120 acres of grazing land in Golden Valley County which was inherited from his aunt and father. The land does not have any improvements, is not fenced, and is leased to a neighbor for \$1 per acre per year for grazing purposes. (Test. Winters.) The property has been in the Winters family for over 80 years and the use has not changed in the past 80 years. Mr. Winters noted that he wished to keep this piece of property and to pass it along to his granddaughter. He noted, however, that the land does not support the tax bill.

The parties agree the property's sole use is for agricultural activities. The parties also agreed, at the county tax appeal board, the subject property had a carrying capacity of 22.255 animal unit months (AUM). (CTAB trans. 21.)

Board Discussion

The issue presented is whether the property can be classified as agricultural land. This Board has the authority to review the classification of property. *See, e.g., Farmers Union Central Exchange v. Department of Revenue*, 272 Mont. 471; 901 P.2d 561(1995).

The Department contends classifying Mr. Winters' property as agricultural property does not comport with the requirements of §15-7-202, MCA, because the land does not produce \$1500 in income or support the equivalent AUM. Mr. Winters contends the land continues to be used for agricultural purposes as required by statute and is properly classified as agricultural land.

It is the clear intent of the legislature that land used for agricultural purposes be granted agricultural classification. *See* §15-7-201, MCA. To determine whether land is being used for agricultural purposes, the legislature set forth specific requirements based on the productivity and size of the parcel of property.

For prior years, the county and state tax appeal boards considered the subject property to fit the criteria for agricultural valuation. *See* [Department of Revenue v. Norman Winters](#), PT-2006-2, 01/22/07; CTAB trans. generally; Winters test.

During the last legislative session, however, the Legislature changed the requirements for land to be granted agricultural classification to require a specific production requirement of \$1500. The specific statutory changes directly affect the subject property. The Legislature now requires that grazing

land can only be eligible for classification as agricultural land when the grazing land can sustain the minimum number of animal unit months and those “minimum number of animal unit months must equate to \$1,500 in annual gross income...” § 15-7-202(3), MCA. There is no evidence the land meets these requirements and, in fact, there is no contest that the subject property does not meet these requirements (Winters CTAB, 21).

Thus, even though the evidence demonstrates the subject property is “used primarily for raising and marketing agricultural products” as is required by §15-7-202(1)(b)(i), MCA, the subject property does not meet the current statutory income or AUM requirement . §15-7-202(3), MCA.

The Legislature does have the authority to set requirements for classification of agricultural land. The subject property is, without dispute, leased to a neighboring landowner and is being used as grazing land. The change in statutory language, however, changed the requirements for agricultural taxation, and the subject parcel may no longer be considered qualified agricultural land for tax purposes.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Golden Valley County in accordance with a classification as non-qualified agricultural land.

The decision of the Golden Valley County Tax Appeal Board is hereby reversed.

Dated this 26th 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, 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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/ss/

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