

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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CRAIG and LESLI GOULD,	)	
	)	DOCKET NO. IT-2012-10
Appellants,	)	
	)	
-vs-	)	
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	<u>FOR JUDICIAL REVIEW</u>
	)	
Respondent.	)	

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This case comes to us through a direct appeal by Taxpayers Craig and Lesli Gould from an adverse decision of the Office of Dispute Resolution (ODR) of the Department of Revenue (DOR). A telephonic hearing was held before the DOR on October 9, 2012. Craig Gould represented Taxpayers, and testified on his own behalf. The Department of Revenue (DOR) was represented by Douglas Peterson, DOR Field Unit Audit Manager, and DOR Auditor Cameron LaRocque.

By agreement of the parties, the ODR decision and transcript was considered by this Board, and the parties were allowed an opportunity to submit additional evidence. The Board elected to hear this appeal on the record without objection by the parties.

**Issue**

The issue presented is whether or not the Taxpayers' late submission of a written objection to a Statement of Account (SOA) should be excused on the basis of Taxpayers' time constraints and financial hardship.

## **Facts Presented in ODR Opinion**

1. Taxpayers claimed the Energy Conservation Credit for tax years 2009 and 2010.
2. DOR performed a random selection desk audit on Taxpayers. As a result, an energy credit survey letter was sent to the Taxpayers on March 6, 2012, requesting that receipts pertaining to their claimed capital investment be submitted within 30 days.
3. Taxpayers did not respond to the March 6 letter. A second request for receipts related to the claimed energy conservation credit was sent on April 9, 2012. Again, Taxpayers were asked to submit substantiating evidence within 30 days.
4. DOR did not receive a response from Taxpayers to either request for information.
5. DOR issued a "Statement of Adjusted Income Tax Liability" (SOA-Statement of Account) on April 18, 2012. The adjustments set forth by the SOA disallowed the energy conservation credit which resulted in corrected tax liabilities for 2009 and 2010. The SOA further assessed late penalties and interest for those years.
6. The SOA contains the following language on the first page:  
"WARNING: YOU MUST RESPOND WITHIN 30 DAYS OF THIS ASSESSMENT, OR YOU WILL LOSE YOUR RIGHT TO APPEAL."
7. DOR issued subsequent SOAs on May 2, 2012 and June 1, 2012. (Tr. p. 7.)
8. Mr. Gould also received a telephone call from the Accounts Receivable and Collections office of the DOR. Mr. Gould claims this telephone call was his first notification that the DOR had audited his 2009 and 2010 individual income taxes.

9. On July 26, 2012, Mr. Gould filed a Notice of Referral to the DOR's Office of Dispute Resolution requesting "an opportunity to immediately respond to the initial document request and overturn the Department of Revenue's ruling."

10. In a letter attached to his Notice of Referral to ODR, Mr. Gould offered the following explanation for his tardy submission of a written objection to the SOAs:

For the past two years, I've been working excessive hours at my main job and also working full time starting a business here in Billings. With my wife not working on a full-time basis, this is currently necessary to support my family of five, two of which are in college (a third one may enter college in Fall of 2012.) ...The normal course of work, business and travel requirements along with service work in my community diverted my attention too many ways, and many, many tasks at home were neglected. Unfortunately, one of the neglected tasks was reviewing and responding to mail and related paperwork. This resulted in a lack of response to the Audit request on my part. As a result, the claimed Energy Conservation Credit was disallowed and the corresponding taxes, penalties and interest were levied in the amount of nearly \$2,500.

11. Mr. Gould contends DOR did not exercise all means available to contact him regarding the audit assessments because the DOR failed to telephone him to request documents. (Taxpayers' Administrative Hearing Questionnaire responses dated February 25, 2013.)

12. Mr. Gould does not deny that the DOR mailed requests to the Taxpayers.

### **Applicable Regulations**

1. ARM 42.2.105 (3) provides that a taxpayer has 30 days from issuance of the SOA to submit a written objection, either by mail or email.
2. ARM 42.3.105 allows the DOR the discretion to waive penalty and interest on taxes due for reasonable cause. The causes listed by the statute include

delays caused by death or extended illness, misinformation from the Department, destruction of records by fire or casualty or where a taxpayer is unable, for reasons beyond the taxpayer's control, to obtain the records necessary.

### **Findings of Fact, Conclusions of Law and Discussion**

The Taxpayers in this case have appealed the DOR's finalization of their account and imposition of past due taxes, penalties and interest. We find no evidence in this instance that indicates the DOR has improperly imposed taxes, penalties and interest in this matter.

The Taxpayer received two letters with clear requests for documentation to which he did not respond. The Taxpayer also received three tax bills to which he did not respond. He does not claim that his delay is due to illness, death, misinformation of the DOR or his inability to obtain the records. His only claim for relief is that he was simply too busy to open his mail, as he was working excessive hours. This explanation does not meet the causes set out in the Regulations for waiving penalties and interest, nor does it entitle the Taxpayer to reopen his case and offer proof now that he is reading his mail. Nothing in the statute or regulations requires that the DOR make efforts to personally contact the taxpayer by phone, as Taxpayer here suggests. More importantly, no evidence is offered that the method of notice used by the DOR failed to reach the Taxpayer or was inadequate to apprise him of the need to respond.

The Board concludes that the taxes, penalty and interest assessed by the DOR are properly due and owing, and that the Taxpayer has failed to timely contest the imposition of such taxes and associated penalties and interest.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Taxpayers' appeal and complaint be denied and the taxes, penalty and interest assessed by the Department of Revenue are properly due and owing.

DATED this 23<sup>rd</sup> day of May, 2013.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

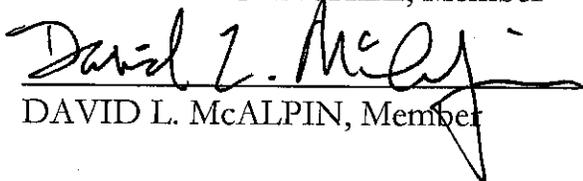


KAREN E. POWELL, Chairwoman

( S E A L )



SAMANTHA SANCHEZ, Member



DAVID L. McALPIN, Member

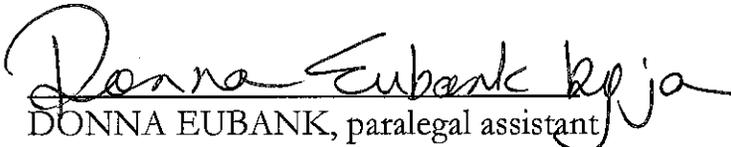
NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

I certify that on this 23<sup>rd</sup> day of May, 2013, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

Craig and Lesli Gould  
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