

BITTERROOT VALLEY BOARD OF REALTORS, INC.,

CASE №: SPT-2020-43

Appellant,

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND OPPORTUNITY FOR JUDICIAL REVIEW

v.

STATE OF MONTANA, DEPARTMENT OF REVENUE,

Respondent.

STATEMENT OF THE CASE

This is an appeal of a decision by the Department of Revenue (DOR), which denied the Bitterroot Valley Board of Realtors' (BVBOR) request for a property tax exemption for its office in Hamilton, Montana. The denial by the DOR was based on a review of BVBOR business practices, which DOR determined do not conform to the requirements set forth in Mont. Code Ann. § 15-6-201. We affirm DOR's determination that BVBOR does not meet the requirements for exemption from Montana property tax.

ISSUE TO BE DECIDED

Whether the Department of Revenue erred in denying the Bitterroot Valley Board of Realtors' property tax exemption for its property in Ravalli County.

PROPERTY DESCRIPTION

The physical address of this property is 224 N. 4th Street, Hamilton. The property Geocode is 13-1467-25-1-05-03-0000 and the Legal description is Hamilton Original Townsite, S25, T6 N, R21 W, Block 017, Lot 019, 7000 Square Feet, Lot 20 N 20' Lot 19 Block 17 Hamilton CS#

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599566-TR. The assessment code is 552600 and the property is in DOR neighborhood 213.940B. The subject property improvements consist of a commercial office building of 2,336 square feet on a city lot. BVBOR bought the building April 1, 2008 and owns it in fee simple. The building is used as the office for the BVBOR, which is a trade association in support of the realty industry in Ravalli County. *Dept Ex. G.*

EXHIBIT LIST

The following evidence was submitted at the hearing:

Bitterroot Valley Board of Realtors exhibits:

1. BV BOR Exhibit 1 - Title 15 Chapter 6 highlighting 15-6-201;
2. BV BOR Exhibit 2 - IRS Exemption Notice dated June 4, 2020;
3. BV BOR Exhibit 3 - DOR Determination Letter;
4. BV BOR Exhibit 4 - Building Rental Agreement;
5. BV BOR Exhibit 5 - Building Rental Agreement for Humane Association;
6. BV BOR Exhibit 6 - Building Rental Agreement for Debra Shelby;
7. BV BOR Exhibit 7 - Building Rental Agreement Debra Shelby;
8. BV BOR Exhibit 8 - Legislator Meet & Greet information;
9. BV BOR Exhibit 9 - Information on classes held at BVBOR property;
10. BV BOR Exhibit 10 - Adopt A Family information and photograph;
11. BV BOR Exhibit 11 - Roaring Lion Fire Victims Fund flyer;
12. BV BOR Exhibit 12 - S.A.P.S. Self Defense Class flyer;
13. BV BOR Exhibit 13 - Information regarding Quality of Life Committee donations;
14. BV BOR Exhibit 14 - Government Affairs information;
15. BV BOR Exhibit 15 - Fundraising and sponsorship information;
16. BV BOR Exhibit 16 - Brew Tour Food Drive ad; and
17. BV BOR Exhibit 17 - Meet & Greet State Speech Team photographs.

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Department of Revenue exhibits:

- A. DOR Exhibit A - Application for Property Tax Exemption;
- B. DOR Exhibit B – Property Tax Exemption Letter of Denial;
- C. DOR Exhibit C – BVBOR Articles of Incorporation;
- D. DOR Exhibit D – BVBOR Bylaws of Corporation;
- E. DOR Exhibit E - Letter from DOR - Income Tax Exemption Denial;
- F. DOR Exhibit F – BVBOR IRS Exemption Letter;
- G. DOR Exhibit G – BVBOR Warranty Deed;
- H. DOR Exhibit H - Appraisal photographs and emails; and
- I. DOR Exhibit I - Property Record Card for subject property.

BVBOR appealed to the Montana Tax Appeal Board (MTAB) on September 14, 2020, per Mont. Code Ann § 15-2-302. *Dept. Ex. B, MTAB Dkt. 1*. The MTAB hearing was conducted in Helena by Zoom teleconference on January 20, 2021 at which the following were present:

- a. Kristina K. Warren, DOR Counsel; Linda Sather, DOR Management Analyst; and Kacee Redli, DOR Program Support Specialist.
- b. Deidrie Kinnunen, Representative for BVBOR.

The record includes all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties prior to the MTAB hearing.

FINDINGS OF FACT

- 1. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

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2. BVBOR was founded in 1992, and the IRS sent a letter to BVBOR dated June 4, 2020 granting an exemption from federal income tax under Internal Revenue Code § 501(c)(6), effective January 3, 2020. *Dept. Ex. F, MTAB Hearing 00:48:50-00:49:15.* Additionally, the DOR sent a letter to BVBOR dated October 22, 2019 granting non-profit, tax-exempt status for state corporate income tax purposes. *Dept. Ex. E.*

3. BVBOR submitted a property tax exemption application dated January 15, 2020 to the DOR, as required by Mont. Code Ann. § 15-6-201. *Dept. Ex. A.* In completing the application, BVBOR checked "Other" with regard to the type of property tax exemption and listed "Board of Realtors" on the form. *Id.* The DOR processed the application and sent a determination letter denying BVBOR's exemption request on June 19, 2020. *Dept. Ex. B.* The DOR stated the evidence submitted did not support exemption as outlined in Title 15, Chapter 6, Part 2 of the Montana Code Annotated. *Id.*

4. Taxpayer representative Deidrie Kinnunen testified that BVBOR's property should be exempted under Mont. Code Ann. § 15-6-201 because BVBOR is a part education, part charitable, and part government income tax-exempt organization open to the public for use. *MTAB Hearing 00:07:17-24.* Ms. Kinnunen testified that the BVBOR organization includes a governmental affairs committee that assists residents with water regulations and septic permit issues, as well as an office that can be rented/loaned for meet and greet functions with elected officials. *Taxpayer Ex. 8, 14, MTAB Hearing 00:11:50-00:12:50.* BVBOR offers the use of its building to Bitterroot Resource and Development Area organization to host classes relating to buying homes. *Taxpayer Ex. 9.* BVBOR also has a Quality-of-Life committee that holds a variety of charitable events for families in need from the Bitterroot Valley. *MTAB Hearing 00:34:08-00:40:00, Taxpayer Ex. 10, 13.* Depending on the organization that is using the building, BVBOR sometimes charges a fee of \$100.00 per

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day, which includes a rental charge, as well as a refundable cleaning deposit. *Taxpayer Ex. 6, MTAB Hearing 00:56:55-00:58:28.*

5. When asked by the Board during the hearing, Ms. Kinnunen was unable to specifically point out the section of Mont. Code Ann. § 15-6-201 exempting BVBOR from property tax. *MTAB Hearing 00:13:50-00:16:55.* Ms. Kinnunen testified that BVBOR does not specifically meet the requirements of any subsection of Mont. Code Ann. § 15-6-201 but thought that the subject property may be able to qualify for tax-exempt status based on its part governmental, part charitable, and part educational mixed use. *MTAB Hearing 00:10:04-00:10:33;1:00:10-1:02:04.*

6. Kacee Redli, program support specialist for the DOR, testified she reviewed BVBOR's tax-exempt application and denied it because BVBOR did not qualify under Mont. Code Ann. § 15-06-201. *Dept. Ex. B, MTAB Hearing 01:28:44-01:28:55.* Ms. Redli stated BVBOR did not qualify for the education exemption because the property is not used exclusively for educational purposes and BVBOR does not have an attendance policy or defined curriculum. *MTAB Hearing 01:24:00-01:27:12.* Ms. Redli testified that BVBOR did not qualify for the public charity exemption because it is not a 501(c)(3) as required by statute. *Id.* BVBOR did not qualify for the community service building/fraternal organization exemption under Mont. Code Ann. § 15-6-209, because it is not a fraternal organization or senior citizen center, it was not established by January 1, 1981, and its focus is the business interests of its real estate broker and agent members. *Id.* Additionally, Ms. Redli testified that BVBOR did not qualify for the governmental exemption because BVBOR is not a government entity. *Id.* She further testified that BVBOR's tax-exempt status for federal and state income tax purposes was not determinative of whether the subject property qualified for exemption from property tax. *MTAB Hearing 01:19:20-01:21:50.*

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7. Linda Sather, Management Analyst, and supervisor for DOR, testified that when the DOR reviews an application for exemption from property tax under Title 15, Chapter 6, Part 2 of the Montana Code Annotated, it is required to apply the property ownership test and the property use test, both of which must be met for exemption to be conferred. *MTAB Hearing 01:33:00-01:35:55*. Ms. Sather testified that she reviewed BVBOR's application for tax exemption, as well as the supplemental information provided in connection with the application, and agreed with Ms. Redli's determination that the subject property did not meet the statutory requirements to qualify for tax exemption. *Id.* Additionally, Ms. Sather testified that she has never approved any other realtor board property as tax-exempt. *MTAB Hearing 01:36:14-28*.

JURISDICTION AND STANDARD OF REVIEW

8. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101. The Taxpayer filed a timely appeal of the DOR's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter, a direct appeal to MTAB from a decision of the DOR. Mont. Code Ann. § 15-2-302.
9. This Board may hear appeals de novo. *Puget Sound Energy, Inc. v. State*, 2011 MT 141, ¶ 30, 361 Mont. 39, 255 P.3d 171. "A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered." *McDunn v. Arnold*, 2013 MT 138, 303 P.3d 1279 (2013).
10. The Board's order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-302.

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CONCLUSIONS OF LAW

11. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

12. DOR is entitled to a “presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful.” *Dep't of Revenue v. Burlington N. Inc.*, 169 Mont. 202, 214, 545 P.2d 1083, 1090 (1976). However, DOR cannot rely entirely on the presumption in its favor and must show the propriety of their action. *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).

13. The Taxpayer bears the burden of proving the error of DOR’s decision. *Farmers Union Cent. Exch., Inc. v. Dep't of Revenue of State of Mont.*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.

14. This case requires MTAB to make an interpretation of the meaning of the Montana Statute as it applies to this dispute. When construing a statute, it is the Board’s role to “determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted.” *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 332 P.3d 235; Mont. Code Ann. § 1-2-101.

15. “When faced with a problem of statutory construction, great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration.” *Dep't of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978) (citing *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).

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16. “[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer.” *Western Energy Co. v. State, Dep't of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 990 P.2d 767.
17. A property tax exemption claim requires proof that all the requirements of the statute permitting exemption have been met. Mont. Admin. R. 42.20.102.
18. Exemptions from taxation of property are within the purview of the Montana Legislature. The Legislature has full authority to change and modify the definitions of properties that qualify for exemption from tax. Meeting every two years, the Legislature has ample opportunity to set a standard, enforced by the Department of Revenue in the executive Branch, defining what non-profit properties are exempt from state property tax.
19. The Board has read the full record of this dispute and heard testimony offered by DOR and the Taxpayer regarding whether this Taxpayer’s property meets any legal requirements for exemption from Montana property tax.
20. It is our finding after weighing the evidence and judging the credibility of the testimony that the Taxpayer does not meet the conditions set forth by the Legislature for exemption.
21. While the Taxpayer presented evidence and testimony to the Board that its property was used for various community outreach functions related to government affairs, charitable giving, and education, this area of Montana law is very specific. The Taxpayer did not meet those very specific tests set by the Legislature for exemption as either a government entity, a public charity, an educational institution, or a community service organization.

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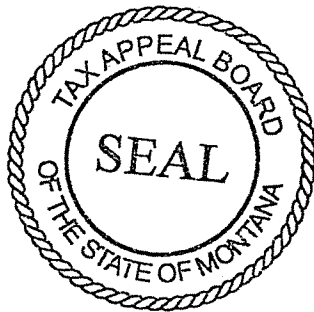
22. We find the Taxpayer's activities did not satisfy any of the separate statutory requirements for exemption, and that even if it had in part, the Board finds no authority in the Montana Code Annotated to combine portions of several of the various elements of exemption requirements to create an exemption which could apply to the Taxpayer. We are not allowed to read into the statute what is not explicitly written there by the Legislature.
23. The Board would remind the DOR that the notice provided to the Taxpayer in this matter offered scant explanation or reasoning as to why it had been denied exemption. It is our interpretation of the Taxpayer Bill of Rights that every taxpayer deserves a full explanation from the Department when a decision like this is made. Mont. Code Ann. § 15-1-222. We encourage DOR in the future to exercise better oversight of their processes to educate and inform taxpayers of the reasoning and law behind DOR decisions when exemptions are denied.

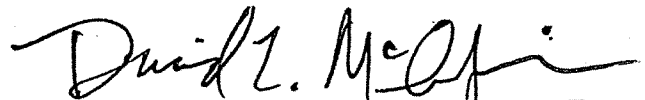
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ORDER


24. Bitterroot Valley Board of Realtors appeal and complaint is denied.

Ordered April 8, 2021

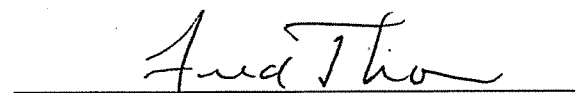




David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



Amie Zendron, Member
MONTANA TAX APPEAL BOARD



Fred Thomas, Member
MONTANA TAX APPEAL BOARD

Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2). The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §15-2-303(2).

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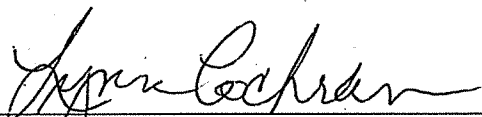
Certificate of Service

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review to be sent by United States Mail via Print, Email and Mail Services Bureau of the State of Montana on April 8, 2021 to:

Bitterroot Valley Board of Realtors, Inc.,
224 N. 4th Street
Hamilton, MT 59840

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MONTANA TAX APPEAL BOARD