

AUG 13 2021

Montana Tax Appeal Board

COLSTRIP PROPERTIES, INC.,

Appellant,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**

Respondents.

CASE №: PT-2021-1
(Motel property)

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

STATEMENT OF THE CASE

This is an appeal by Colstrip Properties Inc. represented by owner Richard S. Burnett (Taxpayer) of a decision by the Rosebud County Tax Appeal Board (RCTAB) which upheld the Department of Revenue's (DOR) appraised value of a motel located in Colstrip. We hereby modify the RCTAB decision and partially reduce the value of the subject property.

ISSUE TO BE DECIDED

Whether the Rosebud County Tax Appeal Board erred in affirming the DOR appraised value of \$656,700 for this property.

PROPERTY DESCRIPTION

The physical address of this property is 15 Dogwood Street Colstrip. The property geocode is 29-1151-33-4-07-05-0000 and the Legal description is Colstrip, S33, T02 N, R41 E, Block 024, Lot 001, Colstrip Blk 24. The assessment code is 001311 and the property is in DOR neighborhood 229.210.C. The subject property is known as the Fort Union Inn, a motel consisting of 20 units and was built in 1973.

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EXHIBIT LIST

The following evidence was submitted at the hearing:

Department of Revenue Exhibits;

- A. Land Model Packet, MDOR bates numbered 000009-000011;
- B. Classification and Appraisal Notice, MDOR bates numbered 000030-31;
- C. CTAB Exhibit A: Property Record Card and appeal documents, MDOR bates numbered 000036-51;
- D. CTAB Decision, MDOR bates numbered 000052-54;
- E. 2019 State B Hotel/Motel Model, MDOR bates numbered 000400.

Colstrip Properties and Richard Burnett Exhibits;

- A-1. 3/9/21 Article by Pete Zimmerman at Daily Montanan;
- B-2. 3/26/14 Buy-Sell Agreement (Land) dated 3/26/14 for vacant land (not subject to this appeal), page 1 of 7;
- C-3. 2/5/21 Casper Star Article;
- D-4. What is Colstrip...part of an article (no reference source);
- E-5. 1/2021 EDF case study article (select pages) - 3pages;
- F-6. Confidential Comparables for 11 Larkspur Drive - 2 pages MDOR 000268;
- G-7. 5/2/2008 Colstrip companies water lawsuit Billings Gazette articles -- 1 page;
- H-8. 2015 MCA 15-8-111 Market Value Standard-exceptions – 1 page;
- K-11. 3/13/20 Four Foundation Underpinning Bids – 4 separate pages;
- L-12. 3/12/13 Coal-fired Power plant article – Quartz 3 pages;
- M-13. TriMedia Envir. article on coal-fired power plants, unknown date – 1 page;
- N-14. 6/26/19 EIA article ‘Today in Energy’ – 2 pages;
- O-15. 4/25/21 Daily Inter Lake article – 1 page;

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P-16. Daily Montanan article approx. date 5/7/21, Colstrip Utilities sue NW Talen - 5 pages;

Q-17. 5/13/21 Email with Krista Hazel – 2 pages;

R-18. 12/5/2019 MTAB Opinion PT-2018-63 related to geocodes 29-1151-34-3-22-01-0000 and 29-1151-34-3-19-01-0000;

S-19. 8/25/2000 MTAB Opinion PT-1999-45, related to the Taxpayer's Mobile Home Park;

T-20. Packet of pictures of parts of the different apartments owned by Taxpayer;

U-21. Pages 11-12 from MTAB Opinion in transcript PT-1999-45;

V-22. Packet of pictures (13) of motel PT-2021-1;

W-00. (No Exhibit labeled W-23);

X-23. 'Not the Future' article from Missoula Current, unknown date – 1 page.

The Montana Tax Appeal Board (MTAB) hearing was conducted in Helena on May 18, 2021, and the following were present:

- a. Richard Burnett; and
- b. Anthony Zammit and Dave Burleigh, DOR Counsel; Liz Franz, DOR Regional Manager; and Maureen Celander, DOR Commercial Appraiser for Billings.

The Board was represented at the hearing by Board Members David McAlpin, Amie Zendron, and Fred Thomas. Board Member Thomas subsequently resigned his position and was replaced by Daniel Zolnikov. Board Member Zolnikov has read the case file and listened to the audio recording of the hearing and was therefore designated to participate in the deliberations and decision in the case per Mont. Code. Ann. § 2-4-622.

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The record includes all materials submitted to the county tax appeal board, the audio recording of the hearing at the county tax appeal board, and additional exhibits submitted by the parties for 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.
2. The DOR valued the subject property at \$620,600 for the 2017/2018 appraisal cycle. *Dept. Ex. B.* For the 2019/2020 tax cycle, the DOR valued the subject property at \$656,700 using a lien date of January 1, 2018. *Id.*
3. Rather than file Form AB-26 to request informal review by the DOR, the Taxpayer appealed to the RCTAB on July 10, 2019, and a hearing was held on December 2, 2020. *MTAB Hrg. Transcr. 31:7-8, Dept. Ex. D.* The Taxpayer's hearing was delayed until Taxpayer's prior MTAB appeals PT-2018-63 & PT-2018-67 had concluded. RCTAB upheld the DOR's value of \$656,700 for "lack of evidence" from the Taxpayer. *Dept. Ex. D.*
4. The Taxpayer appealed the county decision to MTAB on January 4, 2021, and the Board held a hearing on May 18, 2021. The Taxpayer was seeking a valuation of \$186,000, and the DOR was seeking to uphold its valuation of \$656,700. *MTAB Hrg. Transcr. 3:19-4:14.* At the hearing, the Taxpayer introduced additional exhibits that were not provided to the DOR in advance of the hearing. *MTAB Hrg. Transcr. 5:1-7.* The DOR made a standing objection to the use of the exhibits on the basis they had not been previously disclosed to the DOR. *MTAB Hrg. Transcr. 7:22-24, 11:4-14.* Taxpayer testified that he was aware that evidence and witnesses needed to be disclosed prior to the hearing. *MTAB Hrg Transcr. 8:21-23.* After consideration, the Board allowed the additional exhibits admitted as

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evidence in consideration of the Taxpayer's status as a pro se litigant and considering the view that the exhibits were primarily news articles that did not require extensive analysis by the DOR. *MTAB Hrg. Transcr. 9:24-10:19*. The Board granted the DOR additional time during the hearing to review the Taxpayer's exhibits before proceeding with the hearing. *Id.*

5. This property is one of six cases the Taxpayer concurrently appealed on the general theory of economic obsolescence. The basis of the Taxpayer's arguments in all cases was the adverse effect of the Colstrip power plant pending shutdown. Taxpayer contends the town of Colstrip has a life span of forty-five to fifty years, and a town with an end date means the property's value in the town will also have an end date. *MTAB Hrg. Transcr. 6:17-23*. The Taxpayer contended that, with the clock "running on the town," as an entrepreneur and property purchaser, he would not purchase the property. *MTAB Hrg. Transcr. 7:3-5*. When valuing the property, Taxpayer argued the DOR appraisers failed to consider the length of the town's life, the employment at the powerplant, and the cost to repair the motel. *MTAB Hrg. Transcr. 13:21-14:13*. Taxpayer testified he believes the entire plant will close within five years, and unless remediation work is undertaken on a large scale at the power plant, the motel will be valueless and boarded up in four to five years. *Id.*
6. Taxpayer testified that in recent years the subject motel is only seasonally occupied, physically rundown, and structurally damaged from constant settling of the soils and subsoils in Colstrip. *MTAB Hrg. Transcr. 7:5-11, 13:6-7*. The Taxpayer testified that the front of the motel has settled six or seven inches, the walkway is pulling away from the building, and the property is not too far from being condemned. *MTAB Hrg. Transcr. 7:5-11*. The Taxpayer further testified that there is no tourism in Colstrip, and while there may be occasional weddings and graduations and an increase in occupancy during hunting season, other than the periodic turnaround maintenance at the power plant, the motel is

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largely empty from December through April. *Id.* The subject motel also has competition for business from the newer and more modern Colstrip Inn and Suites. *Id.*

7. Several lawsuits have been filed regarding the foundation damage in the town of Colstrip from the ground settling. *MTAB Hrg. Transcr. 13:1-19.* The Taxpayer has settled his legal claim for damages for the motel and is still litigating the damage to his personal home. *Id.*
8. Taxpayer contends the comparable sales used to validate the subject motel's value is incorrect. *MTAB Hrg. Transcr. 15:14-16:2.* Taxpayer testified according to appraisal law, comparable properties used for valuation must represent similar properties within acceptable proximity of the property being valued. *Id.* The Taxpayer concedes appraisal law does not specify acceptable proximity but believes that using hotels in Forsyth and Miles City, as he believes the DOR did when valuing his motel, will not work. *Id.* Additionally, the Taxpayer argues that it would be impossible for the DOR to find the sale of a hotel with similar damage in a dying town that was truly comparable. *Id.*
9. Taxpayer cited Mont. Admin. R. 42.20.454 as evidence the DOR should consider the \$186,000 sales price from the 2002-2003 sale as an indication of value of the motel. *MTAB Hrg. Transcr. 16:8-17, 19:19-20:8.* Taxpayer also cited Mont. Admin R. 42.20.107 stating "when determining the market value of commercial property, . . . department appraisers will consider, if the necessary information is available, an income approach to value." *MTAB Hrg. Transcr. 16:8-17:4.* The Taxpayer presented a 1999 MTAB decision (PT-1999-45) relating to a mobile home park property the Taxpayer owns, indicating in that case the DOR lacked adequate income and expense information to develop an income approach model for that tax cycle for that property. *Id.*

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10. Taxpayer testified that he has called all over Montana and could not find an appraiser that will consider that the town is dying when appraising the property. *MTAB Hrg. Transcr. 20:17-22.* The Taxpayer also testified he has never considered the income approach to value the motel because his business comingles several sources of income, so he cannot determine the motel's profits or losses. *MTAB Hrg. Transcr. 24:1-25:14.*

11. DOR appraiser Maureen Celander testified that she did not conduct the original appraisal but reviewed all property records and inspected the property when the Taxpayer appealed to RCTAB. *MTAB Hrg. Transcr. 31:22-33:5, Dept. Ex. A.* Ms. Celander testified that she visited the property on November 25, 2020, to establish the property valuation was accurate and to meet with the Taxpayer to get additional information, if needed. *MTAB Hrg. Transcr. 32:22-33:23.* Ms. Celander testified that she spoke with Mr. Burnett's son, Jerry Burnett, who designated himself as the agent for the Taxpayer, at the property. *Id.* According to Ms. Celander's testimony, Jerry Burnett verbally provided some rental information but could not provide documentation of the motel's vacancy or expenses. *Id.* She further testified that during her visit, she was also provided a bid for foundation underpinning for the motel dated March 13, 2020, after the lien date, which has been designated as part of Taxpayers Exhibit K, and also verified the steps were separating from the building and the foundation was settling on the northeast corner. *MTAB Hrg. Transcr. 34:1-35:4.* Ms. Celander testified she could not inspect all the rooms in the motel because it was fully occupied at the time of her inspection. *MTAB Hrg. Transcr. 35:7-12.*

12. Ms. Celander testified that the DOR uses a motel model to project the income of commercial properties. *MTAB Hrg. Transcr. 47:1-10.* The DOR builds a regional income model by collecting income and expense information voluntarily provided to the DOR. *Id.* Within that framework, DOR modelers build regional commercial income models for motel businesses. The model used for this property is confined to rural eastern Montana. The

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DOT income models are based upon incomes and expenses voluntarily reported to DOT by hotel/motel properties statewide and then normalized and localized for appraisal use. *MTAB Hrg. Transcr. 47:21-48:10*. Ms. Celander testified that she did not know specifically how the income model was constructed or the location of the data points but trusted the models to produce reliable information. *Id.*

13. Ms. Celander testified that the DOT did not use the income method to determine market value of the subject property because the income method is typically a more reliable appraisal method for commercial properties than the sales comparison method. *MTAB Hrg. Transcr. 44:16-45:7, Dept Ex. C*. Within the DOT's rural motel income model, the subject motel's projected gross annual income, based on 20 units, is \$371,205, with an effective gross income of \$211,587. *MTAB Hrg. Transcr. 46:5-16, Dept Ex. C*. DOT's model subtracted costs associated with a standardized vacancy and collection rate of 43% to arrive at the effective gross income. *Id*, *MTAB Hrg. Transcr. 48:13-17*. Next, the DOT subtracted the estimated total expenses of \$141,976 to get the net operating income of \$69,611. *MTAB Hrg. Transcr. 46:10-16*. The capitalization rate was determined as 9.55% with an effective tax rate of 1.05%, making the overall effective capitalization rate 10.6%. *Id*. The net operating income was then divided by the capitalization rate to arrive at the estimated market value of \$656,700 for the subject property. *Id.*

14. In her review of the DOT income analysis for motels, Ms. Celander set the vacancy rate at 43%, meaning the model presumes the motel is fully occupied 57% of the time. *MTAB Hrg. Transcr. 48:13-21*. When Ms. Celander visited the property, Jerry Burnett verbally indicated the motel had an estimated vacancy rate of 50%. *MTAB Hrg. Transcr. 50:2-8*. Additionally, Ms. Celander testified that the motel's disrepair was accounted for by using a lower rent rate to reflect the reduced amount of income the property could produce due to its condition. *MTAB Hrg. Transcr. 51:14-18*.

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15. In response to the Taxpayer's arguments for economic obsolescence, Ms. Celander explained the DOR's task is to value all property for the 2019/2020 appraisal cycle using a common lien date of January 1, 2018. Because the DOR is unable to consider future events, any economic factors occurring after the lien date, such as the power plant closing, will be included in that future tax cycle. *MTAB Hrg. Transcr. 65:1-17.*

16. Region 3 regional manager Liz Franz testified that the capitalization rate is net income divided by a sales price of a property with the effective tax rate added in, and it does not relate to the economic life of any property. *MTAB Hrg. Transcr. 69:19-70:14.* She testified that the capitalization rate is developed with expense and income from a specific period. *Id.* Ms. Franz further testified that until sales prices in an area start declining, the DOR is unable to change its values in economically depressed cities, even though it may be aware of the issue, because external factors might affect the value of properties in the area in the future. *MTAB Hrg. Transcr. 71:19-72:6.* Ms. Franz testified some residential properties in Colstrip are still selling, and at slightly higher prices than in the previous appraisal cycle. *MTAB Hrg. Transcr. 69:19-22.*

17. Ms. Franz testified that hotel sales had occurred in region three, but the closest sale to the subject property was in Forsyth. *MTAB Hrg. Transcr. 72:3-16.*

18. When questioned by the Board about whether any self-reported data was received from Colstrip motel owners to be used in the DOR income model for rural eastern Montana motels, Ms. Franz did not know. *MTAB Hrg. Transcr. 186:16-187:5.*

JURISDICTION AND STANDARD OF REVIEW

19. The Montana Tax Appeal Board (MTAB) is an independent agency not affiliated with the Montana Department of Revenue. Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101.

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20. The Taxpayers filed a timely appeal of the RCTAB decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. §15-2-301(1)(b).
21. This Board has discretion to determine an appeal on the record or it may hear further testimony. Mont. Code Ann. §15-2-301(2)(b).
22. This Board may hear appeals de novo. *Department of Revenue v. Burlington N.*, 169 Mont. 202, 545 P.2d 1083 (1975). “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). As such, this matter will be reviewed without deference to the RCTAB hearing and subsequent decision.
23. The Board’s order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-301.

CONCLUSIONS OF LAW

24. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
25. “All taxable property must be appraised at 100% of its market value....” Mont. Code Ann. § 15-8-111.
26. Except as otherwise provided in Montana Code Ann. § 15-2-301(2)(c), the Board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision in connection with any appeal under Montana Code Ann. § 15-2-301. To the extent Mont. Code Ann. § 15-2-301 conflicts with the Montana

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Administrative Procedure Act, § 15-2-301 supersedes that act. Mont. Code Ann. § 15-2-301(5).

27. 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.” *Burlington N. Inc.*, 169 Mont. at 214, 545 P.2d at 1090. 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).
28. 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.
29. The Legislature intended the Department to utilize a number of different approaches or combination of approaches, including the income approach, sales comparison approach, and cost less depreciation approach, depending on the market where the appraisals take place, when it assesses property and estimates market value. *Albright v. State By & Through State*, 281 Mont. 196, 208-209, 933 P.2d 815, 823 (1997).
30. “‘Assessment formulations’ by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion.” *Peretti v. State, Dep’t of Revenue*, 2016 MT 105, ¶ 15, 383 Mont. 340, 344, 372 P.3d 447, 450 (citing *O’Neill v. Dep’t of Revenue*, 2002 MT 130, ¶ 23, 310 Mont. 148, 155, 49 P.3d 43, 47); see *Northwest Land & Dev. of Montana, Inc. v. State Tax Appeal Bd.*, 203 Mont. 313, 317, 661 P.2d 44, 47 (1983) overruled on other grounds by *DeVoe v. Dep’t of Revenue of State of Mont.*, 263 Mont. 100, 866 P.2d 228 (1993).

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31. “The state tax appeal board must consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was conducted within 6 months of the valuation date. If the state board does not use the appraisal provided by the taxpayer in conducting the appeal, the state board must provide to the taxpayer the reason for not using the appraisal.” Mont. Code Ann. § 15-2-301(3).
32. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” Mont. Code Ann. § 15-2-301.
33. The Board is challenged in this case by a lack of specific relevant data to guide us in deciding whether this motel is correctly valued at \$656,700.
34. On the one hand, while we recognize that the DOR is bound to use mass appraisal methods to establish defensible values and achieve the presumption of correctness, we find the DOR’s presentation lacking in data or evidence comparable to Colstrip. Through no fault of the DOR, it appears the DOR may not have received any voluntary data from a town similar to Colstrip to enter into the model for typical motel income and expenses. This challenges the validity of the regional income model for motels.
35. As to the comparable sales method of finding market value, there were no motel sales in Colstrip and the DOR’s identified comparable sales out of Colstrip but in the area could be questioned as less comparable to Colstrip. There is no question the Colstrip economy is greatly influenced by the future of the Colstrip power plant, and Colstrip’s location away from I-90 or other typical amenities would lead a motel buyer to consider different factors

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when deciding what to pay for the subject property as compared to a similar motel in Forsyth.

36. The DOR is hamstrung by both a lack of comparable sales and a model dependent on self-reported income and expense data to build mass appraisal income models. We find that troubling when the record and testimony indicate that no data in the income model was from the community in question or a comparable community, as we heard in testimony during the hearing.
37. On the other hand, the Taxpayer's evidence lacked specifics. We understand the Taxpayer's high-level view of the present and future economy of Colstrip, but his presentation sorely lacked any specific evidence documenting vacancy rates or expenses that would allow the Board to best consider his appeal under the income method.
38. This Board is not equipped to predict the economic future of Colstrip any more than the Department of Revenue. Our task is to find market value on the statewide lien date for the tax cycle, in this case on a date three years in the past on January 1, 2018.
39. In our final analysis we cannot support a value generated from a mass appraisal income model using limited data from around rural Eastern Montana but excluding data from Colstrip or a comparable community. That evidence is not convincing as a foundation to estimate the market value of this motel under the income method so we find that evidence and the income method less reliable.
40. With regard to the comparable sales method of valuation we also find that approach less reliable. Any regional sales considered to validate the income method analysis removed in place and time from the subject and are only slightly less suspect as their sale price would

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be also be influenced by very different factors than a motel buyer in Colstrip would consider. We conclude a well-informed buyer would not pay \$656,700 for this property.

41. We are now left with the third and final method to estimate market value, the cost less depreciation method. The DOR employed a replacement cost new less depreciation analysis which appraised the motel value at \$480,281. DOR's limited testimony and evidence of their cost analysis was credible. We find the cost method the most reliable evidence in the record when weighed against either the market sales or the income method of valuation. We adopt the DOR value of \$480,281, calculated by the cost method, as the best evidence of market value on January 1, 2018.

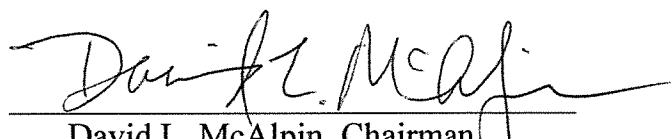
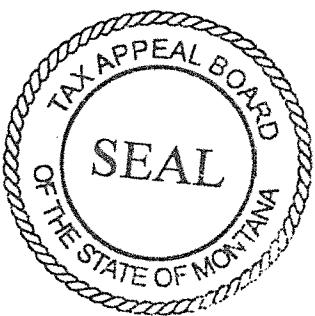
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ORDER

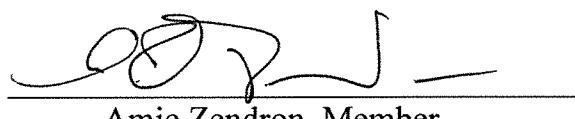
42. Colstrip Properties Inc.'s appeal and complaint is granted in part. The Board modifies the RCTAB decision and partially reduces and the value of the subject property.

43. MDOR is ordered to assign a market value of \$480,281 to the motel property for 2019/2020.

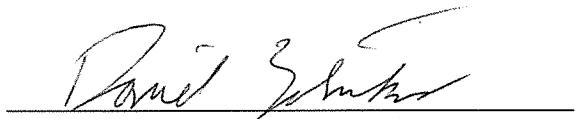
Ordered August 13, 2021,



David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD



Amie Zendron, Member
MONTANA TAX APPEAL BOARD



Daniel Zolnikov, 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 Montana Dept. 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 email and by United States Mail via Print & Mail Services Bureau of the State of Montana on August 13, 2021 to:

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