

BEFORE THE MONTANA TAX APPEAL BOARD

ROBERT J. GANTER,)	
)	DOCKET NO.: PT-2013-20
Appellant,)	
)	FINDINGS OF FACT,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

Statement of Case

Robert J. Ganter (Taxpayer) appealed a decision of the Lewis and Clark County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR) valuation of his property identified as 11.86 acres in Section 21, Township 11N, Range 05W, Lewis and Clark County, State of Montana. The Taxpayer argues the DOR has incorrectly classified the property as non-qualified agricultural land, and seeks a grazing land classification. At the Montana Tax Appeal Board (Board) hearing held on February 27, 2014, the Taxpayer, Robert Ganter, appeared on his own behalf and provided testimony and evidence in support of the appeal. The DOR, represented by Tax Counsel Michele Crepeau, Area Manager Judy Tice, and Management Analyst Frank McCall, presented testimony and evidence in opposition to the appeal.

The Board having fully considered the testimony, exhibits, post-hearing submissions and all matters presented, finds and concludes the following:

Issue

The issue before this Board is whether the Department of Revenue determined an appropriate land classification for tax year 2013.

Summary

Robert J. Ganter is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Lewis and Clark County Tax Appeal Board.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The subject property is an 11.86 acre tract with the following legal description:

Land only comprised of 11.86 acres in Section 21, Township 11 North, Range 05 West, County of Lewis and Clark, State of Montana, Geo Code 05-19993-21-1-01-06-0000. Appeal Form.
3. For tax year 2013, the DOR classified the subject property as non-qualified agricultural land. Taxpayer Administrative Hearing Status Questionnaire, p. 1.
4. Taxpayer filed an AB26 form for property review with the DOR on July 3, 2013. No change in classification was made. Taxpayer Administrative Hearing Status Questionnaire, p. 1.
5. Taxpayer filed an appeal with the Lewis and Clark County Tax Appeal Board (CTAB) on October 1, 2013. The Taxpayer requested a grazing land classification for the subject 11.86 acres. Appeal Form.

6. The Lewis and Clark CTAB heard the appeal on October 10, 2013 and upheld the DOR classification for the subject property. Appeal Form.
7. The Taxpayer appealed to this Board on January 14, 2014, stating:

“The Board did not recognize my right to bring evidence per MT 42.20.625 Section 15B. In addition, I feel that calculations used by the Department of Revenue do not follow common sense grazing and range management principles, criteria used & calculation derived do not recognize these principles.” Appeal Form.
8. A hearing was held before the Montana Tax Appeal Board on February 27, 2014.
9. By law, agricultural land is valued for tax purposes based on its productivity, instead of its market value. The Legislature set out a framework for calculating productivity, and, by rule, the Department has a specific formula for calculating productivity, which requires a minimum of 30 AUM carrying capacity to be classified as grazing land. Section 15-7-202, MCA, ARM 40.20.620(8)(e).
10. Under the Department’s formula, Mr. Ganter’s land does not have sufficient productivity to be considered grazing land, and the Department of Revenue placed a non-qualified agricultural value on the property. DOR Exh. A.
11. Non-qualified agricultural land is valued based on seven times the rate of grazing land, but is not taxed at market value. Section 15-6-133, MCA.
12. At the hearing before the Montana Tax Appeal Board, Mr. Ganter presented the Board with an alternative formula for the calculation of carrying capacity on the subject property.

13. Mr. Ganter argues that the formula used by the Department of Revenue is too conservative with its use of herbage and rain calculations. Ganter testimony.
14. First, Mr. Ganter argues that the DOR is too conservative and overestimates the amount of wasted herbage, and instead should “save half, take half.” He argues that his calculation is more in line with commonly accepted rangeland practices than the Department’s rule which assumes stock “takes half, leaves half, and wastes half.” Taxpayer’s Exhibit, Dietz article. See ARM 42.20.620 and 42.20.625.
15. Second, Mr. Ganter argues that the DOR calculation uses a midpoint between average and low average rainfall for its calculation, and Mr. Ganter notes that his property has enjoyed above average rainfall in the past years. He argues that it is more appropriate to use average rainfall as verified by the NRCS for his land for calculation of AUM’s. Taxpayer Exhibits and State Tax Appeal Board testimony and CTAB testimony, p. 7, NRCS handwritten calculations.
16. Mr. Ganter’s testimony and exhibits demonstrated that his property does have an average rainfall that matches the DOR calculations, with an average of 16.88 inches for the last 29 years, in comparison to the DOR 15-19 inches for average rainfall. Taxpayer Exhibits, Taxpayer testimony, CTAB Tr., page 9.
17. When using Mr. Ganter’s “take half, leave half” waste calculation, and an average rainfall (instead of the midpoint between average and below average calculation used by the DOR,) then Mr. Ganter’s property carries 35 AUM. Using the DOR method of calculating forage but using the actual average rainfall, gives Ganter a 31 AUM calculation.

Testimony Ganter, MTAB, and CTAB Tr. page 7; Taxpayer's Exhibits, NRCS handwritten calculations.

18. The DOR noted in its testimony at the county tax appeal board that it is required to set a general and uniform method of classifying lands for taxpayers as required by statute. McCall testimony, CTAB Tr. page 21.
19. To calculate tax value for agricultural land, the DOR uses NRCS data, as set out in rule and statute. McCall testimony, § 15-7-202, MCA, and accompanying administrative rule.
20. Under the DOR calculations, Mr. Ganter's property does not meet the requirements of grazing land, and the department's agricultural specialist, Frank McCall, testified that agricultural properties must all be valued using the same formula to meet the statutory requirements of equitable taxation. McCall testimony.

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. Section 15-2-301, MCA.
2. "It is the duty of the department of revenue to accomplish the classification of all taxable lands." Section 15-7-101(1)(a), MCA.
3. "It is the duty of the department of revenue to implement the provisions of § 15-7-101, 15-7-102, and this section by providing for a general and uniform method of classifying lands in the state for securing an equitable and uniform basis of assessment of lands for taxation purposes." Section 15-7-103(1)(a), MCA.
4. All lands must be classified according to their use or uses. Section 15-7-103(2), MCA.
5. The legislature has directed that bona fide agricultural land be classified and assessed at its productivity value. Section 15-7-202,

MCA, et seq.)

6. If the land is used primarily to raise and market livestock, the land must be capable of sustaining a minimum number of animal unit months of carrying capacity to be taxed at the lower rate. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the following criteria: (ARM 40.20.620 (8).)
- (a) Beef cows are owned to produce calves, usually one calf per year.
 - (b) The calf is the annual product produced from the grazing land via the beef cow.
 - (c) Calf prices have averaged approximately \$1.00 per pound. Weaning weights for calves are typically 500 pounds. The average revenue produced by one cow/calf pair is \$500. Three sold calves from three cow/calf pairs would generate \$1,500 in income.
 - (d) Based on a 10-month grazing season (typical), 30 AUM are required to generate \$1,500 (3 cow/calf pair X 10 months = 30 AUM).
 - (e) For the reappraisal cycle ending December 31, 2014, the Montana State University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 30 animal unit months. For subsequent reappraisal cycles, the minimum number of animal unit months of carrying capacity needed to equate to \$1,500 in annual gross income for each cycle will be determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics for the base year for each cycle. The base year for each cycle will be established by administrative rule.
 - (f) One animal unit (AU) is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may be based on the information obtained from the NRCS soil survey. If a soil survey does not exist, the carrying capacity may be based on an estimate by the NRCS, the county agricultural extension agent, or the department. **Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for the midpoint between the normal and unfavorable precipitation year estimates on nonirrigated grazing land.** On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:
 - (i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;

- (ii) per-acre per-year dry herbage production consumed by livestock divided by 915 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and
- (iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs.

7. The Montana Tax Appeal Board must give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. Section 15-2-301(4), MCA.

Findings of Fact, Conclusions of Law, and Board Discussion

The Board must determine, based on a preponderance of the evidence, whether the DOR determined an appropriate classification for the subject land.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue 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); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d. 3, 7, cert. denied 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

First, we will address the issue of the DOR's formula for calculating carrying capacity. The calculation of carrying capacity to derive a tax value originates from an administrative rule implementing a legislative directive. See POL 5 & 6.

Mr. Ganter argues that the administrative rule uses principles of the NRCS, but that the rule itself is onerous to the taxpayer. While we agree that certain acreage used for agricultural activities (especially smaller parcels of land) often cannot meet the criteria for the most beneficial agricultural taxation, it is the purview of the legislature to determine the tax burdens placed on differing property in Montana.

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There is no indication that the administrative rule is arbitrary, capricious or otherwise unlawful. Without evidence that the administrative rule fails to implement the statute or exceeds the statutory grant of authority, the administrative rule is controlling.

Second, it is important to address Mr. Ganter's argument that he has brought in data that proves his land has a carrying capacity of 30 AUM's. Mr. Ganter argued for a different method of calculating carrying capacity on his land. We find that he failed to provide evidence of differing pertinent site-specific evidence that would affect the carrying capacity of the soil at issue. *See, e.g.,* §15-7-201(7)(g), MCA. Mr. Ganter argues that it is proper to use a different calculation to determine carrying capacity for taxation but the law's requirement of equal treatment for all taxpayers does not permit the use of different methodologies for different properties.

While Mr. Ganter uses NRCS carrying capacity data, he uses a different calculation method than administrative rule, and uses the "average rainfall" calculation to determine that he has 30 AUM carrying capacity on the property in question. (*See* EP 17.) We find that his use of the alternate NRCS data does not override the presumptions about rainfall and forage that are built into the regulations. Mr. Ganter did not bring any new evidence from the NRCS to the DOR. The DOR had the same rainfall data that he had, but DOR regulations discount it by averaging the average and below-average rainfall and using the lower number to calculate forage. The method is set by regulation, which we do not have the authority to overturn, as it is not clearly unlawful as an exercise of administrative authority.

Again, we would note that certain acreage used for agricultural activities (especially smaller parcels of land) generally cannot meet the criteria for the most beneficial agricultural taxation, and that it is the purview of the legislature to determine the tax burdens placed on differing property in Montana. Without legislative directive, this Board does not have authority to override the DOR administrative rule. While the legislature has generally directed that land should be valued according to use, and that agricultural land shall be valued by productivity, we can find nothing unlawful about the DOR's implementation of a tiered productivity determination for agricultural property.

Thus, it is the opinion of this Board that the land classification determined by the DOR is correct and the decision of the Lewis and Clark County Tax Appeal Board is upheld.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land value shall be entered on the tax rolls of Lewis and Clark County at a 2013 tax year at a value consistent with the DOR's land classification.


Dated this 1st of May, 2014.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(SEAL)


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

The undersigned hereby certifies that on this 1st day of May, 2014, 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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