BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

PV RANCH COMPANY, L.L.C., FORT PEASE COMMUNITY PASTURE, INC., FROZE TO DEATH STATE GRAZING DISTRICT , FROZE TO DEATH LAND COMPANY, Appellants, -vs- THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent.	) DOCKET NOS.: PT-2009- 94, 95, 96 & 97 FACTUAL BACKGROUND, CONCLUSIONS OF LAW ORDER and OPPORTUNITY FOR JUDICIAL REVIEW	

Statement of the Case

PV Ranch Company, L.L.C., Fort Pease Community Pasture, Inc., Froze to Death Land Co. and Froze to Death State Grazing District (Taxpayers) appealed a decision of the Treasure County Tax Appeal Board (CTAB) relating to the Department of Revenue's (DOR's) valuation of their property. The subject properties consist of numerous parcels all of which are located in Treasure County, Montana. Taxpayers claim the subject property productivity is too high as appraised by the DOR. The Taxpayers were represented by Legal Counsel Tim Filz and John Christenson. John (Sam) Connolly, General Manager and Daniel Zyvoloski, Land Manager for PV Ranch Company, provided testimony in favor of the appeal at the hearing held before this Board on September 29, 2010 in Helena. The DOR was represented by Michele Crepeau, Legal Counsel, Dallas Reese, DOR Agriculture Specialist, Robin Rude, Area Manager, Tammy Bowling, Area Manager and Debbie Bell, Appraiser.

The duty of this Board, having fully considered the exhibits, evidence presented, submissions and all other matters presented, is to determine first, what is the appropriate productivity value for the subject properties, and second, for which year Taxpayers filed appeals, based on a preponderance of the evidence.

Issue

The issues before this Board is whether the Department of Revenue determined the proper productivity on the subject properties for the current reappraisal cycle and if the Taxpayers filed timely appeals for the 2009 and 2010 tax years?

Summary

The Taxpayers in this action bear the burden of proof. Based on a preponderance of the evidence, the Board modifies the decision of the Treasure CTAB.

Evidence Presented

1. Due, proper and sufficient notice was given of this matter. This matter was heard in Helena pursuant to §15-2-301(1), MCA.
2. The subject property is located in Treasure County and is described in the following GEO codes:

PV Ranch Co., L.L.C.

33-1728-18-2-01-01-0000	33-1725-24-1-01-01-0000	33-1626-08-1-01-01-0000
33-1627-01-1-01-01-0000	33-1726-18-4-01-01-0000	33-1626-17-1-01-01-0000
33-1627-02-1-01-01-0000	33-1726-19-1-01-01-0000	33-1627-04-3-01-01-0000
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Fort Pease Community Pasture

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Froze to Death Grazing District

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(Exhs. A, B & C.)

3. Froze to Death Land Company and Grazing District is owned by several entities; PV Ranch Co. is the largest shareholder. (Zyvoloski Testimony, Exh 2.)

4. Fort Pease Community Pasture has two operators, with PV Ranch Co. operating 73% of the holdings. (Zyvoloski Testimony, Exh. 4.)

5. The DOR calculated a productivity value of $1,044,963 for 20,847.06 acres for Fort Pease Community Pasture, Inc., $2,127,911 for 55,713.52 acres for Froze to Death Land Company and Grazing District, and $3,241,280 for 68,323.95 acres for PV Ranch Co. (Post Hearing Submission, Exhs. 2, 3 & 4.)

6. The Taxpayers are asking for a value of $690,636 for Fort Pease Community Pasture, $1,537,161 for Froze to Death Land Co. and Grazing District, and $2,769,729 PV Ranch Co. properties. (Post Hearing Submission, Exhs. 2, 3 & 4.)

7. The Taxpayers filed multiple appeals with the CTAB. The earliest filings were Froze to Death Land Co. and Grazing district, each filing on December 23, 2009. PV Ranch filed on March 17, 2010 and Fort Pease filed on April 2, 2010. The reason for appealing is stated as: "The increase in assessed value of this property is unreasonably large. Our own historical use and DNRC findings do not support such a large increase in value." (Appeal forms.)

8. A consolidated CTAB hearing of the Taxpayers' appeals was held on May 12, 2010. The CTAB concluded the DOR average "productivity is high based on historical carrying capacities" and Montana Department of Natural Resources and Conservation (DNRC) rated carrying capacities. The CTAB also stated the appeals were untimely. (Appeal form attachments.)

9. The Taxpayers filed appeals to this Board on June 29, 2010, stating: "The property in question will not support the AUM's assigned to it by the state appraisal. We feel we presented solid evidence of this to the Treasure County board. We also presented our own Natural Resources Conservation Service (NRCS) report that supports our position." (Appeal forms.)

10. This Board notified the Taxpayers that the record indicated the appeals may not be timely and requested evidence and argument on the timeliness issue. (Board Letter dated July 28, 2010.)

11. The Taxpayers submitted a letter responding to the timeliness issue, but failed to send a copy to the Department. The Department did not submit any information on the timeliness issue. The Board ruled that the Taxpayers were timely in filing their appeals.

12. The Taxpayers are only the second owner of this property in 100 years and attribute their success and longevity to good management. (Zyvoloski Testimony.)

13. Evidence presented indicates an increase in taxes of as much as 75% over the last appraisal cycle. (Exhs. 2, 3 & 4.)

Calculating Productivity for Agricultural Land

14. All agricultural property is subject to reappraisal every six years. §15-7-111 (5), MCA.

15. In 1973, the DOR started appraising all land in Montana and inherited the production information for agricultural land from the County appraisal offices which was based on County's 1960 appraisals. There had been no effort by the DOR to reappraise agricultural land since 1973. (Reese Testimony.)

16. In 1995, the legislature encouraged a comprehensive review of all agricultural lands, for tax purposes, using technologies as the basis to assign productivity. (Reese Testimony.)

17. The Governor's Agricultural Advisory Committee was appointed and met from 2006 through 2008 to review the DOR appraisal process and make recommendations to the 2009 Legislature on the reappraisal of agriculture land. (Reese Testimony.)

18. Pursuant to those recommendations and statutory requirements, the DOR uses Natural Resources and Conservation Service (NRCS) soil mapping, Montana Agricultural Statistics, and local information to produce a productivity value. (Reese Testimony, Exh. D.)

19. The soil survey produced by the NRCS allows the DOR to be specific in determining productivity of agricultural land. (Reese Testimony.)

20. The DOR uses "carrying capacity," the amount of forage needed to support livestock without damage to the land, as opposed to "stocking rate: the actual number of livestock grazed on the property, in calculating production." (Reese Testimony.)

21. The DOR uses a mid-point between NRCS favorable and unfavorable growing seasons in estimating "average management." (Reese Testimony.)

22. The increase in commodity grazing fee to $15.62 per Animal Unit Month (AUM), from the last appraisal cycle to the current cycle, amounted to a 22.62% increase in value, regardless of any other changes. (Reese Testimony, Exh. D-11.)

23. DOR contends this system of calculating productivity is a fair and equitable approach and is the most defensible way to value agricultural land across Montana. (Reese Testimony.)

Timeliness Question

24. At the hearing before this Board, there was debate about the Board's order on the timeliness issue. The Board subsequently ordered additional briefing on the question of timeliness from each of the parties.

25. The parties submitted additional briefs, affidavits and exhibits in regards to whether the various Taxpayers timely filed. The relevant specifics are set out in the discussion below.

Principles of Law

1. The State Tax Appeal Board has jurisdiction over this matter. (§ 15-2-301, MCA.)
2. Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, non-irrigated use, and grazing use. (§ 15-7-201(2), MCA.)
3. Commodity price data and cost of production data for the base period must be obtained from the Montana Agricultural Statistics, the Montana crop and

livestock reporting service, and other sources of publicly available information if considered appropriate by the advisory committee. (§ 15-7-201(5)(i), MCA.)

4. The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana State University-Bozeman, College of Agriculture staff. (§ 15-7-201(7), MCA.)
5. The advisory committee shall verify for each class of land that the income determined reasonably approximates that which the average Montana farmer or rancher could have attained. (§ 15-7-201(7)(e), MCA.)
6. Productivity is determined using the Natural Resource Conservation Service (NRCS) soil surveys. The productivity determination is specific to the agricultural land use classification under average management practices. Productivity is adjusted to reflect, as near as possible, average management practices for an area using the following procedures:

   > (c) for grazing land, the midpoint of production for the amount of air-dry herbage grown between "unfavorable" precipitation years and "normal" precipitation years is used to determine the land's productivity. (ARM 42.20.604.)

7. For the reappraisal cycle beginning January 1, 2009, the per acre grazing land value is calculated as follows:

   > (i) Average private grazing lease = $15.72 per Animal Unit Month (AUM[1]);
   > (ii) Less expense allowance = $ 3.93 per AUM ($15.72 X 25%);
   > (iii) Adjusted gross income per AUM = $11.79 ($15.72 minus $3.93);
   > (iv) Statewide average productivity = 0.31 AUM per acre;
   > (v) Net income per acre = $11.79 per AUM times AUM per acre; and
   > (vi) Productivity value per acre = Net income per acre divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201(4)(c), MCA. (ARM 42.20.680(b).)

[1] "Animal unit month" means one animal unit grazing for one month. One animal unit month represents the amount of forage needed to properly nourish one animal unit for one month without injurious effect to vegetation on the land. (ARM 42.20.601(4).)

8. It is true, as a general rule, the DOR appraisal is presumed to be correct and that the taxpayer must overcome this presumption. *Western Airlines, Inc., v. Catherine Michunovich et al.,* 149 Mont. 347, 428 P.2d 3(1967). The DOR 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).

Board Discussion and Conclusions of Law

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation based on productivity for the subject properties.

The DOR is assigned by the legislature to appraise nearly four hundred thousand parcels of agricultural land during the reappraisal cycle. The DOR does this by using mass appraisal techniques. The legislative directive to value agricultural property based on productivity is very clear: agricultural land must be classified according to its use. Agricultural land must also be sub-classified by production categories. The DOR does this by compiling data and developing valuation manuals adopted by administrative rule. The DOR is assisted in this endeavor by the Governor's Agriculture Advisory Committee, which makes recommendations on how the process should work. (§15-7-201 (7), MCA.) The legislative purpose is to establish a uniform valuation system across the state which takes account of local growing conditions but not individual grower's practices.

The Taxpayers argue the subject properties are misrepresented by the DOR appraisal system. In this case, the Taxpayers compiled a great deal of historical information reflecting a much lower stocking rate AUM (animal unit months) than the DOR calculated for this appraisal cycle. They also provided figures from the DNRC and NRCS showing lower AUM calculations than the DOR used for valuing their property.

The DOR contends their calculations are based on normal growing conditions with average management decisions, as directed by the Montana Agricultural Advisory Committee and mandated by the Legislature. The DOR argues the Taxpayers' evidence shows a stocking rate lower than the DOR's carrying capacity because of management practices. The DOR also argues that the DNRC and NRCS use an unfavorable growing condition assumption when calculating a stocking rate where the DOR use a midpoint between normal and unfavorable to reflect average conditions. Thus, the DOR calculations will be higher, in general, than the DNRC and NRCS data. The calculations used by the DOR, however, are set by statute and cannot be changed just because the DNRC or NRCS data shows a lower calculation.

The Taxpayers contend their historical evidence is proof this property will not support the AUM's estimated by the DOR and if they could support the higher AUM's they would do so to maximize profits.

The Board has no doubt the Taxpayers are extremely good stewards of the land and very good ranch operators. By directive of the Legislature, it is not proper, however, to use individual producer's production information to determine productivity for tax purposes because this information reflects management practices. Management practices can vary greatly, from conservative to aggressive, depending on the financial requirements of the producer. We find that the Department properly calculated the carrying capacity as required by statute. Further, the evidence presented by the Department is credible, and the Taxpayers failed to bring forward evidence showing they could not raise the AUM's assigned by the DOR, only evidence that they have not.

Lastly, it is uncontested that the Taxpayers' assessment increased as much as 75% from the last appraisal cycle. (EP 13.) Part of this increase was due to the rule requiring an increase of the average grazing lease payment to $15.72 used to calculate the per acre grazing land value. (POL 7.) This increase alone amounted to 22.62% of

the increase in Taxpayers' tax bills. (EP 23.) The large change in value for the subject property, however, is likely caused by the failure of the state to do a comprehensive agriculture reappraisal since the 1960's. It is unfortunate that the grazing prices changed dramatically in the same tax year as the implementation of comprehensive agricultural reappraisal. It is unlikely a change of this magnitude will be seen in the foreseeable future due to advances in mapping and data management.

Thus, it is the opinion of this Board the method used by the DOR in assessing the subject property is correct and the decision of the Treasure County Tax Appeal Board as it applies to Taxpayers' valuation is modified.

Timeliness issue

The Treasure County Tax Appeal Board heard all of the Taxpayers' appeals on May 12, 2010. The CTAB concluded that the DOR average productivity is high based on historical stocking capacities and the DNRC rated stocking capacities of involved parties. Further the Board stated "we acknowledge that the appeal was not filed timely and suggest the DOR consider that when making a final productivity adjustment."

By letter dated July 28, 2010, this Board accepted the appeals from decisions of the Treasure County Tax Appeal Board, and requested that the parties provide evidence and argument on the issue of whether the Taxpayers timely filed their appeals. The Taxpayers submitted a letter to the Board in support of their timeliness. The Taxpayers failed to send a copy of the letter to DOR. The DOR did not respond to the Board or the Taxpayers. On August 31, 2010, the Board entered an order determining the Taxpayers timely filed their appeals. The Order failed to address whether the parties were timely for tax year 2009 or tax year 2010. After the hearing, the Board ordered additional briefing on the issue of timeliness for tax year 2009 and 2010. The facts and discussion below derives from the briefing, affidavits, and attachments presented to the Board.

We first note that we have several "Taxpayers" at issue, including PV Ranch Co., LLC., Froze to Death Land Company, Froze to Death State Grazing District, and Fort Pease Community Pasture, Inc. Because the Taxpayers filed appeals in differing manners, we will address each Taxpayer individually.

PV Ranch and the AB-26

One of the Taxpayers, PV Ranch Company, provided an affidavit stating that PV Ranch Company filed an "appeal" with the Treasure County Department of Revenue on September 15, 2009 (within 30 days of receiving the assessment notice). This letter was apparently not received by the DOR. The informal review statute allows that if the taxpayer is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or the classification of the land or improvements, the taxpayer may request an assessment review by submitting an objection "in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department." Section 15-7-102(3), MCA.

After mailing a letter titled an "appeal" to the Department of Revenue and not receiving a response, the Taxpayer faxed the letter again on November 18, 2009. The Department responded by a letter dated November 24, 2009, from Treasure County DOR, informing the PV Ranch that their fax dated November 18, 2009, would be considered untimely to trigger an informal review. After conversation with the Treasure County DOR, Jennifer Hunter-Walter, office manager of the PV Ranch, executed an AB-26 form and sent it on December 16, 2009.(Walter Affidavit.) On March 17, 2010 (three months after receiving the AB-26 form, four months after receiving the faxed letter, and six months after the Taxpayer initially sent an appeal) the Department denied the AB-26 on the grounds that the appeal was not timely. PV Ranch immediately filed an appeal with the Treasure County Tax Appeal Board. (Appeal Form)

During this reappraisal cycle, the Department was tasked with valuing almost a million parcels on a single day. There will, no doubt, be some correspondence that falls through the cracks in such an undertaking. The evidence presented does have inconsistencies between the timeframe presented by the Department and the Taxpayer. There is evidence presented, however, that PV Ranch made a good faith effort to contest its valuation to the Department (as evidenced by its September letter), and consistently followed up with the Department of Revenue. Upon being informed by the Department of the proper form to file, PV Ranch did so. The Department responded to that form, in writing, and the Taxpayer appealed to the Treasure County Tax Appeal Board as provided by law.

Based on the evidence that the Taxpayer put forth a good faith effort to file an informal review in a timely manner, and the Taxpayer is able to credibly document such an effort, we hereby determine that PV Ranch timely filed an appeal with the Treasure County Tax Appeal Board for tax year 2009, as it was filed within "30 days after notice of the Department's determination was mailed to the Taxpayer."

Froze to Death Land Company and Froze to Death Grazing Company

Froze to Death Land Company and Froze to Death State Grazing District (hereinafter jointly referred to as Froze to Death) submitted materials to the Department of Revenue when initial maps were sent to all agricultural producers in January 2009. Froze to Death received no response from the Department in regard to their comments. Froze to Death subsequently received assessment notices in September 2009 and failed to file an informal or formal appeal within 30 days. After receiving their tax bills, Froze to Death filed an AB -26 with the Department on December 23, 2009. Three months later, on March 17, 2010, the DOR denied the AB-26 due to untimeliness.

Froze to Death argue a variety of issues regarding the attempts to timely respond to the appraisal notice. The evidence presented however, clearly shows that

Froze to Death received multiple assessment notices, all with directions for "appealing your property's market value or classification" in September 2009. The notice states that for informal review with the DOR, the Taxpayers must file within 30 days of receipt of the notice. For formal appeal, the notice states

> File an Appeal Directly to the County Tax Appeal Board. To do this, please complete a Property Tax Appeal Form and send it to the Clerk and Recorder in the County in which the property is located before the latest of these dates: 30 days after you receive your assessment notice; or 30 days after you receive our determination of your AB-26 informal review, or by the first Monday in June.

This language mirrors the statutory directive set out in §15-15-102, MCA, which states that the application for reduction in valuation "must be submitted on or before the first Monday in June or 30 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) MCA from the department, whichever is later."

The evidence clearly shows that Froze to Death failed to file for informal or formal review within 30 days of receipt of their appraisal notice, despite notice on each assessment. Merely sending a letter to the Department in response to the maps mailed in January is not sufficient to be considered an appeal. The Taxpayers, however, make an argument that their appeal is timely filed for 2009 tax year, because they filed before the first Monday in June (2010)following the mailing of their appeal notice. Thus, they argue, the latest of the dates acceptable for filing is the first Monday in June, 2010. The Department contends that the reference to the first Monday in June refers to June 2009, and because the deadline has passed before the mailing of the assessment notice, the Taxpayers may only be timely by filing an appeal within 30 days of receipt of the assessment notice.

This is the first time in many years this question has been raised. Due to reappraisal of all residential, commercial and agricultural properties for tax year 2009, all assessment notices in the state were mailed in August and September, substantially after the first Monday in June. In §15-15-101, MCA, et seq., the Legislature set out

the structure for appealing residential, commercial and agricultural property values. Tax Appeal Boards, independent of the DOR, are appointed by County Commissioners in each county, and overseen by the State Tax Appeal Board. The County Tax Appeal Boards are "in session from July 1 of the current tax year until December 31 of the current tax year to hear protests concerning assessments made by the Department…"

Each spring, the Clerk and Recorder in each county must publish a notice to taxpayers, giving the time the county tax appeal board will be in session to hear scheduled protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. §15-15- 101(3), MCA. In Treasure County, the Clerk and Recorder records indicate that the notice was published on both May 28 and June 4, 2009.

Thus, by statute, all Taxpayers receive notice via newspaper that inform the Taxpayers that the County Tax Appeal Boards will be in session, and indicate that the first Monday in June is a deadline for the current tax year. This is the interpretation that has been accepted by the Department of Revenue, as well as the State and County Tax Appeal Boards, since the inception of the statute, and we can find no cases or institutional history that indicates otherwise. It is, however, also self-evident that the Taxpayer does not read the statute to clearly indicate a specific requirement for appeal in the year the notice is mailed. Thus, we are left with a statutory interpretation conflict.

We look to the directives of the court to determine how to resolve this conflict. First, when interpreting a statute, the Court is to give great deference to the interpretation given by the agency charged with its administration. *Dep't of Revenue v. Puget Sound Power & Light Co.,* 179 Mont. 255. Second, tax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer. *Western Energy Co. v. Dep't of Revenue*, 1999 MT 289, 297 Mont. 55.

As stated in *U.S. West v. DOR*, 2008 MT 125, ¶ 16, the Montana Supreme Court, in analyzing a question of tax payment timeliness, states the time-honored principles of statutory construction lead the Court to consider several questions:

> (1) Is the interpretation consistent with the statute as a whole? (2) Does the interpretation reflect the intent of the legislature considering the plain language of the statute? (3) Is the interpretation reasonable so as to avoid absurd results? and (4) Has an agency charged with the administration of the statute placed a construction on the statute?
>
> *Montana Power Co. v. Cremer*, 182 Mont. 277, 280, 596 P.2d 483, 485 (1979).

In attempting to reconcile these two potentially conflicting directives from the Court, we look first to see if the intent of the legislature can be determined from the plain meaning of the words used in the statute. If the plain meaning is evident, that plain meaning controls, and the Court need go no further. *Western Energy Co. v. State, Dept. of Rev.*, 1999 MT 289 ¶ 11, 297 Mont. 55, P 11, 990 P.2d 767, ¶ 11. If not clear, we must then consider the reasonableness of the interpretation and whether such reading leads to an absurd result, as well as analyzing the agency interpretation.

In this instance, a plain reading of the statute demonstrates that specific statutory language in question fails to put particular limitations on what year an appeal may be brought. Thus, we review the statutory section as a whole to determine if the taxpayers or the department's reading of the statute would lead us to an unreasonable result.

We find and conclude that if the statute were to be read in favor of the taxpayer, *i.e.,* that a taxpayer could appeal before the first Monday in June of any year, the statutory language referencing the ability of a taxpayer to file an appeal "within 30 days of the receipt of the notice" would be entirely negated.

Under taxpayers' reading of the statute, there would be no instance in which a taxpayer could trigger the 30 day appeal timeline as the "latest of the three dates." Thus, it would be an absurd result to interpret the statute in this manner because it

clearly negates the Legislature's intent to provide for several filing dates. Our interpretation is supported by the language set out in §15-15-101, MCA, which sets a July through December hearing session for the tax appeal board (which would commence a few weeks after the initial filing deadline). It is further supported by reading the statute relating to the process of informal review by the Department. Pursuant to §15-7-102, MCA, a taxpayer may file with the Department for informal review 30 days after receiving an assessment notice. If the Department denies the informal appeal, the taxpayer has 30 days to appeal to the county tax appeal board. If the Department's informal review determination is "not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision of the county tax appeal board is effective for the year in which the request for review was filed with the department." §15-7-102, MCA. This section makes clear that a taxpayer shall be given relief for the tax year in which the initial appeal was filed, and implies that an appeal is untimely if not filed within the year in which the tax is assessed.

The statutes, read as a whole, indicate the Legislature intended a specific protection for taxpayers when they crafted the language which includes an appeal right "before the first Monday in June." This language allows a taxpayer to file a valuation claim in any tax year "before the first Monday in June." Thus, a taxpayer may file for a valuation adjustment in any year, regardless of whether the taxpayer received an assessment notice. This concept is supported by the tax appeal board's administrative rule ARM 2.51.307(4) which allows for a single appeal during any reappraisal cycle.

This valuable consumer protection is critical when a taxpayer, for whatever reason, is not timely in challenging an assessment notice in the first year. The Department is not required to mail a notice of classification and appraisal to taxpayers each year, instead they are merely required to mail one in a reappraisal year, or if a property value has changed. *See* §15-7-102, MCA. By administrative rule, the

Department of Revenue will **only** allow a filing for informal review within 30 days of mailing assessment notices. Thus, a taxpayer who fails to file for informal review after an initial assessment is received appears to be time-barred from any method to negotiate or point out errors to the Department of Revenue for six years, or until the next assessment.

The Legislature fully realized that taxpayers should have some options to challenge an assessment that sets their taxable value for a six year period, regardless of whether they timely appealed their appraisal in the first year. While the taxpayers may challenge the assessment of the property in any year, they may not receive relief for taxes previously paid. By administrative rule, a taxpayer may only appeal once during a reappraisal cycle, unless a new appraisal or classification notice is sent. ARM 2.51.307. Thus, while the taxpayer may not receive retroactive relief if a tax board changes the assessment, they may receive prospective relief for up to five additional years. Further, the courts will not be overloaded by allowing a taxpayer to file an appeal every year. This balance which allows a taxpayer to appeal at least once, but not more than once, in a reappraisal cycle is a significant and critical consideration of the statutory language. This concept is supported by the notion that "a statute of limitations is meant to provide a reasonable period of time in which wronged parties can initiate suit and obtain redress. Such time frame also allows defendants to rest easy after the passage of a requisite period of time, so as not to keep causes of action forever lurking in the distance. **The time period specified by a statute of limitations seeks to balance the interests of both parties."** *Linder v. Missoula County*, 251 Mont. 292, 298, 824 P.2d 2004(1992) (emphasis added).

The Department attempts to argue that a taxpayer cannot challenge a value set in reappraisal during subsequent years. (DOR Reply Brief, p. 8.) This is contrary to current and past practice of this Board, and is contrary to the majority of the cases this Board addresses in the years between reappraisals, and, based on our statutory analysis we cannot support this interpretation. The Department interprets the statute

to allow an appeal for an informal review only in the year of the assessment, but we do not consider that the formal review process to be similarly limited.

For this reason, the interpretation of the statute that allows for a valuation appeal in any year, but only once in a reappraisal cycle, implements the objectives of the legislature to allow for taxpayer appeals and is in line with the interpretations of the agencies involved in implementation. If there is any ambiguity, this reading of the statute, while not supporting Taxpayers' claim in this instance, is the most liberal interpretation in construing the statute in favor of taxpayers in general and allows for this specific taxpayer to have timely filed an appeal for future tax years. Any different reading of the statute leads to an absurd result by rendering void the "30 day" appeal language.

Thus, we conclude that Froze to Death has timely appealed for tax year 2010, but not timely appealed for 2009.

Fort Pease Community Pasture

The evidence indicates that the Fort Pease filed a formal appeal in April 2010. There is no evidence that Fort Pease filed an informal or formal appeal prior to that date. Thus, based on the above discussion, Fort Pease has timely appealed for tax year 2010, but not timely appealed for 2009.

Due Process Challenge

We will briefly address the Taxpayers' claim regarding denial of due process. The Taxpayers claim the assessment notice is misleading, confusing and/or inaccurate and raise a denial of due process claim. The Taxpayers really raise two claims here. First, they address the actual notice as written on the appraisal and classification notice. On that issue, we find that the assessment notices clearly state the process for filing a formal and informal appeal, as required by §15-7-102, MCA.

As a second issue, the Taxpayer claims that an assessment notice does not provide sufficient information for a taxpayer to determine the effect of the valuation, or increased tax, which may be subsequently due. The legislature has directed that a taxpayer must challenge the assessed value of property prior to receiving a tax bill, which may change because of tax rates, mill levies and other calculations in addition to the appraisal. While it is true that the system is not transparent for taxpayers, the Legislature has consistently affirmed this process through multiple reappraisal cycles, and we do not find, in this instance, that sufficient evidence or law has been presented for us to determine that the laws violate the Taxpayers' due process rights.

While Montana's tax statutes are complex, and it would resolve many of the problems we see in the cases brought to us if the Legislature were to simplify both the statutory construction and the appeal process, we do not find that the assessment notice failed to provide the required statutory or Constitutional notice.

Value Before Reappraisal Issue

This decision does not address any issues relating to VBR or phase-in for agricultural property and should not be construed to affect any rights of the parties relating to "value before reappraisal," "phase-in" or any similar issues addressed in the *Lucas* litigation in the 14th Judicial District.

Order

IT IS THEREFORE ORDERED the subject properties have the proper productivity for agricultural grazing land. The valuation as set by the Department of Revenue is affirmed.

Dated this 13th of December, 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 14th day of December, 2010, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S. Mail and addressed as follows:

Tim Filz John R. Christensen Christensen Fulton & Filz, PLLC. P.O. Box 339 Billings, Montana 59103-0339	__x_____U.S. Mail, Postage Prepaid _____Interoffice _____Hand delivered
Michele Crepeau Senior Counsel Office of Legal Affairs Department of Revenue PO Box 7701 Helena, Montana 59604-6601	_____ U.S. Mail, Postage Prepaid ___x_____ Interoffice _____ Hand delivered
Treasure County Appraisal Office P.O. Box 191 Hysham, Montana 59048-0191	___x____U.S. Mail, Postage Prepaid _____ Interoffice _____ Hand delivered
Treasure County Tax Appeal Board P.O. Box 284 Hysham, Montana 59038	___x____U.S. Mail, Postage Prepaid _____Interoffice _____ Hand delivered

/s/_____
DONNA J. EUBANK, paralegal assistant