

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

U. S. WEST,)	
)	DOCKET NO.: CT-2005-4
Appellant,)	
)	
-vs-)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard on July 19, 2006, in the City of Helena, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The Appellant, represented by Jock Anderson and Dennis Lopach, attorneys; Larry McMillin, corporate counsel for Qwest, Inc., and Melissa Erjavec, income tax manager for Qwest, Inc., presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Brendan Beatty, tax counsel; Brian Staley, corporate tax unit manager, Melissa Kopp and Arnold Sowa, corporate tax auditors; and Janna Nisbett, paralegal, presented testimony in opposition to the appeal.

The duty of this Board is to determine whether the DOR acted in accordance with statute and administrative rule

regarding the assessment of interest on a deficiency in US West's corporate license tax payment for the tax year ending December 31, 1999. Based on the evidence and testimony, the Board finds that the Department of Revenue calculation of interest is affirmed and the appeal of US West is denied.

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, and of its briefing schedule. All parties were given the opportunity to present documentary evidence.

2. US West, Inc. (US West) filed an appeal of a final decision by the Montana DOR regarding the assessment of interest on a deficiency in US West's corporate license tax payment for the tax year ending December 31, 1999. (Complaint, page 1, paragraph 1).

3. US West filed the Montana Corporation License Tax return for the tax year ending December 31, 1999, on October 13, 2000 with a requested refund of \$824,112 based on overpayment of estimated taxes. (Joint Ex 1, tab 1).

4. The DOR requested additional materials related to the tax filing from US West on December 27, 2000 and April 12, 2001. US West responded to these requests on March 21, 2001 and May 10, 2001 respectively. (Joint Ex 1, tab 6.)

5. After reviewing the information provided by US West, the DOR issued a refund of \$824,112 on June 7, 2001.

(Joint Ex. 1, tab 1). Pursuant to § 15-31-531, MCA, the DOR did not issue interest on the refund. Section 15-31-531(2), MCA, states in part, that no interest is due on a refund if the "refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment."

6. US West filed a Montana amended Corporation License Tax return for the year ending December 31, 1999 on December 20, 2002. This return reported an additional tax due of \$368,654 and additional interest of \$66,358. US West calculated the additional interest due from June 7, 2001 through December 20, 2002. (Joint Ex. 1, tab 3.)

7. The DOR reviewed the amended return and assessed a tax of \$1 for tax year 1999. In addition, pursuant to § 15-31-510, MCA (1997), the DOR calculated an additional interest due of \$51,611 for the time period of May 15, 2000 (the original due date of the 1999 Montana return) through June 7, 2001 (the date the DOR issued a refund to US West). (Department of Revenue, Final Determination, dated October 28, 2005.)

8. US West now appeals the DOR's calculation of additional interest.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this appeal pursuant to the provisions of § 15-2-302(1)(c), MCA *et seq.*

2. The \$1 tax assessment arose from a technical problem with the DOR's computer system, and the tax assessed is not at issue. US West contests the additional interest assessed in the amount of \$51,611, and also contends that interest should have been paid to US West when the June 7, 2001 refund was issued.

3. **Assessment of Interest:** Pursuant to § 15-31-510(2), MCA (1997), "[i]f any tax due under this chapter is not paid when due as provided in 15-31-545, by reason of extension or otherwise, interest is added to the tax due at the rate of 12% a year from the due date until paid."

Section 15-31-545, MCA (1997), referenced above, states:

15-31-545. Graduated delinquent penalty for corporate taxpayers. If the tax for any corporation is not paid on or before the due date of the return, as provided in 15-31-111(2), or if the tax is not paid on or before the due date of the return, as provided in 15-31-111(3), there is assessed a penalty of 1% of the tax due, increasing by 1% for each 30-day period that the tax or any fraction of the tax remains unpaid, up to a maximum penalty of 25% of the tax due. This penalty must be assessed unless it is shown that the failure was due to a reasonable cause and was not due to neglect.

Section 15-31-111, MCA requires accurate payment of a tax when a return is filed, with interest added pursuant to § 15-31-510, MCA.

The question is whether interest is owed by US West from the original May 15, 2000 due date of the corporate return even though US West received a prior refund based on an original return claiming overpayment of estimated taxes for the 1999 tax year.

The DOR argues that under the plain reading of §15-31-545, MCA, tax and interest is owed by US West from the time of the original due date of the return until the date of the amended return regardless of any prior payments made to the DOR. US West argues that it overpaid its tax liability and thus interest is only due from the date that the state paid a refund to US West.

Reading §15-31-510(2), MCA (1997) in conjunction with §15-31-545, MCA, makes it clear that interest is added to the tax due when "the tax is not paid on or before the due date." A statute must be construed according to the plain meaning of the language therein. Norfolk Holdings v. Montana Department of Revenue, 249 Mont. 40, 43; 813 P.2d 460, 461 (1991). It is also proper for this Board to give great deference to an interpretation given a statute by the agency charged with its administration. See e.g., Tokumoto

v. Department of Revenue, 264 Mont. 56, 60; 869 P.2d 782, 784 (1994). In the case at hand, the statute is clear and the Department's determination is correct.

The filing of US West's amended return in 2002 created the calculation of interest due from the May 15, 2000 due date. The statutory language states that interest must be paid from the due date of the return. The fact that there were prior transactions relating to a perceived tax liability for the 1999 tax year is irrelevant.

The Board concludes that interest is owed by US West from the original May 15, 2000 due date of the corporate return through the 2002 amended return.

4. Statute of Limitations: US West argues that the DOR is prohibited from assessing interest due to the statute of limitations in § 15-31-509, MCA. The DOR noted in the Final Determination dated October 29, 2005, that US West is currently under federal audit for the 1999 tax year.

The DOR may assess a deficiency as long as there is a suspension of the federal statute of limitations. See § 15-31-509, MCA (1997). US West presented no evidence or testimony that countered this contention by the DOR. Thus, pursuant to §15-31-509, MCA (1997) assessment and deficiency notices by the State of Montana are not barred for the 1999 tax year.

5. **Interest paid on Refund:** US West also argues that it is entitled to interest on the refund it received on June 7, 2001. Section 15-31-531(2), MCA (1997) provides, in part, that interest is payable on refunds except for periods of time when the processing of the refund is delayed for more than 30 days by reason of the taxpayer's delay in providing information requested by the department. No interest shall be allowed if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later.

In the case at hand, the DOR requested information from US West on December 27, 2000. US West responded on March 21, 2001; approximately three months after DOR's original request. US West responded to a second request within 30 days.

US West failed to respond to the DOR's initial request for information and caused a delay of significantly more than 30 days. Without the delay on the part of US West, the refund was issued within the six-month timeframe in which interest is not due to a taxpayer. This Board concludes that interest is not payable upon the refund pursuant to § 15-31-531(2), MCA (1997).

6. Evidentiary Question: During the hearing, US West, through counsel, objected to entering into evidence a copy of an email sent to the DOR by a staff member of the IRS.

Our decision in this matter is made in accordance with the Montana Administrative Procedures Act. See §15-2-302(4), MCA. We are bound by common law and statutory rules of evidence. See § 2-4-612, MCA. In this instance, the email from the IRS is a statement of a public office or agency pursuant to rule 803(8), M.R.Evid. and is admissible.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the decision of the Department of Revenue in the matter of US West v. DOR, CT-2005-4, is affirmed.

Dated this 11th day of September, 2006.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

KAREN E. POWELL, Chairwoman

JOE R. ROBERTS, Member

SUE BARTLETT, Member

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

CERTIFICATE OF SERVICE

I certify that on this 11th day of September, 2006, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

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