

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Appellant/Counter-Respondent,

v.

MCLEOD FAMILY TRUST,

Respondent/Counter-Appellant.

CASE №: PT-2024-21

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

STATEMENT OF THE CASE

This is an appeal of a final decision by the Butte-Silver Bow County Tax Appeal Board (CTAB) granting in part McLeod Family Trust (Taxpayer) a reduction in land value on the subject property located at 4310 Blacktail Loop, Butte, Montana (Subject Property). The CTAB did not adjust the improvements. The Department of Revenue (DOR) appealed the decision for the land value reduction to Montana Tax Appeal Board (MTAB) on February 21, 2024. The Taxpayer filed a cross appealed challenging the CTAB’s value determination for the improvements to MTAB on February 23, 2024. We modify the CTAB’s determination.

ISSUE TO BE DECIDED

Whether the Butte-Silver Bow CTAB erred in granting in part the Taxpayer’s request for a reduction to the Subject Property.

EXHIBIT LIST

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Salient Facts Dated December 6, 2024.

DOR Exhibits:

- A. Land Model;

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

- B. Property Record Card and Photos;
- C. Maps;
- D. Cost Worksheet;
- E. Comparable Sales Report and Maps;
- F. Procedure 2-3-001.1;
- G. Appraiser Certification; and
- H. USPAP Standards 5 and 6.

PROCEDURAL HISTORY

The DOR valued the Subject Property at 496,166 for the 2023/2024 appraisal cycle, with the land valued at \$161,798 and the improvements valued at \$ 334,370. *Ex. B.* The DOR sent a Classification and Appraisal Notice to the Taxpayer dated June 30, 2023. *MTAB Dkt. 3.* The Taxpayer appealed the DOR's valuation to the CTAB on July 26, 2023, requesting a land value of \$88,192 and improvement value of \$273,353. *Id.* The CTAB hearing was held on January 16, 2024, and the CTAB decision granting in part the Taxpayer's application for reduction was sent to both parties on January 22, 2024. *Id.* The DOR appealed the decision for the land value reduction to MTAB on February 21, 2024, per Mont. Code Ann § 15-2-301, requesting a value of \$161,798. *MTAB Dkt. 1.* The Taxpayer cross appealed the decision for the improvements value to MTAB on February 23, 2024, requesting the total value of \$273,353. *Id.* On November 1, 2024, the Taxpayer contacted the Board and stated he could not attend the hearing scheduled for November 7, 2024, because of health reasons and requested to submit a brief and evidence rather than attend the hearing. *MTAB Hr'g Tr. 3:18-21.* The Board granted the Taxpayer's request in an Order Vacating Scheduling Order and Setting New Schedule dated November 4, 2024, and proceeded with the hearing as scheduled. The MTAB hearing was conducted in Helena on November 7, 2024, at which the following were present:

- a. Dave Burleigh, DOR Counsel; Brandon Whitaker, Area Manger; Katelyn Thornton, Modeler; and Jon Kinzle, Appraiser.

The Taxpayer submitted a brief and evidence on December 6, 2024. *MTAB Dkt. 15.* The DOR responded with a brief on December 19, 2024. *MTAB Dkt. 16.*

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

The record includes all materials submitted to CTAB, a recording of the CTAB hearing, all materials submitted to MTAB with the appeal, additional exhibits submitted by the parties prior to, during, and after the MTAB hearing, and a transcript of the MTAB hearing.

FINDINGS OF FACT

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The Subject Property is a residential property owned by McLeod Family Trust. *Ex. B.* The Subject Property is located at 4310 Blacktail Loop, Butte, Montana, and is identified by its geocode 01-1095-04-2-02-02-0000. *Id.* The Subject Property is 5.3 acres and includes a single-family residence consisting of 2,716 square feet first floor living area. *Id.* The Subject Property also includes a garage, shop, shed, framed porch and a concrete deck. *Id.*
3. The DOR valued the Subject Property at \$496,168 for tax years 2023 and 2024, allocating \$161,798 for the land and \$334,370 for the improvements. *Ex. C, MTAB Hr'g Tr. 2:18-22.* At the February 23, 2024, CTAB hearing, the Taxpayer requested \$88,192 for the land and an improvements value of \$273,353 for a total value of \$361,545. *MTAB Dkt. 5.* The CTAB adjusted the Taxpayer's value and granted a reduction. *Id.* The DOR appealed this decision to MTAB on February 21, 2024, and the Taxpayer filed a cross appeal on February 23, 2024. *MTAB Dkt. 1, 3.*
4. DOR Commercial Appraiser, John Kinzle, testified that he visually inspected the Subject Property prior to the CTAB hearing. *MTAB Hr'g Tr. 6:5-8.* Upon inspection, Mr. Kinzle found that the house was a foot wider than previously recorded and that the shop had electricity due to lights on the outside of the garage. *MTAB Hr'g Tr. 6:11-18.* Mr. Kinzle adjusted the property record card before the CTAB hearing. *Id.* Mr. Kinzle adjusted the Subject Property's value

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

to \$507,498, with the land valued at 161,798 and the improvements valued at 345,700. *MTAB Hr'g Tr. 7:5-7*. Mr. Kinzle testified that the Taxpayer stated he added electricity and put the electric garage door in the shop in May of 2024. *MTAB Hr'g Tr. 31:15-24*. The addition of the electricity added \$2,850 in value to the shop. *Id.*

5. Mr. Kinzle valued the Subject Property using the cost approach. *Ex. E; MTAB Hr'g Tr. 2:18-22, 33:3-34:4*. DOR did not value the Subject Property using the sales comparison method because of the location and comparability points of the comparable properties. *Id.* Additionally, the sales comparison approach value was over \$100,000 more than the cost approach value. *Id.* DOR policy 2-3-001.1 mandates that if comparability points are too high, DOR appraisers must switch to the cost method to value the improvements. *Ex. F; MTAB Hr'g Tr. 35:15-24*.

6. The DOR used land sales model 201.004.A to value the Subject Property's land. *Ex. A; MTAB Hr'g Tr. 8:4-9:3*. The DOR's multiplicative land model determined a base size of one acre with a base rate of \$67,988. *Ex. A; MTAB Hr'g Tr. 9:8-10:5*. Mr. Kinzle testified that the base rate is determined using property sales, typically one acre. *MTAB Hr'g Tr. 10:18-20*. To adjust for the larger size of the Subject Property, the DOR determined an incremental rate of 0.1377. *Ex. A; MTAB Hr'g Tr. 11:1-16*. The Subject Property did have an influence applied of 189%, bringing the base rate for the first acre of the Subject Property to \$128,572. *Ex. A; MTAB Hr'g Tr. 26:18-20, 47:18-20*.

7. DOR Modeler, Katelyn Thornton, testified that the R squared value, the T stat, the dispersion coefficient, and the variation coefficient were all within DOR standards, showing that the land model and the influence were reliable. *Ex. A; MTAB Hr'g Tr. 40:14-43:16*. Ms. Thornton demonstrated the multiplicative formula to the Board using the base and incremental rates. *Ex. A; MTAB Hr'g Tr. 45:1-25*.

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

8. Mr. Kinzle testified that two sales in Black Tail Loop, the same neighborhood as the Subject Property, were very similar to the Subject Property. *MTAB Hr'g Tr. 8:4-9:3*. The first sale was 2.5 acres, occurred in 2019, and was time adjusted. *Id.* The second sale was made in August of 2021. *Id.* Mr. Kinzle believed that because most of the property adjustments were based on the two sales, they confirmed the value set by the DOR for the Subject Property. *Id.* The DOR presented aerial maps showing the desirability of the Subject Property's location. *Ex. C; MTAB Hr'g Tr. 24:24-25:21*. The Subject Property is in a good neighborhood with a desirable location, while the property closer to the golf course is rated as very good neighborhood and in a more desirable location. *Id.*

9. The Subject Property is located in the DOR's 003.B Blacktail Loop neighborhood. *Ex. C; MTAB Hr'g Tr. 26:9-20*. The adjustments built into the land model were based on vacant land sales in the same neighborhood. *MTAB Hr'g Tr. 35:8-12*.

10. Mr. Kinzle presented photos of a building on the Subject Property that the Taxpayer claims is in an unbuildable area. *Ex. B; MTAB Hr'g Tr. 15:22-17:7*. Mr. Kinzle testified that Blacktail Creek is near the building but does not touch the Subject property. *Id.* After reviewing the Federal Emergency Management Agency (FEMA) floodplain map, the DOR adjusted the amount of non-buildable land from the last tax cycle. *Id.* Mr. Kinzle stated that the improvements or shops were not in the flood zone, and the non-buildable land adjustment lowered the incremental rate and the Subject Property's land value. *Id.*

11. The DOR presented photographic evidence showing where Blacktail Creek's banks are in relation to the Subject Property. *Ex. B; MTAB Hr'g Tr. 17:10-22:19*. Included in the photos was an aerial view delineating where water was standing on the Subject Property from Blacktail Creek. *Ex. B; MTAB Hr'g Tr.*

BEFORE THE MONTANA TAX APPEAL BOARD

STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

- 22:21-23:4. Mr. Kinzle testified that the area that is affected by water is less than one acre. *Id.*
12. The DOR presented the official FEMA flood zone map of Blacktail Creek and its relation to the Subject Property. *Ex. C; MTAB Hr'g Tr. 24:8-20.* Mr. Kinzle testified that only about a tenth of an acre of the Subject Property is in the FEMA flood zone. *Id.* Additionally, Ms. Thornton testified that the DOR had no examples of properties selling for less because of a flood zone and therefore could not create a sales influence. *Ex. A; MTAB Hr'g Tr. 43:17-44:11.* In their model, the DOR created a regional influence of 34% for flooding and 30% for unbuildable land. *Ex. A; MTAB Hr'g Tr. 44:9-11.* The DOR accounted for the portion of the Subject Property that is flooded using the economies of scale and the low incremental rate of 0.137. *MTAB Hr'g Tr. 44:9-18.* Ms. Thornton testified that if the DOR broke out the unbuildable land and valued it separately using the unbuildable influence, the economies of scale would be reset, and the first acre would be valued at the base rate, causing an increase in value. *MTAB Hr'g Tr. 45:2-46:25.*
13. The DOR valued the Subject Property's improvements using the cost method. *Ex. D; MTAB Hr'g Tr. 27:6-29:7.* Using Marshall & Swift cost tables, the DOR calculated a replacement cost new value of \$350,174 for the Subject Property's improvements. *Id.* DOR appraisers rated the main house at 76% good for depreciation, valuing the replacement cost new less depreciation (RCNLD) of the main house at \$266,132. *Id.* Next, the DOR multiplied the RCNLD by the county index of 0.76 to adjust for the local market for a final value of \$280,640 for the house. *Id.* The outbuildings, including the two detached garages, a shed, concrete, and asphalt, were valued a \$65,060, using the same process as the main house. *Ex. D; MTAB Hr'g Tr. 30:10-31:24.* The value of all improvements using the cost method was \$334,370 and later

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

changed to \$345,700 after adjustments made by Mr. Kinzle before the CTAB hearing. *Ex C; MTAB Hr'g Tr. 6:11-18.*

14. When valuing the Subject Property, the DOR used the Uniform Standards of Professional Appraisal Practice (USPAP) mass appraisal standards. *MTAB Hr'g Tr. 37:11-24.*

15. Because of medical issues, the Taxpayer could not attend the hearing and submitted a brief in support. *MTAB Dkt. 15.* Taxpayer states that by covenant, tract 43, the Subject Property, contains a single dwelling with a shop building constructed away from the wet area. *Id.* In 2015, fill material was used to fill the one-acre area on the north side of the property. *Id.* The Taxpayer further stated that the United States [Army] Corps of Engineers stopped the Taxpayer from spreading the fill. *Id.* The Taxpayer contended that while the one acre to the north is wetland, the local government has failed to designate it as such. *Id.* He further indicated that the Taxpayers have been prohibited from removing willows that are within 20 feet of the shop. *Id.* Additionally, the water table rises to within 18 inches of the land surface in the spring. *Id.*

16. Taxpayer claims the DOR's use of a sale on West Copper Street is improper as it is outside of his market area. *MTAB Dkt. 15.* The Taxpayer claims the sale directly to the west of the Subject Property is the best evidence of value for the Subject Property. *Id.* The Taxpayer also submitted an appraisal to the CTAB, which is considered part of this appeal. *MTAB Dkt. 5.*

JURISDICTION AND STANDARD OF REVIEW

17. 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

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-301*.

18. This Board may hear appeals de novo. *Dept. of Revenue v. Burlington N.*, 169 Mont. 202, 213-14, 545 P.2d 1083 (1976). “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, ¶ 22, 370 Mont. 270, 275, 303 P.3d 1279, 1282.
19. The Board’s order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann. § 15-2-301(6)*.

CONCLUSIONS OF LAW

20. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
21. “All taxable property must be appraised at 100% of its market value....” *Mont. Code Ann. § 15-8-111*.
22. “[I]n connection with any appeal under [Mont. Code Ann. § 15-2-301], the Montana board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act.” *Mont. Code Ann. § 15-2-301(5)*.
23. 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.*, 169 Mont. at 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

- and must present a modicum of evidence showing the propriety of their action.
Western Air Lines v. Michunovich, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).
24. The Taxpayer bears the burden of proving the error of DOR's decision.
Farmers Union Cent. Exch. v. Dep't of Revenue, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995); *Western Air Lines*, 149 Mont. at 353, 428 P.2d at 7.
25. "Assessment formulations' by [the Montana Tax Appeal Board] should be upheld unless there is a clear showing of an abuse of discretion." *Peretti v. 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. 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*, 263 Mont. 100, 866 P.2d 228 (1993)).
26. "Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority." *Bick v. State Dep't of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).
27. 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(5)*.
28. The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. *Mont. Code Ann. § 15-1-101(1)(i)*.

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

29. “If the appeal is an appeal of the valuation of residential property, the state board shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and uses values obtained within the timeframe provided for in subsection (3)(a). The appraisal that is provided by the taxpayer is presumed to establish assessed value in the state board proceeding unless the department provides sufficient evidence to rebut the presumption of correctness, including another independent appraisal or other compelling valuation evidence. The state board shall address the taxpayer’s independent appraisal and the department’s valuation evidence in the decision.” *Mont. Code Ann. § 15-2-301(3)(b)*.
30. 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*, 281 Mont. 196, 208-09, 933 P.2d 815, 823 (1997).
31. “[I]n connection with any appeal under [Mont. Code Ann. § 15-2-301], the Montana board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act.” *Mont. Code Ann. § 15-2-301(5)*.

DISCUSSION

32. The Board finds that the DOR’s use of mass appraisal was correct. The DOR is not able to appraise each property individually and has been authorized to use mass appraisal, which values Montana properties at 100% of market value.

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

33. The Board finds that the DOR correctly valued the Subject Property's improvements using the cost method. When determining the Subject Property's value using the sales comparison approach, several of the comparable properties had excessive comparability points. The DOR followed procedure 2-3-001.1 and switched to the cost approach to value the Subject Property. Additionally, using the cost approach lowered the value of the Subject Property by over \$100,000, benefitting the Taxpayer.
34. The DOR's use of the Marshal and Swift cost tables to determine the replacement cost new is standard, and the 76% good placed on the Subject Property is reasonable depreciation in determining the replacement cost new less depreciation. The DOR used a local index factor to account for the local market. The cost approach was also used to value the outbuilding of the Subject Property and is reasonable. The Taxpayer did not present any arguments showing that the DOR's use of the cost method was improper, and therefore, the Board must uphold the DOR's value of the improvements.
35. The Board understands Mr. Kinzle is obligated to ensure that the DOR property records are accurate. The DOR had valued the shop in the past as having no electricity and valued it the same for the 2023/2024 tax cycle until Mr. Kinzle went and visually inspected the property before the CTAB hearing and after the lien date. Evidence in the record indicates the electricity was added to the shop after the lien date of January 1, 2022, and should not be included in the value for the 2023/2024 cycle. Similarly, the DOR requested different values for the Subject Property's improvements. The DOR's valuation of the improvements diverges in Exhibit B as compared to Ex. D as well as their testimony at hearing. The Board elects to uphold the CTAB's determination and value the improvements at the DOR's original assessment of \$334,370.
36. Taxpayer presented several arguments relating to the land value of the Subject Property. The Taxpayer presented an appraisal to the CTAB and requested it be

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

considered during this appeal. After careful consideration the Board declines to adopt the Taxpayer's appraisal. The appraisal submitted does not conform to the standards set in Mont. Code Ann. § 15-2-301(3)(a). Several of the sales are after the January 1, 2022, lien date, and Taxpayer's appraisal sales are on a price per acre basis and do not specify how the sales were adjusted. Because the appraisal does not meet the standards set forth by the Montana Board of Real Estate Appraisers and was not conducted within six months of the valuation date, this Board declines to adopt the Taxpayer's appraisal.

37. The DOR valued the Subject Property's land using the sales comparison method. The DOR presented a multiplicative regression, and their witness testified that it was statistically correct. The DOR's use of sales to determine the base and incremental rates is accurate, and the Subject Property is valued correctly. The use of the incremental rate is proper in valuing the additional acres of the Subject Property. The DOR developed a positive influence which it used to value the Subject Property's land. The influence is based on two sales from the Subject Property's neighborhood that showed the properties were selling differently. The Taxpayer did not contest the influence used by the DOR.

38. The DOR's use of the incremental rate to account for the portion of the Subject Property that is flooded is improper. The Taxpayer stated in his brief that he cannot build in the area affected by the flooding, and the county has blocked him from placing dirt where the flooding occurs. If the Taxpayer were to sell the property, the area of flooded land would affect the sales price.

39. The Taxpayer claims in his briefing that three acres of the Subject Property are elevated above the wetland area, and one acre in the low area is considered a wetland area. The DOR presented a FEMA map showing very little property in the flood zone. The DOR also presented an unrefuted aerial view of the Subject Property, showing that the flooding affected only one acre. The DOR also

BEFORE THE MONTANA TAX APPEAL BOARD

STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

presented several photos of the flooded area, and Mr. Kinzle testified that he had personally witnessed the flooding. The Board understands the DOR position that breaking the one acre out would result in a higher value for the Subject Property. Because of this, the Board believes that the one acre should not be broken out from the rest of the property and should not be assessed as a new base acre, as suggested by the DOR. The Subject Property has one owner the property is under one geocode, and the property has not been subdivided or separated from the rest.

40. The first acre for the Subject Property is valued at the base acre price of \$128,572. The remaining 4.3 acres of the Subject Property are valued at \$33,226. One acre of the remaining 4.3 acres equals 23% rounded down, thus making one acre worth \$7,641.98. The DOR's model includes a regional influence for flooding of 34%. The Board believes the influence of flooding is more applicable than the unbuildable influence because one acre is flooded as shown in evidence. Additionally, the Taxpayer has built a shop in the low area, which he claims is unbuildable. Applying the 34% flood influence on one acre of land would make the one flooded acre worth \$2,598.27. The DOR is ordered to value the land at \$156,754 for the 2023/2024 tax cycle.

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

ORDER

41. The CTAB determination is hereby modified

42. The DOR will value the Subject Property's land at \$156,754 and the Subject Property's improvements at \$334,370 for the 2023/2024 tax cycle.

Dated this 11th day of February 2025.



A handwritten signature in blue ink, appearing to read "Travis Brown", written over a horizontal line.

Travis Brown, Chairman

A handwritten signature in blue ink, appearing to read "Amie Zendron", written over a horizontal line.

Amie Zendron, Member

Notice: You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. 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. *Mont. Code Ann. §15-2-303(2)*.

BEFORE THE MONTANA TAX APPEAL BOARD
STATE OF MONTANA, DEPARTMENT OF REVENUE v. MCLEOD FAMILY TRUST

Certificate of Service

I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on February 11th, 2025, to:

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