

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

JUL 21 2025

Montana Tax Appeal Board

MCMENAMY'S PARTNERSHIP,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: PT-2025-4

**ORDER GRANTING MONTANA  
DEPARTMENT OF REVENUE'S  
MOTION TO DISMISS,  
STATEMENT OF FACT,  
CONCLUSIONS OF LAW, ORDER,  
AND OPPORTUNITY FOR  
JUDICIAL REVIEW**

**STATEMENT OF THE CASE**

This is an appeal brought by McMenamy's Partnership (Taxpayer), regarding the valuation of the subject property located at 1570 Beartooth Road, Wolf Creek, Montana (Subject Property). The Taxpayer submitted a request to the Department of Revenue (DOR or Department) for an informal review of the assessed property taxes using Form AB-26. After receiving the AB-26 Final Determination Letter (Determination), the Taxpayer appealed to the Lewis and Clark County Tax Appeal Board (CTAB) on March 27, 2024. The CTAB held a hearing on December 17, 2024. The CTAB mailed their decision to the Taxpayer on December 17, 2024. Taxpayer appealed the CTAB's decision to MTAB on January 13, 2025.

On April 22, 2025, the DOR filed a Motion to Dismiss and Brief in Support. Taxpayer filed a Response to the DOR's Motion to Dismiss and Brief in Support on May 9, 2025. The DOR filed a Reply to Appellant's Response to Department's Motion to Dismiss on May 21, 2025. The matter has been fully briefed, and the Board has reviewed the submissions of both parties. Because the Taxpayer failed to appeal the DOR's AB-26 determination to the CTAB timely, the Board grants DOR's Motion to Dismiss.

**ISSUE TO BE DECIDED**

Whether the Montana Tax Appeal Board lacks subject matter jurisdiction due to an untimely appeal by the Taxpayer.

**EXHIBIT LIST**

The following evidence was submitted with the Taxpayer's appeal to MTAB on January 13, 2025:

Taxpayer exhibits:

1. Comparable Sales Information Packet;
2. Form AB-26 Determination Letter;
3. List of Lake Front Land Values;
4. Fergus Farm Mutual Insurance Policy;
5. Photo of Concrete Slab;
6. Photo of Bank;
7. Photo of Drainage Channel;
8. Photo of Drainage Channel Top View;
9. Photo of Drainage Pipe into Lake;
10. Cadastral Map Displaying Drainage Route;
11. Page 5 of Property Record Card;
12. Zillow Property Zestimate;
13. Mountain West Farm Bureau Property Policy Schedule of Coverage;
14. List of Expenses; and
15. CTAB Notice of Untimely Appeal.

DOR exhibits:

- A. 2023 Property Classification and Appraisal Notice;
- B. 2023 AB-26 Check List;
- C. Form AB-26 Determination Letter;
- D. MTAB 401 Appeal to MTAB;
- E. MTAB 401 Appeal to MTAB with Denial; and
- F. MTAB 801 Filed January 13, 2025.

### **PROCEDURAL HISTORY**

The DOR valued the Subject Property at \$1,524,570 for the 2023-2024 valuation cycle, with \$968,300 allocated to land and \$556,270 to improvements. *MTAB Dkt. 2* The Taxpayer filed a Form AB-26, Request for Informal Classification and Appraisal Review, with the DOR on June 21, 2023, seeking a land value of \$491,769 and an improvements value of \$340,331. *Ex. B.* The DOR issued a Form AB-26 Determination Letter dated October 24, 2023, denying the Taxpayer's request for a lowered appraised value. *Ex. C.*

The Taxpayer appealed the DOR's valuation to the CTAB on March 27, 2024, requesting a land value of \$657,199 and an improvements value of \$425,000. *Ex. D.* The CTAB held a hearing on December 17, 2024, and denied the Taxpayer's appeal after determining that the Taxpayer had already exhausted his appeal rights for the appraisal cycle. *MTAB Dkt. 2.* The Taxpayer subsequently filed an appeal with MTAB on January 13, 2025, pursuant to § 15-2-301 MCA, seeking an improvements value of \$405,149, for a total value of \$1,373,449. *MTAB Dkt. 1.*

The DOR filed a Motion to Dismiss and Brief in Support on April 22, 2025. *MTAB Dkt. 7.* Taxpayer filed a Response to the DOR's Motion to Dismiss and Brief in Support on May 9, 2025. *MTAB Dkt. 9.* The DOR filed its Reply to the Taxpayer's Response on May 21, 2025,. *MTAB Dkt. 10.*

The record consists of all materials submitted to CTAB, an audio recording of CTAB's deliberation on the application to appeal, all materials submitted to MTAB with the appeal, and additional exhibits submitted during the briefing of the DOR's Motion to Dismiss.

### **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 located at 1570 Beartooth Road, Wolf Creek, Montana, and is also identified by geocode 05-2342-10-3-01-63-0000. *Ex. 1.*

3. On June 30, 2023, the DOR sent the Subject Property's Property Classification and Appraisal Notice (Notice) to the Taxpayer and notified the Taxpayer of the opportunity to appeal the Notice. *Id.*
4. On June 16, 2023, the Taxpayer requested an Informal Review of the Notice via Form AB-26. *Ex. B.*
5. On October 24, 2023, the DOR issued a Determination notifying the Taxpayer of its decision denying his request to lower the Subject Property's land value, and increasing the improvements value due to discovering new construction on the property. *MTAB Dkt. 2.* The Determination also informed the Taxpayer of their opportunity to appeal to the CTAB within 30 days of receipt of the decision. *Ex. C.*
6. On March 27, 2024, the Taxpayer appealed to the CTAB but mistakenly sent the appeal to MTAB. *Ex. D.* This Board subsequently forwarded the appeal to the CTAB. *Ex. E.*
7. The CTAB held a hearing and denied the Taxpayer's appeal on December 17, 2024, stating that the Taxpayer can only appeal once per reappraisal cycle. *MTAB Dkt. 4.* The CTAB reasoned that the Taxpayer had already initiated the appeal process in tax year 2023 and, therefore, the Taxpayer can't appeal the same property again in tax year 2024, pursuant to Mont. Code Ann. § 15-7-102(3)(a)(i). *Id.*
8. On January 9, 2025, the Taxpayer appealed to MTAB seeking an improvements value of \$405,149 and a land value of \$968,300, for a total value of \$1,373,449. *Ex. F.*

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*MCMENAMY'S PARTNERSHIP v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

9. On April 22, 2025, the DOR filed a Motion to Dismiss, arguing that MTAB lacks the subject matter jurisdiction necessary to hear the appeal because the Taxpayer failed to appeal timely to the CTAB pursuant to MCA § 15-7-102 (6). *MTAB Dkt. 7.*
10. On May 9, 2025, MTAB received the Taxpayer's Response to the DOR's Motion to Dismiss. *MTAB Dkt. 9.* The Taxpayer stated their appeal was sent in and received on March 28, 2024. *Id.* Taxpayer argued that his CTAB appeal was solely for tax year 2024 and was not properly considered by the CTAB. *Id.*
11. The DOR filed its Reply Brief to the DOR's Motion to Dismiss on May 21, 2025. *MTAB Dkt. 10.* The DOR argued that the Taxpayer's Response did not dispute any of the DOR's statements regarding the timeliness of the Taxpayer's appeal and failed to refute the DOR's assertion that MTAB lacks subject matter jurisdiction. *MTAB Dkt. 9.*

**JURISDICTION AND STANDARD OF REVIEW**

12. 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.*
13. 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.
14. The Board's order is final and binding upon all parties unless changed by judicial review. *Mont. Code Ann. § 15-2-301(6).*

15. “(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
- a. Lack of subject-matter jurisdiction;
  - b. Lack of personal jurisdiction;
  - c. Improper venue;
  - d. Insufficient process;
  - e. Insufficient service of process;
  - f. Failure to state a claim upon which relief can be granted; and
  - g. Failure to join a party under Rule 19.” *Mont.R.Civ.P. 12(b)(1)*.
16. “If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” *Mont.R.Civ.P. 12(h)(3)*.
17. “(6) Except as provided in 15-2-302 and 15-23-102, if a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the Montana tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination...”  
*Mont. Code Ann. § 15-7-102(6)*.

### **CONCLUSIONS OF LAW**

18. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
19. [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

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*MCMENAMY'S PARTNERSHIP v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

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)*.

20. An appeal of the county board's decision may not be made to the Montana tax appeal board unless the person or the person's agent has exhausted the remedies available through the county board. *Mont. Code Ann. § 15-15-103*.
21. "When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration." *Dep't of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978) (citing *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).
22. "[T]ax 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, ¶ 10, 297 Mont. 55, 58, 990 P.2d 767, 769.

**DISCUSSION**

23. For the reasons set forth below, this Board grants the DOR's Motion to Dismiss for lack of subject matter jurisdiction.
24. The Taxpayer filed a Form AB-26 with the Department on June 16, 2023, requesting an informal review of the Subject Property's value. The appeal process following the DOR's AB-26 Determination is outlined on the DOR final determination letter. The appeal process includes a 30-day period in which the taxpayer may appeal the determination to the CTAB. The right to appeal to the CTAB and the 30-day limitation is set forth in § 15-7-102(6), MCA.
25. The Department issued an AB-26 Determination Letter to the Taxpayer on October 24, 2023. This letter explicitly outlined the 30-day timeframe within which the Taxpayer could appeal the determination to the CTAB. The

which the Taxpayer could appeal the determination to the CTAB. The Taxpayer did not file the appeal with the CTAB until March 27, 2024, approximately 155 days after the issuance of the determination letter.

26. This Board grants the Department's Motion to Dismiss, finding that MTAB lacks subject matter jurisdiction necessary to consider this appeal due to the Taxpayer's failure to timely appeal to the CTAB, as required by Mont. Code Ann. § 15-7-102(6). Since the Taxpayer failed to file with the CTAB in a timely manner, the only issue on appeal is whether the Taxpayer met the 30-day appeal deadline.
27. The Taxpayer argued that he is only appealing for the 2024 tax year. While this may be true, Mont. Code Ann. § 15-7-102(3)(a)(ii) only allows a Taxpayer to file one objection per valuation cycle. The valuation cycle in question is for tax years 2023 and 2024. The Taxpayer filed his AB-26 Request for Informal Review on June 26, 2023, setting in motion their one tax objection for tax years 2023 and 2024. The DOR mailed the AB-26 Determination Letter on October 23, 2023. By not appealing the DOR AB-26 determination to the CTAB within the 30-day timeframe, the Taxpayer missed their appeal deadline and extinguished their appeal rights for tax years 2023 and 2024.
28. Under Mont. Code Ann. § 15-15-103(1), an appeal of a CTAB decision may not be made to MTAB unless the person or person's agent has exhausted the remedies available through the county board. Because the Taxpayer failed to appeal to the CTAB timely, the Taxpayer has no valid CTAB decision with which to appeal to MTAB.

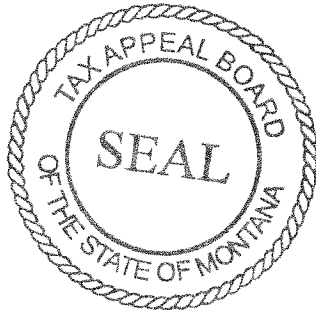


**BEFORE THE MONTANA TAX APPEAL BOARD**  
*MCMENAMY'S PARTNERSHIP v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

**ORDER**

29. The Department's Motion to Dismiss is granted.

Dated this 21<sup>st</sup> day of July 2025.



A handwritten signature in cursive script, appearing to read "Travis Brown".

Travis Brown, Chairman

A handwritten signature in cursive script, appearing to read "Adam Millinoff".

Adam Millinoff, Member

A handwritten signature in cursive script, appearing to read "Christopher Murphy".

Christopher Murphy, 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)*.

**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing Order Granting Department of Revenue's Motion to Dismiss, Statement of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on July 21, 2025, to:

McMenamy's Partnership  
Paul and Diane McMenamy  
P.O. Box 6031  
Great Falls, MT 59406

Dave Burleigh  
Samuel Kane  
State of Montana, Department of Revenue  
Legal Services Office  
P.O. Box 7701  
Helena, MT 59604-7701

Paula Gilbert  
State of Montana, Department of Revenue  
Property Assessment Division  
P.O. Box 8018  
Helena, MT 59604-8108

Lorrie Willey  
Lewis and Clark County Tax Appeal Board  
316 N. Park RM 113  
Helena, MT 59623



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Rina Sanderson, Legal Secretary