

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
TORY AND MEREDITH TAYLOR FROM)
A DECISION OF THE FREMONT COUNTY) Docket No. **2008-97**
BOARD OF EQUALIZATION - 2008)
PROPERTY VALUATION)

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER having come before the State Board of Equalization (State Board) upon the Notice of Intent to Dismiss with Prejudice, issued March 3, 2009, and the State Board having reviewed the file herein, and noting no objection to the Notice has been filed, and being otherwise advised in the premises finds:

1. Taxpayers sent Assessor an e-mail on March 7, 2008, outlining what they characterized as “2007 Farm Agriculture Income” totaling \$7,555.00. [County Board Record, Vol. I, p. 50].
2. The Assessor, by letter dated March 25, 2008, denied agricultural classification for Taxpayers’ property. The letter, in the final paragraph, set out the process to appeal the Assessor’s denial: “If you disagree with this decision a formal protest may be filed with the County Board of Equalization within 30 days of the mailing of the assessment notice.” [County Board Record, Vol. I, p. 23].
3. The Assessor, on April 23, 2008, mailed to Taxpayers a 2008 assessment notice for both parcels at issue. Each notice set out the 30 day deadline for filing an appeal to contest the Assessor’s determination of value:

In case of a dispute over values of your property, your first obligation is to discuss the problem with the assessor’s office. If not resolved, any person wishing to contest the assessment of their property shall file no later than thirty (30) days after the date of the postmark of the assessment notice, a statement with the County Assessor. The statement shall specify the

reasons why the assessment is incorrect. Please contact the assessor's office for more information on the appeal process.

[County Board Record, Vol. I, pp. 45, 47].

4. The 30 day time frame, as measured from the date or postmark of an assessment schedule, in which to file an appeal to a county board of equalization is set by statute. *Wyo. Stat. Ann.* § 39-13-109(b)(i).

5. The 30 day deadline for Taxpayers to file an appeal to challenge the Assessor's April 23, 2008, determination of value was May 23, 2008.

6. The Assessor, by letter dated May 12, 2008, reiterated her denial of agricultural classification for Taxpayers' property. The letter incorrectly indicated an appeal deadline of August 23, 2008: "If you wish to contest this decision with the County Board of Equalization a protest form must be filed by August 23, 2008." [County Board Record, Vol. I, pp. 54-55].

7. The County Board Record contains a "Statement to Contest 2008 Property Tax Assessment" dated May 27, 2008, and signed by both Taxpayers. The Statement does not indicate, by filing stamp or otherwise, when it was received by the Assessor's office. It appears from the County Board Record the Statement was mailed to Assessor by Taxpayers on May 27, 2008, and then sent by facsimile on May 28, 2008. [County Board Record, Vol. I, pp. 1, 14].

8. Taxpayers' appeal, even if considered "filed" on May 27, 2008, if mailed on that date, was not filed within the statutory 30 day appeal time frame. This failure by Taxpayers to timely file an appeal was apparently recognized by the Assessor as reflected in Finding of Fact #4 of the Decision of the Fremont County Board of Equalization: "The Assessor waived objecting to the timeliness of the filing of Taxpayers' Protest petition." [County Board Record, Vol. I, p. 107].

9. The failure to file an appeal with the Assessor within the statutory 30 day time frame is a jurisdictional defect which this Board must independently consider even if not raised by any party. This jurisdictional defect can not be cured by consent of the parties or by waiver, in particular in appeals to a county board of equalization wherein the appeal time frame is set by statute. *Wyo. Stat. Ann.* § 39-13-109(b)(i); *In re Adoption of CF*, 2005 WY 118, ¶ 30, 120 P.3d 992, 1003 (Wyo. 2005); *Miller v. Murdock*, 788 P.2d 614, 616 (Wyo. 1990); *Hollister Convalescent Hospital, Inc. v. Rico*, 541 P.2d 1349, 1354 (Cal. 1975); *Bowman v. Worland School District*, 531 P.2d 889, 890 (Wyo. 1975); *Sun Land & Cattle Co. v. Brown*, 387 P.2d 1004, 1006 (Wyo. 1964).

10. A failure of jurisdiction occurs even though the Assessor stated an obviously incorrect appeal deadline in her May 12, 2008, letter to Taxpayers, particularly in light of the fact Taxpayers had received three previous written notifications of the correct 30 day appeal time frame. [County Board Record, Vol. I, pp. 23, 45, 47]; *Hollister Convalescent Hospital, Inc. v. Rico*, 541 P.2d 1349, 1354, 1359 (Cal. 1975).

IT IS THEREFORE HEREBY ORDERED this matter is **dismissed with prejudice**.

Dated this ___ day of March, 2009.

STATE BOARD OF EQUALIZATION

Thomas R. Satterfield, Chairman

ATTEST:

Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of March, 2009, I served the foregoing **ORDER OF DISMISSAL WITH PREJUDICE** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Jodi Darrough Deputy Fremont County Attorney 450 N. Second St., Room 170	Eileen Oakley Fremont County Assessor 450 N. Second St., Room 210
--	---

Lander WY 82520	Lander WY 82520
Tory & Meredith Taylor 6360 Highway 26 Dubois WY 82513	

Jana R. Fitzgerald
Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6986
Fax: (307) 777-6363

cc: State Board;
Commissioners/Treasurer - Fremont County;
ABA State & Local Tax Reporter;