



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

MEMORANDUM

To: Dan Bucks, Director

From: C. A. Daw, Chief Legal Counsel 

Date: February 18, 2010

Subject: Department of Revenue Major Case Update –
December 2009 – February 2010

CASES DECIDED SUBSEQUENT TO LAST RATIC MEETING

Fallon County Commissioners: The Montana Supreme Court upheld the Department's rulemaking authority over TIF Districts.

Lovaas, Patty: The Federal District Court ruled that the Federal Tax Injunction Act barred Ms. Lovaas's action against Governor Schweitzer and Director Bucks

Lovaas, Patty: Following a hearing in Beaverhead County District Court on the County's motion for summary judgment, the complaint concerning the 2008 tax year against Beaverhead County was dismissed. The Department will be moving the Court for dismissal as well. It is our understanding that Ms. Lovaas has also filed a Complaint for Declaratory Judgment in Beaverhead County regarding the 2009 tax year. The Attorney General received a copy of the complaint by mail on 1/28/10. To date, the Department has not been served.

Gold Creek Cellular d/b/a Verizon Wireless (2007): Verizon is appealing the Department's decision to classify Verizon's property in Class 13 as allocations of a centrally assessed telecommunications services company. On February 10, 2010, STAB granted the Department's Motion for Partial Summary Judgment finding that Class 13 represents the appropriate class for Verizon's property. Pursuant to statute, Verizon has 60 days to appeal the decision to District Court.

CASES PENDING

Montana Supreme Court:

Thill: The Thills were ordered by the District Court to show cause as to why tax returns should not be filed. They have appealed that order on constitutionalist grounds. The matter has been briefed and will be decided by a five-judge panel.

Nelson, Kevin: Mr. Nelson filed an action in District Court seeking the opportunity to participate in the Department's review of documents related to three TIF District applications in Billings. The Department was granted summary judgment and Nelson appealed to the Supreme Court. The matter is currently being briefed.

District Court:

CHS, Inc. (2009): CHS is appealing the Department's valuation of the Cenex refinery in Laurel.

Fallon County Board of Commissioners, et al.: Complaint for Declaratory Relief seeking relief from the Department's refusal to certify a TIF District application. Argument on the parties' motions for summary judgment was held on November 3, 2009. We are awaiting a decision from the District Court.

Charles Lucas / Lucas Ranch / Montana Farm Bureau Federation / Montana Taxpayers' Assn. have filed a Petition for Declaratory Judgment and Writ of Mandate in the 14th Judicial District Court, Meagher County, challenging the Department's reappraisal, reclassification, and changes in productivity of agricultural property. The Department accepted service on 2/17/10 and our response is due 3/29/10.

Omimex (2006): In October 2009, STAB held that the Department could locally assess certain class 8 property. Omimex appealed this determination District Court. The matter is currently being briefed by the parties.

Omimex (2009): Omimex has filed a Declaratory Judgment Action in District Court contending that it is not properly subject to central assessment and not properly classified within Class 9. The Department's answer is due on March 8, 2010.

PacifiCorp (2005): The State Tax Appeal Board affirmed the Department's valuation for the 2005 tax year and PacifiCorp appealed to the First Judicial District Court. The matter has been briefed and argued; and we are awaiting a decision.

PacifiCorp (2008): The Department contends that PacifiCorp missed their deadline to appeal to STAB from ODR. PacifiCorp has filed a declaratory judgment action under § 15-1-406, MCA, arguing that it is permitted to appeal its valuation case directly from ODR to district court. Oral argument was held in July 2009 and a scheduling conference is set for February 24, 2010.

Price Hills Subdivision sued the Department District Court for breach of a settlement agreement and for an illegal assessment, contending that it entered into an express contract with the Department to settle a classification dispute. The Department contends that no such agreement was approved or executed by the Department. Price Hills further alleges an illegal assessment based on the Department's inclusion of all of Price Hills' property onto a single tax bill. The Department filed its answer on February 10, 2010.

Puget Sound Energy: Puget Sound Energy has filed a Petition for Judicial Review of the STAB's decision relating to tax years 2005, 2006, and 2007. The matter has been briefed and we are awaiting a decision from the Court.

Qwest (2007): Qwest has appealed the STAB decision to District Court. The parties anticipate a briefing schedule will be set by the Court.

State Tax Appeal Board (STAB):

Gold Creek Cellular d/b/a Verizon Wireless (2008): Verizon is appealing the Department's classification decision and the market value determined by the Department for Verizon's property. Discovery is ongoing. The matter is scheduled for hearing in May 2011.

Gold Creek Cellular d/b/a Verizon Wireless (2009): Verizon is appealing the Department's classification decision and the market value determined by the Department for Verizon's property. The matter is scheduled for hearing in November 2011.

Omimex (2006): This matter was set for hearing before STAB in October 2009. Because the parties are continuing to work through various discovery disputes, the hearing has been continued with no date set. A status report is due to STAB in August 2010.

Omimex (2009): Omimex has filed a Complaint with STAB raising the same issues as their Complaint in District Court. The Department's answer is due on March 3, 2010.

PacifiCorp (2006 & 2007): The centrally assessed valuations for tax years 2006 and 2007 have been consolidated. Discovery is ongoing and hearing is scheduled for June 2010.

PacifiCorp (2009): PacifiCorp has petitioned STAB for redetermination of the Department's property assessment for 2009 of PacifiCorp's tangible, taxable property. A hearing is scheduled for October 2011.

Qwest (2007): Hearing before STAB was held in February 2009. STAB issued its Decision on November 30, 2009, affirming the Department in all respects. Qwest has until the end of January to appeal the decision.

Qwest (2008): Qwest is appealing the Department's valuation and classification. Discovery is ongoing and the matter is set for hearing in March 2010.

Qwest (2009): In September 2009, Qwest filed its complaint appealing the Department's 2009 appraisal of its Montana properties. The Department filed its Answer in October 2009.

WWC Holding Co. (Alltel) (2008): WWC is appealing the Department's decision to classify Alltel's property in Class 13 as allocations of a centrally assessed telecommunications services company. The parties are currently conducting discovery. Motions for summary judgment are due March 2, 2010, and the matter is scheduled for hearing in April 2010.

WWC Holding Co. (Alltel) (2009): WWC is appealing the Department's classification decision and the market value determined by the Department for WWC's property. Discovery is ongoing and a hearing is scheduled for September 2011.

Office of Dispute Resolution (ODR):

Devon Energy Production Company (2009): The parties have agreed to a briefing schedule which will conclude the end of February 2010, after which the Hearing Examiner will issue a decision.

Puget Sound (2009): Mediation was unsuccessful and the parties are awaiting an Order from the Hearing Examiner.