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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

<p>GOLD CREEK CELLULAR, d/b/a VERIZON WIRELESS,</p> <p>Petitioner,</p> <p>v.</p> <p>STATE OF MONTANA, DEPARTMENT OF REVENUE,</p> <p>Respondent.</p>	<p>Cause No. CDV-2010-358</p> <p>MEMORANDUM AND ORDER ON PETITION FOR JUDICIAL REVIEW</p>
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BACKGROUND

Before the Court is the petition of Gold Creek Cellular, d/b/a Verizon Wireless (Verizon), for judicial review of the February 10, 2010 order (hereafter STAB Order) of the Montana State Tax Appeal Board (STAB) affirming the classification determination of the Montana Department of Revenue (Department) relative to Verizon's radio transmission equipment for taxation purposes. The case relates to tax year 2007.

Verizon initially appealed both the Department's determination of the value of its telecommunications equipment and the classification of its radio

1 transmission equipment. It subsequently dismissed the valuation claim and
2 maintained its appeal on the radio transmission equipment issue. Cross-motions for
3 summary judgment were filed before the STAB with both parties acknowledging that
4 there were no material issues of fact to be resolved.

5 On February 10, 2010, STAB issued its opinion and order, affirming the
6 Department's classification determination. Verizon's petition for judicial review
7 followed. The Court concludes that STAB's decision should be affirmed.

8 STANDARD OF REVIEW

9 The Montana Administrative Procedure Act governs district court
10 review of an administrative agency's decision. Section 2-4-704(2), MCA, establishes
11 the standard of review:

12 (2) The court may not substitute its judgment for that of the
13 agency as to the weight of the evidence on questions of fact. The court
14 may affirm the decision of the agency or remand the case for further
15 proceedings. The court may reverse or modify the decision if substantial
16 rights of the appellant have been prejudiced because:

17 (a) the administrative findings, inferences, conclusions, or
18 decisions are:

19 (i) in violation of constitutional or statutory provisions;

20 (ii) in excess of the statutory authority of the agency;

21 (iii) made upon unlawful procedure;

22 (iv) affected by other error of law;

23 (v) clearly erroneous in view of the reliable, probative, and
24 substantial evidence on the whole record;

25 (vi) arbitrary or capricious or characterized by abuse of discretion
or clearly unwarranted exercise of discretion.

26 The Montana Supreme Court has adopted a three-part test to determine
27 if a finding is clearly erroneous. *Weitz v. Mont. Dep't of Natural Res. & Conserv.*,
28 284 Mont. 130, 133, 943 P.2d 990, 992 (1997). First, the Court will review the record
29 to see if the findings are supported by substantial evidence. *Id.* Second, if the
30 findings are supported by substantial evidence, the Court will determine whether the
31 agency misapprehended the effect of the evidence. *Id.* at 133-34, 943 P.2d at 992.

1 Third, even if substantial evidence exists and the effect of the evidence has not been
2 misapprehended, the Court may still decide that a finding is clearly erroneous when,
3 although there is evidence to support it, a review of the record leaves the court with
4 the definite and firm conviction that a mistake has been committed. *Id.* at 134, 943
5 P.2d at 992.

6 Substantial evidence is "evidence that a reasonable mind might accept as
7 adequate to support a conclusion; it consists of more than a mere scintilla of evidence
8 but may be somewhat less than a preponderance." *Marriage of Schmitz*, 255 Mont.
9 159, 165, 841 P.2d 496, 500 (1992).

10 The standard for reviewing an administrative agency's conclusions of
11 law is whether the agency's interpretation of the law is correct. *Steer, Inc. v. Dep't of*
12 *Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990); *Baldrige v. Rosebud*
13 *County Sch. Dist. # 19*, 264 Mont. 199, 205, 870 P.2d 711, 714 (1994).

14 DISCUSSION

15 Verizon is a wireless communications company operating throughout
16 Montana and other states. Its system allows transmission of voice and data
17 messaging. Verizon's personal property includes radio transmission equipment used
18 to provide wireless telecommunication services.

19 Prior to 2007, Verizon's property was assessed as class four and class
20 eight, pursuant to Sections 15-6-134 and 15-6-138, MCA, respectively. However, for
21 tax year 2007, the Department determined to classify Verizon's property, including
22 radio transmission equipment, as a centrally assessed telecommunications company
23 under Section 15-6-156, MCA. Verizon challenges the validity of the STAB decision
24 affirming the Department's conclusions that all of Verizon's equipment should be

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1 classified as class thirteen property and taxed at six percent of its market value
2 pursuant to Section 15-6-156(4), MCA.

3 Section 15-23-101, MCA, delineates those properties which are to be
4 centrally assessed by the Department, including “(2) property owned by a corporation
5 or other person operating a single and continuous property operated in more than one
6 county or more than one state. . . .” Section 15-6-156(1)(d), MCA, defines class
7 thirteen property to include “allocations of centrally assessed telecommunications
8 services companies.” The Department is also required to centrally assess interstate
9 and inter-county continuous properties of telecommunications companies by
10 administrative rule. A.R.M. 42.22.102(1)(d).

11 Verizon concedes that it is a class thirteen centrally assessed
12 telecommunications company, but argues that its radio transmitting equipment should
13 be taxed pursuant to Section 15-6-138, MCA, which describes class eight property,
14 generally taxed at three percent of its market value. Verizon argues that there is no
15 statutory proscription to placing a centrally assessed entity’s property in a different tax
16 classification and that STAB misconstrued the law by concluding otherwise.

17 The language in question regarding the class 8 property is set forth in
18 Section 15-6-138(1)(j), MCA, which states: “Class eight property includes: (j) radio
19 and television broadcasting and transmission equipment.”

20 In Verizon’s view the differing construction to be resolved in its favor
21 turns on the rule of statutory construction that the specific governs over the general.
22 Verizon maintains that Section 15-6-156, MCA, is a general statute relating to
23 classification and Section 15-6-138, MCA, is the more specific statute and thus is the
24 controlling statute when it comes to classification. See 1-2-102, MCA; *State v. Smith*,
25 2004 MT 191, ¶ 17, 322 Mont. 206, 95 P.3d 137.

1 However, STAB and the Department contend that Verizon's reliance on
2 these rules of statutory construction is misplaced and unnecessary. In its order on
3 motions for summary judgment, STAB observed:

4 This is not a case, as Verizon argues, in which specific and
5 general code definitions are in conflict. This case presents a choice
6 between a complete or partial definition; between code sections that
7 either fully describe the petitioner's business or describe merely a
8 portion of it; between a code section expressly meant to include
9 Verizon's business or one with no clear intent. Petitioner admits its
10 business is a unified telecommunications company and it should be
11 taxed accordingly.

12 (STAB Order, at 7.) STAB concluded that Verizon must be valued as a single
13 operating entity "that logically cannot be divided into state or county divisions without
14 understating the value of the whole." (Id.) It noted that unitary assessment for
15 companies with an operating structure like Verizon's has been a long-standing
16 practice in Montana, conceptually approved by the Montana Supreme Court. See
17 *State Dep't of Revenue v. PPL Mont., LLC*, 2007 MT 310, 340 Mont. 124, 172 P.3d
18 1241 (hereafter *PPL Montana*).

19 The Court recognizes, as Verizon argues and the STAB decision
20 discusses, that classification is a process separate from assessment and valuation.
21 However, that fact does not resolve the dispute in Verizon's favor. Verizon cites *PPL*
22 *Montana* for the proposition that central assessment does not require inclusion of all
23 the company's property in one classification. The supreme court in *PPL Montana*
24 stated:

25 DOR applied the unit method of valuation to PPLM's property to
arrive at a total market value of PPLM's electric generation and
pollution control equipment (PCE) for the years 2000, 2001, and 2002.

Montana law classifies electric generation property and pollution control
equipment separately as Class 13, § 15-6-156, MCA, and class 5, §

1 15-6-135, MCA, respectively, and declares different tax rates for these
2 properties.

3 *PPL Montana*, ¶ 10.

4 The supreme court did not “find,” as Verizon suggests, that the property
5 of a centrally assessed company could be classified differently — it simply recognized
6 a statutory distinction that was not at issue in *PPL Montana*. Further, the language of
7 Section 15-6-135, MCA, defining class five property, evidences a legislative intent to
8 place pollution control equipment in a different class than the centrally assessed utility
9 company. Section 15-6-156, MCA, includes electrical generation facilities, which
10 *PPL Montana* was, while 15-6-135 lists **and specifically defines** air and water
11 pollution control equipment. Clearly, the legislature intended the Department to tax
12 the pollution equipment of the utility at a lower rate.

13 Section 1-2-102, MCA, provides in part: “[i]n the construction of a
14 statute, the intention of the legislature is to be pursued if possible.” Likewise, in *In re*
15 *Archer*, 2006 MT 82, 332 Mont. 1, 136 P.3d 563, the supreme court stated the
16 long-established rule of statutory construction with the following:

17 In interpreting a statute, we attempt to implement the objectives
18 the legislature sought to achieve. Legislative intent is ascertained, in the
19 first instance, from the plain meaning of the words used. If the intent of
20 the legislature can be determined from the plain meaning of the words
used, the plain meaning controls and the court need go no further nor
apply any other means of interpretation.

21 *Archer*, ¶ 16 (citations omitted).

22 The Court concludes that the language “radio and television
23 broadcasting and transmitting equipment” in Section 15-6-138(j), MCA, is most
24 accurately construed as relating to a one-way broadcast system as the STAB Order
25 states, not a two-way telephonic transmission system. The Court agrees with STAB

1 that to construe the language as Verizon urges would require a manipulation that is
2 inconsistent with the basic tenants of statutory construction. As the supreme court
3 observed:

4 We have repeatedly held that, when interpreting a statute, we
5 must seek to implement the intention of the Legislature. We determine
6 the intention of the Legislature first from the plain meaning of the words
7 used, and if interpretation of the statute can be so determined, we may
8 not go further and apply any other means of interpretation. Moreover,
9 “[i]n the search for plain meaning, ‘the language used must be
10 reasonably and logically interpreted, giving words their usual and
11 ordinary meaning.’”

12 We have also held that the Legislature need not define every term
13 that it employs when constructing a statute. “If a term is one of common
14 usage and is readily understood, it is presumed that a reasonable person
15 of average intelligence can comprehend it.”

16 *State v. Ankeny*, 2010 MT 224, ¶¶ 21, 22, 358 Mont. 32, 243 P.3d 391 (citations
17 omitted).

18 Verizon points out that the Montana Supreme Court has held that
19 conflicts in tax statutes are to be resolved in favor of the taxpayer. The supreme court
20 stated the rule as follows: “[w]e have previously stated that when a taxing statute is
21 susceptible to two constructions, doubt should be resolved in the favor of the taxpayer.
22 Moreover, tax statutes are to be strictly construed against the taxing authority and in
23 favor of the taxpayer. *W. Energy Co. v. Dep’t of Revenue*, 1999 MT 289, ¶ 10, 297
24 Mont. 55, 990 P.2d 767 (citations omitted).

25 However, the case before this Court does not present a situation in
which there are legitimate doubts about the meaning of the statute — simply arguing
that such is the case does not make it so. The supreme court has also recognized the
need to pay deference to the expertise of the tax appeal boards.

We defer to STAB’s findings unless they are clearly erroneous. We
previously have stated that “[t]ax appeal boards are particularly suited
for settling disputes over the appropriate valuation of a given piece of

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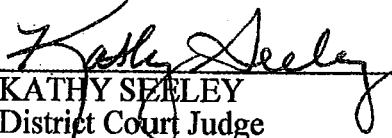
property, and the judiciary cannot properly interfere with that function.”
It is not our function “to act as an authority on taxation matters.”

PPL Montana, ¶ 45 (citations omitted)

The STAB Order affirmed the Department’s determination which put Verizon’s property in the tax class that best describes its entire operation. The Court agrees with this conclusion.

For the foregoing reasons, STAB’s Order of February 10, 2010 is
AFFIRMED.

DATED this 3rd day of May 2011.


KATHY SEALEY
District Court Judge

pc: Terry B. Cosgrove/Jock O. Anderson/Dennis R. Lopach
C.A. Daw/David R. Stewart/Courtney Jenkins
State Tax Appeal Board

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