MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

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

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

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

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

STANDARD OF REVIEW

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

> (2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:
> (a) the administrative findings, inferences, conclusions, or decisions are:
> (i) in violation of constitutional or statutory provisions;
> (ii) in excess of the statutory authority of the agency;
> (iii) made upon unlawful procedure;
> (iv) affected by other error of law;
> (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
> (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

> 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, §

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

PPL Montana., ¶ 10.

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

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

> In interpreting a statute, we attempt to implement the objectives the legislature sought to achieve. Legislative intent is ascertained, in the first instance, from the plain meaning of the words used. If the intent of 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.

Archer, ¶ 16 (citations omitted).

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

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

> We have repeatedly held that, when interpreting a statute, we must seek to implement the intention of the Legislature. We determine the intention of the Legislature first from the plain meaning of the words used, and if interpretation of the statute can be so determined, we may not go further and apply any other means of interpretation. Moreover, "[i]n the search for plain meaning, 'the language used must be reasonably and logically interpreted, giving words their usual and ordinary meaning.'"
>
> We have also held that the Legislature need not define every term that it employs when constructing a statute. "If a term is one of common usage and is readily understood, it is presumed that a reasonable person of average intelligence can comprehend it."

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

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

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

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 31st day of May 2011.

KATHY SEELEY
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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