

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>HEALTHSOUTH CORPORATION,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket Nos.: 44716 & 44717</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 19, 2007, Karen E. Hart, Sondra W. Mercier, and Lyle D. Hansen presiding. Petitioner was represented by Norman H. Wright, Esq. Respondent was represented by Michael A. Koertje, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2002.

The Board consolidated Docket Nos. 44716 and 44717.

The subject property is personal property, Boulder County Schedule Nos. P0212187 and P0285474.

Respondent has moved this tribunal to dismiss the petition for abatement filed by Petitioner for tax year 2002. After considering Respondent’s motion, all other written submissions by the parties, and oral argument made by the parties at the June 19, 2007 hearing, Respondent’s motion is hereby **GRANTED** and the petition for abatement is dismissed for the reasons set forth below.

Petitioner timely filed abatement and refund requests with Respondent for a refund of property taxes levied upon the subject property for tax year 2002. According to a letter dated December 9, 2004 from Petitioner’s agent to the Boulder County Treasurer, Petitioner requested a refund based on “clerical errors” that were made.

According to Petitioner, Petitioner reported and paid personal property taxes based on fictitious assets that never existed in Boulder County. These fictitious assets were reported by Petitioner to Boulder County as part of a broader fraudulent scheme to inflate Petitioner's earnings and bolster the company's stock price.

Respondent's motion to dismiss contends that Petitioner's fraud in preparing the personal property declaration schedules does not constitute a statutory basis for the abatement of personal property taxes pursuant to Colorado Revised Statutes ("C.R.S.") section 39-10-114(1)(a)(I)(A). Petitions for abatement or refund may only be filed for reasons of erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation. Respondent contends that none of these bases exist in the present case.

In contrast, Petitioner contends that the petition was based on clerical error, overvaluation and/or an erroneous valuation for assessment. Petitioner also contends that the Board must hear this appeal because the Board has a mandatory duty to hear appeals from a board of county commissioners.

C.R.S. section 39-10-114 sets forth the Colorado statutory provisions governing petitions for abatement or refund of taxes. C.R.S. section 39-10-114(1)(a)(I)(A) states that "if taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation, the treasurer shall report the amount thereof to the board of county commissioners, which shall proceed to abate such taxes in the manner provided by law."

With respect to "clerical error," that term is not defined in C.R.S. section 39-10-114. In other contexts, a clerical error has been found to include a transcription mistake, a mistake appearing on the face of the record, and an arbitrator's error in an award where the award does not reflect the valuation intended by the arbitrator. *See Landmark Petroleum Inc. v. Board of County Commissioners of Mesa*, 870 P.2d 610, 613-614 (Colo. Ct. App. 1993). *See also 5050 S. Broadway Corp. v. Arapahoe County Board of Commissioners*, 815 P.2d 966, 971 (Colo. Ct. App. 1991).

The Board does not believe that the petition for abatement is based on a "clerical error," for purposes of C.R.S. section 39-10-114. Contrary to engaging in some sort of "unintentional" error such as a transcription mistake, Petitioner acted intentionally in creating fictitious assets. As such, there was no clerical error.

With respect to overvaluation, Petitioner argues that although it overreported the assets, Respondent overvalued them and thus, its petition for abatement is based on overvaluation. In contrast, Respondent contends that the Boulder County Assessor properly valued the assets Petitioner reported and thus, there was no overvaluation. The Board agrees with Respondent. The assessor did not overvalue the assets reported by Petitioner and thus, the petition for abatement is not based on overvaluation.

Petitioner contends that the petition for abatement is based on an "erroneous valuation for assessment" because the basis for the abatement is a legal issue. According to Petitioner, Respondent cannot tax property that does not exist in its jurisdiction.

In *Boulder Country Club v. Boulder County Board of Commissioners*, 97 P.3d 119 (Colo. Ct. App. 2003), the taxpayer's petition for abatement asserted that assessments for the 1999 and 2000 tax years must be the same. The Court of Appeals held that the taxpayer's abatement petition was based on "an erroneous valuation for assessment" rather than based on an "overvaluation," because the petition required a legal rather than a factual determination. According to the Court of Appeals, whether Boulder Country Club was entitled to an abatement did not involve a factual determination.

In contrast to the facts of *Boulder Country Club*, a review of Petitioner's petition for abatement requires both legal and factual determinations. This Board first would have to make a factual determination as to whether or not the assets Petitioner reported to Boulder County actually existed in Boulder County during the tax year. Only if the Board made the factual determination that some or all of the assets Petitioner reported to Boulder County were nonexistent would the Board reach the legal issue of whether or not Respondent may tax property that does not exist in its jurisdiction. Because the issues underlying this case require both a factual and legal determination, Petitioner's petition is not based on an erroneous valuation for assessment.

We also reject Petitioner's contention that this Board should not grant Respondent's motion to dismiss because the Board must hear appeals from a board of county commissioners when there has been a denial of an abatement of taxes. The Board has heard this appeal by permitting the parties the opportunity to brief and advocate at a hearing regarding the issue of whether Petitioner's petition is permissible under C.R.S. section 39-10-114. *Cf. 5050 S. Broadway Corp.*, 815 P.2d 966 (affirming the Board's decision, which affirmed the county board's denial of abatement petitions because the abatement petitions had to be contested under the protest procedure of C.R.S. section 39-5-122 rather than C.R.S. section 39-10-114).

ORDER:

The petition is dismissed.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of C.R.S. section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of C.R.S. section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Colo. Rev. Stat. § 39-10-114.5(2) (2007).

DATED and MAILED this 31st day of December 2007.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Sondra W Mercier
Sondra W. Mercier

Lyle D Hansen
Lyle D. Hansen

This decision was put on the record

DEC 31 2007

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Heather Heinlein
Heather Heinlein

