

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 57395 and 57396
<hr/> Petitioner: MARSICO CAPITAL MANAGEMENT, LLC, v. Respondent: DENVER COUNTY BOARD OF COMMISSIONERS.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on April 24, 2012, James R. Meurer and MaryKay Kelley presiding. Petitioner was represented by Paul J. Lopach, Esq. Respondent was represented by Michelle Bush, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2008 and 2009.

Dockets 57395 and 57396 have been consolidated for purposes of the hearing.

Subject property is described as follows:

**1200 17th Street, Suite 1600, Denver, Colorado
Denver County Schedule No. 390-496-000**

The subject of this petition is personal property owned by a financial management firm. Petitioner completed Personal Property Declaration Schedules for tax years 2008 and 2009. The assessor's office failed to value three items ("affixed property" dated 1997, 1998 and 2000). On receiving Notices of Valuation, Petitioner paid tax bills in a timely manner. In July of 2009, the assessor's office performed an audit, realized that the three line items had been omitted from the tax roll, and mailed Special Notices of Valuation in 2010 that included the omitted items.

Respondent assigned actual values of \$6,117,670.00 (tax year 2008) and \$6,024,134.00 (tax year 2009). Petitioner is requesting values of \$3,351,854.00 (tax year 2008) and \$3,374,242.00 (tax year 2009).

Petitioner made note that the three “affixed property” items were declared in 2008 and 2009 and that taxes were paid. Petitioner argued that the assessor cannot retroactively assess these items; after personal property has been declared and valued, additional taxes may not then be assessed.

Petitioner referenced *In Stitches Inc. v. Denver Co. Bd. Co. Com.*, 62 P.3d 1080 (Colo. App. 2002), in which personal property was not declared by a taxpayer and an assessor’s office estimated value based on the best information available (BIA). The assessor’s office later re-valued the property at a higher rate after an audit defined higher values. Petitioner pointed out that *In Stitches* involved a taxpayer who failed to declare personal property and that the *In Stitches* facts and resulting decision have no similarity to the subject. According to Petitioner, a retroactive assessment should not be allowed for the subject’s personal property.

Respondent asserted that Colorado law addresses personal property omitted by the assessor. Respondent referenced Section 39-10-101(2)(A)(I), C.R.S., “[i]f, after the tax list and warrant has been received by the treasurer, the treasurer discovers that any taxable property then located in the treasurer’s county has been omitted from the tax list and warrant for the current year or for any prior year and has not been valued for assessment, the treasurer shall forthwith list and value such property for assessment in the same manner as the assessor might have done and shall enter such valuation for assessment on the tax list and warrant and extend the levy. Such entry shall be designated as an additional assessment and shall be valid for all purposes, the same as though performed by the assessor.” Section 39-10-101(2)(b)(II), C.R.S. states that “Effective January 1, 1996, the taxes for any period, together with interest thereon, imposed by this section shall not be assessed, nor shall any lien be filed or distraint warrant issued or suit for collection be commenced, more than two years after the date on which the tax was or is payable when the failure to collect the tax is due to an error or omission of a governmental entity.”

Respondent’s witness, Donald W. Korte, Tax Audit Supervisor, confirmed that Petitioner appropriately declared the three “affixed” items for tax years 2008 and 2009. They were, however, omitted from tax lists and warrants by the assessor. The omission was remedied, per Section 39-10-101(2), C.R.S., by an additional assessment by the treasurer.

Respondent presented sufficient probative evidence and testimony to show that the tax years 2008 and 2009 valuations of the subject property were correct.

The Board is persuaded that the omission of personal property was made by the assessor’s office. Section 39-10-101, C.R.S. addresses such an omission, and an additional assessment is appropriate.

The Board agrees that the *In Stitches* example is not relevant to this case, because it references an omission by a taxpayer. In Dockets 57395 and 57396, the assessor’s office was at fault.

The Assessor’s Reference Library (ARL) addresses Section 39-10-101(2)(b)(II), C.R.S.: (1) “Omitted property is valued and assessed for the current year and up to two prior years when the error or omission is the fault of a governmental entity.” (2) “Omitted property is added to the

assessment roll as soon as the assessor discovers the omission. The assessor is also required to notify the treasurer of any unpaid taxes for prior years.” Section 39-5-125(1), C.R.S.

ORDER:

The petition is denied.

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 Section 24-4-106(11), C.R.S. (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 Section 24-4-106(11), C.R.S. (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.

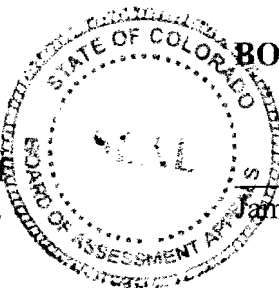
Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 2nd day of May, 2012.

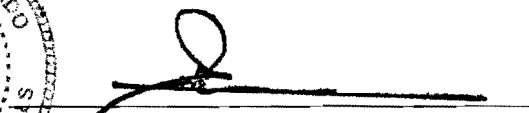
I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



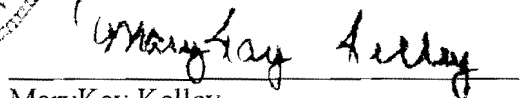
Milla Crichton



BOARD OF ASSESSMENT APPEALS



James R. Meurer



MaryKay Kelley