

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ISTVAN AND KATALIN BERNATH,</p> <p>v.</p> <p>Respondent:</p> <p>SAN MIGUEL COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 57750</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 23, 2012, Debra A. Baumbach and MaryKay Kelley presiding. Ms. Katalin Bernath appeared pro se on behalf of Petitioners via telephone. Respondent was represented by Rebekah S. King, Esq. who appeared via videoconference. Petitioners are requesting an abatement/refund of personal property taxes on the subject property for tax year 2010.

Subject personal property is located at:

**104 Benchmark Dr.
Mountain Village, CO
San Miguel County Schedule No. P2003004**

The subject property consists of furniture used in Petitioners' vacation rental business.

Respondent cites Sections 39-5-116 and 39-5-118, C.R.S. and argues that Petitioners are barred from seeking an abatement of taxes because they failed to file a personal property schedule as mandated by Section 39-5-108, C.R.S., and the Assessor subsequently determined the value of Petitioners' property based on the best information available ("BIA").

Respondent's witness, Ms. Carmen Warfield, Administrative Clerk with the San Miguel County Assessor's Office, testified as to the process that the San Miguel County Assessor's Office follows when mailing personal property declaration forms to taxpayers. Ms. Warfield testified that in January 2010, the San Miguel County Assessor's Office mailed to Petitioners a Residential

Personal Property Declaration Schedule (“Declaration Schedule”). Ms. Warfield presented the Board with a copy of the Declaration Schedule that was sent to Petitioners in January, 2010 at their correct mailing address.

Ms. Warfield testified that the Assessor’s Office did not receive a filled out Declaration Schedule back from Petitioners by the due date, April 15, 2010. Therefore, the Assessor proceeded to value the subject property based on the BIA. Ms. Warfield further testified that in June, 2010 the Assessor sent a Notice of Value to Petitioners.

Ms. Warfield testified that the Assessor’s Office did not receive any response from Petitioners to the Notice of Valuation. Ms. Warfield further testified that mail sent to Petitioners’ address was not returned by the postal service. Ms. Warfield testified that Petitioners had not contacted the Assessor’s Office until February, 2011, well beyond the deadline for appealing the 2010 valuation of the subject personal property.

Respondent argues that this case is analogous to previous case law, where the holding was as follows:

When the taxpayer fails to return the information required by the personal property schedule, the assessor still must determine the value of the taxpayer’s property, as we have previously stated, using the best information available to him or her. If the taxpayer believes that the valuation has been made in error, it must then file a protest in accordance with the statutory procedures set forth in section 39-5-122(2). **If the taxpayer neglects to avail itself of the procedure, the assessor’s (BIA) valuation is presumed to be accurate and becomes the final valuation.** *Property Tax Administrator v. Production Geophysical Services, Inc.*, 860 P.2d 514, 519 (Colo. 1993) (emphasis added).

Although Petitioners provided the Board with a copy of a filled out 2011 Declaration Schedule, they did not provide the Board with a copy of the 2010 Declaration Schedule, which is at issue in this matter.

Respondent presented sufficient probative evidence and testimony to show that the Board does not have jurisdiction to change the subject property’s personal property values for tax year 2010.

The Board agrees with Respondent’s application of *Production Geophysical* in this matter because the Board finds that Respondent followed appropriate statutory procedures in valuing subject personal property. The Board finds that Petitioners failed to return a filled out 2010 Declaration Schedule to Respondent by the April 15, 2010 deadline. As a result, the Assessor valued Petitioners’ personal property based on the BIA, and Petitioners failed to timely appeal the Assessor’s valuation. Accordingly, the BIA valuation is final, and the Board is bound by it.

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 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).

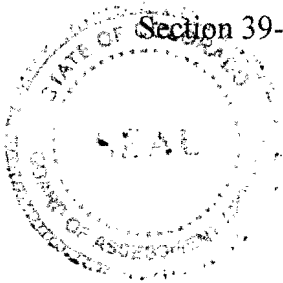
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of 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 19th day of April, 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

Debra A. Baumbach

MaryKay Kelley