BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 65763
Petitioner: **CC INTERLOCKEN,** v. Respondent: **PROPERTY TAX ADMINISTRATOR.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 29, 2015, Louesa Maricle and Amy J. Williams presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is requesting an abatement/refund of 2011 taxes on the subject property.

Factual Background

On May 30, 2011, Petitioner protested the 2011 valuation of the subject vacant land parcel identified as schedule number R1129595 by the Broomfield County Assessor. On June 30, 2011, the Broomfield County Assessor signed a Notice of Determination ("NOD") denying the 2011 protest for schedule R1129595. The NOD contained information on how to appeal the Assessor's determination: "APPEAL DEADLINES: REAL PROPERTY – JULY 15, PERSONAL PROPERTY – JULY 20. If you disagree with the Assessor's decision, you have the right to appeal to the County Board of Equalization for further consideration, 39-8-106(1)(a), C.R.S."

Petitioner did not appeal the Assessor's denial of the 2011 protest for schedule number R1129595 to the County Board of Equalization.

On December 27, 2013, Petitioner filed a Petition for Abatement or Refund of Taxes for tax years 2011 and 2012 for schedule numbers R1122835 and R1129595. On the Petition form, Petitioner stated the reason for the appeal as: "Sales indicate a lower value."

On June 5, 2014, Petitioner and the Broomfield County Assessor signed a Written Mutual Agreement of Assessor and Petitioner. In the agreement, Petitioner and the Assessor agreed to settle the tax year 2012 abatement relating for schedule number R1122835 through the issuance of an abatement/refund to Petitioner in the amount of $2,560.12. The Assessor also recommended that the County Board of Equalization approve the 2012 tax year abatement relating to schedule number R1129595 in the amount of $52,119.63.

The Assessor recommended that the County Board of Equalization deny the tax year 2011 abatements for schedule numbers R1122835 and R1129595. The Assessor's Recommendation Form indicated that Petitioner had already filed a protest for tax year 2011 for both schedule numbers and cited the following statutory language: "If the request for abatement is based upon the grounds of overvaluation, no abatement or refund of taxes shall be made if an objection or protest to such valuation has been filed and a Notice of Determination has been mailed to the taxpayer, §39-10-114(1)(a)(I)(D), C.R.S."

On June 17, 2014, the County Board of Equalization issued a decision approving the Assessor's recommendation, thereby denying Petitioner's 2011 abatement/refund request for both schedule numbers and recommending approval of the 2012 abatement/refund request for schedule number R1129595. The County Board of Equalization submitted its recommendation for the 2012 abatement petition for schedule R1129595 to Respondent for review.

On June 18, 2014, the City and County of Broomfield, City and County Clerk, issued a "Notice of Decision – Denied" to Petitioner for tax year 2011 for both schedule number R1129595 and schedule number R1122835. The Notice of Decision advised Petitioner of the following appeal rights: "If you desire to appeal this decision, you have the right to appeal under Colorado Law, pursuant to §39-10-114.5 of the Colorado Revised Statutes (C.R.S.) to the State Board of Assessment Appeals. [. . .] You are entitled to a de novo hearing, meaning a new hearing if you appeal to the State Board of Assessment Appeals." The Notice of Decision also notified Petitioner that if it decided to appeal the decision to the BAA, it must file the appeal "with the Board of Assessment Appeals no later than thirty (30) days from the date of the entry of the decision."

Petitioner did not appeal the decision issued by the County Board of Equalization on June 17, 2014.

On June 19, 2014, Respondent approved the 2012 tax year abatement for schedule number R1129595.

On December 10, 2014, Petitioner filed a second 2011 tax year abatement petition with the Broomfield County Assessor for schedule numbers R1129595 and R1122835.

On May 8, 2015, Petitioner and Assessor entered into a Written Mutual Agreement of Assessor and Petitioner. In the agreement, Petitioner and the Assessor agreed to settle the tax year

2011 abatement relating to schedule number R1122835 through the issuance of an abatement/refund to Petitioner in the amount of $2,540.32. The Assessor also recommended that the County Board of Equalization approve the 2011 tax year abatement relating to schedule number R1129595 in the amount of $51,716.44.

On June 18, 2015, the County Board of Equalization acted on Petitioner's second abatement petition – approving the petition for schedule R1122835 in the amount of $2,540.32 and the petition for schedule R1129595 in the amount of $51,716.44. The abatement for schedule number R1122835 involved a refund amount of less than $10,000 and was not submitted to Respondent for review. A refund was made for that schedule number. The abatement for schedule number R1129595 involved an amount in excess of $10,000, and therefore it was submitted to Respondent for review to determine if it was in proper form and recommended in conformity with the law.

On June 25, 2015, Respondent denied Petitioner's abatement petition for schedule number R1129595 for tax year 2011. The reason for the denial was noted as follows: "Please be advised that I have denied your request for an abatement for property tax year 2011, as the petition was not submitted to the Broomfield County Assessor's Office by the January 1, 2014 deadline."

On July 23, 2015, Petitioner filed a Petition to the State Board of Assessment Appeals ("BAA") appealing Respondent's decision and requesting a refund/abatement for schedule numbers R1122835 and R1129595 for tax year 2011. Petitioner's Agent later clarified, via an e-mail sent to the BAA on July 23, 2015 that the abatement petition was only for schedule number R1129595. Therefore, the issue before the BAA is the 2011 refund/abatement for the subject property identified as schedule number R1129595.

Analysis

A. Petitioner's Argument that the 2011 and 2012 Valuations Must be the Same.

Petitioner argues that the valuation of Petitioner's property for the 2011 and 2012 tax years in the same reassessment cycle must be the same absent certain statutory exceptions not applicable here. *See* Section 39-1-104 (10.2)(a) & (11)(b)(I), C.R.S. According to Petitioner, when the Broomfield County Board of Equalization and the Property Tax Administrator approved Petitioner's abatement petition for 2012, Petitioner became entitled to seek the same relief for tax year 2011. However, neither Colorado statutes nor Colorado case law support Petitioner's argument that it is entitled to an abatement and refund for tax year 2011 as a matter of right.

The Board is persuaded by a case cited by Respondent entitled *Red Junction, LLC v. Mesa County Bd. of County Comm'rs*, 174 P.3d 841 (Colo. App. 2007). In *Red Junction*, the court held that valuations of the subject properties for both tax years in the same reassessment cycle need not be the same where the factual situation involved a second abatement/refund action which was ultimately barred under principles of *res judicata* or claim preclusion.

In *Red Junction*, the assessor valued the subject property at $6 million for tax years 2003 and 2004. The taxpayer pursued the protest and adjustment procedure for 2004 and received a reduction at the County Board of Equalization ("BOE") to $4.1 million. Dissatisfied with the reduction, the taxpayer then appealed the BOE's decision to the BAA.

The taxpayer in *Red Junction* did not seek a protest and adjustment for tax year 2003 but instead filed for abatement with the Board of County Commissioners ("BOCC") based on the BOE's reduction of the 2004 valuation to $4.1 million. The BOCC approved the taxpayer's 2003 abatement petition reducing the 2003 value to $4.1 million. Afterwards, the BAA granted a further reduction of the 2004 valuation to just under $3 million. Petitioner then filed its second abatement petition to the BOCC seeking a reduction of the 2003 value to just under $3 million based on the BAA's reduction of 2004 taxes to that amount.

The BOCC in *Red Junction* refused to adjudicate taxpayer's second abatement petition on the principles of *res judicata*. The taxpayer appealed to the BAA and the BAA upheld the BOCC decision to deny the year 2003 abatement based on *res judicata*. The Court of Appeals upheld the BOCC's and the BAA's decisions. In relevant part, the Court of Appeals held:

> [...] the taxpayer could have resolved all issues concerning the 2003 valuation in the first set of abatement-refund petitions by setting forth both the BOE's reduction of the value to approximately $4.1 million and taxpayer's contemporaneous efforts to further reduce the 2004 valuation on appeal from the BOE to the BAA. If taxpayer had done this, the BOCC could have partially granted a 2003 reduction to the level established by the BOE for 2004, and taxpayer could then have properly appealed the partial denial of any further valuation reduction to the BAA. In that event, the BAA could then have consolidated the 2004 protest-adjustment appeal and the 2003 abatement-refund appeal to provide taxpayer the full relief sought for both tax years.

Red Junction, 174 P.3d at 845.

In this case, instead of filing for a second abatement petition on December 10, 2014, Petitioner could have appealed on multiple occasions but did not do so. First, Petitioner could have appealed the Assessor's June 2011 determination denying its protest of the 2011 valuation. Second, Petitioner could have appealed the BOE's June 2014 denial of its first abatement petition filed on December 27, 2013. In that instance, Petitioner could have appealed the BOE's 2014 decision to the BAA, where it could have argued that the BOE's reduction of the 2012 value required a reduction of the 2011 value. Instead, Petitioner waited six months to file a second abatement petition on December 10, 2014, almost a year after the deadline for filing a 2011 abatement appeal had expired.

As the court stated in *Red Junction*, "the BAA and the property tax system as a whole have an interest in judicial economy and finality of decisions, which favors precluding a second abatement-

refund action on matters, as in this case, that could have been raised in the first abatement-refund action, but were not." *Id.* at 845.

Here, Petitioner could have raised all legal arguments for the 2011 abatement during the course of the first abatement-refund action but instead chose to file a second abatement-refund action which was duplicative and contrary to the interests of judicial economy. Not only was Petitioner's second abatement petition duplicative like the petition in *Red Junction*, the petition was also late because it was filed after the statutory deadline for filing a 2011 tax year abatement.

In support of the argument that the subject property must be valued the same for 2011 as it was valued for 2012, Petitioner cited the following three Colorado Court of Appeals' decisions: *Cherry Hills Country Club v. Bd. of County Comm'rs*, 832 P.2d 1105, 1109 (Colo. App. 1992); *Boulder Country Club v. Boulder County Bd. of Comm'rs*, 97 P.3d 119 (Colo. App. 2003); *and 24, Inc. v. Bd. of Equalization of Arapahoe County*, 800 P.2d 1366 (Colo. App. 1990).

None of the cases cited by Petitioner are on point with the facts of this case. Notably, none of Petitioner's cases involve the statutory deadline for filing an abatement petition found in Section 39-10-114(1)(a)(I)(A), C.R.S.

In *Cherry Hills*, the taxpayer brought a case in the District Court appealing the BOE's valuation of the taxpayer's property for both 1989 and 1990. As to the 1989 reassessment year, the BOE valued the taxpayer's land at $9,400,000. In a separate proceeding pertaining to the 1990 tax year (the intervening year), the BOE re-valued the same property at $6,500,000.

The *Cherry Hills* case is factually distinguishable because there the BOE determined the valuation of the intervening 1990 tax year by making substantial adjustments to the valuation figures it previously adopted for the 1989 revaluation year. *Id.* at 1109. In effect, the BOE substantially reduced its own previous valuation figures and determined that the correct level of value for taxpayer's land for both tax years of the same reassessment cycle should be the valuation determined for 1990 tax year. *Id.*

Further, in *Cherry Hills*, both the BOE and the taxpayer agreed that the property's valuations for both years within the same reassessment cycle should be the same and the court, under those circumstances, concluded that the 1989 valuation had to be reduced to the BOE's 1990 valuation of the same property. *Id.*

Contrary to Petitioner's argument, *Cherry Hills* does not support the argument that a taxpayer is entitled to receive the same value for both the reassessment and the intervening tax years as a matter of right. The *Cherry Hills* decision was made under the particular circumstances of that case. Unlike the situation in *Cherry Hills*, here, the Broomfield County Board of Equalization never granted a reduction for the intervening tax year (here, 2012) which was based on the valuation for the reassessment tax year (here, 2011). In fact, Petitioner never successfully appealed the 2011

valuation of the subject property and was never granted a reduction for the 2011 reassessment tax year.

Moreover, in this case, the valuation for the 2012 intervening tax year was determined by the mutual agreement of the parties and without any reliance on the subject property's 2011 value, which was not the case in *Cherry Hills*.

As a further distinction from *Cherry Hills*, Petitioner in this case chose not to appeal the Assessor's June 30, 2011 determination to the BOE, and instead filed its first petition for abatement/refund on December 27, 2013 on the impermissible grounds of overvaluation. And, about a year after that first petition for abatement/refund was denied, Petitioner filed a second petition for abatement/refund on December 10, 2014 which by that time was untimely. Importantly, the *Cherry Hills* case did not address the situation where the taxpayer fails to file an abatement appeal by the statutory deadline. Thus, the *Cherry Hills* case is factually distinguishable and does not support Petitioner's argument in the present case.

Petitioner's reliance on *Boulder Country Club v. Boulder County Bd. of Comm'rs*, 97 P.3d 119 (Colo. App. 2003), is equally unpersuasive. In the *Boulder Country Club* case, the property's stipulated actual value for the 1999 tax year was $5,700,000. In the 2000 tax year, the Boulder County Assessor set the actual value of the property at $7,433,900. The taxpayer protested the 2000 tax year valuation. After the assessor denied the protest, the taxpayer appealed to the Boulder County Board of Equalization (BCBOE). The BCBOE denied the taxpayer's appeal, and the taxpayer did not appeal that decision. However, the taxpayer later filed a timely abatement petition based on "erroneous valuation for assessment" and not on "overvaluation".

The taxpayer argued that its petition for abatement and refund was not prohibited under Section 39-10-110(1)(a)(I)(D), C.R.S. because it was not based on overvaluation. Instead, the taxpayer argued, the petition was based on an erroneous valuation for assessment because it required a legal determination concerning whether the property's value for tax year 2000 should be the same as its value for tax year 1999. In contrast, overvaluation requires a factual determination. The court agreed that the taxpayer's timely filed abatement petition was based on an erroneous valuation for assessment and therefore it was not prohibited under the statute.

The *Boulder Country Club* case is factually distinguishable because there the parties stipulated to the property's 1999 reassessment year value of $5,700,000 and later the assessor deviated from that base year value by increasing it to $7,433,900 for the intervening year.

In this case, however, Petitioner and the Assessor, with the BOE's approval, entered into a mutual agreement as to the subject property's 2012 intervening year value, while Petitioner's first abatement appeal for the reassessment 2011 tax year was denied by the Broomfield Board of County Commissioners because it was filed on the grounds of overvaluation which is prohibited by Colorado

statute. Petitioner chose not to appeal this denial, but to wait nearly six months to file an untimely second abatement petition for the same 2011 tax year.

The Board finds the *Boulder Country Club's* factual scenario is distinguishable from Petitioner's case. Moreover, like the *Cherry Hills* case, the *Boulder Country Club* case does not state that the taxpayer is entitled to the same value for both the reassessment and intervening years as a matter of right. The decision in *Boulder Country Club* was based on the circumstances of that case, which did not involve the filing of two abatement petitions for the same tax year or the filing of an abatement appeal after the statutory deadline.

Petitioner next relies on the holding in *24, Inc. v. Bd. of Equalization of Arapahoe County*, 800 P.2d 1366 (Colo. App. 1990) in support of its argument that the 2011 and 2012 valuations of the subject property should be the same. The *24, Inc.* case is also factually distinguishable from the case at hand.

In *24, Inc.*, the taxpayer filed a protest for the 1987 reassessment tax year value of the property and eventually that value was set at $2,037,970 by the BAA. For the intervening tax year 1988, the assessor revalued the property at $9,049,483. The assessor, the BOE, and the BAA all denied Petitioner's subsequent appeals. The Court of Appeals reversed, however, holding that the assessor failed to establish a legal basis for increasing the actual value of taxpayer's property for 1988 tax purposes. *Id.* at 1370.

The factual scenario of the *24, Inc.* case is distinguishable because there the taxpayer went through all of the steps of the protest and adjustment appeal process for both the reassessment and the intervening tax years. Unlike the facts in *24, Inc.*, Petitioner in this case chose not to appeal the 2011 reassessment tax year value to the BOE. Instead, Petitioner filed two abatement/refund petitions for the same 2011 tax year, and the second abatement petition was not filed by the statutory deadline.

In sum, the Board is not convinced by Petitioner's argument that the 2011 and 2012 valuations of the subject property must be the same under the facts of this case. The Board is not persuaded by the case law cited by Petitioner because each case is factually distinguishable from the factual situation of the case at hand. In addition, the Board finds that the *Red Junction* case referenced by Respondent is the most similar to the present case. The Board finds that the valuations need not be the same for each of the two years in the assessment cycle under the factual circumstances presented here.

B. Petitioner's Arguments For Equitable Relief.

Petitioner argues that the filing deadline in Section 39-10-114(1)(a)(I)(A), C.R.S. is not jurisdictional and is therefore subject to the equitable principles of waiver, tolling and estoppel. The Board does not agree.

Petitioner presented no case law or other authority where Section 39-10-114(1)(a)(I)(A), C.R.S. has been treated as non-jurisdictional. The Board finds that Petitioner's interpretation of Section 39-10-114(1)(a)(I)(A), C.R.S. as non-jurisdictional, and therefore a waivable statutory limitation time period, is contrary to the plain meaning of the statutory language that states: "In no case shall an abatement or refund or taxes be made unless a petition is filed within two years after January 1 of the year following the year in which the taxes were levied." Section 39-10-114(1)(a)(I)(A), C.R.S. (Emphasis added).

Furthermore, the Colorado Court of Appeals has previously held that Section 39-10-114(1)(a)(I)(A), C.R.S., is actually a statute of repose and as such can be applied more strictly than an ordinary statute of limitations. See *Woodmoor Improvement Ass'n. v. Property Tax Adm'r*, 895 P.2d 1087,1090 (Colo. App. 1994), citing *Austin v. Litvak*, 682 P.2d 41 (Colo. 1984) ("the statute of repose can bar claim even when the cause of action is permitted by the statute of limitations").

Even if Section 39-10-114(1)(a)(I)(A), C.R.S. is considered non-jurisdictional, the Board is not persuaded that the equitable principles of waiver, tolling or estoppel are appropriate in this case.

1. Petitioner's Waiver Argument.

The Board finds unpersuasive Petitioner's contention that the equitable principle of waiver is appropriate under the facts of this case.

Petitioner argues that the Broomfield County Assessor and the Broomfield County Board of Equalization waived the statutory filing deadline in Section 39-10-114(1)(a)(I)(A), C.R.S. According to Petitioner's argument, Broomfield County was the only party entitled to invoke the statutory deadline for filing the 2011 abatement petition and because Broomfield County did not do so, the statutory deadline was waived. Petitioner also argues that the statutory deadline is an affirmative defense that was waived because Broomfield County did not affirmatively plead it.

Petitioner points out that neither the Broomfield County Assessor nor the Broomfield County Board of Equalization invoked the statute of limitations in connection with the Petition for Abatement filed on December 10, 2014. Rather than invoking the statute of limitations, the Broomfield County Board of Equalization recommended a reduction for 2011 to the level of value previously approved for tax year 2012. Therefore, Petitioner contends, since Broomfield County did not invoke the limitation provision of Section 39-10-114(1)(a)(I)(A), C.R.S. the statutory filing deadline was waived.

There was no testimony or other evidence presented at the hearing to provide explanation to the BAA why the Broomfield County Assessor and the Broomfield County Board of Equalization decided to approve Petitioner's 2011 Petition for Abatement despite the fact that it was filed after the statutory deadline. Regardless of the reason for the failure to invoke the statutory filing deadline to deny Petitioner's second abatement petition, because the amount of abatement for the subject parcel

exceeded $10,000, Respondent was required to conduct an independent review and either authorize or reject the abatement. See Section 39-1-113(3), C.R.S.

Pursuant to Section 39-2-116, C.R.S., Respondent is required to "review each application submitted by the board of county commissioners or the board of equalization of any county for abatement or refund of taxes, and, if all of such application is found to be in proper form and recommended in conformity with the law, the application shall be approved; otherwise, it shall be disapproved [. . .]."

Petitioner incorrectly argues that the only party entitled to invoke the filing deadline set forth in Section 39-10-114(1)(a)(I)(A), C.R.S. is Broomfield County. Respondent has a constitutional duty, as provided by law, of administering the property tax laws and such other duties as may be prescribed by law. Colorado Constitution, Article X, Section 15(2). Colorado statute requires Respondent to disapprove abatement applications recommended by the county that are not in conformity with the law.

Here, Broomfield County filed an application with Respondent recommending approval of Petitioner's abatement petition. Respondent correctly determined that the abatement petition (which was filed on December 10, 2014) was not filed by the January 1, 2014 statutory deadline, and Respondent appropriately disapproved the abatement application.

As stated in Section 39-2-116, C.R.S., Respondent is given full authority to reject the applications for abatement submitted by the County Boards of Commissioners or Equalization if such applications do not conform to the law. Respondent fulfilled her constitutional and statutory duties by reviewing the application filed by Broomfield County, and by finding that Petitioner's abatement petition was filed late and therefore not in conformity with Section 39-10-114(1)(a)(I)(A), C.R.S. Respondent correctly denied the abatement. The Board is not persuaded by Petitioner's argument that the County Assessor's and the County BOE's failure to invoke the statute of limitations as an affirmative defense in any way prevents Respondent from fulfilling her duties as outlined per Section 39-2-116, C.R.S.

The Board also disagrees with Petitioner's argument that Broomfield County waived the statutory deadline by not raising it as an affirmative defense. This argument rests on the assumption that abatement proceedings are governed by the Colorado Rules of Civil Procedure, and the statute of limitations is a defense which is waived if not affirmatively pleaded under C.R.C.P. 8(c). This assumption is incorrect. Abatement proceedings are not the same as an adversarial lawsuit governed by the Colorado Rules of Civil Procedure. Petitioner did not file a complaint, and Broomfield County did not file an answer. The Colorado Rules of Civil Procedure did not apply to those proceedings. The statutory deadline in Section 39-10-114(1)(a)(I)(A), C.R.S. is not an affirmative defense that was waived unless affirmatively pleaded.

2. Petitioner's Tolling Argument.

Petitioner argues that the statutory deadline set forth in Section 39-10-114(1)(a)(I)(A), C.R.S. leads to an unjust result in this case and that the Board should create an exception to the deadline by either equitably tolling the statutory deadline or otherwise fashioning a remedy to protect Petitioner's rights. The Board is not convinced by these arguments.

At the heart of Petitioner's equitable tolling argument is the assumption that, "Petitioner has the right for 2011 and 2012 tax year values to be the same, but there was no remedy under the statutes to correct the 2011 valuation." See *Petitioner's Brief in Support of Petitioner's Appeal, at page 7*. However, as previously discussed, the Board does not agree that Petitioner has the right for the 2011 and 2012 tax year values to be the same under the facts of this appeal.

Petitioner contends that by the time the Broomfield Assessor and the BOE had reduced the valuation for 2012 in June of 2014, the statutory deadline for filing for the abatement for 2011 tax year had already expired several months earlier, on January 3, 2014. In other words, Petitioner argues that Petitioner could not have filed for an abatement petition for tax year 2011 on the basis that the 2011 and 2012 tax year valuations should be the same until after the BOE granted the abatement for 2012. According to Petitioner, because the 2012 abatement petition was not granted until after it was already too late to file for abatement for tax year 2011, Petitioner was left without recourse and the Board should toll the statute of limitations in order to provide Petitioner with a remedy.

The Board is not persuaded that Petitioner had no remedy to correct the 2011 valuation. To the contrary, Petitioner had multiple opportunities to appeal the 2011 valuation. There was nothing that the Broomfield Assessor or the BOE did to prevent Petitioner from pursuing its 2011 appeal much in the same way as it pursued its 2012 appeal. It was Petitioner's own actions, and sometimes inactions, that resulted in the 2011 valuation not being reduced prior to the statutory filing deadline set forth in Section 39-10-114(1)(a)(I)(A), C.R.S.

For example, Petitioner could have, but chose not to, appeal the June 30, 2011 Notice of Determination to the County Board of Equalization which could have been done on the basis of overvaluation. Next, Petitioner's first abatement petition, filed on December 27, 2013 was filed on impermissible grounds of overvaluation which caused the County's denial of that abatement petition on June 18, 2014. And, instead of timely appealing the BOE's June 17, 2014 decision to the BAA, Petitioner waited half a year to file its second abatement petition with the Assessor on December 10, 2014. Petitioner has appealed three times for the same 2011 tax year for the same property (May 30, 2011 protest; December 27, 2013 abatement petition; and December 10, 2014 abatement petition). Each appeal was addressed and adjudicated in accordance with Colorado statutory provisions in the ordinary course of the administrative agency's business. There has been no evidence presented and no allegations made that the County has in any way delayed or in any other way unfairly prevented

Petitioner from utilizing its appeal rights. Therefore, the Board finds that Petitioner has failed to demonstrate either a lack of remedies or unfairness of process to justify tolling the deadline for filing Petitioner's 2011 abatement petition.

3. Petitioner's Estoppel Argument.

In its brief, Petitioner argued that Respondent and Broomfield County should be barred from raising the statutory deadline for filing the abatement appeal because the Assessor contributed to Petitioner's failure to timely file by incorrectly checking a box on the 12/27/2013 abatement form concerning whether the 2011 valuation had been previously protested. However, a review of both the 12/27/2013 and the 12/10/2014 abatement petitions shows that the Assessor did in fact check the correct box on both forms – indicating that the 2011 valuation had been previously protested. Petitioner conceded at hearing that a notice of determination had been issued relating to the 2011 tax year protest.

Accordingly, Petitioner's equitable estoppel argument is without merit and was appropriately withdrawn by Petitioner at the hearing.

Conclusion

In sum, the Board finds that Petitioner's second abatement petition for 2011, which was filed on December 10, 2014, was untimely filed and therefore Petitioner's request for an abatement refund for the 2011 tax year was correctly denied by Respondent. The Board was not persuaded by Petitioner's arguments for excusing its delay in filing.

The Board finds that Broomfield County did not waive the statutory filing deadline by failing to invoke it during the county abatement proceeding. The County's failure to invoke the filing deadline did not limit Respondent's statutory duty to review the abatement petition for conformity with the law. To the contrary, the Board is convinced that Respondent did exactly what the statute required her to do when she reviewed the legality of the abatement and, upon determining that the abatement petition recommended by the County was not in conformity with the law, denied the request for abatement. *See* Section 37-2-116, C.R.S.

The Board also finds that Petitioner has not suffered any unfairness of process or a lack of remedies that would justify either tolling the statutory filing deadline for Petitioner's 2011 abatement petition or any other equitable remedy.

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-nine 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-nine 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 30th day of December, 2015.

BOARD OF ASSESSMENT APPEALS

Louesa Maricle

Amy J. Williams

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

Milla Lishchuk

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