

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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OTTO AND FRANCES BALTRUSCH,	)	
	)	Docket No. IT-2009-1
Appellants,	)	
-vs-	)	
	)	ORDER
DEPARTMENT OF REVENUE	)	
OF THE STATE OF MONTANA,	)	
	)	
Respondent.	)	

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**Procedural Background**

The Department filed a motion to dismiss in this matter. The Department urged this Board to take judicial notice of certain cases and additionally attached several exhibits to the motion.

When reviewing a 12(b)(6), M.R.Civ.P. motion to dismiss, a reviewing tribunal's examination is limited to the contents of the complaint. *See Stokes v. State*, 2005 MT 42, P 7, 107 P.3d 494 (citing *Plouffe v. State*, 2003 MT 62, P 13). The Court in *Stokes* clearly indicated that reviewing additional court cases (or any additional materials) requires treating a motion to dismiss as a motion for summary judgment (Rule 56, M.R.Civ.P.).

Because the motion to dismiss was more properly treated as a motion for summary judgment as allowed under Rule 12(b)(6), M.R.Civ.P, the Board allowed additional time for the parties to supply any additional material before we addressed the substance of the Department's motion. The Board received no additional substantive filings.

**Standard of Review**

A motion for summary judgment is reviewed under the standards set forth in Rule 56, M.R.Civ.P.

As set forth in *Olympic Coast Inv., Inc. v. Wright*, 2005 MT 4, P 20, 325 Mont. 307, 105 P.3d 743, a party seeking summary judgment has the burden of establishing a complete absence of any genuine factual issues. In light of the pleadings and the evidence before the court, there must be no material issue of fact remaining which would entitle a nonmoving party to recover. Once the moving party has met its burden, the opposing party must present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact. Once it is established no genuine issues of material fact exist, the district court must then determine whether the moving party is entitled to judgment as a matter of law. (citations omitted)

### **Background**

The Baltrusch Land and Cattle Co. Partnership (BLCC) was equally owned by brothers William and Otto Baltrusch (hereafter referred to by first name). Extensive litigation in the district court and the Montana Supreme Court relating to the siblings' business practices occurred beginning in 1992. The first complaint was filed in the 12<sup>th</sup> Judicial District in 1992, and extensive filings continued in this matter. *See Baltrusch v. Baltrusch*, 12<sup>th</sup> Judicial District Court, 92-029, Finding of Fact, Conclusions of Law, Judgment and Order, November 1, 2004, Amended Finding of Fact, Conclusions of Law, Judgment and Order, January 3, 2005, *Baltrusch v. Baltrusch*, 2003 MT 357, 319 Mont. 23, 83 P.3d 256, *Baltrusch v. Baltrusch* (reviewing all of the issues prior to 2000 as set out in *Baltrusch* 2008, ¶ 15) *Baltrusch v. Baltrusch*, 2006 MT 51, 331 Mont. 281, 130 P.3d 1267 (upholding the district court's ruling that the doctrines of *res judicata* and collateral estoppel prohibit William's allegations against Frances), and *Baltrusch v. Baltrusch* 2008 MT 245, 334 Mont. 489, 190 P.3d 1034 (reviewing all remaining issues after 2003, ¶ 16)

The only issue before this Board relates to the October 9, 2002, sale of certain farm property to Otto and Frances. For tax year 2002, taxpayers Otto and Frances Baltrusch filed an income tax return but did not report the sale of the farm property on that return.

During litigation, William argued (successfully) that the farm property was sold to Otto from BLCC (the partnership jointly owned by Otto and William). Otto had argued that William sold the property to Otto, thus Otto avoided any tax liability from the sale. The Court determined that the farm property was sold by BLCC. *See Baltrusch v. Baltrusch*, 12<sup>th</sup> Jud. District, Amended Finding of Fact, Conclusion of Law, Judgment and Order, January 3, 2005, FOF 8,9, COL 4.

The Department subsequently audited and amended Otto and Frances's 2002 income tax return to reflect a portion of the sale liability. In 2008, the Department sent a statement of account with tax, interest, and late penalties due and owing. Otto and Frances filed a complaint with this Board.

### **Issue**

The question at issue is whether prior court decisions preclude Otto and Frances from challenging the Department's assessment.

The Department argues that the taxpayers' request for relief is precluded by collateral estoppel and requests that this Board take judicial notice of certain district court actions. The Department contends the prior litigation decided the relevant issues and Otto and Frances may not re-litigate a matter already decided by the district court.

Otto and Frances argue that the assessment of additional taxes to them is erroneous. The complaint states that "[t]he Taxpayers' purchase of the real property was accurately and properly reported and reflected on the Baltrusch Land & Cattle Co. Partnership 2002 income tax return and on the Taxpayers [sic] 2002 income tax return." (Complaint 3).

This appeal is conducted in accordance with the contested case provisions of the Montana Administrative Procedures Act, § 15-2-302(4), MCA. Pursuant to Rule 201 and 202, M.R.Evid, this Board may take judicial notice of certain facts and laws, including those of a Montana District Court.

In this instance, there is an extensive record in the 12<sup>th</sup> Judicial District. We need only look to the district court's ruling on this particular issue. As a general rule,

where a court's decree is clear and unambiguous, neither pleadings, findings nor matters outside the record may be used to change its meaning or construe it. 46 Am.Jur.2d Judgments § 97 (1994), as cited in *Harland v. Anderson Ranch Co.*, 2004 MT 132, P 24.

The issue of original ownership of the farm land in question was explicitly discussed by the District Court. *See* District Court's Amended Findings of Fact, Conclusions of Law, and Order dated December 30, 2004 (DV-92-029). Amended Finding of Fact 8 states in part "The issues remaining to be decided are as follows: . . . Otto's reporting and handling of the October 9, 2002 farm sale that resulted in his saving \$536,127 in personal income taxes." The Court further notes in Amended Finding of Fact 9, "[t]he deed, realty transfer certificate, and settlement statement indicate the sellers of the farm property to be the partnership...." (and the Court cites to the relevant exhibits.) The Court further notes that "A fax from Otto's lawyer . . . confirms the Seller is the Partnership." *See* App. 46-47. The Conclusions of Law also directly hold that "Otto's reporting and handling of the . . . farm sale was contrary to the facts. All of the documentation except an unsigned Buy/Sell Agreement indicates the seller of the property to be the partnership..." COL 4, App. 56.

For the purposes of reviewing the tax implications of the sale of the farm, we review whether the above ruling was final. Although the December 30, 2004, ruling was the final review of the farm ownership and sale, there were several other issues which were still open. The Court reviewed subsequent issues and ruled on additional issues (unrelated to the sale of the farm) in the Finding of Fact, Conclusions of Law and Order dated Aug 14, 2006. Finally, on Oct. 26, 2006, the Court issued an Order regarding Interest which stated in part "[t]he August 14, 2006 Order may be considered final as of the date of this Order." There is no indication that the sale of the farm was at issue in subsequent matters before the 12<sup>th</sup> Judicial District.

Thus, the issue of the sale of the farm reached finality, at the latest, on Oct 26, 2006.

### **Accuracy of the Audit**

Otto and Frances argue that even if this Board determines the partnership sold the property in question, there is no proof that the Department properly calculated the tax liability for Otto and Frances. Otto and Frances do not, however, provide any evidence that the Department's calculations are incorrect. In fact, Otto and Frances do not provide this Board with any evidence contradicting any Department allegation.

The Department of Revenue submitted an affidavit from Spencer Marks, auditor. Otto and Frances argue the affidavit is improper and misleading. Otto and Frances, however, fail to provide any contradicting evidence to this Board. This Board has no indication that the taxpayers' characterization of the affidavit, which merely recites the basis for the audit and subsequent adjustment, is correct.

Because this matter is treated as a motion for summary judgment, there is some duty on the part of the taxpayers to demonstrate that they can prevail. The moving party must demonstrate that no genuine issues of material fact exist, and the burden then shifts to the non-moving party to prove, by more than mere denial and speculation, that a genuine issue does exist. Otto and Frances have failed to provide this Board with any indication that a genuine issue of fact exists.

### **Collateral Estoppel**

We need not even address the issue of collateral estoppel or *res judicata* when the dispositive facts demonstrate "the absence of genuine issues of material fact and entitlement to judgment as a matter of law." In this instance, the essential question was litigated and determined by the district court, and the complainant failed to provide any evidence that a genuine issue of fact may exist.

**Order**

This Board hereby orders that the Department's motion for summary judgment is granted, and the taxpayers' complaint is dismissed with prejudice.

DATED this 16th day of June, 2009.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

/s/\_\_\_\_\_  
KAREN E. POWELL, Chairwoman

/s/\_\_\_\_\_  
SUE BARTLETT, Member

/s/\_\_\_\_\_  
DOUGLAS A. KAERCHER, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17<sup>th</sup> day of June, 2009, a true and correct copy of the foregoing has been served on the parties hereto by the method indicated below and addressed as follows:

James A. Patten	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
PATTEN, PETERMAN, BEKKEDAHL	<input type="checkbox"/> Hand delivered
& GREEN PLLC	<input type="checkbox"/> E-mail
28187 Second Ave. North, Suite 300	<input type="checkbox"/> Telecopy
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