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WILLIAM SUTHERLY
JUDICIAL DISTRICT COURT

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FILED
BY: SHELVY CALLIHAN
DEPUTY

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

<p>OMIMEX CANADA, LTD, Plaintiff, v. STATE OF MONTANA, DEPARTMENT OF REVENUE, Defendant.</p>	<p>Cause No. BDV-2004-288 ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT</p>
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Before the Court is Plaintiff Omimex Canada, Ltd.'s (Omimex) motion for partial summary judgment. In this action Omimex seeks a declaration that Administrative Rule of Montana 42.22.102(3) is invalid and also a declaration that Omimex's taxable personal property should be taxed at a rate of 3 percent which is the rate of locally assessed property. Both sides have moved for partial summary judgment on the issue of whether A.R.M. 42.22.102(3) is valid.

For purposes of this motion, this Court will only address the issue of the validity of the administrative rule in question.

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1 Background

2 Although the Court will address only the issue noted above, it is helpful to
3 have some background to this case. Omimex owns property consisting of pipe and other
4 auxiliary assets used in gas gathering. The property is located in various counties in
5 Montana. For the tax year 2004, Omimex reported its taxable personal property to local
6 Department of Revenue (DOR) offices in those counties in which the property is
7 situated for local assessment. DOR returned the forms that Omimex had submitted,
8 informing Omimex that it believed it should have reported the property to be centrally
9 assessed rather than locally assessed. The difference between property that is locally
10 assessed and that which is centrally assessed is, in part, a difference in rates. Property
11 which is centrally assessed is subject to a 12 percent rate, where locally assessed
12 property is subject to a 3 percent rate. Omimex contends that its property is not single,
13 continuous property operated in more than one county or more than one state and does
14 not, therefore, fall within the language of the statute.

15 Standard of Review

16 Summary judgment is appropriate if "there is no genuine issue as to any
17 material fact and that the moving party is entitled to judgment as a matter of law." Rule
18 56(c), M.R.Civ.P. The moving party has the initial burden of showing that no genuine
19 issues of material fact exist. Jobe v. City of Polson, 2004 MT 183, ¶ 10, 322 Mont.
20 157, ¶ 10, 94 P.3d 743, ¶ 10. Once the moving party establishes no genuine issues of
21 material fact exist, the burden shifts to the non-moving party opposing summary
22 judgment to prove otherwise. Id. If the court determines no genuine issues of material
23 fact exist, the court will determine whether the moving party is entitled to judgment as a
24 matter of law. Id.

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1 Discussion

2 At issue is whether there is a conflict between the administrative rule
3 promulgated by the DOR and the enabling statute. Omimex contends that the
4 administrative rule at issue goes beyond the language of the enabling statute and,
5 therefore, impermissibly expands the underlying statute and is therefore invalid.

6 The underlying statute at issue, Section 15-23-101, MCA, sets forth
7 properties to be centrally assessed by DOR:

8 Properties centrally assessed. The department shall centrally
9 assess each year:

10 (1) the railroad transportation property of railroads and railroad
11 car companies operating in more than one county in the state or more than
12 one state;

13 (2) property owned by a corporation or other person operating a
14 single and continuous property operated in more than one county or more
15 than one state, including but not limited to telegraph, telephone,
16 microwave, and electric power or transmission lines; natural gas or oil
17 pipelines; canals, ditches, flumes, or like properties and including, if
18 congress passes legislation that allows the state to tax property owned by
19 an agency created by congress to transmit or distribute electrical energy,
20 property constructed, owned, or operated by a public agency created by
21 congress to transmit or distribute electrical energy produced at privately
22 owned generating facilities, not including rural electric cooperatives;

23 (3) all property of scheduled airlines;

24 (4) the net proceeds of mines;

25 (5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to
the provisions of Title 15, chapter 24, part 12.

19 DOR argues that the statute was intended to centrally assess certain types
20 of properties and that some clarification was necessary to assess these types of
21 properties. To implement the statute, DOR adopted ARM 42-22-102.

22 CENTRALLY ASSESSED PROPERTY

23 (1) The department shall centrally assess the interstate and inter-
24 county continuous properties of the following types of companies:

25 (a) railroad;

(b) railroad car;

(c) microwave;

(d) telecommunications;

- 1 (e) telephone cooperatives;
2 (f) gas;
3 (g) electric;
4 (h) electric cooperatives;
5 (i) ditch;
6 (j) canal;
7 (k) flume;
8 (l) natural gas pipeline,
9 (m) oil pipeline; and
10 (n) airline.

11 (2) The property of a centrally assessed company is separated into
12 two categories: operating and non-operating. All operating property will
13 be apportioned to the taxing units as provided in ARM 42.22.121 and
14 42.22.122.

15 (3) The department will determine centrally assessed property
16 based on the property's operating characteristics such as but not limited to
17 property use, integration of operations, management, and corporate
18 structure.

19 DOR points out that an administrative agency's interpretation of a statute
20 under its domain is presumed to be controlling. Christenot v. Dep't of Commerce, 272
21 Mont. 396, 401, 901 P.2d 545, 548 (1995). However, an agency's rules are valid only if
22 they are "consistent and not in conflict with the statute" and the rule must be "reasonably
23 necessary to effectuate the purpose of the statute." See Section 2-4-305(6), MCA.
24 Courts have uniformly held that administrative regulations are "out of harmony" with
25 legislative guidelines if they (1) engraft additional and contradictory requirements on the
statute; or (2) if they engraft additional, noncontradictory requirements on the statute
which were not envisioned by the legislature. Safeway, Inc. v. Mont. Petroleum Release
Comp. Bd., 281 Mont. 189, 194, 931 P.2d 1327, 1330 (1997). See also, Bell v. Dep't
of Licensing, 182 Mont. 21, 23, 594 P.2d 331, 333 (1979).


Despite DOR's contention, however, it does appear that the administrative
rule has impermissibly expanded the statute. The statute specifically states that centrally
assessed property consists of "single and continuous property operated in more than one
county or more than one state," while the administrative rule includes in the definition

1 property that is not single and continuous. The agency was not granted the authority in
2 the statutes to include additional types of property to be centrally assessed. Because the
3 DOR impermissibly exceeded its authority, this Court finds A.R.M. 42-22-102(3) to be
4 invalid.

5 For the reasons stated above, Omimex's motion for partially summary
6 judgment is hereby GRANTED.

7 DATED this 9 day of August, 2005.

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JEFFREY M. SHERLOCK
District Court Judge

pcs: James P. Sites/Denise Linford
Charlena Toro/Monica L. Smith

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