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MONTANA FOURTEENTH JUDICIAL DISTRICT COURT, MEAGHER COUNTY

CHARLES B. LUCAS; LUCAS RANCH,
INC.; MONTANA FARM BUREAU
FEDERATION; and THE MONTANA
TAXPAYERS' ASSOCIATION,

Petitioners,

vs.

MONTANA DEPARTMENT
OF REVENUE,

Respondent.

Case No. DV-10-02

**RESPONSE TO RESPONDENT'S
MOTION FOR EXTENSION OF TIME**

Petitioners Charles B. Lucas ("Lucas"), Lucas Ranch, Inc. ("Lucas Ranch"), Montana Farm Bureau Federation ("MFBF"), and The Montana Taxpayers' Association ("Montax"), by and through their counsel, hereby respond in opposition to Respondent's Motion for Extension of Time to Respond to Petitioners' Motion for Class Certification. The undersigned is sensitive to the scheduling issues of Respondent's new counsel, but regrettably, Petitioners must oppose Respondent's motion for extension due to impending deadlines having a direct impact on this case.

On April 12, 2010, Petitioners received a request from the legislative Agricultural Land and Forest Land Property Reappraisal Subcommittee of the Revenue and Transportation Interim

Committee (the “Subcommittee”) to provide an update on the status of the pending litigation on April 29, 2010. The Subcommittee is tasked with reviewing the agricultural reappraisal, and has been reviewing the phase-in calculations at issue in this lawsuit. The Subcommittee has requested information from the parties regarding the case status and possible timelines. Given the statewide scope of the reappraisal errors and the class of affected taxpayers in this lawsuit, the Respondent’s response to Petitioners current motion for class certification will be an important issue for the Subcommittee’s consideration. As a result, Petitioners are unable to consent to an extension beyond April 28, 2010.

Moreover, Petitioners’ filed this motion in response to the Respondent’s denial of allegations related to the applicability of this lawsuit to “similarly situated taxpayers.” (e.g. Answer, paras. 20 and 33) Sections 15-1-406 and 407, MCA require that taxpayers pay their property taxes under protest to benefit from this lawsuit. The deadline for second half 2009 property tax payments, statewide, is June 1, 2010. Petitioners were hopeful to use their proposed class notice to remind taxpayers of their obligation to timely protest. Petitioners intended to have their reply filed, and this motion ripe for ruling by the Court prior to the end of April, to give the Court an opportunity to rule prior to the June 1, 2010, tax due date.

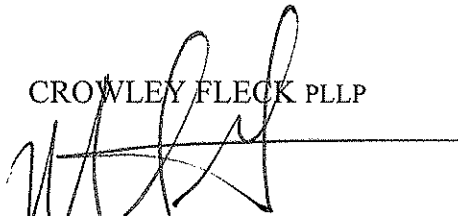
Finally, since receiving Respondent’s motion for extension, the undersigned has received a notice from the Respondent of its intent to adopt a new administrative rule which could directly affect the members of the class Petitioners seek to have certified. *See* MAR Notice No. 42-2-826, a copy of which is attached as Exhibit A. In relevant part, this rule requires Respondent to issue a new 2009 assessment for taxpayers who “timely filed . . . [a] District Court action relating to the 2009 assessment.” Ex. A, p. 903, New Rule I. To the extent this rule is deemed to apply to all class members benefitting from this litigation, it will have a material impact on this

litigation, and may substantially reduce the scope of issues for the Court's consideration. However, the hearing on that rule notice has been scheduled for May 10, 2010, and the close of the comment period is May 14, 2010. Under these timelines, if the Department's response is not filed until May 7, 2010, Petitioners would have no time to evaluate the impact of the Department's position relative to their motion for class certification on Petitioners' comments on the Department's proposed rule.

For all these reasons, Petitioners oppose Respondent's request for extension to May 7, 2010. Petitioners do not object to an extension to April 28, 2010, if Respondent continues the parties' practice of serving a copy of the pleading electronically on the day mailed or faxed to the Court.

Dated this 19th day of April, 2010.

CROWLEY FLECK PLLP



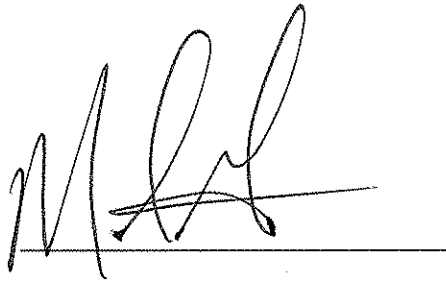
Michael Green
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I, Michael Green, one of the attorneys for the law firm of Crowley Fleck PLLP hereby certify that on the 19th day of April, 2010, I had mailed, via U.S. Mail and electronic mail, a true and correct copy of the foregoing document to the following:

C.A. Daw
Michele Crepeau
Montana Department of Revenue
Legal Services Office
125 N. Roberts
P.O Box 5805
Helena, MT 59604-5805

McMahon Law Firm, PLLC
Michael F. McMahon
212 North Rodney
Helena, MT 59601

A handwritten signature in black ink, appearing to read "M. McMahon", is written over a horizontal line. The signature is stylized and cursive.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I) NOTICE OF PUBLIC
relating to value before reappraisal for 2009) HEARING ON PROPOSED
agricultural land) ADOPTION

TO: All Concerned Persons

1. On May 10, 2010, at 11:00 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rule.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

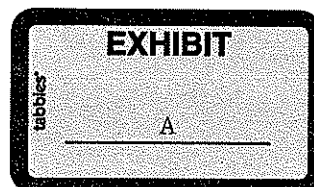
2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., May 3, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I CORRECTION OF VALUE BEFORE REAPPRAISAL (VBR) FOR 2009 AGRICULTURAL LAND (1) For those properties that experienced productivity only changes for tax year 2009, the department will correct the VBR as follows:

- (a) If the taxpayer timely filed an AB-26, County Tax Appeal Board (CTAB) appeal, State Tax Appeal Board (STAB) appeal, or District Court action relating to the 2009 assessment the department will:
 - (i) replace the calculated VBR with the prior year VBR of the prior grade;
 - (ii) issue a revised assessment notice for 2009 showing the correct VBR; and
 - (iii) provide the county the information necessary to allow the county to issue a new tax bill.
- (b) If the taxpayer did not timely file an AB-26, CTAB appeal, STAB appeal, or District Court action relating to the 2009 assessment the department will correct the VBR calculation beginning in tax year 2010.
- (c) The department will correct the VBR and adjust the taxable values each year for the subsequent five years of this reappraisal cycle by one-fifth of the difference in taxable value.
 - (i) The difference in taxable value is the amount that the department either under or over assessed in 2009.

7-4/15/10



MAR Notice No. 42-2-828

(ii) The adjusted taxable value will be used by the counties to apply mill levies to determine taxes owed.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-201, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the department adopted ARM 42.20.502 in 1997, and amended it in 2002. ARM 42.20.502 directed the department to use the prior year VBR for the current year VBR during 2002 or subsequent tax years. ARM 42.20.502 specified the VBR for class three property. For class three property that contains a productivity or grade change, the current year VBR will be the prior year VBR of the prior grade.

The new reappraisal cycle began January 1, 2009, pursuant to 15-7-111, MCA. The department updated its agricultural manual for this new reappraisal cycle. The department did not timely update ARM 42.20.502. The updated agricultural manual required a calculated VBR rather than the 2008 full reappraisal value. The calculated VBR resulted in an incorrect application of phase-in for properties with productivity only changes. By adopting New Rule I, the department is correcting the phase-in for these properties to comport to the requirements of ARM 42.20.502, as amended in 2002.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than May 14, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices

and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State April 5, 2010