

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>RED JUNCTION, LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>MESA COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 46051</b></p>
<p><b>ORDER ON MOTION TO DISMISS</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on March 9, 2006, Karen E. Hart, Sondra Mercier, and Steffen Brown, presiding. Petitioner was represented by Michael J. Russell, Esq. Respondent was represented by Valerie J. Robinson, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2003.

This matter pertains to petitions for abatement for tax year 2003 that Petitioner filed with Respondent on September 13, 2005.

Respondent contends that the Board lacks jurisdiction in this matter, as Petitioner filed petitions for abatement of taxes for tax year 2003 on August 16, 2004, and the Property Tax Administrator granted those abatements on April 20, 2005. Respondent argues that the approval of the abatement petitions filed on August 16, 2004, represents a final determination for tax year 2003. As such, *res judicata* bars Petitioner from bringing a second set of petitions for abatement for tax year 2003.

Petitioner contends that the second set of petitions seek abatement of tax monies that are different from the taxes abated via the first set of abatement petitions. Petitioner argues that nothing in C.R.S. § 39-10-114 holds that Petitioner exhausted its remedies as a result of the abatements approved on April 20, 2005. Moreover, Petitioner believes that the current 2003 valuations are erroneous, pursuant to the Court’s decision in *Cherry Hills Country Club v. Board of County Comm’rs*, 832 P.2d 1105 (Colo.App. 1992) and *Boulder Country Club v. Board of County Comm’rs*, 97 P.3d 119 (Colo.App. 2003).

C.R.S. § 39-10-114 sets forth the authority for a taxpayer to file a petition for refund or abatement of taxes if the Petitioner believes that their property taxes have been levied erroneously or illegally. If the Board of County Commissioners denies the petition for refund or abatement, the Petitioner may appeal to the BAA within 30 days of entry of any such decision. C.R.S. § 39-10-114.5. The Petitioner may thereafter appeal to the Court of Appeals. *Id.*

C.R.S. § 39-10-114 does not provide authority for a taxpayer to file two separate petitions for abatement for the same real property for the same tax year. In addition, there is no case law to support a claim that a taxpayer may file two petitions for abatement for the same tax year for the same property.

The Board and the property tax system as a whole have an interest in judicial economy and finality of decisions. *Res judicata*, otherwise known as claim preclusion, bars litigation of matters that were decided in a prior proceeding, as well as matters that could have been raised but were not. *Gavrilis v. Gavrilis*, 116 P.3d 1272, 1273 (Colo.App. 2005). For a claim in a second proceeding to be precluded by a previous judgment, (1) the first judgment must be final, (2) both actions must involve the same subject matter, (3) both actions must involve the same claim for relief and (4) there must be the same parties or privity between parties to the actions. *Continental Divide Ins. Co. v. Western Skies Mgmt., Inc.*, 107 P.3d 1145, 1147 (Colo.App. 2004).

Petitioner filed two sets of petitions for the same property for the same tax year. The resolution of the first set of petitions for abatement is final, as Petitioner received the total valuation sought. Petitioner could have requested a lower value on the original set of abatement petitions but did not. Both sets of petitions for abatement involve the same subject matter, assessment of property tax for the year 2003, and both sets of petitions for abatement involve the same claim for relief, total valuation for assessment. Contrary to Petitioner's argument that they seek to abate different monies than were abated as a result of the first set of petitions, a party may seek review of only the total valuation for assessment and not of the component parts of the total. *Cherne v. Board of Equalization of Boulder County*, 885 P.2d 258, 259 (Colo.App. 1994).

Neither *Cherry Hills Country Club v. Board of County Comm'rs*, 832 P.2d 1105 (Colo.App. 1992) nor *Boulder Country Club v. Board of County Comm'rs*, 97 P.3d 119 (Colo.App. 2003) addresses the issue of whether a taxpayer may file a second petition for abatement on the same property for the same tax year after a first petition for abatement was filed, acted upon, and became final.

## **ORDER:**

Respondent's Motion to Dismiss is granted. The appeal is dismissed.

**APPEAL:**

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

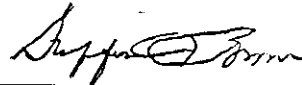
In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

**DATED and MAILED** this 31<sup>st</sup> day of March 2006.

**BOARD OF ASSESSMENT APPEALS**



Steffen A. Brown



Sondra W. Mercier

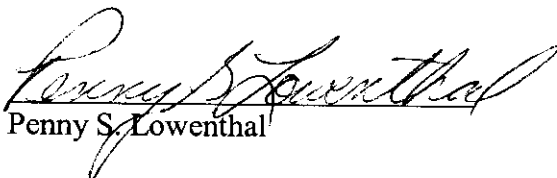


Karen E. Hart

This decision was put on the record

**MAR 31 2006**

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



Penny S. Lowenthal

