

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JEANETTE AND CHRISTOPHER PETERSON,</p> <p>v.</p> <p>Respondent:</p> <p>CLEAR CREEK COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 55411</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 23, 2010, Sondra W. Mercier and Louesa Maricle presiding. Petitioners were represented by Jeannette Peterson. Respondent was represented by Robert W. Loeffler, Esq. Petitioners are requesting an abatement/refund of taxes for tax year 2007.

Subject property is described as follows:

**614 Rose Street, Georgetown, Colorado
Clear Creek County Schedule No. R010181**

The subject property consists of a two and a half-story, 3,680 square foot building built in 1880, situated on a 4,200 square foot lot. The building has retail use on the ground level and vacation rental units on the upper floors.

Jeannette Peterson testified for Petitioners that prior to 2007, the property was classified as 50 percent commercial and 50 percent residential. For tax years 2007 and 2008, the classification of the subject property was changed to 100 percent commercial. Following the 2008 Board of Assessment Appeals (BAA) decision regarding Docket 48280, filed by a non-related property owner that supported residential classification for vacation rentals, Petitioners believed that Respondent would be required to change the commercial classification to residential for all properties in the county with vacation rental units. When Petitioners received the 2009 assessment of the property, still classified as 100 percent commercial, they protested the classification and Respondent reclassified the property to 50 percent commercial and 50 percent residential. Subsequently,

Petitioners filed a Petition for Abatement or Refund of Taxes for tax years 2007 and 2008, based on the 2009 reclassification. The petition was dated January 18, 2010, and the assessor's office received it on January 19, 2010. Respondent granted the abatement/refund for tax year 2008, but it was denied for 2007 because of untimely filing. The deadline for filing a petition for 2007 was the first working day of January 2010.

Citing Colorado House Bill 02-1265, effective July 1, 2002, and BAA Docket 48280, Petitioners contend that the 2007 change in classification to all commercial use was illegal. Ms. Peterson testified that she was not informed about the two-year filing deadline when she obtained the abatement/refund petition form from the Clear Creek County Assessor's office and did not find any reference to the time limit on the form itself. Therefore, Ms. Peterson believed that the denial of the Petition for tax year 2007 is unjust.

Diane Settle, Clear Creek County Assessor, appeared as a witness for Respondent. Ms. Settle testified about the property classification history for the subject and that Respondent is prevented by Colorado State statute from granting any abatement/refund petition filed later than the two-year protest period. The witness testified that the abatement filing deadline is normally relayed by office staff verbally to the property owner verbally when the petition form is obtained, but Ms. Settle could not testify that it did or did not occur in this case. The witness could not testify about other sources Petitioners may have had for that information.

Respondent presented sufficient probative evidence and testimony to prove that the abatement/refund petition for tax year 2007 for the subject property was filed after the two-year deadline.

Petitioners relied on House Bill 02-1265 and BAA Docket 48280 as support for the testimony that the 2007 and 2008 commercial classification of the property was illegal. BAA docket decisions relate to appeals for specific properties, not property classes. The properties involved in Docket 48280 were single family homes and though the case decision may be used as support for residential classification for vacation rentals, the subject property is not identical and must be considered based on its own specific uses. House Bill 02-1265 establishes that certain real property is residential for purposes of property taxation. The Board concludes that the definitions included in House Bill 02-1265 may require interpretation relative to specific properties and again, that the subject property must be considered based on its own specific uses. Protest procedures exist to allow property owners the opportunity for due process and dispute resolution, which Petitioner utilized. As a result of Petitioners' property classification protest in 2009, the County agreed and the classification was changed.

The Board agrees with Petitioners that Respondent should make every effort to make protest and petition rules and deadlines easily available to property owners. However, the Board does not have the authority to mandate to the counties how or in what form that information is disseminated. That is an issue Petitioners may choose to address with county officials. Regardless, Petitioners not being aware of the two-year filing deadline does not negate it.

Abatement petitions must be 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. Case law provides that

the taxpayer has until the first working day of January following the two-year deadline, *Golden Aluminum Company v. Weld County Board of County Commissioners*, 867 P.2d 190 (Colo. App. 1993). In this case, the petition was filed later than the two-year deadline. On this basis, the Board concludes that the petition for abatement and refund for tax year 2007 is time barred.

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-five 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-five 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 13th day of October 2010.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Sondra W. Mercier

Louisa Maricle

Louisa Maricle

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

Amy Bruins

Amy Bruins

