



STATE OF NEVADA  
STATE BOARD OF EQUALIZATION

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CHRISTOPHER G.  
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*Secretary*

In the Matter of

Mud Camp Mining Company dba IMV Nevada  
Amargosa Mill  
William H. Wahl, Manager  
PETITIONER

Nevada Department of Taxation  
RESPONDENT

Net Proceeds of Minerals Tax

Case No. 14-101

**NOTICE OF DECISION**

***Appearances***

Ross E. DeLipkau appeared on behalf of William H. Wahl (Taxpayer).

Jan Kelley appeared on behalf of the Department of Taxation (Department).

***Summary***

The matter of the Taxpayer's petition for review of net proceeds of minerals tax certification came before the State Board of Equalization (State Board) for hearing. The Notice of Appearance to determine whether the State Board would accept jurisdiction of the case was heard by the State Board on March 24, 2014 in Carson City, Nevada after due notice to the Taxpayer and the Assessor.

Pursuant to NAC 361.7014, the Secretary to the State Board examined the petition of the Taxpayer and found the Taxpayer's appeal was for the tax year 2012-13. The appeal was received by the Department on September 26, 2013. Appeals of net proceeds of minerals certifications must be filed within 30 days after the certification is sent to the taxpayer. The certification was originally sent on April 19, 2013 and later revised on May 6, 2013. The appeal for the tax year 2012-13 was due no later than June 6, 2013 and was therefore late. *See Record, SBE page 87-88.* Accordingly, the Secretary recommended to the State Board that the appeal be dismissed due to lack of jurisdiction.

The Taxpayer asserted the Department had been properly advised of the change of address of the representative for the Taxpayer, William Wahl on the annual reporting form, but the Department failed to send the certification and billing to that address. The Taxpayer asserted it's due process rights were therefore denied, and asked the State Board to remand the matter to the Tax Commission for further hearing. *See Tr., 3-24-14, p.15, ll.11-19.*

The State Board, having considered all evidence, documents and testimony pertaining to the jurisdiction of the State Board, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

### FINDINGS OF FACT

- 1) The State Board is an administrative body created pursuant to NRS 361.375.
- 2) The State Board is mandated to hear all appeals of net proceeds of minerals tax assessments pursuant to NRS 362.135.
- 3) The Taxpayer and the Assessor were given adequate, proper and legal notice of the time and place of the hearing before the State Board, and the matter was properly noticed pursuant to the Open Meeting Law at NRS 241.020. The Department provided evidence to show the Taxpayer received notice of the hearing. *See Record, SBE page 111.*
- 4) The subject net proceeds certification was based on the annual statement of gross yield and claimed net proceeds filed by the Taxpayer and received by the Department on February 19, 2013, as adjusted by the Department after disallowance of certain marketing and depreciation expenses. *See Record, SBE pages 39-76, 89.*
- 5) Pursuant to NRS 362.135 any taxpayer dissatisfied by any certification of the Department may file an appeal with the State Board of Equalization within 30 days after the certification is sent to the taxpayer. The certification was mailed on April 20, 2013, and later revised on May 6, 2013, however the appeal was not received until September 26, 2013 and was therefore filed after the filing deadline of June 6, 2013. *See Record, SBE pages 87-89; Tr., 3-24-14, p.11, ll.9-16.*
- 6) The State Board found the Department had properly sent the certification and billing to the address of the Taxpayer as shown on the annual report submitted by the Taxpayer. *See SBE Record, page 22; Tr., 3-24-14, p. 30, ll. 9-21.*
- 7) The State Board found the Taxpayer did not show circumstances beyond the control of the Taxpayer as to why the appeal was filed beyond the deadline for appeal to the State Board, and declined to accept jurisdiction of the case. *See Tr., 3-24-14, p. 30, l. 4 through p.32, l.4.*
- 8) Any finding of fact above construed to constitute a conclusion of law is adopted as such to the same extent as if originally so denominated.

### CONCLUSIONS OF LAW

- 1) The State Board has authority to determine whether it has jurisdiction to hear a matter. The State Board has the authority to determine matters necessary to carry out the power conferred on the State Board by statute. *Checker, Inc. et al. v. Public Serv. Comm'n*, 84 Nev. 623, 629-630, 446 P.2d 981 (1968).
- 2) The certification was properly sent to the taxpayer pursuant to NRS 362.130. *See Tr., 3-24-14, p. 19, l. 12 through p. 20, l. 12; p. 21, l. 12 through p. 22, l. 1; p. 25, l. 14 through p. 26, l. 8; p. 26, l. 19 through p. 27, l. 3.*
- 3) The State Board found the Taxpayer did not show circumstances beyond the control of the Taxpayer as to why the appeal was not filed timely, and declined to accept jurisdiction of the case. *NRS 360.291(1)(a).*

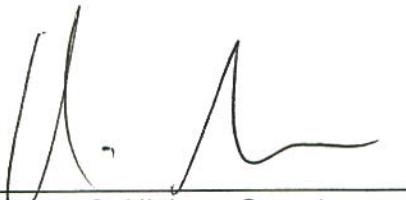


- 3) Any conclusion of law above construed to constitute a finding of fact is adopted as such to the same extent as if originally so denominated.

### DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the State Board held it is without jurisdiction to hear the above referenced appeal by the Taxpayer. The Department is instructed to certify the net proceeds assessment roll consistent with this decision.

BY THE STATE BOARD OF EQUALIZATION THIS 25<sup>th</sup> DAY OF APRIL, 2014.

A handwritten signature in black ink, appearing to read 'C. Nielsen', written over a horizontal line.

Christopher G. Nielsen, Secretary  
CGN/ter