

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

MAR 01 2018

Montana Tax Appeal Board

SEIPEL, JEAN & JOE,

*Appellants,*

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

*Respondent.*

CASE No: IT-2017-13

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER,  
AND OPPORTUNITY FOR JUDICIAL  
REVIEW

Joe and Jean Seipel appeal from the Montana Department of Revenue (DOR) Office of Dispute Resolution (ODR) Order of July 11, 2017. ODR upheld the DOR's final audit that denied various business and personal deductions the Seipels claimed on their 2003, 2004 and 2005 Montana individual income tax returns.

This Board held a hearing on January 16, 2018.

For the reasons provided herein, the Seipels' appeal is denied.

**Findings of Fact**

**Procedural History**

1. The Seipels filed joint federal and Montana individual tax returns for tax years 2003, 2004 and 2005. In 2005 the Internal Revenue Service (IRS) initiated audits of the Seipels' 2003 and 2004 federal returns and in 2006 initiated an audit of the Seipels' 2005 federal return. DOR Ex. L.

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2. Mr. Seipel testified that that at some time during the audit proceedings he produced and delivered to the IRS examiner a box of receipts and other original documents to support the various deductions and credits claimed on the tax returns.
3. On September 29, 2008, the IRS examiner made a final audit determination for each year and assessed significant amounts of additional tax due: \$127,499.13 for 2003, \$83,689.00 for 2004, and \$118,113.00 for 2005. DOR Ex. L.
4. On October 22, 2009, pursuant to the normal course of business, the IRS transmitted copies of the Revenue Agent Reports (RARs) to the DOR which notified the DOR of IRS' final audit determination for the three tax years at issue. DOR Exs. B, C, D. A Revenue Agent Report contains all the information the IRS examiner used to show what adjustments they made to a taxpayer's return and how any additional tax liability was computed.
5. The DOR adjusted the Seipels' Montana individual income tax returns for the 2003, 2004 and 2005 tax years based on the RAR adjustments made by the IRS examiner on the Seipels' federal returns, and sent letters to the Seipels notifying them of the adjustments to the Montana returns on November 2, 2009. DOR Ex. E.
6. On November 4, 2009, Mr. Seipel contacted the DOR and informed it that he was filing an audit re-consideration form with the IRS and that he would take the dispute to the [U.S.] tax court if the re-consideration was not successful. DOR Ex. A. The DOR agreed to hold the Montana

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assessments in abeyance until the conclusion of the Seipels' federal appeal. ODR Ex. E(1).

7. The Seipels exhausted their federal administrative appeal rights with the IRS and then filed a Petition in the U.S. Tax Court on March 23, 2012. DOR Ex. N. After a hearing held in Helena on April 14, 2014, the U.S. Tax Court denied the Seipels' Petition in an Order dated August 11, 2015. DOR Ex. M.
8. On September 19, 2015, the Seipels appealed that decision to the Ninth Circuit Court of Appeals. DOR Ex. N. On May 4, 2016, the Court of Appeals dismissed the appeal because the Seipels failed to file an opening brief. *Id.*
9. On January 9, 2017, the DOR issued a final determination letter upholding its 2009 assessments and notified the Seipels that the DOR intended to resume its collection efforts for Montana, wherein the tax, interest and penalties owing for tax years 2003 through 2005 totaled \$176,049.61. ODR Ex. E(1).
10. On January 17, 2017, the Seipels appealed the DOR's final determination to the Office of Dispute Resolution (ODR). *Id.*
11. The Seipels' appeal to ODR claimed:  

Both the State and the IRS used incorrect income and expense info to calculate our taxes for 2003, 2004, + 2005 tax years.

ODR Ex. 1.

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12. ODR held a hearing on May 2, 2017.
13. ODR issued a decision on July 11, 2017 denying the Seipels' appeal. The hearing examiner found "the Taxpayers . . . failed to produce documents or testimony that prove, by a preponderance of the evidence, that they are entitled to the deductions they claimed." Findings of Fact, Conclusions of Law, and Order, ODR Cause No.17-012-IT-M, p. 13.
14. On August 7, 2017, the Seipels filed an appeal with this Board. In their appeal letter, the Seipels asserted,  

. . . our due process, discovery, and equal protection rights have been cut off in the July 11, 2017 decision by the Montana Department of Revenue. Our income tax liability for tax years 2003 through 2005 is significantly overstated by the Montana Department of Revenue and the IRS.
15. The Seipels request an Order by this Board that their "tax liability for tax years 2003 through 2005 be reduced to zero."

**The Seipels' Motion to Continue**

16. On January 9, 2018, the Seipels filed a motion to continue the hearing for "60 to 90 days to allow the Appellants extra time to receive documents requested from the IRS that relate to this matter and which have not been received."
17. This Board set a show cause hearing for January 10, 2018. This Board requested the Seipels provide documentation supporting their requested

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continuance and to explain how the taxpayers documents allegedly in the IRS' possession might be relevant to this appeal.

18. On January 10, 2018, this Board held the show cause hearing. Mr. Seipel appeared on behalf of the Seipels and stated that during the IRS audit he had produced a box of original receipts which, to date, the IRS has never returned to him. In support of his argument, Mr. Seipel produced copies of two letters, one dated August 27, 2010 and the other dated November 1, 2017, that do not indicate any mailing address but were allegedly sent to the IRS, requesting the IRS return the Seipels' original tax records.
19. At the conclusion of the show cause hearing, Mr. Seipel admitted the IRS likely does not have the documents any more.
20. This Board denied the Seipels' request, finding that an additional 60 to 90 days would not result in the Seipels obtaining the documents he claims he gave to the IRS because: (1) Mr. Seipel admitted the IRS likely no longer possessed the documents; and (2) the Seipels have apparently been requesting those documents since August 2010, and he could provide no assurance or even minimal likelihood that they would be obtained within the next 60 to 90 days, if at all.

## **MTAB Hearing**

21. This Board held the hearing on January 16, 2018.
22. The Seipels were represented by Mr. Seipel who appeared, at his request, by telephone. Mr. Seipel testified in support of their appeal.

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23. During the hearing, Mr. Seipel submitted, and this Board admitted, the following exhibits<sup>1</sup>:

- a. Ex. 1: Hand-written agreement between the Seipels as to God's Country Ministries, Inc. (January 1, 2003) [marked as 1 – 2];
- b. Ex. 2: Letter from the IRS to God's Country Ministries, Inc. (March 1, 2003) [marked as 3 – 4];
- c. Ex. 3: God's Country Ministries Psalm [marked as 5];
- d. Ex. 4: God's Country TV;
- e. Ex. 5: Agreement between Robert Fick and God's Country Ministries for youth Christian video program (May 3, 2002);
- f. Ex. 6: Email between Joe Seipel and Dave & Kristie<sup>2</sup> about TV program (March 26, 2002);
- g. Ex. 7: Copy of Ex. 1;
- h. Ex. 8: Newspaper clippings [marked as 12];
- i. Ex. 9: Letter from IRS to God's Country Ministries (August 19, 1999) [marked as 13 – 17];
- j. Ex. 10: Form 872-C for God's Country Ministries (August, 18, 1999) [marked as 18];
- k. Ex. 11: Mr. Video Productions – Video Production Suggestions (December 10, 1999) [marked as 19];

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<sup>1</sup> The exhibits total 45 pages. The Board has grouped these exhibits based on content and not necessarily the page numbers. At the hearing, Mr. Seipel referred to each page as an exhibit; i.e. page 1 constituted Exhibit 1.

<sup>2</sup> Their full names are not included in the email.

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- l. Ex. 12: Jesus Video Project Proposal (no date) [marked as 20 – 22];
  - m. Ex. 13: Logs of those staying in the Seipels' home, from June 2005 to April 2008 [marked as 23 – 40]; and
  - n. Ex. 14: Information on the Seipels' 2 homes [marked as 41 – 45].
24. The DOR was represented by Jessica DeMarois. The following testified on behalf of the DOR:
- a. DOR unit manager of the Income Tax Compliance unit, Micah Christensen; and
  - b. DOR tax examiner of the Income Tax Compliance unit, Marla Wolstein.
25. During the hearing, the DOR submitted, and this Board admitted, the following exhibits:
- a. Ex. A: Seipels' account notes maintained by the DOR from November 2009 to February 2017;
  - b. Ex. B: RAR tax year 2003;
  - c. Ex. C: RAR tax year 2004;
  - d. Ex. D: RAR tax year 2005;
  - e. Ex. E: DOR statement of account notice to the Seipels (November 2, 2009);
  - f. Ex. F: DOR statement of account notice to the Seipels (May 3, 2010);
  - g. Ex. G: Letter by the Seipels to DOR regarding May 3, 2010 DOR notice (May 27, 2010);

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- h. Ex. H: DOR statement of account notice to Seipels (February 2, 2012);
- i. Ex. I: Letter from Micah Christensen to Seipels (September 13, 2012);
- j. Ex. J: DOR notice of intent for IRS offset to Seipels (September 29, 2014);
- k. Ex. K: Seipels' response to DOR's September 29, 2014 notice (October 20, 2014);
- l. Ex. L: IRS account transcripts for the Seipels' 2003 – 2005 tax years;
- m. Ex. M: U.S. Tax Court Memorandum of Findings of Fact and Opinion in *Joe Seipel and Jean Seipel v. Commissioner of Internal Revenue*, 2015-154 (August 11, 2015); and
- n. Ex. N: U.S. Tax Court docket for the case *Joe Seipel & Jean Seipel v. Commissioner of Internal Revenue*, docket no. 007633-12 L.

### **The Seipels' case**

26. At the hearing, Mr. Seipel claimed the DOR's assessment relied solely on the IRS' redetermination of the Seipels' federal adjusted gross income as set forth in the RARs. Mr. Seipel testified that the RARs did not accurately reflect their federal adjusted gross income because the IRS examiner wrongly denied many of the Seipels claimed Schedule C (Profit or Loss from Business) and Schedule A (Itemized Deductions) deductions.

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27. During the years at issue Mr. Seipel was a real estate appraiser who filed a Schedule C for his appraising business known as “Market Research Group.”
28. The IRS examiner did not use a broad brush to disallow all of the Seipels claimed business deductions, rather the RARs provide sufficient detail to indicate that the examiner must have reviewed some documentation provided by Seipels to reach the final audit adjustments. *Id.*
29. For example, the RAR for tax year 2005 indicates that the Seipels claimed \$36,441 for Schedule C Car/Truck Expenses and the IRS examiner accepted that figure without adjustment – thereby allowing the Seipels the full amount of the deduction they claimed for their car expenses. DOR Ex. D (bates SEIPEL – MDOR 000132). However, the next page of the 2005 RAR indicates that the Seipels claimed \$49,477 in Schedule C Office Expenses and the IRS examiner disallowed \$41,956 due to “Disregard RecordKeep Rules” and adjusted the deduction for Office Expenses to \$7,521. DOR Ex. D (bates SEIPEL – MDOR 000133). The subsequent page of the 2015 RAR indicates that the Seipels claimed \$4,551 for Schedule C Supplies and the IRS examiner disallowed the full \$4,551 due to “Disregard RecordKeep Rules” and thus reduced to zero the business deduction for supplies. DOR Ex. D (bates SEIPEL – MDOR 000134).
30. Importantly, not all of the IRS examiner’s adjustments were made to reduce the Seipels claimed deductions. For example, the 2005 RAR

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indicates the Seipels reported \$4,506 in Schedule C Utilities and the audit increased the Utilities deduction by \$1,003, also due to “Disregard RecordKeep Rules” for a new upward adjustment to allow \$5,509 as a deduction for Utilities. DOR Ex. D (bates SEIPEL – MDOR 000143).

31. The RAR also indicates that the IRS examiner made adjustments to Schedule A (itemized deductions). For example, the 2005 RAR indicates the Seipels claimed \$24,447 for charitable deductions subject to the 50% limitation, the examiner disallowed \$2,240 due to “Disregard RecordKeep Rules” thereby reducing the deduction to \$22,207. DOR Ex. D (bates SEIPEL – MDOR 000128). Two pages later, on the 2005 RAR report, the IRS examiner includes a deduction for \$2,092 as a Schedule A deduction for Personal Property Tax where the Seipels had claimed no deduction at all, due to “Taxpayer Unaware of Law.” DOR Ex. D (bates SEIPEL – MDOR 000130). This adjustment indicates that the IRS Examiner granted the Seipels a tax deduction they had not even claimed on their tax return because they were unaware of the law that they could take this personal expense as a deduction.
32. A review of the RARs for 2003 and 2004 demonstrate that they are equally as thorough as the RAR for 2005, and demonstrate that the IRS examiner conducted a thorough audit of the Seipels federal income tax returns. The IRS examiner ultimately disallowed hundreds of thousands of dollars in claimed business expenses and personal deductions which resulted in significant upward adjustments to the Seipels federal adjusted gross income for each of the tax years under audit.

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33. Mr. Seipel testified he did not agree with the IRS examiners adjustments to his 2003, 2004 and 2005 federal returns, but that he could not produce documents (receipts) that would establish the validity of the deductions disallowed by the IRS, because the IRS had never returned his box of original documents when the federal audit concluded. Mr. Seipel testified that he may have some copies of some of the documents but that the information he does have is incomplete. However, Mr. Seipel did not provide any documentation at all to the DOR or this Board.
34. The majority of the Seipels exhibits pertained to God's Country Ministries, Inc. (God's Country).
35. Mr. Seipel produced a March 1, 2003, letter from the IRS addressed to God's Country in care of Joe Seipel that grants God's Country an exemption from federal taxation under section 501(c)(3) of the Internal Revenue Code. Seipel Ex. 2. The March 1, 2003, letter states that if God's Country has a tax filing requirement it has to use Form 990-T (Exempt Organization Business Income Return) to report that income. Seipel Ex. 2 p.2.
36. Mr. Seipel also produced a two-page handwritten Agreement, dated January 1, 2003, that was signed by Joe and Jean Seipel and Joe Seipel as Chairman of God's Country. Seipel Ex. 1.
37. Similarly, the Seipels Exhibits 3-14 all related to God's Country.

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38. Mr. Seipel asked both DOR witnesses if they were aware of a recent federal district court decision concerning religious non-profits. Mr. Seipel did not provide a copy of the decision prior to the hearing or at the hearing and both DOR witnesses testified that they did not know what case he was referring to.
  
39. In conclusion, Mr. Seipel asserted he has been treated differently than other taxpayers; suggesting that the IRS audit resulted in a federal adjusted gross income that is not typical of other real estate appraisers. Mr. Seipel suggested, therefore, that the DOR failed to equalize his income tax liability as he claims is required by the Montana Constitution.

**The DOR's case**

40. Ms. Wolstein testified that she had taken responsibility for the DOR's assessment against the Seipels in 2016 when auditor Connie Day, who had made the initial assessment against the Seipels, left the Department.
  
41. Ms. Wolstein testified that the IRS provides the DOR with RARs for taxpayers who reside in Montana, as part of an agreement between the IRS and the DOR. Ms. Wolstein explained that, unless a taxpayer files an amended Montana return within 90 days, the DOR routinely uses the numbers in the RARs to adjust the taxpayer's state income tax returns

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so that that the taxpayer's adjusted gross income as reported to Montana matches the RAR's federal adjusted gross income.

42. Ms. Wolstein explained that anyone at the DOR who has any contact with or about a taxpayer as a regular course of its business, documents the substance of that contact in a DOR program known as "GenTax." These are referred to as the "Account Notes."
43. The first entry in the DOR's Account Notes for the Seipels indicates that on November 2, 2009, the "RAR's for 2003, 2004 and 2005 added Sch. C income and SE [self-employment] tax." DOR Ex. A (bates number Sipel – MDOR 000049). This GenTax note refers to the Statement of Accounts that the DOR sent to the Seipels on November 2, 2009, to notify them that the DOR had made adjustments to their 2003, 2004 and 2005 state tax liability based on the adjustments made to their federal returns. DOR Ex. E.
44. The second note in GenTax indicates that on November 4, 2009, Mr. Seipel called the DOR and said he would send the DOR a copy of the audit re-consideration form he was filing with the IRS and that he would take the dispute to the [U.S.] tax court if the re-consideration was not successful. *Id.* (Bates Seipel -MDOR 000049).
45. Ms. Wolstein testified that because Mr. Seipel immediately contacted the DOR upon receipt of the November 2<sup>nd</sup> notice and he explained that he was disputing the IRS audit results, Ms. Day suspended collection

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activity on the Seipels account to afford them opportunity to dispute the federal audit. Ms. Wolstein testified that the DOR's normal practice is to suspend collection activities against a taxpayer who notifies the DOR they are disputing IRS adjustments.

46. Ms. Wolstein testified that the DOR's Exhibits F,G,H,I, J and K, document the minimal, but consistent, communication between the DOR and Mr. Seipel that served to remind the Seipels of the outstanding liability owed to the DOR. These exhibits consist of copies of DOR notices sent to the Seipels showing an amount due to the DOR and copies of those same notices returned to DOR with Mr, Seipels handwritten notes over the letters indicating that he was still disputing the IRS audit. DOR Exs. F – K.
47. Both Mr. Christensen and Ms. Wolstein testified that the DOR waited until the Ninth Circuit had dismissed the Seipels' appeal before resuming collection actions against the Seipels. DOR Ex. A, M, and N.
48. Both Mr. Christensen and Ms. Wolstein testified that the DOR does not have to accept wholesale adjustments from an RAR if a taxpayer provides the DOR with evidence or documentation that establishes the IRS made its adjustments in error. Both Mr. Christensen and Ms. Wolstein testified that the DOR did not receive any documentation from the Seipels at all, and thus nothing warranted a reduction to the federal adjusted gross income as determined by the IRS audit which the DOR relied on to revise the Seipels state tax liability.

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49. Lacking any relevant documentation from the Seipels, Mr. Christensen testified the DOR had to follow Montana statutes and regulations and calculated the Seipels' revised tax liability based on the federal adjusted gross income as reported to the DOR in the RARs.
50. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

## Conclusions of Law

51. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

## Jurisdiction

52. This is an income tax dispute, and thus the Seipels' appeal falls under MCA § 15-2-302.
53. This Board will "conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act." MCA § 15-2-302(5).
54. The Montana Rules of Evidence apply to this appeal. MCA § 2-4-612(2) – (3).

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## Income Tax

55. Taxable gross income means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter. MCA § 15-30-2101(32).
56. Under Montana statutes, adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, plus certain additions. MCA § 15-30-2110(1).
57. "Under Montana law, in computing net income, deductions are generally those permitted by 26 U.S.C. §§ 161 and 211." *Id.* at ¶ 13.
58. 26 U.S.C. § 161 includes 26 U.S.C. § 162 and 26 U.S.C. § 170 as allowable deductions.
59. 26 U.S.C. § 162 allows for the deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade of business . . ." 26 U.S.C. § 162(a)
60. 26 U.S.C. § 170 allows for the deduction of charitable contributions and gifts only if "verified under regulations prescribed by the secretary." 26 U.S.C. § 170(a)(1). Failure to verify the deduction will mean the deduction will not be granted. *Id.*
61. A general rule of taxation is that an item may constitute a deduction only when the legislature specifically establishes the deduction. *GBN, Inc. v. Montana Dept. of Revenue* (1991), 249 Mont. 261, 266; 815 P.2d 595, 595-

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98 citing *Cyprus Mines Corp. v. Madison County* (1977), 172 Mont. 117 118, 560 P.2d 1342, 1343.

62. “Tax deductions are a matter of legislative grace and it is the taxpayer’s burden to clearly demonstrate the right to the claimed deduction.” *Robison v. Montana Dept. of Revenue*, 2012 MT 145, ¶ 12, 365 Mont. 336, 340, 281 P.3d 218, 222. The “burden of showing the right to the claimed deduction is on the taxpayer.” *INDPCO, Inc. v. Comm’r*, 503 U.S. 79, 84 (1992).

63. “A taxpayer must substantiate the amounts which give rise to the claimed deduction, and if he does not, respondent is not arbitrary or unreasonable in denying the deductions.” *Cook v. Commissioner*, 1991 Tax Ct. Memo LEXIS 640, at 7-8 citing *Hradesky v. Commissioner*, 65 T.C. 87, 90 (1975), affd. per curiam 540 F.2d 821 (5th Cir. 1976); *Roberts v. Commissioner*, 62 T.C. 834, 836-837 (1974).

64. A taxpayer's inability to produce his records does not relieve him of this burden of proof. *Estate of Mason v. Commissioner*, 64 T.C. 651 (1975), affd. 566 F.2d 2 (6th Cir. 1977); *Figueiredo v. Commissioner*, 54 T.C. 1508 (1970), affd. per order (9th Cir. Mar. 14, 1973).

65. Regarding regulations related to 26 U.S.C. § 170(a)(1), 26 C.F.R. § 1.170A-13 describes the type of documentation a taxpayer must provide to support the charitable contribution deduction, which includes a cancelled check, a receipt from the donee of the charitable organization,

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or “other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution.” These general documentation requirements only change slightly depending on whether the gift was property or cash over \$5,000. 26 C.F.R. 1.170A-13(b) – (c).

66. Under Montana law, the taxpayer must provide a federal tax return and file an amended return if the taxpayer’s taxable income is changed or corrected by the IRS. MCA § 15-30-2619 states:

Each taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year that the taxpayer has filed or may file with the federal government, showing the taxpayer's net income and how obtained and the several sources from which derived. *If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall file an amended Montana return with the department within 90 days after receiving notice of the change or correction.* [Emphasis added.]

67. MCA § 15-30-2605(2) states:

If a taxpayer does not file a return as required under this chapter, the department may, at any time, audit the taxpayer or *estimate the taxable income of the taxpayer from any information in its possession* and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state. [Emphasis added.]

68. The Seipels bear the burden to show the DOR wrongly calculated their income for the tax years 2003, 2004, and 2005.

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69. In the present appeal, the Seipels did not present any documentation, or offer any testimony refuting any of the IRS examiners specific line item adjustments to the various deductions claimed on their Schedules A and C for 2003, 2004 or 2005. Mr. Seipel testified that he and his wife had formed God's Country, an exempt organization, in 2003, but nothing in the record, and none of Mr. Seipel's exhibits or testimony explains how Mr. Seipel believes the IRS examiner erred when making very specific adjustments to the charitable contributions they personally claimed on their Schedule A for 2003, 2004, and 2005.
70. At the hearing Mr. Seipel produced a series of documents irrelevant to this appeal. The Seipels Exhibits 1-14 all related to God's Country. While interesting, and possibly showing the Seipels charitable intent to subsidize the costs of building of a Christian ministry retreat center for God's Country that would also serve as their own personal residence, Mr. Seipel never explained how these documents relate to the IRS examiner's audit findings that resulted in the RAR reports that led to the DOR assessments currently on appeal before this Board. Mr. Seipel did not testify or provide any explanation for how the IRS' grant of exempt status to God's Country in 2003 disputes any of the audit adjustments made to his personal income tax returns for the years 2003, 2004, and 2005.
71. The IRS audit adjusted many expenses claimed on the Seipels' Schedule C for Market Research Group, an unrelated for-profit business, and their Schedule A. Meaning, the Seipels' individual and personal taxes were

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before this Board, not God's Country's tax returns and God's Country's tax status and its relevance were never properly articulated.

72. Instead, the Seipels' arguments before this Board repeat what they had unsuccessfully argued before the IRS, the U.S. Tax Court, and ODR: the IRS wrongly determined their adjusted gross income. But without any relevant documents to substantiate their deductions, the Seipels' claims ring hollow.
73. Furthermore, the Seipels have been provided with numerous and extensive opportunities to provide evidence to the DOR, then ODR, and finally to this Board showing the federal adjusted gross income has been incorrectly calculated.
74. The DOR waited nine years, until the Seipels' federal tax litigation was finally concluded, before proceeding with collection actions. The DOR provided the Seipels' ample time and opportunity to present any documentation in their possession that might support their claimed deductions.
75. Following Montana law, the DOR waited ninety (90) days for the Seipels' to file amended Montana returns once the IRS issued its final audit reports. The Seipels failed to file amended state returns, so the DOR, pursuant to statute and regulations, appropriately recalculated the Seipels' Montana income tax liability based on the final RARs.

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76. At every stage in their appeal before this Board, the Seipels failed to present any evidence that might support their position.
77. Six days before this Board's scheduled hearing, Mr. Seipel suggested, for the first time, that the IRS had never returned a box full of his original receipts that he had given to the IRS examiner during the audit.
78. At the hearing, Mr. Seipel continued to assert that the IRS possesses the documents he needs to prove his case, although he also testified that he had incomplete copies of some of his records but it would be hard and take him a long time to find those records. Regardless of the difficulty, it is the taxpayer's job to document all claimed deductions and expenses, and in the nine years that Mr. Seipel has been disputing the DOR's assessments he failed to produce the incomplete records he now admits he may or may not possess.
79. The Seipels had the obligation to keep records substantiating the amounts giving rise to all claimed deductions. Even if Mr. Seipel did give his original documents to the IRS and failed to keep copies of those documents for his own records, the U.S. Tax Court has consistently held taxpayers to this obligation.
80. In *Cook v. Commissioner*, 1991 Tax Ct. Memo LEXIS 640 (U.S. Tax Court December 2, 1991), the taxpayers claimed they were unable to substantiate the disputed deductions because some of the records which they produced during the audit were lost by the IRS examiner. In that case the court held "There is no authority for placing the burden of proof

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on [the IRS] in the current situation. . . [Taxpayer's] burden of going forward with the evidence does not shift merely because his records are unintentionally lost, whether by the [taxpayer], or the Government.” *Cook* at 8-9. The court further explained,

The loss of records does not leave a taxpayer helpless in meeting his substantiation burden. In general, when a taxpayer's records have been lost or destroyed through circumstances beyond his control, he is entitled to substantiate the deductions by reconstructing his expenditures through other credible evidence.” *Id* at 9; *see also American Police & Fire Found., Inc. v. Commissioner, supra; Malinowski v. Commissioner*, 71 T.C. 1120, 1125 (1979); *Cook v. Commissioner*, T.C. Memo. 1991-590. *Priestly v. Comm'r*, T.C. Memo 2003-267, 2003 Tax Ct. Memo LEXIS 267, 86 T.C.M. (CCH) 367

Therefore, when a taxpayer's records have been lost or destroyed through circumstances beyond his or her control, the taxpayer must substantiate the deductions by reconstructing expenditures through other credible evidence including making some attempt to obtain substantiating records from third parties in those situations where it is reasonable to expect that third-party records exist. *See Priestly v. Comm'r*, T.C. Memo 2003-267, 86; *American Police & Fire Found., Inc. v. Comm'r*, 81 T.C. 699, 707-708; *Malinowski v. Commissioner*, 71 T.C. 1120, 1125 (1979); *Gizzi v. Commissioner*, 65 T.C. 342, 345 (1975); *Cook v. Commissioner*, T.C. Memo. 1991-590, 8-9.

81. The Seipels' claim of missing documents was undermined by Mr. Seipel who testified at this Board's hearing that he had portions of the alleged

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important documents, but not a complete copy. The Seipels chose to appeal the DOR assessments and they have the burden to prove they are entitled to the deductions that have been disallowed on their state income tax return. Their decision to not provide any substantiating documentation – even an incomplete collection of the alleged documents – was their litigation decision.

82. Accordingly, we find that the Seipels failed to meet their burden to substantiate any of the deductions disallowed by the 2003, 2004 and 2005 RARs.
  
83. This Board wants to address the equalization arguments Mr. Seipel raised at this Board's hearing. Article VIII, section 3 of the Montana Constitution states, "The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law." Consistent with the Montana Constitution, MCA § 15-9-101, states "The department shall adjust and equalize the valuation of taxable property among the several counties." Equalization is a property tax concept, not an income tax concept. These provisions do not apply to income tax and thus the Seipels' argument lacks merit.

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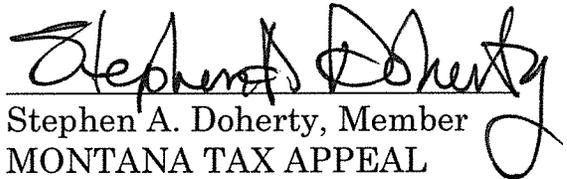
**Order**

IT IS HEREBY ORDERED that Jean and Joe Seipels' appeal is DENIED and the taxes, penalty and interest assessed by the Department of Revenue are properly due and owing.

Ordered March 15<sup>th</sup>, 2018.



David L. McAlpin, Chairman  
MONTANA TAX APPEAL  
BOARD



Stephen A. Doherty, Member  
MONTANA TAX APPEAL  
BOARD



Valerie A. Balukas, Member  
MONTANA TAX APPEAL  
BOARD

**Notice:** You may be entitled to judicial review of this Order by filing a petition in Montana District Court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2).

*Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review*

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**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on March 1, 2018 to:

**Jean & Joe Seipel**  
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Great Falls, MT 59405

**Jessica M. DeMarois**  
Montana Department of Revenue  
Legal Services Office  
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Helena, MT 59604-7701

  
\_\_\_\_\_  
Lynn Cochran, Admin. Paralegal  
MONTANA TAX APPEAL BOARD