

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

JUL 20 2018

Montana Tax Appeal Board

CASE No: IT-2017-10

NATALIE GONZALES,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

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

Natalie Gonzales appealed from the Montana Department of Revenue (DOR) Office of Dispute Resolution (ODR) Order dated June 5, 2017, adopting a final agency decision dated February 1, 2017. Taxpayer was represented by Thomas C. Morrison and the DOR was represented by Jessica DeMarios and Nicholas Gochis. Taxpayer elected to bypass ODR and submit the case to this Board for review.

This Board held a hearing on February 27, 2018 during which both parties presented testimony and exhibits, and both parties submitted post-hearing briefs on April 24, 2018.

For the reasons provided herein, Natalie Gonzales' appeal is granted.

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ISSUE TO BE DECIDED

Whether Dr. Gonzales is entitled to deduct her costs to attend the Barbara Brennan School of Healing (BBSH) as ordinary and necessary business expenses under IRC §162 for the 2012 – 2015 tax years (“the audit period”).

FINDINGS OF FACT

1. Dr. Natalie Gonzales is a licensed Doctor of Osteopathic Medicine in Montana and is board certified as a general surgeon. *Stip. Facts* ¶1, 14.
2. Dr. Gonzales was originally licensed as a Doctor of Osteopathic Medicine in Michigan, where she graduated from Michigan State University College of Osteopathic Medicine. *Stip. Fact* ¶13. After graduating, she completed a residency in general surgery at Pontiac Osteopathic Hospital in Pontiac, Michigan (since renamed as McLaren Oakland Hospital). *Stip. Fact* ¶16. Upon completion of her residency, Dr. Gonzales became board-certified in the field of general surgery by the American Osteopathic Board of Surgery. *Stip. Fact* ¶17.
3. During the audit period, Dr. Gonzales filed Montana individual income tax returns. *Stip. Fact* ¶2.
4. During the audit period, Dr. Gonzales was employed as a surgeon by the Fort Harrison Veteran’s Administration Hospital in Montana (the V.A.). *Stip. Fact* ¶3. The V.A. requires its doctors and surgeons to be licensed in their profession. *Stip. Fact* ¶12.
5. The State of Montana has no continuing education requirements for physicians. *Stip. Fact* ¶4.

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6. Dr. Gonzales testified during the hearing that an osteopathic medical school teaches a holistic approach towards the practice of medicine where you are taught to look at a person and their whole body, mind and spirit, emotional states, and mental health. MTAB Hrg. Transcr. 34:00-34:54. She testified that there is also a Medical School at Michigan State, but that she decided to attend the Osteopathic School because an osteopathic doctor thinks a little bit differently than an M.D. and she valued this holistic philosophy. 33:00-35:07.
7. Dr. Gonzales testified that in the 1990's the National Institute of Health ("NIH") assembled a consortium of academics to create the Office of Alternative Medicine to study alternative therapies in order to understand why patients were using these alternatives outside of conventional medicine and surgery. MTAB Hrg. Transcr. 35:30-38:34. In the late 1990s, this office became one of the Institutes of the NIH, created to study alternative therapies and complementary medicine and to regulate these fields, for example what a label on a bottle of supplements should or should not say. MTAB Hrg. Transcr. 36:07-37:23.
8. Dr. Gonzales testified that also in the late 1990s, academics from medical schools across the country met in Kalamazoo, Michigan, to develop a means of integrating these alternative practices into the field of medicine and into the curriculum of medical students and residents. MTAB Hrg. Transcr. 37:30-38:30. She testified that eight medical schools, including Duke, Harvard, Stanford, University of California in San Francisco and San Diego, University of Arizona, formed a consortium to incorporate alternative therapies into medical training. MTAB Hrg. Transcr. 38:30-39:29. She further testified that as of November 2017, 71 medical schools and the V.A. belong to this consortium. MTAB Hrg. Transcr. 38:30-39:29.

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9. Dr. Gonzales testified that in order to become Board Certified as a Surgeon, she went through the initial year of her rotating residency internships, followed by four years of a general surgery residency, after which she took a written exam considered part 1, and then she sat before a Board for an oral exam where they ask her questions regarding the practice of surgery considered part 2, and then part 3 which is only required for the osteopathic doctors who are trying to be Board Certified (part 3 is not required for M.D.s) where examiners actually come to her hospital to watch her do surgery and reviewed her surgical cases for discrepancies or problems. MTAB Hrg. Transcr. 39:29-40:59.
10. Dr. Gonzales testified that starting in 2011 it became possible to be Board Certified in Integrated Medicine, and the first physicians who became Board Certified occurred in 2014. MTAB Hrg. Transcr. 42:10-42:31. However, you cannot be Board Certified in Integrated Medicine without being Board Certified in another specialty first, so it is considered a sub-specialty for any physician who wants to be Board Certified in Integrated Medicine. MTAB Hrg. Transcr. 42:31-42:54.
11. Dr. Gonzales explained that it is possible to practice specialties without being Board Certified, and while most hospitals generally require board certifications they will make exceptions for individual physicians, the V.A. does not require its doctors be Board Certified to work at the V.A. MTAB Hrg. Transcr. 43:19-45:15.
12. Dr. Gonzales is not Board Certified in Integrated Medicine, but she is currently in a two-year program to learn about the requirements for that board certification exam. MTAB Hrg. Transcr. 44:15-45:40.
13. Dr. Gonzales testified that biofield therapy is one of the areas that falls under the heading of mind-body practices recognized by Integrated

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- Medicine and is part of the study for the board certification. MTAB Hrg. Transcr. 45:00-45:14. Dr. Gonzales introduced into evidence four journal articles that discuss biofield therapy trials and barriers to the entry of biofield healing, and other integrated medicine practices, to conventional medical practices. Exs. 9-12.
14. Dr. Gonzales testified that she first became familiar with Barbara Brennan through her books, specifically her first book *Hands of Light*, wherein Dr. Brennan described biofield therapies through her understanding as a trained physicist. MTAB Hrg. Transcr. 58:00-30. Dr. Gonzales testified that it was important to her that Barbara Brennan was a scientist and that she was able to take something that was not well understood and explain the science behind it. MTAB Hrg. Transcr. 58:35-52. Dr. Gonzales testified that this was one reason why she was interested in studying biofield therapy from Dr. Brennan's point of view. MTAB Hrg. Transcr. 58:52-59:09.
 15. Dr. Gonzales testified that when she read the catalogue from the Barbara Brennan School of Healing "it mentioned over and over that you could incorporate this into your current practice or you could start a new practice of biofield therapy." MTAB Hrg. Transcr. 59:10-22; See also Ex. L. She also testified that the catalogue talked about the relevancy to surgery, about treating surgical patients before, during and after surgery, for wound healing, for patients who were in stages of terminal illness, in trauma care, all things that Dr. Gonzales saw in her practice as a physician at the V.A. MTAB Hrg. Transcr. 59:35-1:00:15; *see also* Ex. L. Dr. Gonzales testified that these were the reasons she was interested in studying biofield therapy from Dr. Brennan's point of view in a school program. 1:00:15-21.

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16. Dr. Gonzales attended the "Barbara Brennan School of Healing" (BBSH) during each of the years under audit. *Stip. Fact ¶5*. Dr. Gonzales testified that she attended the school for a week at a time, five times a year, for four years. 1:07:38-1:08:08.
17. The BBSH program includes classes in the following areas of study: Psych-Spiritual Development, Creative Arts, Professional Practice, Integrative Care, and Healing Science. *Stip. Fact ¶10*.
18. BBSH's website describes the student body as, "Ranging in age from 18 to 75, these individuals have backgrounds in many professions. More than 15% of our students are currently practicing members of the healthcare community, working as medical doctors, registered nurses, physical therapists, psychotherapists, and nutritionists. BBSH is also a part-time home to artists, writers, teachers, accountants, attorneys, business consultants and owners, and computer technicians, as well as numerous other professions, including stay-at-home parents." (<https://www.barbarabrennan.com/students-alumni/>). *Stip. Fact 25*.
19. BBSH students can choose to earn either a Bachelor of Science degree in "Brennan Healing Science," or a diploma through the "Brennan Healing Science Professional Studies Program." *Stip. Fact 26*. Graduates of both courses are "eligible to establish a professional practice as a Brennan Healing Science Practitioner." *Stip. Fact 27*. Dr. Gonzales graduated from the "Professional Studies Diploma Program" of BBSH in 2016 and is listed as an "Active Practitioner" on the BBSH website. *Stip. Facts 28, 29*.
20. BBSH is licensed by the Commission for Independent Education, Florida Department of Education, State of Florida, Board of Education, License #2897. *Stip. Fact ¶9*. BBSH provides its students on-site training in five

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- one-week sessions per year at various hotels and resorts in Florida. *Stip. Fact ¶7.*
21. The V.A. does not require surgeons to attend BBSH to continue their employment, or to maintain their present salary or status. *Stip. Fact ¶11.*
 22. Dr. Gonzales testified at length about the changes she incorporated into her practice as a surgeon at the V.A. from the knowledge she obtained at BBSH. MTAB Hrg. Transcr. 1:03:40-53. She testified that she was able to incorporate the training she received at BBSH relatively easily into her surgical practice at the V.A., that she might still recommend a patient undergo surgery, but she also might be able to recommend something other than surgery that might be beneficial, but that it was most useful with post-surgery recovery and pain management and making the transition to non-narcotic pain medications. MTAB Hrg. Transcr. 1:03:54-1:05:33.
 23. Dr. Gonzales testified that she obtained the Professional Studies Diploma, as a surgeon specifically, because she needed a professional certificate in order to show some type of credentials before she could introduce any of the [biofield] modalities into her surgical practice. MTAB 1:06:05-1:07:16.
 24. Dr. Gonzales introduced five letters from different physicians, along with their biographies, stating how the training they received at the BBSH enhances their ability to practice medicine as physicians. Exs. 2-6.
 25. Dr. Gonzales left her employment as a physician with the V.A. in 2016 to work at a small clinic in Helena – Dynamic Health Technologies – where she is still currently employed as a physician. MTAB Hrg. Transcr. 22:20-30. She testified that her current practice is confined to

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integrated medicine and she is no long actively practicing as a surgeon. MTAB Hrg. Transcr. 22:30-23:14. She described that in her current practice she can consult with patients and give advice regarding medications and alternative types of treatment, and offered the following scenario as an example; if she meets with someone who is having pain she can advise them about certain alternatives that are available to them if they want to stop using narcotics. MTAB Hrg. Transcr. 23:15-23:09.

26. Dr. Gonzales testified that the website for the NIH defines integrated medicine as the coordinated practice of alternative medicine and conventional medicine. MTAB Hrg. Transcr. 31:00-31:54. She explained that integrated medicine is divided into three different categories; (1) natural products such as nutrition and over the counter supplements; (2) mind body practices such as yoga, massage therapy, and pilates, along with chiropractic medicine and acupuncture; and (3) a broad other category which includes traditional Chinese medicine, Ayurvedic medicine, and the use of traditional herbs used by Native American cultures currently being looked into by pharmaceutical companies. 32:33:44. Dr. Gonzales testified that she likes to use the term complementary to describe the practice of integrated medicine because she can incorporate those practices that are outside the field of conventional medicine into her medical practice for the use of people for their health and wellbeing. MTAB Hrg. Transcr. 31:00-33:46.
27. Dr. Gonzales testified that she continues to maintain her medical [physician] license and her DEA [Drug Enforcement Agency] license, and that her current employer maintains medical malpractice insurance to cover her work as a physician in their clinic. MTAB Hrg. Transcr. 22:30-40; 23:09-29.

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28. On her originally filed returns, Dr. Gonzales took business deductions for work- related education in the following amounts for tax years 2012-2015 for tuition, travel, and lodging to attend BBSH:

A. 2015: \$23,612

B. 2014: \$18,101

C. 2013: \$13,589

D. 2012: \$ 8,548

Stip. Fact 30.

29. The DOR denied the claimed deductions relating to attendance at BBSH for each tax year. *Stip. Fact 31.*

30. Teresa Pancheau, a field auditor with the DOR, testified that she was assigned to review Dr. Gonzales' tax returns, specifically the unreimbursed employee business expenses, which is what started this audit. 1:41:30-1:42:25. Ms. Pancheau testified that the DOR does not dispute the amounts that Dr. Gonzales claimed on her return, rather whether the expenses related to the BBSH qualify as ordinary and necessary business expenses. 1:48:08-28.

31. Ms. Pancheau testified that she denied the BBSH expenses because she did not find (1) that they were related to Dr. Gonzales' employment at the V.A., (2) that the BBSH diploma or certification were not required for her employment at the V.A., and (3) that BBSH certificate can or will qualify an individual for a new career.

32. Brian Olson, the Field Audit Unit Manager with the DOR, primarily focused on individual income tax returns, testified that he issued a final

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determination letter affirming Ms. Pancheau's audit findings MTAB Hrg. Transcr. 1:54:55-1:55:08. Mr. Olson testified that he determined the BBSH deductions were not required by Dr. Gonzales' employer, they did not maintain or improve skills that were required for Dr. Gonzales in her employment as an osteopathic surgeon, ultimately, he did not see anything in the training that enhanced Dr. Gonzales' skills as contemplated under the [Internal Revenue] regulations for ordinary and necessary business expenses 1:57:47-1:58:51.

33. Mr. Olson testified that he also made the determination that Dr. Gonzales' certification qualified her as a practitioner in a new science or field and for that reason also supported the DOR's decision to deny the deductions. 1:58:56-1:59:35.
34. The parties agree that Dr. Gonzales's deductions related to BBSH, if allowed, are properly reported on Schedule A. *Stip. Fact* 34.

CONCLUSIONS OF LAW

35. The Board has jurisdiction over this appeal. Mont. Code Ann. §15-2-302.
36. To whatever extent the foregoing Findings of Fact may be construed as Conclusions of Law, they are incorporated accordingly.
37. The Montana Department of Revenue is an agency of the executive branch of government, created and existing under the authority of Montana Code Annotated, Title 2, chapter 15, part 13. The DOR is charged with the administration and enforcement of the Montana Code Annotated, Title 15, chapter 30 (Individual Income Tax) and the ancillary Administrative Rules of Montana (ARM) Title 42, chapter 15.

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38. If DOR determines a return of a taxpayer is in any essential respect incorrect, the agency may revise the return. Mont. Code Ann. §15-30-2605.
39. In the current case, Montana law incorporates federal law, so the Internal Revenue Code 26 U.S.C. §162(a) (“IRC §162”) is the authority for determining what deductions are allowed as business expenses. *Robison v. DOR*, 2011 Mont. Tax LEXIS 9 (2011).
40. Education expenses are deductible if the taxpayer can prove the expenses are ordinary and necessary business expenses. IRC §162. The Internal Revenue service has written extensive regulations to guide taxpayers and auditors in making this determination. 26 C.F.R. §1.162-5.
41. The regulation sets forth the following general rule:
§ 1.162-5 Expenses for education.
(a) *General rule.* Expenditures made by an individual for education (including research undertaken as part of his educational program) which are not expenditures of a type described in paragraph (b) (2) or (3) of this section are deductible as ordinary and necessary business expenses (even though the education may lead to a degree) if the education -
 - (1) Maintains or improves skills required by the individual in his employment or other trade or business, or
 - (2) Meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation.
42. The parties stipulated that the disputed education expenses were not required by Dr. Gonzales’ employer and thus she does not qualify for the deduction under 26 C.F.R. §1.162-5(a)(2).

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43. The parties dispute whether the BBSH education maintained or improved skills required by the Dr. Gonzales in her employment or other trade or business. 26 C.F.R. §1.162-5(a)(1).
44. The DOR asserts that the BBSH education expenses Dr. Gonzales claimed are not deductible because (1) they did not maintain or improve skills required for a surgeon, and (2) BBSH qualified Dr. Gonzales for a new trade or business and as such fall within the (b)(3) exception to the general rule because they “lead a taxpayer to qualify for a new trade or business.” 26 C.F.R. §1.162-5(3).
45. A physician’s trade or business is to heal – whether a physician is practicing as a surgeon or in integrated medicine. Dr. Gonzales testified credibly that the practice of integrated medicine is complementary, allowing a practitioner to bring non-traditional healing practices into a conventional medical practice – thereby requiring the existence and maintenance of a conventional medical practice. The training Dr. Gonzales received at BBSH did not qualify her for a new trade or business, instead it broadened the types of healing modalities she can offer to patients in her medical practice.
46. The Board finds that Dr. Gonzales testified credibly that the BBSH coursework that she completed is designed, and was advertised, as training for a physician to incorporate new skills into an existing medical practice. Dr. Gonzales has not qualified herself for a new trade or business, she obtained education to expand her skill set to incorporate new methods and practices into her existing trade or business as a physician.
47. The DOR cites to *Myrup v. Montana*, 370 Montana 266, 304 P3rd 385 (MT 2013) as support for its determination. However, this Board finds

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Myrup distinguishable on the facts. The taxpayer in *Myrup* was a licensed counselor who was denied education expenses for her costs in obtaining a doctoral degree in psychology. The Court in *Myrup* upheld the DOR's denial, using the following reasoning:

Educational expenses will be deemed nondeductible as qualification for a new trade or business if the education is a step towards obtaining a certification that once obtained, would qualify the taxpayer to perform tasks significantly different from those the taxpayer performed before receiving the education. See *Glenn v. Comm'r*, 62 T.C. 270, 276-77 (1974). This holds true even when the education is to obtain different licensing in the same field. See e.g. *Glenn*, 62 T.C. at 276-77. "An educational expense is deductible only if the primary purpose is to improve one's skills at his present job." *Lee v. Comm'r*, 723 F.2d 1424, 1427 (9th Cir. 1984). *Myrup* at ¶10.

48. The Board finds the facts presented by Dr. Gonzales are significantly distinguishable from *Myrup*. The education, and corresponding diploma, that Dr. Gonzales received at BBSH were not a step towards obtaining a certification that qualified Dr. Gonzales to perform tasks *significantly* different from those Dr. Gonzales performed before attending BBSH. Instead, this Board finds that Dr. Gonzales is entitled to deduct the BBSH expenses because the primary purpose of the BBSH training was to improve the skills required in her trade or business as a physician and a surgeon, and she testified credibly that she used the skills she obtained at BBSH during the audit period in her employment at the V.A. as a surgeon.

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CONCLUSION

We find that all the facts and testimony demonstrate that Taxpayer's educational expenses to attend BBSH maintained or improved skills required by the Dr. Gonzales in her trade or business, which this Board finds is her employment as a physician. Dr. Gonzales clearly established that the skills she obtained at BBSH maintained and improved her performance as a physician and surgeon for the time periods at issue.

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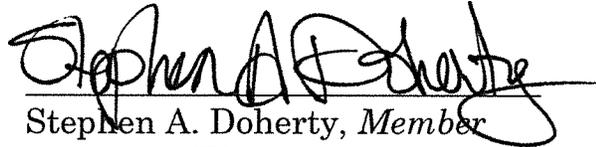
ORDER

1. IT IS HEREBY ORDERED that Natalie Gonzales' appeal is GRANTED and the DOR will treat all of the expenses associated with the BBSH as ordinary trade and business expenses deductible under IRC §162.
2. The parties stipulated that once the Board has issued its findings and conclusions regarding the deductibility of the BBSH expenses, they will convene to implement the Board's decision into a deficiency or overpayment computation. If the parties do not agree on a computation, each will submit a computation to the Board for its final determination.

Ordered July 20, 2018.



David L. McAlpin, *Chairman*
MONTANA TAX APPEAL BOARD



Stephen A. Doherty, *Member*



Valerie A. Balukas, *Member*

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

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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, and Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on July 20, 2018 to:

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