

JAN 16 2020

Montana Tax Appeal Board

ERIC JOHNSON,

*Appellant,*

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

*Respondent.*

CASE No: IT-2019-7

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

**STATEMENT OF THE CASE**

This is a direct appeal from a decision by the Department of Revenue's (Department) Office of Dispute Resolution (ODR), for which a hearing was held on January 23, 2019. *MCA §15-2-302*. Hearing Officer Laura Cunningham issued the ODR's Final Decision on February 4, 2019, where she found Mr. Eric Johnson failed to timely challenge the audit findings of his income tax returns, which was required to be brought within 30-days of Mr. Johnson's being notified of the audit results. *ODR Tr.* Mr. Johnson argued at the ODR hearing, and argues in this appeal, that he had reasonable cause to miss the deadline because of work assignments which frequently took him away from his home in Whitefish; and that his actions established a pattern of behavior which shows that he made a good-faith effort to respond as quickly as possible.

By agreement of both parties the Board decided this dispute on the written record, which included briefs and additional materials submitted by both parties.

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As reflected in the following decision and order, Mr. Johnson's appeal is denied, and the Department's income tax assessments stand for tax years 2012, 2013, 2014, 2015 and 2016.

**ISSUE TO BE DECIDED**

Whether Mr. Johnson's actions concerning his failure to timely file a written request for informal review of his income tax audit findings with the Department, warrants a finding of reasonable cause.

**EXHIBIT LIST**

The Board admitted the following exhibits submitted by Mr. Johnson:

1. A copy of Mr. Johnson's Verizon cell phone call log entitled *Talk Activity*, from July 26, 2017 through August 25, 2017 (with highlights made by Mr. Johnson).
2. A copy of Mr. Johnson's Verizon cell phone call log entitled *Talk Activity*, from August 26, 2017 through September 25, 2017 (with highlights made by Mr. Johnson).
3. A copy of Mr. Johnson's Verizon cell phone call log entitled *Talk Activity*, from September 26, 2017 through October 25, 2017 (with highlights made by Mr. Johnson).
4. A copy of Mr. Johnson's *Work Program Schedule* from January 1, 2017 through December 31, 2017, provided by his employer BNSF Railway, dated June 13, 2019. Marked as Ex. A by Mr. Johnson.
5. A copy of Mr. Johnson's Verizon cell phone call log entitled *Talk Activity*, from July 26, 2017 through August 25, 2017 (with highlights made by Mr. Johnson). Marked as Ex. B by Mr. Johnson.
6. Two written testimonials:  
Kyle Tubbs, Mr. Johnson's friend and religious leader; and  
Patricia Johnson, Mr. Johnson's mother, dated July 30, 2019. Marked as Ex. C by Mr. Johnson.

The Board admitted the following exhibits submitted by the Department:

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- A. *Department Field Audit Appointment Letter* concerning tax years 2012, 2013, 2014 and 2016, written by Clarke Supola, Auditor of Mr. Johnson's returns (June 12, 2017).
- B. *Department Field Audit Appointment Letter* concerning tax year 2015, written by Mr. Supola to Mr. Johnson (June 12, 2017).
- C. *Department Missed Field Audit Appointment Letter*, written by Mr. Supola to Mr. Johnson (July 28, 2017).
- D. *Department Audit Adjustment Letter* concerning tax years 2012, 2013, 2014, 2015 and 2016, written by Mr. Supola to Mr. Johnson (Oct. 17, 2017).
- E. Department Notice of Assessment – Filing Period 31-Dec-2012 (Oct. 17, 2017).
- F. Department Notice of Assessment – Filing Period 31-Dec-2013 (Oct. 17, 2017).
- G. Department Notice of Assessment – Filing Period 31-Dec-2014 (Oct. 17, 2017).
- H. Department Notice of Assessment – Filing Period 31-Dec-2015 (Oct. 17, 2017).
- I. Department Notice of Assessment – Filing Period 31-Dec-2016 (Oct. 17, 2017).
- J. Email from Mr. Johnson to Department, resubmitting an informal audit request (June 21, 2018).
- K. Department letter titled *Request for Informal Review/Late Appeal*, written by Brian Olsen, Field Audit Unit Manager, to Mr. Johnson (July 19, 2018).
- L. *Notice of Referral to the Office of Dispute Resolution*, filed by Mr. Johnson (Oct. 3, 2018).
- M. Mr. Johnson's *2012 Montana Individual Income Tax Return*.
- N. Mr. Johnson's *2013 Montana Individual Income Tax Return*.
- O. Mr. Johnson's *2014 Montana Individual Income Tax Return*.
- P. Mr. Johnson's *2015 Montana Individual Income Tax Return*.
- Q. Mr. Johnson's *2016 Montana Individual Income Tax Return*.
- R. Department audit report notes titled *Audit Narrative* (Oct. 17, 2017).
- S. Department general tax notes.
- T. Document titled *Account Letters*, concerning Mr. Johnson's statement of account list (Jan. 7, 2019).

**FINDINGS OF FACT**

1. On June 12, 2017, Department Auditor Clarke Supola issued a Field Audit Appointment Letter to Mr. Johnson. *Dept. Ex. A.* The Letter stated the Department would be conducting an audit of Mr. Johnson's Montana individual income tax returns for tax years 2012, 2013, 2014 and 2016. *Id.* The letter set an appointment date for July 26, 2017, and requested a confirmation or contact from Mr. Johnson to reschedule the appointment if he could not attend. *Id.*
2. Mr. Supola also issued a similar letter concerning Mr. Johnson and Eliza Cannell's 2015 joint income tax return. *Dept. Ex. B.* The Department later determined Ms. Cannell was mistakenly included in the 2015 audit, and incorporated tax year 2015 into the Mr. Johnson's original audit. *Dept. Ex. R.*
3. Based on the evidence presented, Mr. Johnson did not attend the July 26, 2017 audit appointment, nor did he contact Mr. Supola to reschedule the audit. *Dept. Ex. R.* On July 28, 2017, Mr. Supola issued a Missed Field Audit Appointment Letter to Mr. Johnson. *Dept. Ex. C.* Mr. Supola rescheduled the audit appointment for August 8, 2017. *Id.* Mr. Johnson called Mr. Supola on August 1, 2017 and stated he was unavailable to attend the August 8<sup>th</sup> appointment. *Dept. Ex. R.*
4. Between August 1, 2017 and October 10, 2017 Mr. Johnson and Mr. Supola exchanged several phone calls and voice mails in an attempt to schedule an appointment. *Id.* Mr. Johnson stated he was available to meet on August 20, 2017, but was informed Mr. Supola did not commonly work on both Monday and Friday during the summer. *Johnson File 8.* Mr. Johnson and Mr. Supola agreed to a scheduled appointment for Monday, September 18, 2017, but on September 15<sup>th</sup> Mr. Johnson cancelled, stating that he would be back in the Flathead valley within two weeks and would call to reschedule.

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*Dept. Ex. R.* Mr. Johnson never contacted Mr. Supola to reschedule. *Id.* Mr. Supola used the available information to make a final audit determination. *Id.*

5. On October 17, 2017, Mr. Supola issued an Audit Adjustment Letter and Notice of Assessments (NOA) for each tax year under review. *Dept. Ex. D-I.* The letter and NOAs each included instructions on how to file an objection: “You need to file a written objection by November 16, 2017 or you will lose your right to appeal.” *Id.*

6. In the ODR hearing, Mr. Johnson testified that he had mailed the Department a written request for informal review the last week of January 2018. *ODR Tr. 9:23-24.* The Department testified they had never received a request for review from Mr. Johnson nor had any contact with him after the Audit Adjustment Letter was sent, until approximately seven months later, when Mr. Johnson exchanged emails with the Department’s call center on June 4, 2018 and again on June 7, 2018. *Id. at 6:3-12.*

7. Ultimately, Mr. Johnson submitted an emailed request for informal review on June 21, 2018. *Dept. Ex. J.* After reviewing Mr. Johnson’s request, Brian Olsen, the department’s field audit manager, issued a final determination letter on July 19, 2018, which stated he had reviewed Mr. Johnson’s account, and he could not find reasonable cause to waive the 30-day deadline for filing an informal review; and that even if Mr. Johnson had filed for review during the last week of January 2018 the filing would still be considered late by more than two months. *Dept. Ex. K.*

8. Mr. Johnson filed a request for referral to the ODR on September 29, 2018, over a month past the 30-day deadline to appeal Mr. Olsen’s determination letter. *ODR Tr. 7:1-7 and Dept. Ex. K-J.* The ODR heard the appeal and determined Mr. Johnson’s failure to file an objection to the audit adjustment within the 30-day deadline could not be excused

on the grounds of reasonable cause. *ODR Tr. 13*. Mr. Johnson subsequently filed an appeal with this Board on March 4, 2019. *Johnson File 1*.

### **JURISDICTION AND STANDARD OF REVIEW**

1. The Board has jurisdiction over this appeal, and its order is final and binding upon all parties unless changed by judicial review. *MCA §15-2-302*.
2. This appeal is governed by the contested case provisions of the Montana Administrative Procedure Act. *MCA §15-2-302(5)*.

### **CONCLUSIONS OF LAW**

3. The Department of Revenue is tasked with the administration and enforcement of all state income tax. *MCA Title 15, Chapter 30*. If the Department determines a taxpayer's return is incorrect, the Department may revise the return. *MCA 15-30-2605*. The Department may also request further information and attendance of the taxpayer at an audit appointment to determine the accurate amount of tax due. *Id.*
4. Under the facts presented, Mr. Johnson was notified that his 2012-2016 individual income taxes were under audit. *Dept. Ex. A-B*. The notice set a date on which Mr. Johnson could meet with Mr. Supola, the auditor conducting the review. *Id.* A meeting never took place despite multiple scheduling attempts, and Mr. Supola made his audit determinations and issued the Notice of Assessment(s). *Dept. Ex. D-I*.
5. A Notice of Assessment (NOA) is the first notice a taxpayer will receive of a revised tax amount due. *ARM §42.2.304(36)*. The onus is on the taxpayer to respond to the NOA within the prescribed 30-days or else lose the right of appeal. *ARM §42.2.510(2)(3)*. The Department issued an Audit Adjustment Letter and Notice of Assessment Letter(s) on October 17, 2017. *Dept. Ex. D-I*. Each letter included

information concerning how to appeal the findings, including the date by which an appeal must be filed, so as to prevent a forfeiting of appeal rights. *Id.*

6. Mr. Johnson testified he filed a written objection and request for informal review near the end of January 2018. *ODR Tr. 9:23-24*. The Department testified they never received a written notification from Mr. Johnson, and when asked by the Department Mr. Johnson could not provide any proof or evidence of his mailing. *Id. at 6:3-12*. After an exchange of emails with the Department's call center, Mr. Johnson emailed a request for informal review on June 21, 2018, approximately seven months after the filing deadline. *Dept. Ex. J*.

7. Regardless of whether Mr. Johnson filed for review in late January 2018 or on June 21, 2018 either filing would be considered late. The first by approximately 70 days at least, and the second by approximately 217 days at most, based on the deadline given by the Department in its October 17, 2017 notices to Mr. Johnson. *Dept. Ex. D-I*.

8. The Department has the authority to set rules of procedure to assist in the administration of its statutory obligations and duties. *Northern Plains Resource Council v. Board of Natural Resources & Conservation, 181 Mont. 500, 510, 594 P. 2d 297, 1979 Mont. LEXIS 680*. Within the Administrative Rules of Montana are provisions which may provide relief if a taxpayer's filing is late. *ARM 42.2.304(50) and 42.2.512*. The taxpayer may be excused for missing a deadline if the taxpayer can prove the existence of reasonable cause, and that he met his duty of exercising ordinary business care and prudence. *Id.*

9. Mr. Johnson testified in his opening brief concerning the extensive amount of time he spends away from home. *Johnson File 8*. Mr. Johnson also provided a copy of his work schedule to show the extent of his work assignments, and the remote areas to which he travels for work. *Johnson Ex. A*. After reviewing Mr. Johnson's work schedule for the period in which the Department issued its adjustment letters, the Board concluded there

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were ample periods of time between work assignments in which Mr. Johnson was able to receive and respond to any correspondence. Mr. Johnson confirmed this in his testimony at the ODR hearing, stating that he did receive everything the Department sent by mail.  
*ODR Tr. 14:9-25 and 15:1-2.*

10. This Board finds a delay of 100 to 247 days does not show the exercise of ordinary business care and prudence required by rule to enable an exception to be made. The Board does not doubt the sincerity of Mr. Johnson's testimony about his busy schedule away from home, but in order to meet the threshold of reasonable cause the taxpayer must show that he exercised ordinary business care and prudence, and a reasonable excuse, neither of which has been provided here.

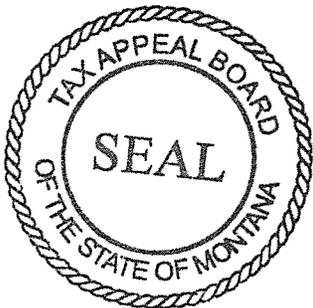
11. The Board must apply the law and procedure equally to all taxpayers. While Mr. Johnson gave testimony concerning challenges he encountered during the audit period, he presented little evidence or testimony for this Board to determine that he possessed reasonable cause for missing the deadline. Some action or response must be required for any taxpayer to exercise a right of appeal. Unfortunately, the record is devoid of any such effort, and therefore the Department's audit findings must stand.

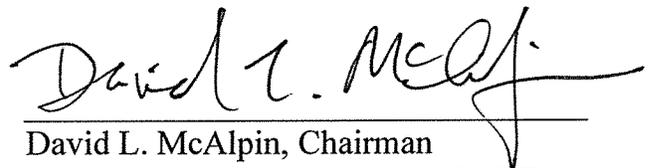
**ORDER**

IT IS THEREFORE ORDERED by the Montana Tax Appeal Board:

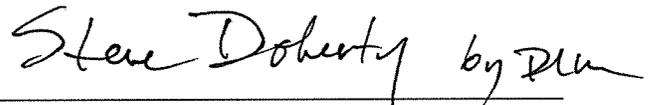
1. Mr. Eric Johnson's appeal is denied.
2. The findings of the Montana Department of Revenue's income tax audit and final agency decision for tax years 2012, 2013, 2014, 2015 and 2016 are upheld.
3. The income tax, penalties and interest as assessed by the Department are due and owing.

Ordered January 16, 2020

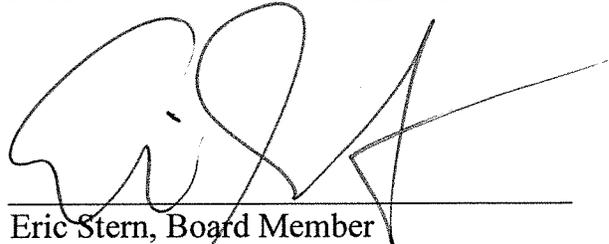




David L. McAlpin, Chairman  
MONTANA TAX APPEAL BOARD



Steve Doherty, Board Member  
MONTANA TAX APPEAL BOARD



Eric Stern, Board Member  
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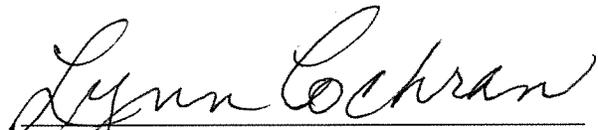
**Notice:** You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. MCA §15-2-303(2).

**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing Order to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on January 16, 2020 to:

**Eric Johnson**  
16 Tamarack Lane  
47 Alder Way  
Whitefish, Montana 59937

**Brendan R. Beatty**  
**Montana Department of Revenue**  
P.O. Box 7701  
Helena, Montana 59604-7701

  
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Lynn Cochran, Paralegal Assistant  
MONTANA TAX APPEAL BOARD