

BEFORE THE MONTANA TAX APPEAL BOARD

TIMOTHY L. BLIXSETH,)	
)	Docket No. IT-2011-2
Appellant,)	
-vs-)	
)	ORDER
DEPARTMENT OF REVENUE)	on MOTION FOR PARTIAL
OF THE STATE OF MONTANA,)	SUMMARY JUDGMENT
)	<u>on COUNTS 5, 6, 7 and 11</u>
Respondent.)	

The Montana Department of Revenue (DOR) petitions for partial summary judgment under Rule 56, Montana R.Civ.Pro., on Counts 5, 6, 7, and 11 of the original complaint filed by taxpayer Timothy Blixseth on February 10, 2011.

Mr. Blixseth has not responded to the Department's Motion for Summary Judgment¹.

Summary Judgment Standard

Rule 56(c)(3) of the Montana Rules of Civil Procedure states "The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." The moving party has the burden of showing that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

¹ The Department's motion was, due to a conflict between the discovery schedules and the motions schedule, filed after the deadline for dispositive motions. We find good cause exists to allow the motion to be filed after the deadline as the Department could not know that Mr. Blixseth would not file a response to their final request until after the dispositive motions deadline.

Background

This partial summary judgment is sought by the Department of Revenue which claims that the Taxpayer has consistently failed to produce the documents proving that the purported business expenses for the maintenance of his private golf course, aviation, marine and luxury automobile fleet on his personal tax returns from 2002 through 2006 were business related and not personal. Counts 5, 6 and 7 of the complaint challenge the DOR's disallowance of business expense deductions for a golf course and for the use of aviation, marine, and luxury automobiles by Blixseth. Count 11 requests a waiver of interest and penalties. (We note that the power to grant such waivers has been delegated by statute to the DOR, not this Board. Section 15-1-206, MCA.)

The DOR motion details a two-and-a-half-year history of futile requests for the documents as well as demands for a witness list. Finally, on August 1, 2014, the DOR served its Third Combined Discovery Request with 92 requests for admissions that the expenses were personal, the answers to which were due September 2, 2014. Again, Mr. Blixseth provided no response. MDOR Motion for Summary Judgment on Complaint Counts 5, 6, 7, and 11.

MDOR argues that, because Taxpayer failed to respond to the requests for admission that those expenses were personal, those facts are deemed admitted and conclusively established under Rule 36(a)(3), M.R.Civ.P. The Rule states: "A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney, . . ."

On September 2, 2014, Mr. Blixseth did appear for deposition but did not bring any documents or witness lists with him, despite receiving a subpoena duces tecum, warning him that he needed to bring any and all documents that support his

case which had not been submitted previously. With just 60 days to trial, Mr. Blixseth did not submit any answers, nor did he seek an extension from this Board to submit any additional documentation. He has never submitted an amended witness list.

We agree with the DOR's contention that the failure to provide documents supporting the deductions, as well as the failure to deny the personal nature of the expenses in the Third Request, removes any material fact issues from these claims and eliminates the need to consider them at trial.

It is clearly established by case law that deductions are a matter of legislative grace and the taxpayer bears the burden of proving the right to the deduction. *INDOPCO, Inc. v. Commr.*, 503 U.S. 79, 84 (1992). For purposes of calculating Montana tax liability, allowable deductions are defined in the federal tax code. Section 50-30-2131(1)(a), MCA. The Internal Revenue code defines business deductions as the ordinary and necessary expenses of carrying on a trade or business. 26 U.S.C. §162. Furthermore, the statute affirmatively states that personal expenses cannot be deducted under 26 U.S.C. §162. 26 U. S. C. §262(a). It is, therefore, the taxpayer's burden to show that the expenses are the ordinary and necessary expenses of carrying on a trade or business. We find that Mr. Blixseth has not met that burden.

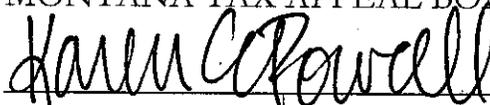
There has been a consistent lack of response by the Taxpayer and Taxpayer's variety of counsel over the past few years of litigation. While Mr. Blixseth was without an attorney for several weeks at the very end of this process, he specifically opted to act as his own attorney. During that time the Taxpayer had adequate personal notice of the Motion and deadline for response. The deadlines were discussed with Mr. Blixseth in a conference call with this Board on October 2, 2014, and in the subsequent scheduling order issued by this Board on the same day.

We find, therefore, that both requirements for summary judgment are met as there is no issue of material fact and that the movant is entitled to judgment as a matter of law. Rule 56(c)(3), M.R.Civ.P.

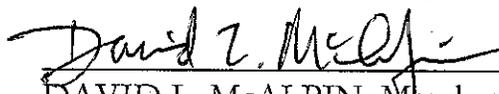
DATED this 3rd day of November, 2014.

BY ORDER OF THE
MONTANA TAX APPEAL BOARD

(SEAL)


KAREN E. POWELL, Chairwoman


SAMANTHA SANCHEZ, Member


DAVID L. McALPIN, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of November, 2014, a true and correct copy of the foregoing has been served on the parties hereto by the method indicated below and addressed as follows:

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