

BEFORE THE MONTANA TAX APPEAL BOARD

<p>RANNA & MICHAEL McCAULEY,</p> <p>Appellants,</p> <p>v.</p> <p>THE STATE OF MONTANA, DEPARTMENT OF REVENUE,</p> <p>Respondent.</p>	<p>CASE NO. IT-2015-5</p> <p>ORDER ON DEPARTMENT OF REVENUE'S MOTION FOR SUMMARY JUDGMENT</p>
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This case comes to us through a direct appeal by Taxpayers Ranna and Michael McCauley (hereinafter referred to as "McCauleys" or "Taxpayers") from an adverse decision of the Office of Dispute Resolution (hereinafter referred to as "ODR") of the Montana Department of Revenue (hereinafter referred to as "Department" or "DOR") dated May 5, 2015. That Order upheld a decision by the Department that the McCauley's owe Montana income tax, penalties, and interest, for tax year 2013. McCauley's contend on constitutional grounds that they are not subject to any state income tax. They do not contest that they earned Montana source income or that they are Montana residents.

The Department has filed a Motion for Summary Judgment pursuant to Rule 56, Mont.R.Civ.P., arguing that Taxpayer's appeal should be dismissed because there

are no issues of material fact and the Department is entitled to judgment as a matter of law. The Board agrees with the Department and grants their Motion for Summary Judgment.

Summary Judgment Standard

Rule 56(c)(3) of the Montana Rules of Civil Procedure states “[t]he 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); *Wiser v. State, Dep't of Commerce*, 2006 MT 20, 331 Mont. 28, 129 P.3d 133. When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must, by affidavits or as otherwise provided in this rule, set out specific facts showing a genuine issue of fact for trial. M. R. Civ. P. 56(e)(2); See *Nelson v. Nelson*, 2005 MT 263 ¶18, 329 Mont. 85, 122 P.3d 1169 (2005) *citing Tucker v. Trotter Treadmills, Inc.*, 239 Mont. 233, 235, 779 P.2d 524, 525 (1989).

Issue

The issue before this Board is whether the McCauleys were residents of Montana for the tax year 2013, and therefore liable for taxes on income earned as Montana source income. McCauleys argue that they are not subject to Montana

income tax because they are “sovereign citizens” residing outside the jurisdiction of “the territories of the United States.”

Findings of Fact

1. The facts in this tax appeal are not in dispute.

2. On April 14, 2014, Ranna and Michael McCauley filed a joint 2013 Montana individual income tax return as full-year residents. *DOR Ex. A.* The McCauleys reported \$0.00 in income on their 2013 return and requested a refund of the \$240 that was withheld for State income tax. *Id.*

3. Ms. McCauley’s employer, Citizen’s Bank and Trust Company, issued her a 2013 Form W-2 that reported wages earned in the amount of \$11,121.99, and State income tax withheld in the amount of \$240.00. *DOR Ex. B.*

4. A Form 1099-R Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showed that Reliance Trust Company reported a taxable distribution of \$40,923.19 made to Ranna McCauley during tax year 2013. *DOR Ex. C.*

5. The Department processed the Taxpayers’ return, denied their claim for a refund, and determined that the Taxpayers’ owed additional tax for the 2013 tax year. On November 14, 2014, Taxpayers appealed the DOR’s determination to ODR. *DOR Form APLS102F ODR File Document #1.*

6. The Taxpayers appeal was based on a variety of constitutional arguments summarized as follows: (1) that they do not reside within the territorial jurisdiction of

the United States, and as such the territorial laws for those citizens do not apply to them; and (2) that because the McCauleys do not work for the federal government but were instead employed in the private sector, they are not required to file a 1040 form, and are exempt from taxation under the federal Public Salary Act of 1939 and MCA § 15-30-2102, MCA. *Id.*

7. McCauleys' requested that ODR find that their 2013 Montana individual income tax return should be accepted by the Department as filed and that the Department return the taxes withheld and paid to the State of Montana by Citizens Bank & Trust Co. that they claim are not owed. *Id.*

8. On May 5, 2015, the ODR Hearings Examiner issued an Order denying the McCauley's their requested relief and ordered that the tax, including penalties and interest, as assessed by the Department of Revenue is properly due and owing. *Findings of Fact, Conclusions of Law, and Order*, Office of Dispute Resolution (May 5, 2015).

9. On June 4, 2015, the McCauleys' timely filed an appeal of the ODR decision with this Board.

Principles of Law

1. The Board has jurisdiction over this appeal. §15-2-302, MCA.
2. To whatever extent the foregoing Findings of Fact may be construed as Conclusions of Law, they are incorporated accordingly.

3. 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.

4. If, in the opinion of the DOR, a return of a taxpayer is in any essential respect incorrect, the agency may revise the return. §15-30-2605, MCA.

5. If a taxpayer does not file returns pursuant to the requirements of Title 15, chapter 30, MCA, the DOR may, at any time, audit the taxpayer or estimate his or her taxable income from any information in its possession and, based upon such audit or estimate, assess the taxpayer for taxes, penalties, and interest due the state of Montana. §15-30-2605(2), MCA.

6. The amount of tax due is determined based upon a taxpayer's net income viz:

All income except what has been expressly exempted under the provisions of this chapter and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States shall be included and considered in determining the net income of the taxpayers within the provisions of this chapter.

§15-30-2102, MCA.

7. "Montana source income" means wages, salaries, or any other compensation for services performed in Montana or while a resident of Montana regardless of where the services were performed. §15-30-2101(18), MCA. "Pension and annuity income" includes "lump sum distributions from pension or profit sharing plans to the extent that the distributions are included in federal adjusted gross income." §15-30-2602(1), MCA.

9. Penalty and interest accrue based upon late payment of tax due. The late payment penalty is assessed at 1.2 percent of the tax due. Interest is equal to the underpayment rate for individual taxpayers established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621, for the fourth quarter of the preceding year, or 8 percent, whichever is greater. §15-1-216, MCA.

10. By law, every person has a residence. §1-1-215, MCA. Such a residence is deemed to be the place where a person remains when not called elsewhere for labor or other special or temporary purpose, and to which the person returns in seasons of repose. *Id.* There can be only one residence. *Id.*

11. A "resident" is defined as applying to natural persons. For the purpose of determining income tax imposed by Title 15, chapter 30, MCA, the definition of resident includes any person domiciled in Montana and any other person who maintains a permanent place of abode in the state even though temporarily absent from Montana and who has not established a residence elsewhere. §15-30-2101(28), MCA.

12. The issue before this Board is whether the McCauleys were residents of Montana for the tax year 2013 and therefore liable for taxes on income earned during 2013.

Board Discussion and Conclusions of Law

It is undisputed that the McCauleys are natural persons and that they are residents of Montana. They live and work in Big Timber, Montana, and have not established residence elsewhere. It is universally recognized that the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event. Residency itself affords a basis for such taxation.¹ McCauleys have enjoyed the privilege of residence in Montana. Therefore, McCauleys have their share of tax responsibility.

The Taxpayers first argue that they are sovereigns and thus they cannot be taxed by the state of Montana. The Taxpayers also argue that because their income was earned in the private sector by their own labor and not earned in Federal or state government jobs or in the “regulated industries,” such as tobacco, firearms, or alcohol, it became personal property not subject to income taxes.

¹ According to *People of State of New York ex rel. Cohn v. Graves*:

“Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws, are inseparable from responsibility for sharing the costs of government.... A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. The tax, which is apportioned to the ability of the taxpayer to pay it, is founded upon the protection afforded by the state to the recipient of the income in his person, in his right to receive the income and in his enjoyment of it when received. These are rights and privileges, which attach to domicile within the state. To them and to the equitable distribution of the tax burden, the economic advantage realized by the receipt of income and represented by the power to control it, bears a direct relationship.” *People of State of New York ex rel. Cohn v. Graves*, 300 U.S. 308, 312-13, 57 S. Ct. 466, 467-68, 81 L. Ed. 666 (1937); See also *Lawrence v. State Tax Comm.*, 286 U.S. 276, 52 S.Ct. 556, 76 L.Ed.1102, 87 A.L.R. 374; *Maguire v. Trefry*, 253 U.S. 12, 14, 40 S.Ct. 417, 418, 64 L.Ed. 739; *Virginia v. Imperial Coal Sales Co.*, 293 U.S. 15, 55 S.Ct. 12, 13, 79 L.Ed. 171; compare *Shaffer v. Carter*, 252 U.S. 37, 50, 40 S.Ct. 221, 224, 64 L.Ed. 445.

First, simply declaring themselves as “sovereigns” does not vest sovereignty upon a citizen of the United State and a resident of Montana, nor does it grant the McCauleys status of “nontaxpayer.” Second, income earned in the private sector, and not from federal or state government employment, is subject to Montana’s state income tax. Montana residents employed in the private sector share their tax burden with Montana residents employed by the federal and state government. This Board finds that the McCauleys are Montana residents subject to Montana income tax on all Montana source income.

For tax year 2013, Ms. McCauley earned \$11,121.99 in taxable income from her employer, Citizens Bank & Trust Co. located in Big Timber, Montana. During the tax year 2013, Ms. McCauley received a taxable distribution of \$40,923.19. This Board finds that both distributions are Montana source income.

Taxpayers filed a joint 2013 Montana Income Tax Return reporting \$0 in income and requesting a refund of \$240 for the amount withheld for State income taxes by Citizen’s Bank & Trust Co. When Taxpayers signed and filed their return reporting \$0 in income, they failed to report at least \$52,045.18 in Montana source income received during the 2013 tax year. This Board finds that Taxpayers, as residents of Montana, were required to report all Montana source income on their joint 2013 Montana Income Tax Return and to accurately calculate and pay the amount of tax due on that income.

To the extent that the Taxpayers make constitutional arguments, this Board lacks jurisdictional authority to decide those arguments. Therefore, the Board declines to address those arguments.

Conclusion

This Board grants summary judgment for the Department of Revenue. We find that the DOR has satisfactorily established that there is no genuine dispute as to any material fact. Taxpayers are Montana residents. Taxpayers earned income through wages and a lump-sum retirement distribution during the 2013 tax year, while Montana residents, thus establishing the distributions as Montana source income. Taxpayers signed and filed a joint 2013 Montana Income Tax Return reporting \$0 in income and requesting a refund of \$240 for the amount withheld for State income taxes. Taxpayers failed to report at least \$52,045.18 in Montana source income earned during the 2013 tax year. Therefore, the DOR is entitled to judgment as a matter of law on this appeal. Tax, including penalties and interest, as assessed by the Department of Revenue for the tax year 2013 is properly due and owing.

ORDER

IT IS THEREFORE ORDERED that the Department of Revenue's Motion for Summary Judgment is granted.

Dated this 12th day of November 2015.

BY ORDER OF THE
MONTANA TAX APPEAL BOARD

(SEAL)



DAVID L. McALPIN, Chairman



VALERIE A. BALUKAS, Member

CERTIFICATE OF SERVICE

I certify that on this ___ day of November 2015, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

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