

BEFORE THE MONTANA TAX APPEAL BOARD

Kevin Reed,

Appellant;

v.

**State of Montana,
Department of Revenue,**

Respondent.

CASE No: IT-2015-8

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

Kevin Reed appeals from the Montana Department of Revenue (DOR) Office of Dispute Resolution (ODR) Order of July 24, 2015. ODR upheld the DOR's final audit that denied various business expense deductions Reed claimed on his 2011, 2012 and 2013 Montana individual income tax returns.

FINDINGS OF FACT

1. DOR notified Reed in a letter dated November 18, 2014 that his individual income tax returns for 2011-2013 were being audited. (Ex. A.)

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2. In response to the audit, Reed provided the auditor with sufficient documentation to substantiate many of the claimed business expenses related to charitable contributions and travel. (ODR. R, Dkt. 13.)
3. Reed also submitted two different letters from his employer, Highgate Senior Living. The first, written by the human resources department described Reed's required travel for work. (Ex. E, 2.) The second, written by the accounting department, stated that Highgate does not reimburse Reed for incentives such as any "trips, gifts, meals, awards" that Reed awards to his team members. (Ex. E, 1.)
4. On March 19, 2015, the DOR auditor sent Reed a final audit adjustment letter which gave Reed 30-days to file a written objection and request an informal review. (Ex. O.)
5. The final audit report resulted in a proposed assessment of an additional \$2,992 in tax for the three years under audit. With accompanying interest and penalties, DOR requested payment of \$3,732.72 (Ex. O, KR-DOR-881.) Reed submitted written objections and requested an informal review of the final audit on March 30, 2015. (Ex. P.) Reed did not provide any additional documentation with this request. (Ex. Q.)
6. DOR field audit manager Peterson reviewed the audit and on April 1, 2015, Peterson responded to Reed, writing that he had not made any adjustments to the final audit report and he outlined Reed's right to appeal to the ODR. (Ex. Q.)

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7. Reed filed an appeal with ODR on April 15, 2015 contesting the final audit report and statement of account. This action triggered a review by the ODR of that DOR decision. (Ex. R.)
8. ODR's Administrative Hearing Officer made numerous attempts to schedule and conduct an initial scheduling conference by phone with Reed. ODR made a good faith effort to accommodate Reed's travel and work schedule to find a mutually acceptable date for a scheduling conference. (ODR R., Dkt. 2-8.) Reed failed to attend the conference set for May 29, 2015. (ODR R., Dkt. 5.) ODR rescheduled the scheduling conference for July 21, 2015. Again Reed failed to appear. (ODR R., Dkt. 13.)
9. ODR dismissed the appeal on July 24, 2015 for failure to prosecute.
10. Reed appealed ODR's Order to this Board on July 30, 2015.
11. On his hearing questionnaire, Reed's only argument was "All business expenses were submitted and are not reimbursable." (Reed Administrative Hearing Status Questionnaire (Sep. 2, 2015).)
12. Reed requested that his case be heard without an in-person hearing due to his busy work and travel schedule. (Id.)
13. The Board scheduled a status conference hearing for Reed and the DOR on October 8, 2015.
14. Reed failed to appear or contact the Board to reschedule the hearing.

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15. The Board issued an order on October 13, 2015 that the appeal would be heard on the record and directing the parties to file submissions and/or exhibits by November 2, 2015.
16. Reed did not submit any documents or exhibits during his appeal before this Board to prove that his claimed deductions should be allowed by the DOR.

CONCLUSIONS OF LAW

17. The Board has jurisdiction over this appeal. Mont. Code Ann. § 15-2-302.
18. To whatever extent the foregoing Findings of Fact may be construed as Conclusions of Law, they are incorporated accordingly.
19. 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.
20. 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.
21. “[T]raveling expenses are deductible if the taxpayer can prove the expenses are: 1) reasonable and necessary; 2) incurred while away from home; and 3) incurred in the pursuit of a trade or business.” *Robison v.*

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Montana Dep't of Revenue, 2012 MT 145, ¶ 13, 365 Mont. 336, 281 P.3d 218 (citing *Commissioner v. Flowers*, 326 U.S. 465 (1946)).

22. Incurred in pursuit of business “means that there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer. Moreover, such an expenditure must be necessary or appropriate to the development and pursuit of the business or trade.” *C.I.R. v. Flowers*, 326 U.S. 465, 470, 66 S. Ct. 250, 252, 90 L. Ed. 203 (1946).
23. Reed failed to adequately substantiate all of the deductions he claimed.
24. Reed failed to offer any evidence to the Board to substantiate his claims that the denied deductions should be allowed.
25. The Board will not order the Department to allow deductions when the taxpayer had not provided any evidence to support their claim.
26. Reed did not provide this Board with any evidence to substantiate the deductions disallowed by the DOR. While Reed requested that his case be considered on the record, he failed to make any effort to prove his case by refusing to provide this Board with any evidence to support his contentions.

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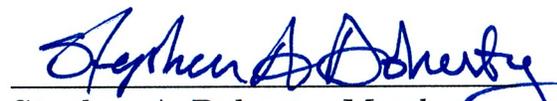
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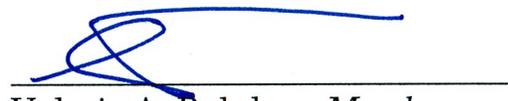
ORDER

IT IS HEREBY ORDERED that Kevin Reed's appeal and complaint be denied and the taxes, penalty and interest assessed by the Department of Revenue are properly due and owing.

February 3, 2016.


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 are 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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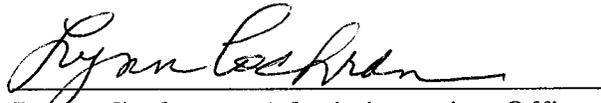
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Certificate of Service

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 February 3, 2016 to:

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Lynn Cochran, *Administrative Officer*
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