

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

JAN 30 2019

Montana Tax Appeal Board

CARLETON M. CLIFFORD, Jr.,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE No: IT-2018-45

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

The Montana Tax Appeal Board (MTAB) is an independent agency not affiliated with the Montana Department of Revenue (DOR). Under the authority of MCA §15-2-302 this appeal is a direct appeal from the Office of Dispute Resolution (ODR) hearing held on April 23, 2018, and the ODR Final Decision issued on July 12, 2018. The ODR upheld the DOR's final audit determination, which denied the Taxpayer's unreimbursed employee business expenses filed on his individual income tax returns during the 2015 and 2016 tax years.

The Taxpayer believes sufficient evidence was provided to prove he is entitled to claim his unreimbursed employee business expenses as an employee of his Subchapter S-Corporation.

The Montana Department of Revenue claims the Taxpayer did not receive compensation for his services, thus he is not considered an employee, and not entitled to the deductions.

As reflected in the following opinion, the Taxpayer's unreimbursed employee business expenses are denied.

FINDINGS OF FACT

The Board admitted the following exhibits submitted by the Taxpayer:

- Ex. 1: Taxpayer Hardship Letter concerning the relief of a preexisting loan;
- Ex. 2: DOR letter written by Ms. Lear granting an extension at the Taxpayer's request (Oct. 16, 2017);
- Ex. 3: Taxpayer letter to Ms. Lear concerning the outcome of the Taxpayer's visit with an accountant (Oct. 26, 2017);
- Ex. 4: Taxpayer letter to Mr. Olsen requesting clarification prior to amending his tax returns (Jan. 31, 2018);
- Ex. 5: *CPA Journal* article "S Corporations and Salary Payments to Shareholders" by James A. Fellows and John F. Jewell;
- Ex. 5A: *AccuPay* memo "S Corp Pays Zero Salary to Owner";
- Ex. 6: *IRS* memo "Wage Compensation for S Corporation Officers" (Aug. 2008);
- Ex. 7: Article "Can an S-Corp Owner Have Unreimbursed Employee Expenses?" by John Cromwell;
- Ex. 8: *TurboTax* memo "I Have an S-Corp. How Should I Deduct Business Mileage?";
- Ex. 9: *IRS* memo "Statutory Nonemployees";
- Ex. 10: A Professional Law Corporation article "An Officer of a Corporation or LLC is a Statutory Employee" by Robert S. Schriebman;
- Ex. 11: DOR letter written by Mr. Olsen offering the Taxpayer the opportunity to amend his tax returns (Jan. 24, 2018);
- Ex. 12: Taxpayer letter to Mr. Olsen requesting clarification prior to amending his tax returns – duplicate (Jan. 31, 2018);
- Ex. 13: DOR email written by Mr. Olsen to the Taxpayer clarifying his letter of Jan. 24, 2018 (Feb. 1, 2018);
- Ex. 14: Taxpayer email to Mr. Olsen requesting recognition of his status as an employee (Feb. 2, 2018);

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Ex. 15: DOR letter written by Mr. Olsen to the Taxpayer offering the choice of informal resolution, and requesting the withdrawal of the appeal from the ODR (Feb. 7, 2018);

Ex. 16: Taxpayer email to Mr. Olsen agreeing to withdraw his appeal from the ODR if the DOR will recognize the Taxpayer's deduction method (Feb. 12, 2018);

Ex. 17: DOR email written by Mr. Olsen to the Taxpayer clarifying the original audit findings (Feb. 27, 2018);

Ex. 18: Taxpayer email to Mr. Olsen informing the DOR of the Taxpayer's intent to continue with the ODR hearing (Feb. 27, 2018);

Ex. 19: DOR letter written by Mr. Olsen to the Taxpayer stating the DOR's position to move forward in the appeal process (Feb. 28, 2018);

Ex. 20: Taxpayer summary presented at the MTAB hearing.

The Board admitted the following exhibits submitted by the DOR:

Ex. A: DOR Field Audit Appointment Letter written by Ms. Lear to the Taxpayer (Sept. 7, 2017);

Ex. B: DOR Audit Adjustment Letter written by Ms. Lear to the Taxpayer (Oct. 5, 2017);

Ex. C: Taxpayer and DOR correspondence, including:

1. Taxpayer email objection to the audit findings, and request for an informal review (Oct. 12, 2017),

2. DOR letter written by Ms. Lear granting an extension at the Taxpayer's request (Oct. 16, 2017),

3. Taxpayer letter to Ms. Lear concerning the outcome of the Taxpayer's visit with an accountant (Oct. 26, 2017),

4. DOR letter written by Ms. Lear to the Taxpayer requesting a 30-day extension for the SOA Objection review (Nov. 20, 2017);

Ex. D: DOR Notice of Determination Letter written by Mr. Olsen to the Taxpayer concerning the outcome of the Taxpayer's informal review request (Dec. 21, 2017);

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Ex. E: Taxpayer's filing for a Notice of Referral to the Office of Dispute Resolution, and objection letter (Jan. 9, 2018);

Ex. F: Taxpayer and DOR correspondence, including:

1. DOR letter written by Mr. Olsen offering the Taxpayer the opportunity to amend his tax returns (Jan. 24, 2018),
2. Taxpayer letter to Mr. Olsen requesting clarification prior to amending his tax returns (Jan. 31, 2018),
3. DOR email written by Mr. Olsen to the Taxpayer clarifying his letter of Jan. 24, 2018 (Feb. 1, 2018), and Taxpayer email to Mr. Olsen requesting recognition of his status as an employee (Feb. 2, 2018),
4. DOR letter written by Mr. Olsen to the Taxpayer offering the choice of informal resolution, and requesting the withdrawal of the appeal from the ODR (Feb. 7, 2018),
5. Taxpayer email to Mr. Olsen agreeing to withdraw his appeal from the ODR if the DOR will recognize the Taxpayer's deduction method (Feb. 12, 2018),
6. DOR email written by Mr. Olsen to the Taxpayer clarifying the original audit findings (Feb. 27, 2018), and Taxpayer email to Mr. Olsen informing the DOR of the Taxpayer's intent to continue with the ODR hearing (Feb. 27, 2018);

Ex. G: Taxpayer's 2016 state and federal individual income tax returns;

Ex. H: Lone Pine Realty's 2016 Subchapter S-corporation tax return;

Ex. I: Taxpayer's 2015 state and federal individual income tax returns;

Ex. J: Lone Pine Realty's 2015 Subchapter S-corporation tax return.

1. On September 7, 2017 DOR Auditor Jeanne Lear, sent the Taxpayer a Field Audit Appointment Letter in order to begin an audit of the Taxpayer's personal income tax returns for the years 2014, 2015 and 2016. DOR Ex. A. The audit appointment was scheduled on September 27, 2017. Id.

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2. During the audit Ms. Lear determined the Taxpayer did not receive a wage from his Subchapter S-Corporation. DOR Ex. B. As such, Ms. Lear denied the Taxpayer's unreimbursed employee business expenses for the 2015 and 2016 tax years. *Id.* Ms. Lear made the decision not to review the 2014 tax year as a courtesy to the Taxpayer. MTAB Hrg. 1.23.29.

3. The issue of whether the Taxpayer could sustain his 2015 and 2016 deductions was never reached, Ms. Lear "... didn't pursue the avenue of the documentation because [she] felt as though [she] needed to overcome the hurdle of his lack of compensation first." MTAB Hrg. 1.26.48.

4. The Taxpayer was a 50% shareholder of the Subchapter S-Corporation Lone Pine Realty (LPR), a real estate brokerage firm. Taxpayer Ex. 1. The remaining 50% was divided equally between the Taxpayer's daughter and son. *Id.*

5. LPR was a successful business venture until the 2008 recession. *Id.* Prior to the recession LPR paid the Taxpayer a salary of \$1,000.00 per month. Taxpayer Ex. 20. The Taxpayer also owned the building where LPR occupied space, and was paid \$1,000.00 per month from LPR for rent. *Id.* During the 17 years LPR was in operation the Taxpayer was an active shareholder, and ran all aspects of the business. *Id.*

6. With the downturn in the economy the Taxpayer made the choice to forgo a salary and rent in order to keep LPR operating. *Id.* "In 2008 the real estate market collapsed, and the Corporation did not have sufficient funds to continue to pay me a salary or rent." *Id.*

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7. The Taxpayer continued to use Form 2106 Schedule A, filed with his individual income tax returns, to deduct his unreimbursed employee business expenses. DOR Ex. G and I.

8. On October 5, 2017 Ms. Lear issued an Audit Adjustment Letter for the Taxpayer's 2015 and 2016 individual income tax returns. DOR Ex. B. The letter explained that because the Taxpayer did not receive any compensation reported on a W-2, the DOR denied the unreimbursed employee business expenses, and determined a balance due from the Taxpayer. Id.

9. The Taxpayer objected to the audit findings by email, and requested an informal review. DOR Ex. C-1. The email, dated October 12, 2017, also requested an extension of time in order to allow the Taxpayer to meet with a private sector tax professional. Id.

10. The DOR granted the Taxpayer's request for an extension, and set the deadline for October 31, 2017. DOR Ex. C-2. The extension included a request for information to be received by the extension deadline:

In order to consider your request, we will require that you provide the following information to me by October 31, 2017: If you believe my findings to be incorrect, please explain why you believe this to be true. Please keep in mind that Shareholder's in an S-Corporation may deduct unreimbursed business expenses that are:

1. Ordinary and necessary,
2. Paid or incurred during the tax year, and
3. Are for carrying on a trade or business of being an employee. Id.

11. The Taxpayer responded to the DOR with a letter dated October 26, 2017. Taxpayer Ex. 3. The letter concerned the Taxpayer's visit to tax consultant Bridget Niemeir of Niemeir and Ellis Tax Associates in Hamilton, Montana. Id. The

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Taxpayer stated Ms. Niemeir agreed with the DOR, and he did indeed need wages to claim unreimbursed employee business expenses. *Id.* The Taxpayer then proposed to amend his 2015 and 2016 individual income tax returns by paying himself a commission, giving himself a 1099, and claiming the deductions on a Schedule C. *Id.* He would also need to amend LPR's tax returns for those years. *Id.*

12. On November 20, 2017 Ms. Lear issued a letter to the Taxpayer requesting an extension for the DOR to review the Taxpayer's appeal. DOR Ex. C-4. "In order to give your SOA Objection the time and consideration that it deserves, my manager, Brian Olsen would like to request a 30 day extension of time to respond to it." *Id.*

13. Mr. Olsen, issued the findings of his informal audit review on December 21, 2017. DOR Ex. D. "The primary issue presented in the informal review is a request that you be permitted to amend the returns and report the income in a manner that would then potentially allow deductions. After considering the issue, I do not believe that the proposed amendments are permissible as there is no indication that the original filings were erroneous. It is my final determination that the audit remain as it currently stands." *Id.*

14. The Taxpayer disagreed with the findings relayed in the Olsen letter, and filed a "Notice of Referral to the Office of Dispute Resolution" (ODR) on January 9, 2018. DOR Ex. E. The Taxpayer also attached an objection letter to the ODR filing. *Id.* The Taxpayer used the objection to articulate his concern over his classification as a nonemployee. *Id.* "In researching my situation, online, I have discovered some interesting information. Shareholders of an S Corp are considered statutory employees." *Id.*

15. Shortly after the ODR filing the DOR issued a letter offering to allow the Taxpayer to amend his returns as he previously requested. DOR Ex. F-1.

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16. The Taxpayer responded with a request for clarification. Taxpayer Ex. 12. The Taxpayer's letter dated January 31, 2018 stated "... before I accept your offer I need to be convinced that my original filing was in error." Id. The Taxpayer went on to say "I have done considerable work on line on 1120 S Corporations and find that there are some unique regulations that pertain to these entities. ... Keep in mind that Shareholders of an S-Corporation are, according to the regulations, Statutory employees. It does not say they have to be paid or a W-2 is necessary to file in this manner." Id.

17. On February 7, 2018, after a lengthy correspondence exchange between the Taxpayer and Mr. Olsen, the DOR again offered the choice of informal resolution if the Taxpayer would withdraw his appeal from the ODR. Taxpayer Ex. 15.

18. Following the DOR letter of February 7th, a further exchange of correspondence between the Taxpayer and the DOR occurred, which did not result in a resolution. DOR Ex. F-5 and F-6. "Because of my inability to get a response from you regarding my contention that I took the real estate expenses correctly i.e. on schedule A I must request that I continue my appeal as soon as possible." DOR Ex. F-6.

19. The appeal process advanced, and the ODR held a hearing on April 23, 2018. ODR Hrg. Transcr. The hearing centered around the disallowed unreimbursed employee business expenses, and the Taxpayer's classification as a nonemployee. Id.

20. On July 12, 2018, Hearing Examiner Laura Cunningham issued her decision. ODR Decision. Examiner Cunningham concluded "The record has established that although Clifford did not receive remuneration for the services he performed for Lone Pine during the years under audit, he was a bona fide employee of the corporation." Id. at pg. 8 ln. 7.

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21. Examiner Cunningham established “The question for determination is not whether he was a bona fide employee of the corporation or whether he was required to be paid a wage to be an employee, but whether those claimed expenses were incurred as ordinary and necessary expenses while engaged in the trade or business of being a Lone Pine employee, and not simply a means to preserve the corporation, which was experiencing significant financial losses.” Id. at pg. 13.

22. The Order determined the Taxpayer “... was not engaged in a trade or business, and therefore was not entitled to the claimed expenses.” Id. at pg. 16.

23. On August 13, 2018 the Taxpayer filed for an appeal with the MTAB. Clifford File 1. The hearing took place on December 4, 2018 at the Montana Tax Appeal Board office located at 600 North Park Avenue, Helena, Montana. MTAB Hrg.

24. The Taxpayer appeared in person, and was accompanied by his son Carleton M. Clifford III. Id. The Taxpayer did not call any witnesses besides himself. Id.

25. The DOR was represented by Nicholas Gochis (Attorney). Id. Brian Olsen (Unit Manager) and Jeanne Lear (Auditor) were called as witnesses for the DOR. Id.

26. During the MTAB hearing the Taxpayer emphasized the resolution of the issue as to his status as an employee of his Subchapter S-Corporation. Taxpayer Ex. 20. Examiner Cunningham expressly stated the Taxpayer is a recognized employee. ODR Decision at pg. 8 ln. 7.

27. The DOR accepted the Taxpayer’s status as an employee, but brought forward Examiner Cunningham’s determination that the Taxpayer was not engaged in

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carrying on the trade or business of being an employee. MTAB Hrg 1.01.39. As such, he could not claim unreimbursed employee business expenses. Id.

28. During the MTAB hearing the question arose concerning the appropriateness of the claimed expenses, and their accompanying documentation. Id at 1.02.30. The Taxpayer stated he was unprepared to defend the issue, as he believed the hearing concerned only his employment status. Id at 1.12.27.

29. The Taxpayer stated “I have every piece of paper I brought them, I had them in ... Jeanne’s office at one time. And she and I had a discussion about, ... she asked me about the same question you asked me about, did I have a log for the truck? I said no.” Id at 1.12.56. He continued “I have a receipt for everything there except I cut the mileage because I ... couldn’t justify 25,000.” Id at 1.13.24.

30. The hearing also produced questions concerning the Taxpayer’s income, and deductions reported on his individual income and S-Corporation tax returns. Id at 1.02.30. Board Member Balukas asked the Taxpayer to review three points of outstanding concern from his returns. Id.

A. The Taxpayer was asked to look at his year 2015 Form 2106, and review the \$15,100 claim for business expenses. DOR Ex. I pg. 127 ln. 4. The dollar amount was not supported through itemization, as such the specific expenses were unknown. Id.

Along a similar line, Part II section A of the same form requires mileage to be recorded for a deduction. Id at pg. 128. A dollar amount was entered for a deduction in section I, but a mileage total was not recorded in section II. Id.

B. Next, the Taxpayer was asked to look at his year 2016 Form 2106, and review the \$12,722 claim for business expenses. DOR Ex. G pg. 96 ln. 10. The amount ultimately recorded as a deduction on the individual income tax return was

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\$14,777. Id. at pg. 91 ln. 21. The Taxpayer stated the difference was due to other miscellaneous expenses, but he did not have an itemization for the difference in the two numbers. MTAB Hrg. at 1.12.07.

As related, Part II section A of Form 2106 requires mileage to be recorded for a deduction. DOR Ex. G pg. 97. The Taxpayer entered 18,000 business miles on line 13, but the total miles recorded on Line 17 shows -18,000 business/other miles. Id. As a follow-up question Board Member Balukas asked the Taxpayer about a mileage log for his vehicle. MTAB Hrg. at 1.10.15. The Taxpayer stated he did not maintain a log for the vehicle. Id at 1.10.17. The Taxpayer said other than his son using the vehicle to go to Great Falls, for which he deducted 10%, the truck was used exclusively for business purposes. Id at 1.10.25.

C. Finally, the Taxpayer was asked to look at his year 2016 Schedule K-1, and review the \$8,137.60 reported for ordinary business income. DOR Ex. H pg. 115 ln. 1. The K-1 income was not reported on the Taxpayer's Schedule E, or anywhere else on the Taxpayer's individual return. DOR Ex. G pg. 94.

31. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.

CONCLUSIONS OF LAW

32. To whatever extent the forgoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.

33. 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.

34. The DOR is an agency of the executive branch of government, created and existing under the authority of MCA §2-15-13. The DOR is charged with the

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administration and enforcement of the Montana Code Annotated, Title 15, Chapter 20 (Individual Income Tax) and the ancillary Administrative Rules of Montana Title 42, Chapter 15.

35. “If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.” MCA §15-30-2605(1).

36. “Taxable income’ means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.” MCA §15-30-2101(32).

37. “[G]ross income means all income from whatever source derived, including (but not limited to) ... [c]ompensation for services, including fees, commissions” 26 U.S.C. §61.

38. “[A]djusted gross income is the taxpayer’s federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,” and includes certain additions. MCA §15-30-2110(1).

39. “Under Montana law, in computing net income, deductions are generally those permitted by 26 U.S.C. §§161 and 211. MCA §15-30-2131(1)(a).” *Robinson v. DOR*, 2012 MT 145, 3, 365 Mont. 336, 336, 281 P. 3d 218, 218.

40. “Tax deductions are a matter of legislative grace, and it is the taxpayer’s burden to clearly demonstrate the right to the claimed deduction.” *Robinson v. DOR*, 2012 MT 145, ¶12, 265 Mont. 336, 340, 281 P. 3d 218, 222 (Quoting *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L. Ed. 2d 226 (1992)).

41. "All expenses of every business transaction are not deductible. Only those are deductible which relate to carrying on a business." *Hirsch v. Comm'r* 315 F. 2d 731, 735 1963.

Statutory Employee

42. "Employee [f]or purposes of this chapter, the term 'employee' means - (1) any officer of a corporation... ." I.R.C. §3121 (d)(1).

43. "Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is considered not to be an employee of the corporation." 26 C.F.R. 31.3121(d)-(1)(b).

44. "[C]orporate officers are to be classified as employees if they perform more than minor services and receive or are entitled to receive remuneration." *Mike J. Graham Trucking, Inc. v. Comm'r*, 2003 Tax Ct. Memo LEXIS 49, 16.

45. The birth of the Taxpayer's case derives from this essential question ... who is an employee? The DOR contends an employee is defined by compensation or a W-2, and in the absence of such unreimbursed employee business expenses are not allowed. DOR Ex. C-2. The Taxpayer articulated the pragmatic approach, primarily employment status is based on the actions of the individual. Taxpayer Ex. 4. The Taxpayer also relied on multiple articles and analytical memos, which condense into the agreement that an officer of an S-Corporation is a statutory employee. Taxpayer Ex. 5-10.

46. The qualifications of an employee looks to his or her status as an officer of the corporation, whether said officer performs an appropriate level of services and if the officer either receives or is entitled to receive compensation. 26 C.F.R. 31.3121(b).

47. The Taxpayer was not just the 50% owner/shareholder of LPR, he ran the day-to-day operations, managed the staff and acted as a real estate agent. Taxpayer Ex. 20. As times turned rough for the business the Taxpayer took on more and more responsibility in order to alleviate overhead, and stay in business. *Id.* The Taxpayer went without a wage, not because he performed “minor services” or was undeserving of compensation, but because of his desire to make the business survive. *Id.*

48. The Taxpayer is, by definition and action, an employee of his Subchapter S-Corporation LPR.

Trade or Business

49. With the Taxpayer’s status clarified the next question is, whether he qualifies under 26 U.S.C. §162(a) to take the unreimbursed employee business expenses as claimed on his individual income tax returns for 2015 and 2016.

50. “In general [t]here shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business... .” 26 U.S.C. §162(a).

51. The defining characteristic of carrying on a trade or business “is that the activity or enterprise claimed to constitute ‘carrying on a business’ be entered into, in good faith, with profit, i.e., taxable income, therefrom.” *Hirsch v. Comm’r* 315 F. 2d 731, 735 1963.

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52. The case Hirsh highlights a situation similar to that of the Taxpayer. Hirsh became an investor from the ground-up of a racetrack/racing syndicate. *Id.* Hirsh effectuated the majority of the day-to-day operations, and took upon himself part of the debt incurred by the then defunct company. *Id.* Hirsh was not paid a salary during his tenure, nor did he have a set expectation of a salary. *Id.*

53. In the current case, the Taxpayer began LPR with the intent to make a profit. Taxpayer Ex. 20. He took a salary of \$1,000 per month for his actions on behalf of the company. *Id.* He was the owner, office manager, realtor and employee. *Id.* When the real estate market crashed in 2008 the Taxpayer stopped paying himself a salary, and rent for the space LPR occupied in one of his rental properties. *Id.* The Taxpayer's intent to make a personal profit was eliminated by his actions to help the company continue to make a corporate profit. This practice continued until December 2017, when LPR closed its doors. *Id.*

54. The United States Court of Appeals for the Ninth Circuit, reasoned in Hirsch "it is clear that Congress intended that the profit or income motive must first be present in and dominate any taxpayer's 'trade or business' before deductions may be taken." *Hirsch v. Comm'r* 315 F. 2d 731, 735 1963.

55. "[T]he basic and dominant intent behind the taxpayer's activities, out of which the claimed expenses or debts were incurred, must be ultimately to make a profit or income from those very same activities. Absent the basic and dominant motive, the taxpayer's activities, no matter how intensive, extensive or expensive, have not been construed by the courts as carrying on a trade or business within the purview of I.R.C. §23." *Id.* at 735-736.

56. "Generally, a corporation and its stockholders are separate taxable entities." *Snarski v Comm'r*, 1981 Tax Ct. Memo LEXIS 418, 3. "[T]o be deductible, the ...

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expenses incurred by petitioner had to be incident to earning a salary from the corporation.” Id.

57. Without question the intent behind the profit/income requirement is a personal, and not corporate, motive. Id. The Taxpayer was dedicated to the ongoing success of LPR. All his actions, though admirable, do not meet the requirement of the law. The Taxpayer must show a dominant personal profit/income motive as separate from the corporate entity of LPR. Id. This is just not apparent in the Taxpayer’s case. The Board was not provided adequate evidence or testimony to convince us otherwise.

58. This Board concludes the Taxpayer falls within the statutory definition of an employee of his Subchapter S-Corporation. Upon further examination, the Board also finds the Taxpayer fails to meet the requirement set forth in 26 U.S.C. §162(a) concerning carrying on a “trade or business”.

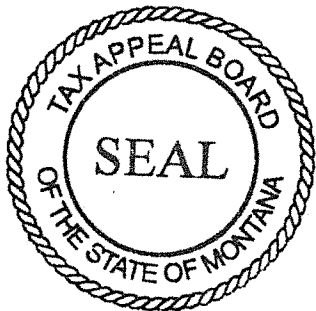
59. The directive housed within the statutory material and case law requires a profit/income motive, which is a personal motive and not related to the corporate entity. The Taxpayer’s motives were upstanding, and intended only to help his business succeed through difficult financial times. But, without a dominant personal profit motive the deductions fail the statutory test.

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Order

IT IS HEREBY ORDERED the Taxpayer's appeal is denied. The findings of the DOR's audit and final agency decision, as determined by the ODR, are upheld. As such the tax, penalties and interest, as assessed by the DOR, are due and owing.

Ordered January 30, 2019



A handwritten signature in cursive script, reading "David L. McAlpin".

David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD

A handwritten signature in cursive script, reading "Steve Doherty".

Steve Doherty, Member
MONTANA TAX APPEAL BOARD

A handwritten signature in cursive script, reading "Valerie Balukas".

Valerie Balukas, Member
MONTANA TAX APPEAL BOARD

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. 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).

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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 30, 2019 to:

Carleton M. Clifford, Jr.
249 Antigone Drive
Hamilton, Montana 59840

Nicholas Gochis
Montana Department of Revenue
P.O. Box 7701
Helena, Montana 59604-7701



Lynn Cochran, Paralegal Assistant
MONTANA TAX APPEAL BOARD