

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

JUL 25 2018

Montana Tax Appeal Board

CASE No: IT-2018-13

BYRON TAYLOR,

Appellant,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**

Respondent.

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

This Board received motions for summary judgment from both Byron Taylor and the State of Montana, Department of Revenue (DOR). Mr. Taylor requests this Board reject the Office of Dispute Resolution's (ODR) finding that Mr. Taylor improperly reported no earned wages for the 2016 tax year. The DOR requests this Board affirm the ODR's findings.

For the reasons provided below, Mr. Taylor's motion for summary judgment is denied and the DOR's motion for summary judgment is granted.

ISSUES TO BE DECIDED

1. Whether Mr. Taylor properly reported no wages earned for the 2016 tax year.

FINDINGS OF FACT

2. Mr. Taylor was previously before this Board when he challenged the DOR finding Mr. Taylor had earned wages in the 2010 through 2013 tax years. *Taylor v. DOR*, 2016 Mont. Tax LEXIS 8 (Mont.Tax.App.Bd. June 27, 2016).
3. For the 2016 tax year, Mr. Taylor was employed by Many Teepees, an entity located in West Yellowstone, Montana. DOR Ex. C.

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4. Reviewing Mr. Taylor's W-2 Wage and Tax Statement, Many Teepees reported Mr. Taylor earned \$24,945.73 in "State wages, tips, etc." DOR Ex. C. Many Teepees withheld \$731.00 in "State income tax." *Id.* Many Teepees also withheld \$1,546.46 in "Social security tax." *Id.*
5. For the 2016 tax year, Mr. Taylor completed and filed Form 4852. DOR Ex. B. Form 4852 is titled as a "Substitute for Form W-2, Wage and Tax Statement." *Id.* In the section titled "Wages, tips, and other compensation," Mr. Taylor listed "0.00;" thus, reporting no wages earned for the 2016 tax year. *Id.* Interestingly, in the section titled "State income tax withheld," Mr. Taylor listed \$731.00; the exact amount reported by Many Teepees on his W-2. *Id.* Similarly, in the section titled "Social security tax withheld," Mr. Taylor listed \$1,546.46; again the same amount listed on his W-2. *Id.*
6. On his Form 4582, Mr. Taylor stated:

Company issued erroneous W-2 form showing payments as wages. I received no wages as defined by IRC Section 3401(a) and/or 3121(a). Payment of "wages" is vehemently DISPUTED and Denied. I received 0.00 wages.
7. On his State of Montana Individual Income Tax reporting form under the line titled "Wages, salaries, tips, etc." Mr. Taylor wrote "0.00." DOR Ex. A. Mr. Taylor signed the bottom of the form. *Id.* Above his signature is the following statement: "Under penalties of false swearing, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete." *Id.*
8. Based on his reporting to the State of Montana, Mr. Taylor's return indicated he was entitled to a \$731.00 refund for the 2016 tax year. DOR Ex. D; Taxpayer Ex. 1.

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9. On June 29, 2017, the DOR sent an adjustment notice to Mr. Taylor. The DOR adjusted Mr. Taylor's "Wages, salaries, tips, etc." to \$24,946.00. DOR Ex. D. After completing this adjustment, the DOR determined Mr. Taylor was entitled to only a \$37.00 refund. *Id.*
10. On July 14, 2017, Mr. Taylor sent a letter to the DOR regarding the June 29, 2017 adjustment letter. DOR Ex. E. Mr. Taylor asserted the DOR was required to use his federal return and his federal return listed his earned wages as 0.00. *Id.*
11. On August 10, 2017, the DOR responded to Mr. Taylor's letter with a final decision letter. DOR Ex. F. The DOR rejected Mr. Taylor's reasoning by relying on MCA § 15-30-2101(32), MCA § 15-30-2110, 26 § USC 61, and 26 § USC 62. *Id.*
12. On September 12, 2017, Mr. Taylor appealed the DOR's decision to ODR. DOR Ex. G.
13. After hearing and reviewing the evidence, on January 4, 2018, ODR issued its decision denying Mr. Taylor's appeal. DOR Ex. H.
14. On January 28, 2018, Mr. Taylor appealed ODR's decision to this Board. DOR Ex. I. In his appeal, Mr. Taylor asserted, again, that the DOR had "changed [the] amount of federal taxable income on [his] 2016 tax return." *Id.* Therefore, as he had before ODR, Mr. Taylor argued the DOR should have accepted his self-reported amounts on his Form 4852 and his federal return.
15. On June 13, 2018, Mr. Taylor moved this Board for summary judgment.
16. On June 13, 2018, the DOR also moved for summary judgment.
17. On June 25, 2018, Mr. Taylor filed an opposition brief to the DOR's motion for summary judgment.
18. On July 12, 2018, the DOR filed its response to Mr. Taylor's motion for summary judgment and replied to Mr. Taylor's opposition brief.

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

CONCLUSIONS OF LAW

20. To whatever extent the foregoing findings of fact may be construed as conclusions of law, they are incorporated accordingly.
21. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-302.
22. Under Rule 56(c), Mont. R. Civ. P., judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Roe v. City of Missoula*, 2009 MT 417, ¶ 14. "A material fact is a fact that involves the elements of the cause of action or defenses at issue to an extent that necessitates resolution of the issue by a trier of fact." *Roe*, ¶ 14.
23. "The party moving for summary judgment has the initial burden of establishing both the absence of genuine issues of material fact and entitlement to judgment as a matter of law." *Roe*, ¶ 14. If the moving party meets this burden, then the "burden . . . shifts to the nonmoving party to establish that a genuine issue of material fact does exist." *Roe*, ¶ 14.
24. If no genuine issues of material fact exist, the district court "then determines whether the moving party is entitled to judgment as a matter of law." *Roe*, ¶14.
25. Each year individuals must pay tax on their taxable income. Mont. Code Ann. § 15-30-2103.

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26. “‘Taxable income’ means the adjusted gross income of a taxpayer less the deductions and exemptions provided for ...” Mont. Code Ann. § 15-30-2101(32).
27. “[A]djusted gross income’ means, in the case of an individual, gross income minus” allowed deductions. Mont. Code Ann. § 15-30-2110(1); 26 U.S.C. § 62.
28. “[G]ross income means all income from whatever source derived, including (but not limited to) ... [c]ompensation for services...” Mont. Code Ann. § 15-30-2110(1); 26 U.S.C. § 61; *see* Mont. Code Ann. § 15-30-2102(18)(a) (“‘Montana source income’ means: ... wages, salary, tips, and other compensation for services performed in the state or while a resident of the state...”).
29. “If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.” Mont. Code Ann. § 15-30-2605.
30. Mont. Code Ann. § 15-30-2619 states:

Each taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year that the taxpayer has filed or may file with the federal government, showing the taxpayer’s net income and how obtained and the several sources from which derived. If the amount of a taxpayer’s taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall file an amended Montana return with the department within 90 days after receiving notice of the change or correction. If a taxpayer files an amended federal income tax return changing or correcting the taxpayer’s federal taxable income for a tax year, the taxpayer shall also file an amended Montana return with the department within 90 days after filing an amended federal income tax return. The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all forms

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to the taxpayer after they have been examined by the department.

31. Mr. Taylor argues the State of Montana tax form says “enter amounts corresponding to your federal tax return” which he interprets to mean the State of Montana must rely on the amount of earned income he self-reported on Form 4852. He argues Mont. Code Ann. § 15-30-2619 requires the DOR to review the federal return. Mr. Taylor’s argument, therefore, is a purely legal issue which is appropriate for resolution by a motion for summary judgment.
32. The conspicuous problem with Mr. Taylor’s argument can be summarized as follows: if Mr. Taylor misrepresents his income on Form 4852, the State of Montana must accept those misrepresentations and has no means of undertaking an audit and remedying the misrepresentations. Mr. Taylor’s position would lead to illogical results. Taxpayers could simply misrepresent their income on a federal form, and the State of Montana would be required to accept those misrepresentations and not be able to obtain any state income taxes. There would be nothing to stop every Montana resident from undertaking the same conduct, and thus leaving the State of Montana without any income tax revenue.
33. Montana law does not allow for the above result. This Board finds nothing in the law indicating the DOR must rely on erroneous documents filed by the taxpayer when determining the amount of income tax Mr. Taylor owes to the State of Montana. Mont. Code Ann. § 15-30-2605, in fact, authorizes the DOR to revise a return when necessary.
34. Instead, the evidence presented conclusively proves that Mr. Taylor did not accurately report his earned wages for the 2016 tax year. As a result, the DOR had the statutory authority to revise his return and did so properly under Montana law.

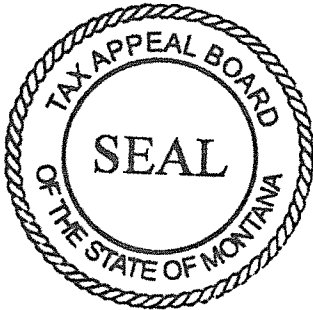
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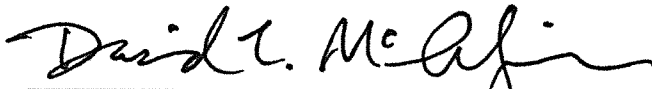
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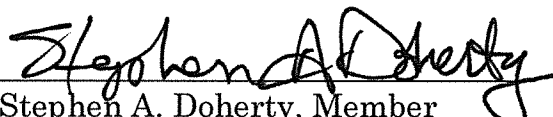
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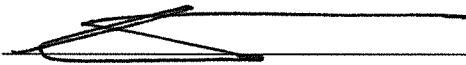
1. The DOR's motion for summary judgment is granted, and the final decision of the Office of Dispute Resolution is affirmed.
2. Mr. Taylor's motion for summary judgment is denied.

Ordered July 25, 2018.




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 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. Mont. Code Ann. § 15-2-303(2).

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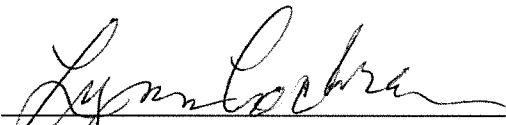
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Certificate of Service

I certify that I caused a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, and Notice of Opportunity for Judicial Review* to be sent by United States Mail via Print and Mail Services Bureau of the State of Montana on July 25, 2018 to:

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Helena, MT 59604-7701



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MONTANA TAX APPEAL BOARD

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