

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

DEC 13 2018

Montana Tax Appeal Board

CASE No: IT-2018-33
(Tax year 2013)

RICH & ALYCE WASSALL,
Appellant,

v.

**STATE OF MONTANA,
DEPARTMENT OF REVENUE,**
Respondent.

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

Rich and Alyce Wassall appeal from the Montana Department of Revenue (DOR) Office of Dispute Resolution (ODR) Order of March 6, 2018. ODR upheld the DOR's final audit that denied various medical expense deductions, and the energy conservation credit taxpayers claimed on their 2013 Montana individual income tax return.

FINDINGS OF FACT

Procedural History

1. Rich and Alyce Wassall filed their Montana individual income tax return (return) for 2013 on October 15, 2015. Ex. E, Bates Wassall-MDOR 000001-2. On their return the Wassalls' claimed \$107,429 in deductible medical expenses and the \$1,000 Montana energy conservation installation credit. Ex. E. Bates Wassall-MDOR 000011-13.
2. DOR notified the Wassalls in a letter dated March 9, 2016, that their return for 2013 was being audited and requested taxpayers provide copies of receipts to verify their itemized deduction schedule along with

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenues

supporting documentation for the energy conservation installation credit, to the DOR within thirty days. Ex. A, Bates Wassall-MDOR 000016-17.

3. Between March 9, 2016 and August 3, 2017, the DOR granted Mr. Wassall numerous extensions of time to produce records, but finally on August 3, 2017, the DOR issued a final audit determination denying all of the Wassall's claimed medical deductions and the energy credit because the Wassalls failed to produce any records or receipts to support their reported deductions. Bates Wassall-MDOR 000038-39.
4. Mr. Wassall timely appealed the final audit determination to ODR. ODR Ex. 1. Taxpayers failed to appear at the initial telephonic conference scheduled for September 28, 2017, by Order on September 14, 2017. ODR Ex. 3. The initial telephonic conference was rescheduled first for October 12, rescheduled to November 7 to accommodate taxpayer's requests for additional time, and postponed to November 28 by yet another extension request from Mr. Wassall. ODR Exs. 4,5,6. At the November 28th conference, Mr. Wassall appeared for himself and his wife, and Mr. Olson and Yost appeared for DOR, and all the parties agreed to a Hearing Date for January 4, 2018. ODR Ex. 6. On January 2nd, Mr. Wassell requested an extension of the hearing date in order to attend a memorial service, and the ODR Hearing Examiner accommodated his request for yet another extension of time, by changing the hearing date to January 5, 2018, to which Mr. Wassall responded to the ODR Hearings Examiner by email "You can take your attitude and stick it you know where." ODR file email dated January 2, 2018 1:31:05 PM.

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

5. ODR held a hearing on January 5, 2018, and Mr. Wassall appeared by telephone. ODR Order. Mr. Wassall produced the following records for the first time:
 - a. Ex. 1: Email drafted by Rich Wassall on April 14, 2014 with subject "2013 Taxes" (2 pages);
 - b. Ex. 2: Summary of invoices between 3/4/2013 and 2/12/2014 from Barry Briggs Construction Company (2 pages);
 - c. Ex. 3: Two IRS Form 1099-MISC (Miscellaneous Income) and a handwritten yellow sticky note (1 page);
 - d. Ex. 4: Records showing how taxpayers health insurance premiums were paid by Mrs. Wassall's retirement administrator (8 pages);
 - e. Ex. 5: List of expenses 1/1/3-12/31/13 from the Safeway Pharmacy in Dillon and the CVS Pharmacy in Butte (7 pages);
 - f. Ex. 6: Letter from Ronald V. Loge, M.D. with handwritten notation "written on 6/14/11 or later" (3 pages);
 - g. Ex. 7: Schedule A itemized deduction worksheet from 2013 Federal Income Tax Return (1 page);
 - h. Ex. 8: Receipts for payments to in-home care providers (4 pages);
 - i. Ex. 9: Receipts for \$25 co-pays (2 pages);
 - j. Ex. 10: Copies of checks written to Barry Briggs Construction (13 pages);
 - k. Ex. 11: Handwritten notes with heading "Energy Credit" (2 pages);
 - l. Ex. 12: Sympathy Card from Ron Loge, M.D. with a handwritten yellow sticky note "written on or after 6/11/2014 (2 pages);
 - m. Ex. 13: Email from Mr. Wassall to DOR employee Brian Olsen and ODR Hearing Examiner Michele Crepeau on 1/18/18 with copy of page 23: Instructions for Filing Montana Form 2 (3 pages);

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

- n. Ex. 14: Email from Mr. Wassall to DOR employee Brian Olsen and ODR Hearing Examiner Michele Crepeau on 1/18/18 with copy of page 6 of IRS Pub. 502. (2 pages).
6. Based on the records produced in Ex. 4 for the first time at the ODR hearing, the DOR concluded that the Taxpayers had substantiated their claimed deduction for health insurance premiums such that the DOR would allow that deduction. ODR Order ¶3.
7. The ODR Hearings Examiner determined that the CVS Pharmacy receipts totaling \$321.26 met the taxpayers' substantiation requirements, and otherwise upheld the DOR's audit findings disallowing all other claimed medical deductions and the energy conservation installation credit. ODR Order.
8. Taxpayers' timely appealed the ODR Order to this Board on March 31, 2018. The Board convened a telephonic scheduling conference on May 16, 2018, at which time the hearing was set for September 20, 2018 and the parties were ordered to exchange exhibits and witness lists on or before September 7, 2018. MTAB Scheduling Order of May 16, 2018. The Wassalls did not provide this Board or the DOR with any exhibits. On September 18th Leo Prigge, CPA, emailed a notification to this Board that he and Mr. Wassall were going to appear at the hearing telephonically. Prigge email to Lynn Cochran dated September 18, 2018.

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

MTAB Hearing

9. On September 20, 2018, this Board conducted a hearing at the Montana Tax Appeal Board office located at 600 North Park Avenue, Helena, Montana.

10. Leo Prigge appeared by telephone and notified the Board the Mr. Wassall was not going to appear for the hearing. Mr. Prigge called no witnesses.

11. The Board used the Wassalls ODR exhibits as submitted and numbered for the ODR hearing as the taxpayers exhibits for the MTAB hearing.

12. The DOR was represented by Anthony Zammit. Brian Olsen, Field Audit Unit Manager for the Business and Income Tax Division, testified as a witness for the DOR's case.

13. The Board admitted the following exhibits submitted by the DOR:
 - a. DOR Ex. A: Correspondence between Taxpayer and the DOR;
 - b. DOR Ex. B: Notice of Referral to ODR;
 - c. DOR Ex. C: Memorandum to ODR;
 - d. DOR Ex. D: Taxpayers exhibits present to ODR;
 - e. DOR Ex. E: 2013 Tax Returns/Amended Notice: Notice of Assessment: Gentax Notes: Statement of Account: Updated Statement of Account;
 - f. DOR Ex. F: Appeal Letter to Montana Tax Appeal Board.

14. The record establishes that in 2013, Mr. Wassall's elderly mother, Edith Boothby, was suffering from Alzheimer's and diabetes and

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

significant complications stemming from those diseases, and because she had a significant risk of falling, she required constant 24 hour – 7 days a week care and supervision, including requiring that someone be with her while she slept. ODR Hrg. Transcr. 3:15-6:2.

15. Up until December 2013, Ms. Boothby was living in the Bicentennial Park Apartments, an independent housing unit in a senior partially HUD related housing complex in Dillon. *Id.* At some time in 2010, Ms. Boothby fell and broke her hip, and after her hospitalization she was discharged back to a two-bedroom apartment in the Bicentennial complex. *Id.*, Ex. 6.
16. Mr. Wassall testified that after a state HUD audit, the manager at Bicentennial changed and the new manager planned to evict Ms. Boothby because she was at risk of falling. *Id.* Mr. Wassall testified that he and his wife did everything they could to try to reverse this eviction decision, including getting Ms. Boothby's doctor to write a letter in support of her continued residence in the Bicentennial complex (see Ex. 6), but eventually, in 2013, the Wassalls made the decision to purchase and remodel a single-family home in Dillon where they would be able to provide 24/7 private care for her. *Id.*
17. The home they purchased was a three-story home originally built in 1887 and completed in 1889, and Mr. Wassall testified that it needed significant renovations to make it habitable for themselves and Ms. Boothby. ODR Hrg. Transcr. 6: 8-10. The bulk of the medical expenses denied by the DOR were the renovation costs which the Wassalls claim were a medical necessity in order to make the home habitable and safe for Ms. Boothby.

Energy Conservation Installation Credit

18. Taxpayers 2013 Montana individual tax return shows that they claimed the full \$1,000 credit available to taxpayers who paid \$4,000 or more on capital investments in the physical attributes of a building for energy conservation purposes. Ex. E Bates Wassall-MDOR 000013.
19. DOR's initial audit inquiry letter dated March 9, 2016, requested the taxpayers provide all supporting documentation for the Energy Conservation Installation Credit. Ex. A Bates Wassall-MDOR 000017-18.
20. Mr. Olson testified that during the audit period the DOR granted the Wassalls numerous extensions of time to search for their records, but ultimately the Wassalls did not provide any documents regarding the energy credit and thus the DOR denied the credit in the final audit report. MTAB Hrg. Transcr. 28:1-9, 29:2-3.
21. At the ODR hearing Mr. Wassall produced a two-page handwritten document with the heading "Energy Credit" which admits that taxpayers could not find any 2013 records to substantiate the credit, but lists six separate items taxpayers assert qualify for the energy credit: fiberglass insulation, a water heater, three doors, a stove, a dishwasher, and an insinkerator food waste disposer. Ex. 11 (2 pages).
22. Mr. Olson testified that even if the taxpayers had provided adequate substantiation the following items do not qualify for the energy credit: the insinkerator, the dishwasher, and the stove. MTAB Hrg. Transcr. 28:10-16.

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

23. Mr. Olson testified that the insulation, water heater, and the three doors, do belong to a broad class of items that could at least potentially qualify for the energy credit, however to qualify for the energy credit the taxpayer has to show that the specific item(s) they installed meet certain efficiency ratings set forth in the DOR's Administrative Rules and the Wassalls failed to provide any documentation for the DOR's auditor's to do this. MTAB Hrg. Transcr. 28:10-16.

24. Nowhere in the exhibit did Mr. Wassall indicate how much they paid for any of the six items, provide any copies of any receipts or order forms, or otherwise indicate how he determined how much of each item's installation cost they were using to claim the energy credit. Ex. 11.

25. Ms. Wassall testified at the ODR hearing that he was in ongoing litigation with the contractor who had not responded or provided Mr. Wassall with his requests for documentation. ODR Hrg. Transcr. 12:21-25.

26. Mr. Wassall testified at the ODR hearing that he was not sure what items he specifically claimed for the energy credit, but that he was hopeful they provided enough information to establish that as part of the expenses for the extensive remodeling of their home, they vastly exceeded the \$4,000 cap on the energy credit. ODR Hrg. Transcr. 19:12-20:12.

Pharmacy Expenses

27. Taxpayers' claimed medical expenses are comprised of different items; pharmacy expenses, payments made to individuals working for the

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

Wassalls as in-home health care providers to Mr. Wassall's mother, doctor's expenses, and expenses related to the remodeling of the home.

28. At the ODR hearing Mr. Wassall produced year-end summary invoices for himself, his wife and his mother, from the Safeway pharmacy in Dillon and the CVS pharmacy in Butte. Ex. 5

29. The Hearings Examiner allowed the Wassalls to claim the CVS pharmacy expenses, because the CVS receipts sufficiently itemized the drugs purchased, the prescribers name, the date the prescription was filled, and the amount paid, but ultimately determined that because the amount of these expenses did not exceed the 7.5 percent threshold of the Taxpayers' adjusted gross income, no medical expense deduction was available to the Taxpayers. ODR Order pp. 13-14, 20.

30. The Safeway receipts only contain the date and the patient payment amount, but they do identify the Safeway store by number, contain a run date, are titled MEDICAL EXPENSES, and include an NABP (National Association of Boards of Pharmacy) number and a DEA (United States Drug Enforcement Administration) registration number. Ex. 5. Mr. Wassall testified at the ODR hearing that he personally went to the pharmacy to obtain the year-end summaries submitted in Exhibit 5. ODR Hrg. Transcr. 16:20-21

Caregiver Expenses

31. Mr. Wassall testified at the ODR Hearing that they hired three people to help with the 24/7 care of his mother, and he provided copies of two federal Form 1099's (Miscellaneous Income) showing they paid

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

Alyssa M. Eads \$11,951.30 and Darlene R. Cross \$2,539.83, and handwritten receipts signed by Lisa Jo Green for payments totaling \$515. Exs. 3 & 8; ODR Hrg. Transcr. 25:5-22. Mr. Wassall testified that they did not prepare a Form 1099 for Lisa Jo Green because the total amount she earned was below the Form 1099 filing requirement. ODR Hrg. Transcr. 25:5-22. Mr. Wassall testified that he and his wife paid those caregiver expenses out of their own personal funds, because his mother did not have any long-term care or other medical insurance that would cover those costs. ODR Hrg. Transcr. 25:5-22.

Doctor Co-Pays

32. The Wassalls included copies of handwritten receipts described, on a yellow sticky note, to be Alyce Wassall's co-pay to a foot doctor. Ex. 9. These small handwritten receipts do not indicate the name of the Doctor or whether the visits were for a medical purpose. *Id.* All the receipts indicate is that Alyce paid \$25 for a co-pay that was received by SA. *Id.*

Capital Expenses to remodel the Wassalls' home

33. Mr. Wassall testified that in 2013 they purchased a run-down three-story home, originally built in 1887, and spent about a quarter of a million dollars to renovate it, in order to move his mother into the home in December of 2013. ODR Hrg. Transcr. 6:6-21, 8:1-9:1. Mr. Wassall described the following renovations that they contracted for the house: they built a concrete wheelchair ramp to access the kitchen door from the street; replaced all of the infrastructure underneath the house including the plumbing, heating and the electrical, with the exception of a furnace which they could use with a new hot water heater system; completely removed all of the walls on the first floor so they could have a bedroom

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

which would accommodate a hospital bed and another bed for a caregiver; a new kitchen; and installed new insulation throughout the home. ODR Hrg. Transcr. 6:10-7:4.

34. Mr. Wassall provided a two-page invoice from a contractor, Barry Briggs, dated 3/14/2013 thru 2/12/2014, which Mr. Wassall described as a cost summary of the renovations done to the home. Ex. 2.

35. The entries on the cost summary provides broad descriptions of the renovation work, for example, the first three entries state:

3/4 thru 4/4/2013 :Excavate for wheelchair ramp. Pour concrete for foundation and slab, set railing posts and spindles. All material and labor \$21,252.00

4/8/2013:Excavate in basement to build up footings. Entire wall were being compromised. Start to re-pour walls were [sic] We [sic] could. Electric to start rough wiring and taking out old panel that was outdated and put in new to accommodate Ediths needs. We needed to do upgrading because of increased load caring for Edith. New service entry line was needed. All materials and labor: \$13,459.00.

5/6/2013: Prepare house for electrician. New service panel needed to start electrical with new wiring and service panel [sic] continue excavation in basement to retain footings. All footing were getting weak and sloughing away from foundation. Reinforce footings for beams, concrete in floor to stabilize. All materials and labor: \$26,790.00. Ex. 2.

36. Mr. Wassall provided copies of thirteen cancelled checks from the Wassalls to Barry Briggs Construction. Ex. 10. The checks are written for amounts varying from \$3,000 to \$27,000 and none of the checks match any of the amounts shown on the cost summary prepared by Barry Briggs Construction. Exs. 2, 10.

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

CONCLUSIONS OF LAW

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

Jurisdiction

39. The Board has jurisdiction over this appeal. MCA §15-2-302.
40. The DOR is an agency of the executive branch of government, created and existing under the authority MCA §2-15-13. The DOR is charged with the 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.
41. If, in the opinion of the DOR, a return of a taxpayer is in any essential respect incorrect, the agency may revise the return. MCA §15-30-2605(1).
42. Taxable gross income means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter. MCA §15-30-2101(32).
43. Under Montana statutes, adjusted 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, plus certain additions. MCA §15-30-2110(1).

44. “Under Montana law, in computing net income, deductions are generally those permitted by 26 U.S.C. §§161 and 211.” *Id.* at ¶ 13. Tax deductions are a matter of legislative grace and it is the taxpayer’s burden to clearly demonstrate the right to the claimed deductions. *Robinson v. DOR*, 2012 MT 145, ¶12, 265 Mont. 336, 340, 281 P. 3d 218, 222. The “burden of showing the right to the claimed deduction is on the taxpayer.” *INDPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992).

Energy Conservation Installation Credit

45. The Montana Energy Conservation Installation Credit is a credit against Montana individual income taxes for “25% of the taxpayer’s expenditure for the capital investment in physical attributes of a building or the installation of a water, heating, or cooling system in the building, so long as either type of investment is for an energy conservation purpose, in an amount not to exceed \$500.” M.C.A. §15-32-109. Thus, a married couple can claim up to \$1,000 for the energy credit each year.
46. This Board find that the Wassalls did not provide enough information for either this Board or the DOR auditors to determine that the Wassalls qualify for the energy credit. This Board finds Mr. Wassall credible that they spent far in excess of \$4,000 to renovate their home. However, this is not sufficient to qualify for the energy credit.
47. Mr. Wassall failed to prove the expenditures were for energy efficient materials which qualify for the Montana Energy Conservation Installation Credit.

Capital Improvements Claimed as Deductible Medical Expenses

48. 26 U.S.C. §213 allows a taxpayer to deduct “the expenses paid during the taxable year, not compensated for by insurance or otherwise, for the medical care of the taxpayer, his spouse, or a dependent, to the extent that such expenses exceed 10 percent of adjusted gross income.” However, if a taxpayer has attained age 65 the 10 percent is reduced to 7.5 percent of adjusted gross income. §213(f).
49. §213 defines the term ‘medical care’ as amounts paid “for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.” §213(d)(1). Deductions for expenditures for medical care allowable under section 213 will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness. Sec. 1.213-1(e)(1)(ii), Income Tax Regs.
50. Capital expenditures are generally not deductible. 26 U.S.C. §263.
51. However, a capital expenditure may qualify as a deductible medical expense if it has as its primary purpose the medical care of the taxpayer or his dependent. §1.213-1(e)(1)(iii) Income Tax Regs. A qualifying capital expenditure may be deducted as a medical expense in the year of payment, but only to the extent that the expenditure exceeds the increase in value of the underlying property which results from the expenditure. §1.213-1(e)(1)(iii), Income Tax Regs.; see also *Cherry v. Comm.* 1983 Tax Ct. Memo LEXIS 317.

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

52. In relation to capital expenditures made for medical care, §1.213-

1(e)(1)(iii) of the Income Tax Regulations provides as follows:

(iii) Capital expenditures are generally not deductible for Federal income tax purposes. See section 263 and the regulations thereunder. However, an expenditure which otherwise qualifies as a medical expense under section 213 shall not be disqualified merely because it is a capital expenditure. For purposes of section 213 and this paragraph, a capital expenditure made by the taxpayer may qualify as a medical expense, if it has as its primary purpose the medical care (as defined in subdivisions (i) and (ii) of this subparagraph) of the taxpayer, his spouse, or his dependent. *Thus, a capital expenditure which is related only to the sick person and is not related to permanent improvement or betterment of property, if it otherwise qualifies as an expenditure for medical care, shall be deductible; for example, an expenditure for eye glasses, a seeing eye dog, artificial teeth and limbs, a wheel chair, crutches, an inclinor or an air conditioner which is detachable from the property and purchased only for the use of a sick person, etc. Moreover, a capital expenditure for permanent improvement or betterment of property which would not ordinarily be for the purpose of medical care (within the meaning of this paragraph) may, nevertheless, qualify as a medical expense to the extent that the expenditure exceeds the increase in the value of the related property, if the particular expenditure is related directly to medical care.* Such a situation could arise, for example, where a taxpayer is advised by a physician to install an elevator in his residence so that the taxpayer's wife who is afflicted with heart disease will not be required to climb stairs. If the cost of installing the elevator is \$ 1,000 and the increase in the value of the residence is determined to be only \$ 700, the difference of \$ 300, which is the amount in excess of the value enhancement, is deductible as a medical expense. *If, however, by reason of this expenditure, it is determined that the value of the residence has not been increased, the entire cost of installing the elevator would qualify as a medical expense. * * * (Emphasis added).*

53. Therefore, under the regulations, the test is whether the expenditures were incurred for the primary purpose of, and were related directly to the petitioner's medical care and if so, *whether the expenditures exceeded any increased value to the residence. Worden v. Comm., 1981 Tax*

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

Ct. Memo LEXIS 376, citing *Haines v. Commissioner*, 71 T.C. 644, 647 (1979) (Emphasis added); *Ferris v. Commissioner*, 582 F.2d 1112 (7th Cir. 1978), revg. and remanding on another issue a Memorandum Opinion of this Court.

54. This Board finds the Wassalls failed to establish either necessary element to support their claimed deductions.

55. The Wassalls purchased a rundown three-story home and provided no evidence as to why this specific house was the most suitable option to provide care for Ms. Boothby. The evidence in the record strongly suggests that Ms. Boothby would never be able to access either the second or third floor, yet much of the work that was done to the house improved these stories as much as they did the first floor.

56. It is possible that had Mr. Wassall appeared at the MTAB hearing he could have provided credible testimony to explain why they needed to build a permanent concrete handicap accessible ramp and whether he believed the cost to build the ramp exceeded any increase in the market value of the home as required for the deduction. However, as the record in this case is devoid of evidence to allow this Board to compare the cost of the improvements to the market value of the home, this Board will not allow the Wassalls to claim numerous capital expenditures as deductible medical expenses.

Pharmacy and Caregiver Medical Expenses

57. “A taxpayer must substantiate the amounts which give rise to the claimed deduction, and if he does not, respondent is not arbitrary or

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

unreasonable in denying the deductions.” *Cook v. Commissioner*, 1991 Tax Ct. Memo LEXIS 640, at 7-8 citing *Hradesky v. Commissioner*, 65 T.C. 87, 90 (1975), affd. per curiam 540 F.2d 821 (5th Cir. 1976); *Roberts v. Commissioner*, 62 T.C. 834, 836-837 (1974). A taxpayer's inability to produce his records does not relieve him of this burden of proof. *Estate of Mason v. Commissioner*, 64 T.C. 651 (1975), affd. 566 F.2d 2 (6th Cir. 1977); *Figueiredo v. Commissioner*, 54 T.C. 1508 (1970), affd. per order (9th Cir. Mar. 14, 1973).

58. Although generally a taxpayer is required to keep records to establish the amount of his deductions under 26 U.S.C. §6001, in some situations, the Court may estimate the amount of medical expenses and allow a deduction to that extent, notwithstanding substantiating documentary evidence in the record. *Cohan v. Commissioner*, 39 F.2d 540, 543-544 (2d Cir. 1930); *Meyers v. Commissioner*, T.C. Memo 1996-219.

59. The Wassalls bear the burden to show they are entitled to the medical expense deductions claimed. *Worden v. Commissioner*, 1981 Tax Ct. Memo LEXIS 376 citing *Oliver v. Commissioner*, 364 F.2d 575, 577 (8th Cir. 1966).

60. This Board finds Mr. Wassall presented sufficient evidence to substantiate the deductions claimed for the pharmacy expenses at the Safeway pharmacy and caregiver expenses reported on the Form 1099s and the receipts. It is likely that these issues would have been removed from the issues before this Board had the Taxpayers provided copies of these records to the DOR during the audit period.

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

61. Mr. Wassall provided credible testimony at the ODR Hearing that he had personally obtained the year-end medical expenses from the Safeway pharmacy, and while the Safeway receipts do not indicate the type of medication or the prescriber, the documents do appear to be credible business records that contain the store identification and both NABP and DEA numbers, to convince this Board that the amounts listed on those pages were limited to medical expenses.

62. Mr. Wassall testified that his mother needed 24-hour a day supervision, and that they paid three caregivers to help provide this necessary medical care to Ms. Boothby. He provided a letter from his mother's doctor confirming that this was a necessary condition to prevent Ms. Boothby from further harm. While Mr. Wassall and his wife were Ms. Boothby's primary full-time caregivers, this Board finds it credible and reasonable to believe that they paid additional persons to assist them with this task. Mr. Wassall provided copies of the Form 1099s that list his wife as the payer of income to two individuals and there is no evidence in the record to suggest that these payments were for anything other than for Ms. Boothby's care. In addition, Mr. Wassall provided copies of receipts of payment signed by the recipient, for monies paid to her by Mrs. Wassall. Again, there is not evidence in the record to suggest that these payments were for anything other than providing care to Ms. Boothby.

Doctor Co-pays

63. Unfortunately, the Wassalls did not provide this Board with enough evidence to substantiate their claimed medical expenses for the doctor co-pays. Unlike the receipts Mr. Wassall obtained directly from the pharmacies in Dillon and Butte, the hand-written receipts do not indicate

BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

anything other than Alyce Wassall paid someone named SA \$25 for a co-pay.

Conclusion

64. This Board finds that the Wassalls did present sufficient evidence to support all of their claimed pharmacy and caregiver expenses, but did not present sufficient documentation or testimony to support the additional medical expenses claimed for doctor co-pays, the renovation of their home, or for the energy conservation installation credit. Case law is replete with cases where taxpayers, despite their intentions, did not meet the burden to document and substantiate their claimed deductions. The Wassalls were given reasonable chances to do so, but failed. In fairness to all taxpayers, consistent rules and expectations must be followed.

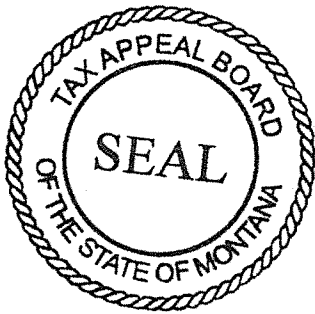
BEFORE THE MONTANA TAX APPEAL BOARD

Rich & Alyce Wassall v. Montana Dept. of Revenue

ORDER

IT IS HEREBY ORDERED that the Department of Revenue allow the deductions Rich and Alyce Wassall's claimed for their pharmacy and caregiver expenses but otherwise this Board upholds the Department of Revenue's determination to disallow the medical deductions for the doctor co-pays, all capital improvements to the home, and the energy conservation installation credit.

Ordered December 13, 2018.



David L. McAlpin

David L. McAlpin, Chairman
MONTANA TAX APPEAL BOARD

Stephen A. Doherty

Stephen A. Doherty, Member
MONTANA TAX APPEAL BOARD

Valerie A. Balukas

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. 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. Mont. Code Ann. § 15-2-303(2).

BEFORE THE MONTANA TAX APPEAL BOARD


Rich & Alyce Wassall v. Montana Dept. of Revenue

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 December 13, 2018 to:

Prigge & Otten PC
Leo Prigge
16 East Granite Street
Butte, MT 59701

Montana Department of Revenue
Anthony Zammit
Legal Services Office
P.O. Box 7701
Helena, MT 59604-7701


Lynn Cochran, Paralegal Assistant
MONTANA TAX APPEAL BOARD