

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

DEC 08 2025

Montana Tax Appeal Board

JAMES ACHTEN,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: IT-2025-15

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

**STATEMENT OF THE CASE**

This is an appeal of a final agency decision issued by the Montana Department of Revenue's (Department or DOR) Office of Dispute Resolution (ODR) which affirmed the DOR's calculation of tax, interest, and penalties due resulting from James Achten's (Taxpayer) 2023 income tax filings. After receiving the Department's final determination confirming the amount of tax due, the Taxpayer appealed to ODR, which held a hearing on December 20, 2024. In its opinion and order, the ODR upheld the DOR's determination of taxes, penalties, and interest accruing. The Taxpayer appealed that outcome to the Montana Tax Appeal Board (MTAB) on June 26, 2025. We affirm the DOR's determination.

**ISSUE TO BE DECIDED**

Whether the compensation that the Taxpayer received from their employer during tax year 2023 constitutes taxable Montana source wages subject to state income tax.

**PROCEDURAL HISTORY**

On April 15, 2024, Taxpayer filed a 2023 Montana Individual Income Tax Return (Form 2) reporting zero wages and claiming a refund of \$4,257.00. *MTAB Dkt.*  
3. On June 28, 2024, the Department issued an Adjustment Notice, revising

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Taxpayer's return to include \$76,733.00 in Montana source wages, correcting the tax liability to \$4,257.00, and adjusting the refund amount to \$139.00. *Id.* On August 12, 2024, Taxpayer sent the Department a Request for Informal Review/Form APLS101F/written objection, objecting to the Department's applied adjustments, arguing that he did not receive "wages" as defined in §§ 26 U.S.C. 3401(a) and 3121(a). *Id.* On September 9, 2024, after receiving Taxpayer's Objection, the DOR reviewed the matter and subsequently issued its Final Determination Letter upholding its initial determination. *Id.*

On October 7, 2024, Taxpayer filed an appeal with ODR, maintaining that he had not received "wages" as defined by Chapter 26, U.S.C. *MTAB Dkt. 3.* ODR held a hearing on the matter on December 20, 2024, and subsequently issued its Findings of Fact, Conclusions of Law, and Order on April 29, 2025, in which it upheld the Department's initial determination. *Id.* On June 26, 2025, Taxpayer filed an appeal of the ODR decision with MTAB. *MTAB Dkt. 1.* On October 6, 2025, the Department filed a Motion for Summary Judgment, arguing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *MTAB Dkt. 7.* On October 7, 2025, this Board issued an order vacating the hearing schedule and set a briefing schedule. *MTAB Dkt. 8.* On October 19, 2025, the DOR emailed the Board to ask if the Taxpayer had filed a response. The Board replied to both the DOR and Taxpayer confirming that a response had not been filed. The Taxpayer responded to the Board's email stating that the response was mailed on October 28<sup>th</sup>, 2025. The DOR then filed a Brief in Support of Motion for Summary Judgment on November 10, 2025. *MTAB Dkt. 9.*

The ODR record has been incorporated into MTAB's record.

**FINDINGS OF FACT**

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

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2. Taxpayer was employed as a pipe designer specializing in designing equipment for refineries and chemical plants at Swift Technical Services, LLC (Swift) during the 2023 tax year. *MTAB Dkt. 3.* Taxpayer performed services and received Montana source employee wages from Swift during the 2023 tax year. *Id.* During the 2023 tax year, Taxpayer resided outside the state of Montana and, for tax purposes, was considered a “nonresident.” *Id.* Swift reported \$76,732.58 in Montana source wages and withheld Montana source income tax in the amount of \$4,396.00. *Id.*
3. Swift filed a Form W-2 with the Department for tax year 2023, reporting that Taxpayer earned \$76,733 in Montana sourced wages, and \$4,396 in Montana income tax was withheld and remitted on his behalf by Swift. *MTAB Dkt. 3.*
4. On April 15, 2024, the Taxpayer filed Form 2, reporting no wages or income but claiming a refund of \$4,396, representing the amount withheld by Swift. *MTAB Dkt. 3.* Taxpayer did not attach the Form W-2 issued by Swift, reasoning that “they’re fraudulent” and “incorrect . . . as my wages do not meet the term, or definition for wages” and instead attached a Form 4852 Substitute Form W-2/1099-R “to correct the erroneous W-2” submitted by Swift. *Id.* Using Form 4852, Taxpayer entered a zero amount under wages. *Id.* Taxpayer did not provide evidence showing that he followed the form’s instructions requiring him to contact Swift to correct the W-2 or provide the Internal Revenue Service (IRS) with Swift’s contact information for the IRS to contact Swift prior to filing the Form 2. *Id.*
5. The Department reviewed Taxpayer’s 2023 tax filing and discovered that the only value included in Taxpayer’s Montana Form 2 was the Montana tax withheld in the amount of \$4,396. *MTAB Dkt. 3.* The Department located the W-2 filed by Swift and amended Taxpayer’s filing to include his Montana source wage information of \$76,732.58. *Id.* On June 28, 2024, the Department

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sent Taxpayer an Adjustment Notice that identified the changes made during the audit. *Id.*

6. On August 12, 2024, the Department received Taxpayer's Request for Informal Review/Form APLS101F/written objection to the applied adjustments. *MTAB Dkt. 3*. In his objection, Taxpayer argued that: (1) he did not receive any "wages" as defined in §§ 26 USC 3401(a) or 3121(a); (2) he was not involved in any federally privileged activities; (3) he was a private individual not involved in any "trade or business", and (4) the Department was unlawfully withholding his private property. *Id.*
7. On September 9, 2024, the Department issued its Final Determination Letter affirming its initial assessment, reasoning that utilizing Form 4852 to create a "zero return" was considered a frivolous position identified by § 26 U.S.C. 6702. *MTAB Dkt. 3*. The DOR further stated that this position is well explained by IRS Notice 2010-33, and that the IRS and Montana DOR have repeatedly rejected such positions. *Id.*
8. On October 7, 2024, ODR received Taxpayer's appeal of the Final Determination Letter. *MTAB Dkt. 3*. ODR held a hearing on December 20, 2024. *Id.* The ODR issued its Findings of Fact, Conclusions of Law, and Order on April 29, 2025, concluding that Taxpayer failed to overcome his burden to show that the Montana source income identified by the Department is erroneous and affirmed the Department's final determination. *Id.*
9. On June 26, 2025, following the April 29, 2025, ODR decision, Taxpayer filed an appeal with MTAB. *MTAB Dkt. 1*. In his appeal, Taxpayer argues that the statutory definitions provided by the US Congress, specifically, the use of the word "includes" in Section 61 does not apply to his earnings from Swift. *Id.*

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10. Taxpayer does not dispute that he performed services for Swift, that Swift paid him the amounts shown on the W-2, or that Swift withheld and remitted Montana income tax on his behalf. *MTAB Dkt. 3*. Taxpayer's argument hinges on different definitional interpretations primarily, that he is not an "employee," and his earnings are not "wages" subject to tax. *Id.*
11. On October 6, 2025, the Department filed a Motion for Summary Judgment pursuant to Rule 56 M. R. Civ. P., contending that the undisputed facts show Taxpayer was employed by Swift, earned wages subject to withholding, and that the plain language definition of "employee" applies to him. *MTAB Dkt. 7*. As such, the Department further contends that Taxpayer's Form W-2 provides uncontroverted evidence of his receipt of employee wages as paid by his employer, that the wages listed on the Form W-2 constitute taxable income, and that the withholding made by Swift is appropriate. *Id.*

**JURISDICTION AND STANDARD OF REVIEW**

12. The Montana Tax Appeal Board is an independent agency not affiliated with the Montana Department of Revenue. Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101. The Taxpayer filed a timely appeal of the DOR's decision to the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-302*.
13. This Board may hear appeals de novo. *Dept. of Revenue v. Burlington N.*, 169 Mont. 202, 213-14, 545 P.2d 1083 (1976). "A trial de novo means trying the matter anew, the same as if it had not been heard before and as if no decision had been previously rendered." *McDunn v. Arnold*, 2013 MT 138, ¶ 22, 370 Mont. 270, 275, 303 P.3d 1279, 1282.
14. The Board's order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2- 302(6).

**CONCLUSIONS OF LAW**

15. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
16. The Taxpayer bears the burden of proving the error of DOR's decision.  
*Farmers Union Cent. Exch. v. Dep't of Revenue*, 272 Mont. 471, 476, 901 P.2d 561, 564 (1995).
17. When construing a statute, it is the Board's role to "determine what in terms or substance is contained in it, and not to insert what has been omitted or to omit what has been inserted." *State v. Minett*, 2014 MT 225, ¶ 12, 376 Mont. 260, 263, 332 P.3d 235, 238; Mont. Code Ann. § 1-2-101.
18. "When faced with a problem of statutory construction great deference must be shown to the interpretation given the statute by the officers or agency charged with its administration." *Dep't of Revenue v. Puget Sound Power & Light Co.*, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978) (citing *Udall v. Tallman*, 380 U.S. 1, 16 (1965)).
19. "Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority." *Bick v. State Dep't of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).
20. "[A]dministrative regulations interpreting the statute made by agencies charged with the execution of the statute are entitled to respectful consideration." *Puget Sound Power & Light Co.*, 179 Mont. 255, 266, 587 P.2d 1282, 1288 (1978).

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21. The Department is not bound to accept an IRS-processed return when credible evidence (e.g., employer-filed W-2) shows inaccuracy. *Western Airlines v. Michunovich*, 149 Mont. 347, 428 P.2d 3 (1967).
22. “In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.” Mont. Code Ann. § 1-2-102.
23. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” Mont. Code Ann. § 15-2-301(5).
24. “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(1).
25. "Montana taxable income" means federal taxable income as determined for federal income tax purposes and adjusted as provided in 15-30-2120. Mont. Code Ann. § 15-30-2101.
26. “Rate of tax -- net long-term capital gains -- definitions. (1) Except as provided in subsections (2) and (3), there must be levied, collected, and paid for each tax year on the Montana taxable income of each taxpayer subject to this chapter a tax on the brackets of taxable income...” Mont. Code Ann. §15-30-2103.
27. Adjustments to federal taxable income to determine Montana taxable income. (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income. Mont. Code Ann. § 15-30-2120.



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28. Wages earned for services performed in Montana are Montana source income subject to state tax. Mont. Code Ann. § 15-30-2101(21)(a).
29. Gross income defined (a) General definition - Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items. 26 U.S.C. § 61.
30. “Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash.” I.R.C. § 61(a).
31. “Adjusted gross income. (1) Subject to subsection (15), 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.” Mont. Code Ann. § 15-30-2110 (Repealed 2021).
32. “A person required to file a Montana Individual Income Tax Return must determine their Montana income tax liability in accordance with the applicable Montana statutes and administrative rules. All income, except income specifically exempted in Title 15, chapter 30, MCA, or these rules, is included in determining income subject to Montana income tax.” Mont. Admin. R. 42.15.108.
33. Summary judgment should be granted if the pleading, discovery, and affidavits show no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. M. R. Civ. P. 56(c).



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34. Once the moving party establishes no genuine issue of material fact exists, the opposing party must identify a genuine issue of material fact. *Lucas Ranch, Inc. v. Mont. Dept. of Revenue*, 2015 MT 115, ¶ 12, 378 Mont. 28, 347 P.3d 1249 (citing *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 39, 345 Mont. 12, 192 P.3d 186). To identify a genuine issue of material fact, the opposing party must set forth specific facts and cannot rest upon the allegations or denials of the pleadings. *Lucas Ranch, Inc.*, ¶ 12; M. R. Civ. P. 56(e).
35. “A material fact is one that involves the elements of the cause of action or defense to the extent that it requires resolution by the trier of fact.” *Roe v. City of Missoula*, 2009 MT 417, 354 Mont. 1, 221 P.3d 1200.

**DISCUSSION**

36. For the reasons set forth below, this Board affirms the DOR determination.
37. Under Rule 56(c), summary judgment shall be granted when the pleadings, discovery, and affidavits show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Once the moving party establishes the absence of a genuine issue, the opposing party must set forth specific facts showing a genuine issue remains. *Lucas Ranch, Inc. v. Montana Department of Revenue*, 2015 MT 115, ¶ 12, 378 Mont. 28, 347 P.3d 1249.
38. In this case, the material facts are not in dispute. Taxpayer admits he performed services for Swift in 2023, does not dispute the wages reported on the Form W-2, and challenges only the legal characterization of that compensation. Nor did the Taxpayer contest DOR’s undisputed facts. Accordingly, the matter may be resolved as a matter of law.
39. Montana imposes an individual income tax on every resident and on the Montana source income of every nonresident. Mont. Code Ann. § 15-30-2103.

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“Montana taxable income” is derived from the taxpayer’s federal adjusted gross income as defined in § 62 of the Internal Revenue Code, 26 U.S.C. § 62. Mont. Code Ann. § 15-30-2110. Federal gross income includes “all income from whatever source derived,” including “compensation for services.” 26 U.S.C. § 61(a)(1).

40. Montana source income specifically includes “wages, salary, tips, and other compensation for services performed in the state or while a resident of the state.” Mont. Code Ann. § 15-30-2101(18)(a). Every employer making payment of wages in Montana is required to withhold state income tax in accordance with the Department’s withholding tables. Mont. Code Ann. § 15-30-2502; ARM 42.17.111(1).
41. The statutes, therefore, leave no ambiguity: compensation received for services performed in Montana constitutes taxable income, and the employer must withhold Montana income tax from those wages.
42. Taxpayer argues that he is not an “employee” as defined by 26 U.S.C. § 3401(c), that the payments he received from Swift do not constitute “wages,” and that his private employment is not subject to taxation.
43. This argument has been raised and rejected in numerous courts. The Internal Revenue Code provides that “employee” *includes* officers and certain public officials. 26 U.S.C. § 3401(c). The word “includes” is a term of enlargement, not limitation. 26 U.S.C. § 7701(c). The definition of “employee” in § 3401(c) does not exclude private-sector workers; rather, it expressly encompasses all individuals who perform services under an employer’s control. *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985). “The assertion that the category of employee does not include privately employed wage earners is a preposterous reading of the statute.” *Id.*

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44. Treasury Regulation § 31.3401(c)-1 confirms that “the term ‘employee’ includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee.” Taxpayer’s own statements establish that he performed services for Swift as a pipe designer under an employer-employee relationship. Accordingly, his pay from Swift constitutes wages under both federal and state law.
45. Taxpayer cited several court cases to support his position that his earnings were not taxable “wages,” but none of those arguments were persuasive in this matter. In *Helvering v. Morgan’s, Inc.*, the Supreme Court explained that when Congress uses the word “includes” in a statute, it is meant to broaden, not narrow, the definition of a term. *Helvering v. Morgan’s, Inc.*, 293 U.S. 121, 55 S. Ct. 60 (1934) and *Fox v. Standard Oil Co.*, 294 U.S. 87, 55 S. Ct. 333 (1935). Likewise, *United States v. Cleveland Indians Baseball Co.*, and *Comm’r v. Glenshaw Glass Co.*, confirm that “wages” and “income” are defined broadly under tax law to cover nearly all payments received for work or services performed. *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 121 S. Ct. 1433 (2001); *Comm’r v. Glenshaw Glass Co.*, 348 U.S. 426, 75 S. Ct. 473 (1955). The *Moore v. United States*, decision also emphasizes that Congress may lawfully define and tax income in broad terms. The other cases Taxpayer referenced, such as *Montello Salt Co. v. Utah*, involved land grants and have no connection to tax law. *Moore v. United States*, 602 U.S. 572, 144 S. Ct. 1680 (2024) and *Montello Salt Co. v. Utah*, 221 U.S. 452, 31 S. Ct. 706 (1911). Finally, the rule of interpretation Taxpayer relies on, *expressio unius est exclusio alterius*, cannot override Congress’s clear intent to tax compensation for work. Taken together, these cases do not support Taxpayer’s position, they instead confirm that the Department correctly treated the payments he received for his services as taxable wages under both federal and Montana law.

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46. Taxpayer submitted an IRS Form 4852 (Substitute for Form W-2) asserting zero wages and claiming a refund of the Montana income tax withheld. Form 4852 is a limited remedy available only when the taxpayer's employer fails to issue a Form W-2 or issues an incorrect one, and the taxpayer has attempted, without success, to obtain the correct form.
47. The record contains no evidence that Taxpayer contacted Swift or the IRS to request a corrected Form W-2, as the Form 4852 instructions require. Moreover, Swift timely filed a Form W-2 reporting \$154,029.93 in wages, of which \$76,733 was Montana sourced. Taxpayer does not dispute these amounts. Therefore, his hand-completed Form 4852 carries no weight and cannot replace a valid W-2.
48. Under Mont. Code Ann. § 15-30-2605, the Department is authorized to revise a return that is "in any essential respect incorrect." The Department properly revised Taxpayer's 2023 return to reflect the W-2 wages reported by Swift.
49. Taxpayer's additional assertions, that he is a private individual not engaged in a "trade or business" and therefore owes no income tax, have been repeatedly rejected by the Internal Revenue Service, the federal courts, and this Board. The IRS has designated such "zero return" and "no wages" positions as frivolous under 26 U.S.C. § 6702 and IRS Notice 2010-33.
50. Numerous courts addressing this claim have held that compensation for personal services, whether public or private, constitutes taxable income. *Commissioner v. Kowalski*, 434 U.S. 77 (1977); *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955); *United States v. Connor*, 898 F.2d 942, 943-44 (3d Cir. 1990). The Board agrees with these authorities and finds Taxpayer's argument contrary to law.

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51. The Department acted within its statutory authority to audit and revise Taxpayer's return under Mont. Code Ann. § 15-30-2605. By including the wages Swift reported as Montana source income, the Department correctly determined Taxpayer's Montana taxable income and resulting tax liability.
  
52. Taxpayer did not file a response to the DOR's Motion for Summary Judgment setting forth specific facts in controversy. The legal question, whether wages earned from private employment in Montana constitute taxable income, has been definitively resolved by statute and controlling precedent. The Department's determination must therefore be affirmed as a matter of law.

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**ORDER**


53. The DOR's Motion for Summary Judgment is granted.
54. The DOR's determination of Taxpayer's 2023 Montana income tax liability, including tax, penalties, and interest, is upheld.

Dated this 3<sup>rd</sup> day of December 2025.



  
Travis Brown, Chairman

  
Adam Millinoff, Member

  
Christopher Murphy, Member

**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. 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).

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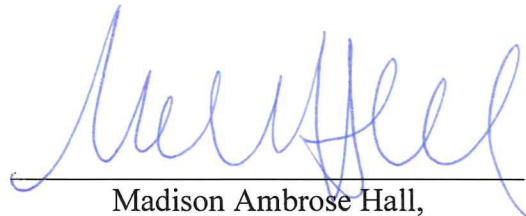
**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Order Granting Summary Judgement, and Opportunity for Judicial Review to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on December 3, 2025, to:

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