

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

APR 25 2023

Montana Tax Appeal Board

MIKE AND DIANNE ATWELL,

Appellants,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: IT-2022-33

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

**STATEMENT OF THE CASE**

This is an appeal of a final decision by the Department of Revenue (DOR) denying Mike and Dianne Atwell's (Taxpayers) request for informal review of the DOR's audit determination of their 2018 and 2019 Montana income tax filings. The DOR denied the request citing a lack of reasonable cause for the untimeliness of the request. The Taxpayer appealed to the DOR's Office of Dispute Resolution (ODR), which held a hearing on July 26, 2022. The ODR upheld DOR's determination that reasonable cause did not exist for the Taxpayers' untimely request for review. The Taxpayers appealed that outcome to Montana Tax Appeal Board (MTAB) on October 17, 2022. We reverse the DOR's determination.

**ISSUE TO BE DECIDED**

Whether the DOR erred in denying the Taxpayers request for informal review of the DOR's audit determination of their 2018 and 2019 Montana income tax filings based on lack of reasonable cause for the untimely request.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

The Taxpayers submitted the following exhibits:

1. Field Audit Appointment Letter – November 8, 2021 (3 pages);

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

2. Additional Information Request Letter – January 11, 2022 (2 pages);
3. Audit Adjustment Letter, Form 18, Form 18 Explanations, Schedule C Adjustments, and Audit Approval e-mail from Senior Tax Examiner, Tina Standish – February 9, 2022 (10 pages);
4. 2018 Notice of Assessment – February 9, 2022 (3 pages);
5. 2019 Statement of Account – March 1, 2022; 2018 and 2019 Statements of Account – April 1, 2022 (12 pages);
6. Request for Informal Review, Form APLS 101F – April 15, 2022 (1 page);
7. Supervisor Brian Olsen’s Response to Request for Informal Review – April 29, 2022 (2 pages);
8. Notice of Referral to the Office of Dispute Resolution – May 12, 2022;
9. Letter from Senator Jon Tester to Eduardo Ruiz, USPS VP of Area Operations – Western Area, and William Schwartz, USPS District Manager, Portland District – July 13, 2022 (1 page);
10. Bozeman Daily Chronicle Article, “USPS staff shortage leads to significant mail delivery delays in Bozeman” by Alex Miller – July 14, 2022 (3 pages);
11. KBZK Bozeman Channel 7 Article, “USPS on Baxter Lane facing backlash due to missing and late packages” by Kristen Merkel – July 14, 2022 (4 pages);
12. Montana Right Now Article, “Hundreds of Bozeman Residents have not received mail in weeks” by Madison Atkinson – July 15, 2022 (2 pages);
13. KBZK Bozeman Channel 7 Article, “Baxter Lane USPS service is starting to look better, but there is still a long way to go” by Kristen Merkel – July 21, 2022 (4 pages) ;
14. KBZK Bozeman Channel 7 Article, “Some in Bozeman still waiting on absentee ballots with Election Day fast approaching” by Kristen Merkel – Oct. 24, 2022 (4 pages);
15. Letter from Senator Steve Daines to Postmaster General Louis DeJoy – Oct. 31, 2022 (1 page); and

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

16. Billings Gazette Article, “Montana mail problems persist postal employees say” by Tom Lutey – Dec. 10, 2022 (6 pages).

The DOR submitted the following exhibits:

- A. MDOR Appointment letter, November 8, 2021;
- B. Additional Information Request, January 11, 2022;
- C. Audit Adjustment letter, February 9, 2022;
- D. Notice of Assessment, February 9, 2022;
- E. 2018 Statement of Account, March 1, 2022; 2018 and 2019 Statements of Account, April 1, 2022;
- F. Request for Informal Review, April 15, 2022;
- G. DOR Response to Informal Review, April 29, 2022; and
- H. Notice of Referral to Office of Dispute Resolution, May 12, 2022.

**PROCEDURAL HISTORY**

After auditing the Taxpayers’ 2018 and 2019 income tax returns, the DOR assessed additional tax, penalties, and interest on the tax returns. The additional tax, penalties, and interest were assessed due to the DOR’s denial of several deductions the Taxpayers claimed on their Schedule C for those tax years. The Taxpayers requested an informal review of that determination through the DOR. The DOR denied the Taxpayers’ request for informal review, stating the request had been filed after the appeal deadline. The Taxpayers appealed that decision to the ODR, and a hearing was held on July 26, 2022. On September 26, 2022, the ODR issued its Findings of Fact, Conclusions of Law, and Order, denying the Taxpayers’ appeal and upholding the DOR’s determination that the appeal was untimely filed and that no reasonable cause existed for the late filing. The Taxpayers timely appealed that decision to MTAB on October 17, 2022.<sup>1</sup>

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<sup>1</sup> The original MTAB appeal was filed on October 17, 2022, in the form of a brief. The complaint was filed October 24, 2022. This Board accepted the original appeal and notes that both submissions were filed timely and no conflict exists as to the timing of either filing.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

The MTAB hearing was conducted in Helena on January 26, 2023, at which the following were present:

- a. Dianne Atwell, Taxpayer (via Zoom); Natalie Black, Taxpayer Counsel; Noah Hill, Taxpayer Counsel;
- b. Teresa Whitney, DOR Counsel; Brian Olsen, DOR Unit Manager, Individual Income Tax Field Audit Unit, Business and Income Tax Division; and Kerry Bolmeier, DOR Management Analyst (Field Auditor at the time of the audit), Business and Income Tax Division.

The record includes all materials submitted to ODR, a transcript of the ODR hearing, all materials submitted to MTAB with the appeal, and additional exhibits submitted by the parties prior to and at the MTAB hearing.

**FINDINGS OF FACT**

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The DOR sent a field audit appointment letter to the Taxpayers dated November 8, 2021, scheduling a meeting for December 20, 2021, at the DOR's Bozeman office to review the Taxpayers' 2018 and 2019 income tax returns. *Ex. 1, A.*
3. The DOR met with the Taxpayers' CPA, Jake Neil, on December 20, 2021, at which Mr. Neil provided information to substantiate certain deductions claimed on the Taxpayers' Schedule C for tax year 2018 and 2019. *Ex. 2, B.*
4. The DOR sent a letter to the Taxpayers dated January 11, 2022, acknowledging receipt of the information provided by Mr. Neil on December 20, 2021 and requesting additional information be provided by February 4, 2022. *Ex. 2, B.*
5. Although she could not recall the date, Mrs. Atwell testified that she dropped off additional information at the DOR's Bozeman field office. *MTAB Hrg. Transcr. 10:12-14.* During the ODR hearing, the DOR Field Auditor, Kerry

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

Bolmeier, testified that Mrs. Atwell dropped off the information on February 7, 2022. *ODR Hrg. Transcr. 6:21-23.*

6. Ms. Bolmeier testified that she made no changes to her audit findings based on the information Mrs. Atwell delivered to her office on February 7, 2022. *MTAB Hrg. Transcr. 10:12-14, 33:17-20.* She testified this was because the materials dropped off were the same as those Mr. Neil had provided to her when she met with him on December 20, 2021. *Id.*
7. The DOR issued the Audit Adjustment Letter dated February 9, 2022 (Audit Adjustment Letter), from its Bozeman office stating the audit was complete and detailing the adjustments the DOR made to the Taxpayers' 2018 and 2019 tax returns. *MTAB Hrg. Transcr. 34:16-34, 37:16-38:5; Ex. 3, C.*
8. The DOR issued a Notice of Assessment dated February 9, 2022, for tax year 2018, which was issued from its Helena office. *MTAB Hrg. Transcr. 37:6-38-5; Ex. 4, D.*
9. The Taxpayers later received a Statement of Account for the 2019 tax year dated March 1, 2022. *Ex. 5, E.*
10. The Taxpayers later received Statements of Account for tax years 2018 and 2019 dated April 1, 2022. *Ex. 5, E.*
11. After receiving Statements of Account for both tax years, the Taxpayers filed Form APLS101F, Request for Informal Review, on April 15, 2022, stating they were receiving bills and asking if they should be receiving a breakdown of additional information needed for the audit. *Ex. 6, F.*
12. The DOR mailed a letter dated April 29, 2022, in response to the Taxpayers' Request for Informal Review (Response to Request for Informal Review). *Ex.*

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

- 7, G. The Response to Request for Informal Review explained that the Audit Adjustment Letter was issued February 9, 2022, and that the Audit Adjustment Letter had advised the Taxpayers they had until March 11, 2022, to object if they disagreed with the audit findings. *Id.* The Response to Request for Informal Review further explained that because the DOR did not receive the Taxpayers' Request for Informal Review until April 15, 2022, the Taxpayers missed the appeal deadline. *Id.* The Response to Request for Informal Review further explained that the Taxpayers could appeal the decision that the request was untimely to the ODR within 30 days of the date shown on the Response to Request for Informal Review. *Id.*
13. The Taxpayers filed DOR Form APLS102F, Notice of Referral to the Office of Dispute Resolution, on May 12, 2022. *Ex. 8, H.* The ODR hearing was held on July 26, 2022. On September 26, 2022, the ODR issued its decision denying the Taxpayers' request for review and upholding the DOR's determination that the Taxpayers did not have reasonable cause for missing the 30-day deadline to appeal the audit findings as provided in the Audit Adjustment Letter. *ODR Findings of Fact, Conclusions of Law, and Order, p. 13.*
14. During the MTAB hearing, Mrs. Atwell testified that she received the 2018 Notice of Assessment dated February 9, 2022, and it was the first communication she received from the DOR since receiving the letter from the DOR dated January 11, 2022. *MTAB Hrg. Transcr. 10:15-11:3, 24:15-24:19.* However, she testified that she did not receive the Audit Adjustment Letter. *MTAB Hrg. Transcr. 12:16-13-2.*
15. Although the 2018 Notice of Assessment dated February 9, 2022, states that the Taxpayers may appeal the notice by March 11, 2022, the Taxpayers took no action at that time. *MTAB Hrg. Transcr. 11:17-24; 25-2-15.* Mrs. Atwell testified that she disregarded the notice because she believed it was generated automatically and that the audit was ongoing. *Id.*

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

16. Mrs. Atwell testified that when she received the 2019 Statement of Account dated March 1, 2022, she believed again that it was generated automatically and that the audit was ongoing. *MTAB Hrg. Transcr. 13:3-14:1*. She did not receive a 2018 Statement of Account in March. *Id.*
17. Mrs. Atwell testified that when she received both a 2018 and 2019 Statement of Account dated April 1, 2022, she decided to ask the DOR for a review since the audit had been going on over a year and she had not heard back from the DOR regarding the audit results. *MTAB Hrg. Transcr. 14:2-16:18*. She filled out DOR Form APLS 101F, Request for Informal Review, on April 12, 2022, and the DOR received it April 15, 2022. *MTAB Hrg. Transcr. 16:16-21; Ex. 6, F.*
18. After submitting their request for informal review, the Taxpayers received the Response to Request for Informal Review dated April 29, 2022. *MTAB Hrg. Transcr. 17:4-12; Ex. 7, G.* In it, the DOR stated that the auditor's original determination was correct and that the Taxpayers had missed the deadline of March 11, 2022, to appeal the DOR's audit findings as set forth in the Audit Adjustment Letter. *Id.* The Response to Request for Informal Review included information regarding the Taxpayers' appeal rights should they disagree with the decision that they missed the deadline to appeal. *Id.* The Taxpayers appealed the DOR's determination that their Request for Informal Review was untimely to the ODR on May 12, 2022. *Ex. 8, H.*
19. Mrs. Atwell testified that she never received the Audit Adjustment Letter in the mail and that the first time she saw it was when the DOR provided it to her in preparation for the ODR hearing. *MTAB Hrg. Transcr. 12:12-13-23, 17:17-25.*
20. Gallatin County has experienced notable issues with mail delivery to such an extent that United States Senator Steve Daines wrote a letter to the Postmaster General, and United States Senator Jon Tester wrote a letter to the USPS Vice

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

President of Area Operations (Western Area) and District Manager (Portland District) regarding the situation. *MTAB Hrg. Transcr. 18:2-19:2; Ex. 9, 15.*

21. The Bozeman area mail delivery issues have also been covered by the local news. *Ex. 10-14, 16.*
22. Mrs. Atwell testified that some of the issues they have experienced with mail include the Taxpayers' mailbox being knocked down by a temporary USPS driver, mail not being delivered, outgoing mail not being picked up, and receiving other people's mail, including mail addressed to someone in Twin Bridges. *MTAB Hrg. Transcr. 18:2-25, 20:13-20.* She further testified these issues began during Covid and remain ongoing as of the date of the hearing. *Id.*
23. Ms. Bolmeier testified that a copy of all correspondence sent to the Taxpayers would also be sent to the Taxpayers' CPA, Jake Neil, because the DOR has a Power of Attorney on file authorizing them to discuss the Taxpayers' 2018 and 2019 income tax matters with him. *MTAB Hrg. Transcr. 35:18-25.* Ms. Bolmeier further testified that she called Mr. Neil before sending out the Audit Adjustment Letter to inform him of the results of the audit. *MTAB Hrg. Transcr. 38:8-11.*
24. Mrs. Atwell testified that Mr. Neil did not contact the Taxpayers regarding the Audit Adjustment Letter. *MTAB Hrg. Transcr. 27:17-28:8.* Mrs. Atwell further testified that she did not follow up with Mr. Neil after the initial conference on December 20, 2021, because she assumed the DOR would contact her with the audit results. *MTAB Hrg. Transcr. 29:3-23.*
25. Ms. Bolmeier testified that the Taxpayers had previously received a Notice of Assessment for tax year 2019 for a separate issue. *MTAB Hrg. Transcr. 34:9-15, 36:15-37:8.* She explained that the reason the Taxpayers only received a Notice of Assessment for the 2018 tax year during this audit was because the



**BEFORE THE MONTANA TAX APPEAL BOARD**  
*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

DOR system only sends out one Notice of Assessment per tax year. She further explained that because the DOR had already issued a Notice of Assessment for 2019 for a separate issue, they would not have generated another one related to this audit. *Id.*

**JURISDICTION AND STANDARD OF REVIEW**

26. 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*.
27. 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.
28. 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**

29. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
30. DOR is entitled to a "presumption of correctness if its decisions are pursuant to an administrative rule or regulation, and the rule or regulation is not arbitrary, capricious or otherwise unlawful." *Burlington N.*, 169 Mont. At 214, 545 P.2d at 1090. However, DOR cannot rely entirely on the presumption in its favor and must present a modicum of evidence showing the propriety of their action. *Western Air Lines v. Michunovich*, 149 Mont. 347, 353, 428 P.2d 3, 7 (1967).

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

31. 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); *Western Air Lines*, 149 Mont. At 353, 428 P.2d at 7.
32. "[T]ax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer." *Western Energy Co. v. Dep't of Revenue*, 1999 MT 289, ¶ 10, 297 Mont. 55, 58, 990 P.2d 767, 769.
33. "[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).
34. 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)*.
35. Under the Taxpayer Bill of Rights, the DOR must provide taxpayers a "complete and accurate written description of the basis for any additional tax assessed" by the DOR. *Mont. Code Ann. § 15-1-222(6)*.
36. The Taxpayer Bill of Rights also requires the DOR to provide taxpayers a "full explanation of the available procedures for review and appeal of additional tax assessments." *Mont. Code Ann. § 15-1-222(8)*.
37. Under Montana Administrative Rule 42.2.510 (2018-2019), the Taxpayers must file a Request for Informal Review or written objection within 30 days from the date shown on the Notice of Assessment or deficiency assessment.
38. "'Reasonable cause' means the taxpayer exercised ordinary business care and prudence and was nevertheless unable to...object to a department action as

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

provided for in [Montana Administrative Rule] 42.2.510...” Mont. Admin. R. 42.2.304(50) (2018-2019).

39. The Taxpayers bear the burden of proving that they had reasonable cause for their failure to timely submit a reply to a deficiency notice and that the failure was not due to neglect. Mont. Admin. R. 42.2.513 (2018-2019).
  
40. Under Montana Administrative Rule 42.2.512(2), the exercise of ordinary business care and prudence, as well as the existence of reasonable cause, must be determined on the facts of each case on a case-by-case basis.
  
41. Montana Administrative Rule 42.2.512(3) sets forth a non-exhaustive list of examples of reasonable cause for a taxpayer’s failure to reply to a deficiency notice. These examples include, but are not limited to:
  - (a) where it can be substantiated that the return or reply was mailed or...electronically filed in time to reach the department in the normal course of business, within the legal period...;
  - (b) where it can be substantiated that the delay or failure was due to erroneous information given the taxpayer by an employee of the department according to the provisions provided in the taxpayer bill of rights found in 15-1-222, MCA;
  - (c) where the delay was caused by death or extended serious illness of the taxpayer;
  - (d) where the delinquency or delay was due to destruction by fire or other casualty of the taxpayer’s place of business or business records; or
  - (e) where a taxpayer is unable, for reasons beyond the taxpayer’s control, to obtain the records necessary to determine the amount of tax due.
  
42. Montana Administrative Rule 42.2.512(4) states that the examples in Montana Administrative Rule 42.2.512(3) are illustrations only and that other reasonable causes may exist for a taxpayer’s failure to reply to a deficiency notice. Other reasonable causes will be considered on a case-by-case basis based on:
  - (a) the taxpayer’s reasons address the penalty and interest that was assessed or the date a reply was due;

## BEFORE THE MONTANA TAX APPEAL BOARD

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

- (b) the length of time between the event cited as a reason and the filing, payment, or reply date negate the event's effect;
  - (c) the event that caused the taxpayer's noncompliance or increased liability could have reasonably been anticipated;
  - (d) the taxpayer has provided sufficient detail (dates, relationships) to determine ordinary business care and prudence was exercised;
  - (e) the taxpayer documented all pertinent facts; and
  - (f) the taxpayer could have requested an extension or filed an amended return.
43. Montana Administrative Rule 42.2.512(5) provides examples which do not constitute reasonable cause and that demonstrate neglect. Such examples, which are illustrations only per Montana Administrative Rule 42.2.512(6), include but are not limited to:
- (a) forgetfulness or inadvertence on the part of a taxpayer, a taxpayer's employee, a taxpayer's agent, or the taxpayer's professional tax preparer;
  - (b) failure to file or reply because of advice by a professional tax preparer, attorney, or accountant;
  - (c) religious, political, or philosophical opposition to the tax;
  - (d) the advent of new tax laws, regulations, or administrative requirements that create complex problems and significantly delay the taxpayer in preparing returns;
  - (e) inability of a professional tax preparer to secure competent help in sufficient time to cope with the workload;
  - (f) a failure to secure the proper forms; or
  - (g) the taxpayer started to prepare the return or reply in sufficient time, but found that because of complicated issues the taxpayer was unable to finish the return or reply.

### DISCUSSION

44. The sole issue before this Board was whether reasonable cause existed for the Taxpayers' untimely filing of their Request for Informal Review. For the reasons stated below, we find reasonable cause exists for the untimely filing.
45. Mrs. Atwell credibly testified that she did not receive the Audit Adjustment Letter from the DOR which explained, in detail, changes the DOR made to their 2018 and 2019 income tax returns which resulted in additional tax assessed. She provided credible evidence and testimony that the Bozeman area

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

has experienced significant issues with mail delivery, which have been covered by the local media. The mail delivery issues in Bozeman have been significant enough to catch the attention of two United States Senators. For these reasons, along with the fact that Mrs. Atwell had been participating in the audit up to that point, this Board finds it credible that the Taxpayers did not receive the Audit Adjustment Letter.

46. The Taxpayer Bill of Rights requires the DOR to provide a complete and accurate description of the basis for any additional tax assessed by the DOR, as well as a full explanation of the available procedures for review and appeal of additional tax assessments. The Audit Adjustment Letter provided all of this information. However, as noted above, we find it credible that the Taxpayers did not receive that information.
47. We note that the 2018 Notice of Assessment did provide some information on appeal rights. However, we find it reasonable that this information on its own without the context provided in the Audit Adjustment Letter was not sufficient to alert the Taxpayers at that time that they may be missing something. We find it reasonable that the Taxpayers would believe the audit was ongoing and that they would receive the final audit findings once it was complete.
48. Because the Taxpayers had previously received a Notice of Assessment for 2019 for an unrelated issue, they did not receive another one when they received their 2018 Notice of Assessment in February 2022. They later received a 2019 Statement of Account in March, but no 2018 Statement of Account that month. The following month, they received both a 2018 and 2019 Statement of Account. It was at that time that the cumulative effect of the seemingly random mailings they received caused them to follow up with the DOR by filing their Request for Informal Review.

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

49. This Board agrees that adhering to deadlines is a requirement in situations such as these. The DOR has created rules allowing for reasonable cause exceptions to late filing of certain forms and objections relating to an audit such as this one. There is no doubt that when the Taxpayers filed their Request for Informal Review on April 15, 2022, it was after the due date of March 11, 2022. The question remains as to whether there was reasonable cause for the late filing. The DOR found that there was not. However, we disagree due to the unusual and well documented circumstances that were outside of the control of either party.
50. The Taxpayers had 30 days from the date on the Audit Adjustment Letter (February 9, 2022) to request an informal review. While the Taxpayers did receive the 2018 Notice of Assessment that indicated they had until March 11, 2022, to appeal the assessment, Mrs. Atwell provided credible testimony that they did not receive the Audit Adjustment Letter. Because they received the Notice of Assessment without any explanation of changes made to their 2018 and 2019 income tax returns, we find it reasonable the Taxpayers would believe that the Notice of Assessment was an automatically generated statement and that they would receive an explanation and breakdown of changes made to their tax returns once the audit was complete. In fact, the DOR witness testified that the Notice of Assessment was generated in Helena, and that their system would have only sent out the Notice of Assessment for 2018 because they had received a 2019 Notice of Assessment for an unrelated matter and would not receive another one related to this audit. We do not believe this would be intuitive to the average taxpayer. In a situation such as this one, where the Taxpayers ultimately had to deduce something was wrong, we believe it is reasonable under the facts and circumstances presented in this case that it took them additional time beyond the deadline to contact the DOR.

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

51. Mrs. Atwell provided credible testimony that the Taxpayers received the other correspondence from the DOR but did not receive the Audit Adjustment Letter until they received it in connection with the ODR hearing.
  
52. The DOR argued that the Taxpayers failed to exercise ordinary business care by disregarding the Notices of Assessment and Statements of Account. Mrs. Atwell testified that she disregarded these statements at first because she believed they were automatically generated statements that she would continue to receive while the audit was ongoing. The DOR did not send statements for both years at issue until April 2022. In this specific instance, we find it reasonable that Mrs. Atwell would believe the audit was ongoing.
  
53. The DOR emphasized that the appeal deadline was clearly laid out in the Audit Adjustment Letter and was also included in the 2018 Notice of Assessment. The DOR pointed to the examples of what does and does not constitute reasonable cause included in Administrative Rule 42.2.512. We note that the Administrative Rule clearly states that these are only examples and that other circumstances, considered on a case-by-case basis, may constitute reasonable cause. Neither the DOR, nor the Board, are confined to the examples listed in the Administrative Rule in determining whether reasonable cause exists.
  
54. The DOR emphasized that the Audit Adjustment Letter also would have been sent to the Taxpayers' CPA. They point out that the Administrative Rules specifically state forgetfulness or inadvertence on the part of a taxpayer or taxpayer's agent does not constitute reasonable cause. The DOR witness testified that they would have mailed the correspondence to the Taxpayers' CPA because they had a Power of Attorney on file. No further evidence or testimony was provided that the CPA received the Audit Adjustment Letter and failed to notify the Taxpayers. Due to the lack of evidence or testimony that the CPA received it and failed to act, we decline to rule in favor of the DOR that such an event happened in this specific instance.

**BEFORE THE MONTANA TAX APPEAL BOARD**

*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

55. The Taxpayers' reasons for filing their Request for Informal Review past the deadline do not easily fit into the examples provided in the Administrative Rule. Thus, we are left to look at the specific circumstances of this case that led to the late filing. We find the evidence presented regarding the well documented and unusual circumstances surrounding mail delivery in Bozeman, along with Mrs. Atwell's credible testimony the Taxpayers never received the Audit Adjustment Letter, justify granting a reasonable cause exception to the late filing of their Request for Informal Review. Because we find reasonable cause exists for the untimely filed Request for Informal Review, the Taxpayers are entitled to proceed with the DOR informal review.
56. We make no determination whether the deductions the Taxpayers claimed on their 2018 and 2019 income tax returns were properly substantiated and permissible.

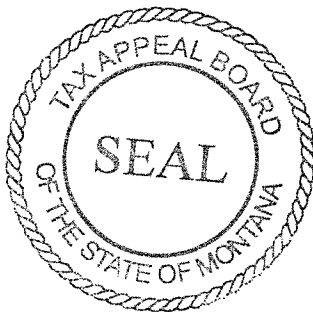



**BEFORE THE MONTANA TAX APPEAL BOARD**  
*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*


**ORDER**


57. The Taxpayers' appeal is granted. The DOR's determination that reasonable cause does not exist for the Taxpayers' untimely filing of their Request for Informal Review is reversed.
58. The Taxpayers are entitled to an informal review of the DOR's audit findings for their 2018 and 2019 tax returns.

Dated this 25th day of April 2023.



  
\_\_\_\_\_  
David L. McAlpin, Chairman

  
\_\_\_\_\_  
Amie Zendron, Member

  
\_\_\_\_\_  
Travis Brown, 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)*.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*MIKE AND DIANNE ATWELL v. STATE OF MONTANA, DEPARTMENT OF REVENUE*


**Certificate of Service**

I certify that I caused a true and correct copy of the foregoing Findings of Facts and Conclusions of Law to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on April 25, 2023, to:

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