

Brett A. Rose,

Appellant,

v.

MONTANA DEPARTMENT OF
REVENUE,

Respondent.

CASE No: IT-2023-3

**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) Office of Dispute Resolution (ODR), which affirmed the DOR’s Business and Income Taxes Division calculation of tax, interest, and penalties due resulting from Brett A. Rose’s (Taxpayer) non filing of Montana Income Tax Returns for 2017, 2018, and 2019. DOR prepared estimated Montana income tax returns and calculated tax due for the Taxpayer for the years in question. After the final audit determination resulting in tax due, the Taxpayer appealed to the ODR, which held a hearing on October 27, 2022. In its opinion and order the ODR upheld DOR’s determination of Montana income tax due, with penalties and interest accruing. The Taxpayer appealed that outcome to Montana Tax Appeal Board (MTAB) on February 10, 2023. We uphold the DOR’s determination.

ISSUE TO BE DECIDED

Whether the DOR properly estimated and assessed the Taxpayer’s 2017, 2018, and 2019 income tax.

EXHIBIT LIST

The following evidence was admitted at the hearing:

Taxpayer Exhibits:

1. Excerpt from 49 CFR § 383.71 Driver Application and Certification Procedures, unknown website

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2. Proof of Citizenship or Lawful Residency, excerpt from Department of Homeland Security website
3. Article on the Historical Background of the Citizenship Clause
4. IRS Webpage on Tax Information and Responsibilities for New Immigrants to the United States
5. IRS Webpage on U.S. Tax Residency – Green Card Test
6. Excerpt from IRS Publication on Differences Between Resident and Nonresident Aliens
7. Definition of Nationality
8. Definition of Freedom
9. Definition of Nationality
10. Cornell Law School Legal Information Institute Definitions of Citizen and Nationality
11. Cornell Law School Legal Information Institute Definition of Clerk of Court
12. Cornell Law School Legal Information Institute 8 U.S.C § 1101 - Definitions
13. Cornell Law School Legal Information Institute - Jurisdiction
14. Excerpt from Deuteronomy 30 of the Besorah of Yahusha, version unknown
15. Excerpt from Revelations 18, version unknown

DOR Exhibits:

- A. Filing Delinquency Letter
- B. 2017 Estimated Tax Return and Related Documents
- C. 2018 Estimated Tax Return and Related Documents
- D. 2019 Estimated Tax Return and Related Documents
- E. Taxpayer's Request for Informal Review
- F. MDOR Response to Request

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PROCEDURAL HISTORY

The DOR sent the Taxpayer an automatically generated Filing Delinquency Letter on July 20, 2021, stating that they had not received his 2018 Montana individual income tax return. *Ex. A.* The DOR alleges it did not receive a response from Taxpayer regarding this letter. *MTAB Dkt. 3.* On February 2, 2022, Notices of Assessment were sent for tax years 2017, 2018, and 2019. *Ex. B, C, D.* The Taxpayer submitted a Request for Informal Review on May 16, 2022. *Ex. E.* The DOR granted the Taxpayer's Request for Informal Review and responded on June 6, 2022, upholding their estimates. *Ex. F.* The Taxpayer appealed that decision to the ODR, and a hearing was held on October 27, 2022. *ODR Tr. 2:5-6.* On January 6, 2023, the ODR issued its Findings of Fact, Conclusions of Law, and Order, affirming the DOR's estimated tax assessments. *MTAB Dkt. 3.* The Taxpayer timely appealed that decision to MTAB on February 10, 2023. *MTAB Dkt. 1.*

The MTAB hearing was conducted in Helena on July 11, 2023, at which the following were present:

- a. Brett A. Rose, Taxpayer; and
- b. Kristina Warren, DOR Counsel; Mark Hartman, Tax Examiner; and Marla Wolstein, Tax Examiner Supervisor.

The record includes all materials submitted to ODR, a transcript of the ODR hearing, all materials submitted to MTAB with the appeal, additional exhibits submitted by the parties prior to and at the MTAB hearing, and a transcript of 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. Taxpayer timely appealed the ODR decision to MTAB on February 10, 2023. *MTAB Dkt. 1.*
3. Taxpayer testified he was born in California and that after his birth the Taxpayer's mother did not receive or fill out a birth certificate in his name.

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MTAB Tr. 32:1-4, 12:16-13:7. Due to this, Taxpayer stated that he has no proof he is a U.S. citizen. *Id.*

4. Taxpayer testified that prior to a change in federal law, he was able to obtain a commercial driver's license without presenting a birth certificate. *MTAB Dkt. 1; MTAB Tr. 6:21-7:12.* However, when this law changed, he was unable to renew his commercial driver's license without presenting a copy of his birth certificate, and as a result, he lost his job. *Id.* Taxpayer testified that he has been unable to have a birth certificate issued [now that he is an adult] because his mother is the only person who can sign an affidavit which could be used to prove that he is a U.S. citizen. *MTAB Tr. 12:13-13:20.* However, because she has Alzheimer's disease, she does not have the mental capacity to do so. *Id.* Additionally, the Taxpayer testified that both he and the United States Air Force (Air Force) attempted to retrieve his birth certificate for the purpose of granting him a security clearance, but the hospital where he was born had no record of his birth. *Id.* The Taxpayer was able to gain a secret clearance via his baptismal certificate but was denied top secret clearance because the Air Force was unable to find a birth certificate. *Id.*

5. Because he lacks a birth certificate, the Taxpayer argued he is not considered a United States citizen in certain aspects of his life, including the right to travel and work. *MTAB Tr. 10:1-18.* He argued that since, in his belief, the government does not consider him a citizen for those purposes, he should not be considered a citizen for the purpose of paying taxes. *MTAB Tr. 16:9-17:14, 35:18-20.* Additionally, he contended the government's restrictions on his own pursuit of well-being are constitutional violations. *Id.* The Taxpayer testified that his unequal treatment compared to U.S. citizens with birth certificates is evidenced by the fact that he cannot obtain a commercial driver's license, realty license, or passport due to his alleged inability to produce a birth certificate. *MTAB Tr. 6:22-7:2, 10:4-15.*

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6. The Taxpayer contends that he is simultaneously not a U.S. citizen and not considered a citizen of any foreign government by U.S. immigration standards. *MTAB Tr. 22:22-24*. Taxpayer has not denounced his U.S. citizenship. *MTAB Tr. 17:9-14*. Taxpayer argues that his legal situation is not dissimilar to that of a Native American who is a member of a sovereign tribal nation. *MTAB Tr. 24:23-25:5*. Taxpayer stated that tribal members are born in the United States, but they are not taxed the same as nontribal citizens. *Id.* Taxpayer further contends that he is not any different from tribal members regarding his ability to be taxed by the government. *Id.*
7. Taxpayer testified that he is a part of the Nation of Yasharal and that according to his scripture, he cannot be part of another nation. *MTAB Tr. 31:1-10*. He argued his affiliation with the Nation of Yasharal is preventing him from being accepted in the United States and Montana as a citizen. *Id.* This was one of several arguments which advanced the Taxpayer's theory that he is a non-citizen of Montana and should not be subject to Montana tax.
8. Taxpayer testified that he has never personally tried to obtain a baptismal record or a copy of his birth certificate or from the State of California Department of Vital Records. *MTAB Tr. 32:5-9*. He testified that during his attempt to get a security clearance in the Air Force, the Department of Defense was unable to locate a birth certificate but it or he did find a baptismal record. *MTAB Tr. 32:10-13, 12:23-13:2*. Taxpayer testified that he subsequently lost that baptismal certificate during a divorce. *MTAB Tr. 32:10-16*. Taxpayer further testified that he has not attempted to contact his former church to obtain a copy of the certificate because, "[He wants] nothing to do with that church." *MTAB Tr. 32:10-20*.
9. Taxpayer gave verbal testimony that he has attempted to contact the Air Force to obtain a copy of the documentation used in granting his security clearance but was told the Air Force has since lost his records. *MTAB Tr. 32:21-33:3*.

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10. Taxpayer testified he has not contacted the United States Citizenship and Immigration Services but had spoken with an immigration lawyer regarding his citizenship. *MTAB Tr. 33:10-15*. Taxpayer testified that he has not attempted to apply for naturalization for having served in the military for more than one year. *MTAB Tr. 33:16-34:3*. Taxpayer has attempted to get a passport in the past but alleges he was denied, due to not having a birth certificate. *MTAB Tr. 34:7-19*. Taxpayer stated, “They needed the primary document first, and then along with the primary document show other documentation.” *Id.*

11. Taxpayer testified he lived and worked in the State of Montana from 2017 to 2019 and earned income for those years as reported on the Internal Revenue Service (IRS) Forms 1099-MISC issued by Midwest Fastener Corp. *Ex. B, C, D, MTAB Tr. 34:20-35:5*. Further, the Taxpayer contends that his estimated Montana taxes for the tax years 2017, 2018, and 2019, calculated by the DOR, are incorrect as they do not include deductions for his business expenditures. *MTAB Tr. 3:17-20*.

12. Mr. Hartman testified that Montana state law does not require taxpayers to be U.S. citizens or to have a birth certificate to be obligated to pay taxes in Montana. *MTAB Tr. 40:9-14*. Further, Mr. Hartman testified the only requirements for a person to be obligated to pay taxes in Montana are that they receive income that is sourced to Montana and/or be a resident of the State of Montana. *MTAB Tr. 40:15-17*.

13. Mr. Hartman defined Montana sourced income as income that is earned in the State of Montana or by virtue of being a resident of the State of Montana. *MTAB Tr. 40:19-21, Mont. Code Ann. § 15-30-2101(21)(a)*.

14. Mr. Hartman testified he was randomly assigned to Taxpayer’s case in 2018 based on Taxpayer’s non-filer status. *MTAB Tr. 47:7-13*. A non-filer is a taxpayer who has not filed a tax return in accordance with Montana Code. *Id.* A non-filer discovery is blind with respect to a taxpayer and is based on an

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algorithm that defines parameters and tolerances and assigns an auditor to any taxpayer who has income outside the given tolerances. *MTAB Tr. 47:14-20*.

The tolerances are determined by management analysts who establish the parameters. *MTAB Tr. 47:21-23*.

15. If a taxpayer has not filed a tax return, Mr. Hartman testified there is no statute of limitations to audit additional tax years. *MTAB Tr. 48:1-7*. He testified that the DOR looks backwards in time from the current year when estimating other tax years. *MTAB Tr. 49:1-5*. Additionally, Mr. Hartman testified the DOR typically looks back five years, although there is nothing that restricts the DOR from looking back further than five years. *MTAB Tr. 48:8-14*.
16. Ms. Wolstein explained that estimates calculated by the DOR are generally higher than an income tax return filed by a taxpayer with non-employee compensation because such a taxpayer would generally have deductions and expenses to claim that would reduce the estimated tax. *MTAB Tr. 52:3-11*. Since the DOR does not have knowledge of those expenses when calculating their estimates, they use gross income which tends to lead to higher estimates of tax due than they typically would be if the taxpayer had filed a return themselves. *Id.*
17. Mr. Hartman testified that he based Taxpayer's 2017 Estimate of Tax Liability on Taxpayer's estimated business income listed in Exhibit B. *Ex. B, MTAB Tr. 44:1-14*. This estimate was derived from the Form 1099 for non-employee compensation which was delivered to the DOR by Midwest Fastener Corp. as an electronic file. *Id.* When estimating tax due, the DOR assumes the taxpayer's filing status is single, they are a full-year Montana resident, and that they are entitled to the standard deduction and one exemption. *Id.* Furthermore, standard deduction and exemption amounts were not identical year to year, because the standard deduction and exemption amounts change with each tax year. *MTAB Tr. 46:16-21*.

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18. Mr. Hartman testified that tribal members are not subject to taxation if the income being exempt from taxation was earned on the reservation of which they are a member, and the tribal member resides on that reservation. *MTAB Tr. 49:11-18*. Mr. Hartman also testified that tribal members are considered residents of the State of Montana. *MTAB Tr. 49:19-21*.

19. Ms. Wolstein testified that Taxpayer's self-identification of being a direct descendant of the twelve tribes of Israel and a part of the Nation of Israel does not affect whether he must pay taxes in Montana since his income was Montana source income. *MTAB Tr. 53:1-9*. Additionally, Ms. Wolstein testified that even an undocumented non-U.S. citizen living in Montana would have to file Montana tax returns, if they earned Montana source income. *MTAB Tr. 53:10-12*.

20. Ms. Wolstein testified the DOR did not have information regarding the taxpayer's expenditures and calculated his taxes with information that was available. *MTAB Tr. 53:13-19*. To have his expenditures listed as a deduction, Taxpayer would need to file a tax return claiming those deductions. *MTAB Tr. 53:20-54:2*. Further, Ms. Wolstein testified that if the Taxpayer were to submit tax returns for 2017-2019 the DOR would accept them, and other information provided, that might reduce the Taxpayer's tax liability. *MTAB Tr. 53:22-54:2, 55:13-16*.

21. Ms. Wolstein testified the tax due is still accumulating penalties and interest. *MTAB Tr. 56:5-15*.

JURISDICTION AND STANDARD OF REVIEW

22. 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

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the MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. *Mont. Code Ann. § 15-2-302*.

23. 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.
24. 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

25. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
26. 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).
27. 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.
28. 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*.

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29. 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*.
30. “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)).
31. “[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.
32. “[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).
33. "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended. *Mont. Code Ann. § 15-30-2101(10)*.
34. “Montana source income” means:
 - (i) 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)*.

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35. “Resident” applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere. *Mont. Code Ann. § 15-30-2101(28)*.
36. “Tax year” means the taxpayer’s taxable year for federal income tax purposes. *Mont. Code Ann. § 15-30-2101(31)*.
37. “Taxable income” means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in chapter 15. *Mont. Code Ann. § 15-30-2101(32)*.
38. For both resident and nonresident taxpayers, each individual or each married couple not filing a joint return and having a gross income for the tax year of more than the maximum standard deduction for that filing status, as determined in Mont. Code Ann. § 15-30-2132, is liable for a return to be filed on forms and according to rules that the department may prescribe. *Mont. Code Ann. § 15-30-2602(1)*.
39. If the department determines that the amount of tax due is greater than the amount of tax computed by the taxpayer in the return, the department shall mail a notice to the taxpayer as provided in Mont. Code Ann. § 15-30-2642 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216. *Mont. Code Ann. § 15-30-2602(5)*.
40. If a taxpayer does not file a return as required under this chapter, including federal adjustments report required under 15-30-3403 or 15-30-3404, the department may, at any time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and, based upon the

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audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state. *Mont. Code Ann. § 15-30-2605(2)*.

41. The following must file an individual income tax return:
 - (a) every resident who is a single person, and every resident who is a married person who does not elect or, as provided in ARM 42.15.321 [relating to joint returns]. *ARM 42.15.301(1)*.

42. Wages are exempt from individual income tax when:
 - (a) the individual is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides; and
 - (b) the wages are derived from reservation sources. *ARM 42.15.220(1)*.

DISCUSSION

43. The DOR presented credible evidence that the income in question was earned by the Taxpayer while a resident of Montana. The Forms 1099-MISC offered by the DOR for 2017, 2018, and 2019, showing income paid to the Taxpayer, is very strong evidence that the Taxpayer received Montana source income. Additionally, the Taxpayer did not refute the 1099s but further admitted on cross-examination to earning the income while being a Montana resident during the audit years. The Taxpayer argued that as a member of the Nation of Yasharal, he should be exempt from tax like an enrolled tribal member in Montana. The Taxpayer presented no evidence that the Nation of Yasharal is a sovereign tribe recognized by the state or federal government, nor that he is an enrolled tribal member and that his wages were derived from reservation sources, as required by DOR's administrative rule to exempt certain income of enrolled tribal members. Additionally, the Taxpayer did not present evidence that he worked or resided inside the boundaries of any governing reservation. The Board finds that the Taxpayer received taxable Montana income for the 2017, 2018, and 2019 audit years.

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44. The Taxpayer did not present any tax returns or any evidence of filing a tax return during the 2017, 2018, and 2019 tax years. Because the Taxpayer earned income in Montana, he is required, by Montana law, to file a tax return. When a taxpayer does not file a tax return, the DOR can estimate the tax due with the information available, which is what the DOR did in this case. Using the Forms 1099 provided by Midwest Fastener Corp, the DOR subtracted the standard deduction and included estimated exemptions to calculate estimated taxable income and tax due for the Taxpayer. At the hearing, the DOR offered to supplement their estimated tax returns with additional information or tax returns provided by the Taxpayer. Because the Taxpayer has not filed his own returns as required by Montana law, the Board agrees with the DOR's estimate of Montana tax due.

45. The Taxpayer made additional arguments relating to his ineligibility to renew his commercial driver's license because of the unavailability of his birth certificate. He presented these arguments as alleged proof of the government impinging his constitutional rights. Further, the Taxpayer alleged unequal treatment under the 14th Amendment of the United States Constitution which the Board will not address. The issue the Board must decide is simply whether the Taxpayer owed income tax to the state of Montana during the audit period. The Board was convinced by the evidence presented that the Taxpayer received income while working in Montana as a Montana resident during the 2017, 2018, and 2019 tax years, thus the Taxpayer owes Montana tax.

46. Lastly, the DOR correctly used available information to estimate the tax due as allowed by Montana Code Annotated. The Board, therefore, denies the Taxpayer's appeal and upholds the DOR's final determination of tax, penalties, and interest due and accruing.

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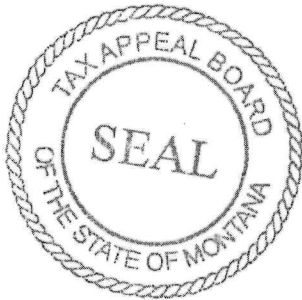
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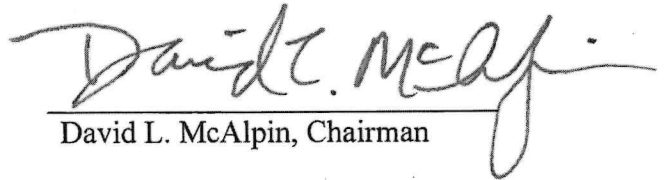
ORDER

- 47. The Taxpayer's appeal is denied.

- 48. The Montana Department of Revenue's estimated tax calculated for 2016, 2017, and 2018 is upheld.

Dated this 31st day of August 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)*.

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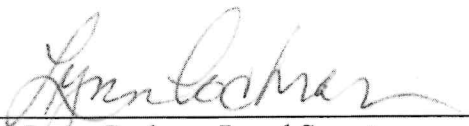
Certificate of Service

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 August 31, 2023, to:

Brett A. Rose
19 Magstadt Lane
Kalispell 59901

Kristina Warren
State of Montana, Department of Revenue
Legal Services Office
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Helena, MT 59604-7701

State of Montana, Department of Revenue
Office of Dispute Resolution
P.O. Box 5805
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Lynn Cochran, Legal Secretary

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

SEP 05 2023

Montana Tax Appeal Board

Brett A. Rose,

CASE №: IT-2023-3

Appellant,

**ORDER CORRECTING CLERICAL
MISTAKE**

v.

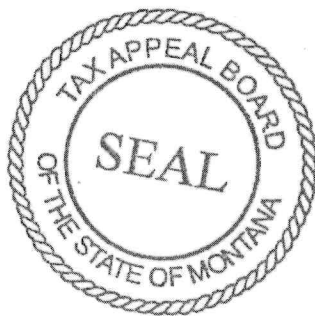
MONTANA DEPARTMENT OF
REVENUE,

Respondent.

The parties are hereby notified that the Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review of August 31, 2023, contains a clerical mistake. A clerical mistake may be corrected by the Board at any time. Rule 60(a), M. R. Civ. P.

On pages 6 ¶ 2, 8 ¶ 3, 12 ¶ 4, 13 ¶¶ 1 and 2, and 14 ¶ 2, the Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review reference tax years 2016, 2017, and 2018. The Findings of Fact, Conclusions of Law, Order, and Opportunity for Judicial Review should reference tax years 2017, 2018, and 2019.

Dated this 5th day of September 2023.



David L. McAlpin

David L. McAlpin, Chairman

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Certificate of Service

I certify that I caused a true and correct copy of the foregoing Order Correcting Clerical Mistake to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on September 5, 2023, to:

Brett A. Rose
19 Magstadt Lane
Kalispell, MT 59901

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Lynn Cochran, Legal Secretary