

JAMES T. CARKULIS,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: IT-2023-9

**ORDER GRANTING  
DEPARTMENT OF REVENUE'S  
MOTION FOR SUMMARY  
JUDGMENT, STATEMENT OF  
UNDISPUTED FACTS,  
CONCLUSIONS OF LAW, ORDER,  
AND OPPORTUNITY FOR  
JUDICIAL REVIEW**

**STATEMENT OF THE CASE**

This is an appeal of a final agency decision issued by the Office of Dispute Resolution (ODR) on May 25, 2023, affirming the Montana Department of Revenue's (DOR) estimation of income earned by James T. Carkulis (Taxpayer) and its assessment of tax, penalties, and interest on such income for tax years 2013 and 2014. The Taxpayer timely appealed that outcome to the Montana Tax Appeal Board (MTAB) on June 23, 2023.

The DOR filed a Motion for Summary Judgment and Brief in Support on November 18, 2024. The Taxpayer did not respond to the DOR's Motion for Summary Judgment. The matter is fully briefed, and the Board has reviewed the submissions of both parties. Because there are no genuine issues of material fact and the DOR is entitled to judgment as a matter of law, the Board grants the DOR's Motion for Summary Judgment and upholds the DOR's estimation of income and assessment of tax, interest, and penalties due and accruing for the reasons stated herein.

**ISSUE TO BE DECIDED**

Whether DOR erred in estimating the income earned by the Taxpayer and assessing tax, interest, and penalties on such income for tax years 2013 and 2014.

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**EXHIBIT LIST**

The Taxpayer submitted the following proposed exhibits on April 16, 2024, in preparation for a hearing, which was later vacated:

1. Second Subpoena to Anderson Zurmuelen;
2. Exergy Final K-1 for 2014;
3. Exergy K-1 for 2014;
4. Exergy Allocation of K-1 items for 2014;
5. Schedule of IWP1 basis;
6. Revised Organization Chart and Articles;
7. Purchase and Sale Agreement of EIH Parent, LLC;
8. 2014 Exergy Development Group, LLC General Ledger;
9. Exergy Development Group, LLC Tax Grouping Report;
10. Subpoena to Pinion Global;
11. IRS Form 4506;
12. Tax Calculation;
13. Copy of Spreadsheet of Reconciliation;
14. (No exhibit 14 submitted)
15. Woodcreek 2012 K-1;
16. IWP1 LLC Final 2010 K-1;
17. EIH Parent 2014 1065 Short Year Return;
18. 2014 K-1 James Carkulis;
19. 2014 Exergy Development Group LLC Tax Return;
20. 2011 IWP1 LLC K-1;
21. 2011 Exergy Development Group LLC Tax Return; and
22. 2010 Exergy Development Group Amended and Original Tax Return.

The DOR submitted the following exhibits with its Motion for Summary Judgment:

- A. Income Tax Non-Filed Return Notices;
- B. Estimation of Tax Liability, Individual Income Tax 2013 and 2014;
- C. Taxpayer Response to Letter Dated 2/1/21 Regarding 2013 & 2014 State of Montana Income Taxes;

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- D. Response to Request for Informal Review 2013 and 2014 Montana Individual Income Tax Assessment;
- E. Taxpayer Response to Letter Dated 3/1/21 in Reference to 2013 & 2014 State of Montana Income Taxes;
- F. Notice of Referral to the Office of Dispute Resolution; and
- G. ODR Findings of Fact, Conclusions of Law, and Order.

**STATEMENT OF UNDISPUTED FACTS**

1. To whatever extent the following findings of fact may be construed as conclusions of law, they are incorporated accordingly.
2. The DOR issued letters to the Taxpayer dated January 31, 2017, March 2, 2017, November 7, 2017, and December 11, 2017, requesting the Taxpayer file his Montana income tax returns for tax years 2013 and 2014 or explain why no tax returns were due if he believed the DOR was in error. *Ex. A.* The DOR explained in each of the letters that a lack of response would result in the DOR estimating the tax due. *Id.*
3. Having received no response from the Taxpayer, the DOR issued a letter dated January 19, 2018, informing the Taxpayer that the DOR had estimated his 2013 and 2014 income tax due based on composite tax returns filed by Exergy Development Group, LLC (Exergy). *Ex. B.*
4. Three years later, the Taxpayer responded in an undated letter received by the DOR on either March 1, 2021, or March 3, 2021.<sup>1</sup> *Ex. C.* In that letter, the Taxpayer asserts that the information the estimate was based on was incorrect; however, he did not provide any information to substantiate the assertions he made in the letter. *Id.* The DOR considered the letter a Request for Informal Review and replied to it via letter on March 15, 2021. *Ex. D.* In that letter, the

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<sup>1</sup> Exhibit C is stamped as received by DOR on March 1, 2021, and March 3, 2021. While it is unclear to the Board which of those days the letter was actually received, this issue has no bearing on our decision in this matter.

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DOR Unit Manager stated that he believed the estimates were made appropriately but again advised the Taxpayer that the DOR would accept his 2013 and 2014 Montana income tax returns, which could change the estimated tax liability. *Id.* The DOR's letter also advised the Taxpayer that he could appeal the decision to the Office of Dispute Resolution (ODR). *Id.*

5. The Taxpayer responded by letter dated March 20, 2021, listing certain liabilities, but he did not provide any information to substantiate the liabilities and deductions he was claiming. *Ex. E.* The Taxpayer filed a Notice of Referral to ODR through counsel on April 14, 2021. *Ex. F.* The ODR hearing was held on January 10, 2023, and the ODR issued its Findings of Fact, Conclusions of Law, and Order on May 25, 2023, affirming the DOR's estimation of income and assessment of tax, penalties, and interest for tax years 2013 and 2014. *Ex. G.*
6. The Taxpayer timely appealed the ODR's decision to MTAB on June 23, 2023. *MTAB Dkt. 1.* The Board issued its Scheduling Order on July 26, 2023, scheduling the hearing for this matter on November 16, 2023. *MTAB Dkt. 4.*
7. On September 11, 2023, the Taxpayer filed an Unopposed Motion to Vacate Scheduling Order and to Set Scheduling Conference, stating that the parties needed more time to confer and review documents. *MTAB Dkt. 6.* The Board vacated the Scheduling Order on September 14, 2023, and ordered the parties to attend a telephonic scheduling conference on October 3, 2023. *MTAB Dkt. 7.* After the October 3, 2023, scheduling conference, the parties submitted a Stipulated Proposed Scheduling Order on October 5, 2023. *MTAB Dkt. 8.* On October 6, 2023, the Board issued its Order Adopting the Stipulated Proposed Scheduling Order and reset the hearing date to April 9, 2024. *MTAB Dkt. 9.*
8. On December 27, 2023, Taxpayer filed an Unopposed Motion to Vacate Hearing and Reset Deadlines stating that the Taxpayer's counsel and a witness

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would not be available for the hearing scheduled for April 9, 2024. *MTAB Dkt. 10*. On December 28, 2023, the Board issued its Order Vacating Hearing and Resetting Deadlines, which reset the hearing date for April 30, 2024. *MTAB Dkt. 11*.

9. On April 22, 2024, the Taxpayer filed an Unopposed Motion to Vacate Hearing, to Set Status Conference and Brief in Support, stating that more time was needed to obtain necessary tax information from the Internal Revenue Service (IRS). *MTAB Dkt. 14*. The DOR filed a Response to Unopposed Motion to Vacate Hearing and Set Scheduling Order on April 23, 2024, stating that while it was true the DOR was not going to take a position regarding the Taxpayer's motion, they were frustrated with the repeated requests for continuance. *MTAB Dkt. 15*. On April 24, 2024, the Board issued its Order Granting Motion to Vacate Hearing and Set Status Conference, ordering the parties to attend a telephonic status conference on June 13, 2024. *MTAB Dkt. 16*. After the status conference, the Board issued its Order to Submit Status Update and Resetting Hearing date, ordering the parties to provide a written status update to the Board by August 9, 2024, and resetting the hearing date to December 5, 2024. *MTAB Dkt. 17*.
  
10. On August 9, 2024, Taxpayer filed a Status Update stating that they had been unable to obtain the information they had been seeking from the IRS. *MTAB Dkt. 18*.
  
11. On November 18, 2024, the DOR filed a Motion for Summary Judgment and Brief in Support. *MTAB Dkt. 21*. Taxpayer did not respond to the DOR's Motion for Summary Judgment. The Board considers the matter fully briefed and ready for the Board's review and decision.

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**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. Summary judgment shall be granted if the pleadings, discovery and disclosure materials on file, and any affidavits show that no genuine issue as to any material fact exists and that the movant is entitled to judgment as a matter of law. M.R.Civ.P. 56(c)(3).
  
17. 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

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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).

18. “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.” *Hopkins v. Superior Metal Workings Sys., LLC*, 2009 MT 48, ¶ 5, 349 Mont. 292, 203 P.3d 803.
19. 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).
20. 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.
21. The DOR is responsible for administering and enforcing Montana revenue laws. Mont. Code Ann. §§ 15-1-201 and 15-1-202.
22. Each year individuals must pay tax on their taxable income as provided in Montana Code Annotated § 15-30-2103.
23. “If a taxpayer does not file a return as required under this chapter, 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 audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.” Mont. Code Ann. § 15-30-2605(2).

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24. “‘Taxable income’ means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in [Title 15, chapter 30, MCA].”  
Mont. Code Ann. § 15-30-2101(32).
25. For Montana income tax purposes, adjusted gross income is the taxpayer’s federal adjusted gross income as defined in 26 U.S.C. § 62, subject to certain state modifications. Mont. Code Ann. § 15-30-2110(1).
26. For federal individual income tax purposes, adjusted gross income means gross income minus allowed deductions. 26 U.S.C. § 62.
27. For Montana purposes, “‘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...” Mont. Code Ann. § 15-30-2101(10).
28. For federal income tax purposes, “...gross income means all income from whatever source derived, including (but not limited to) ... [c]ompensation for services...” 26 U.S.C. § 61(a)(1).
29. “Montana source income” 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)(i).
30. “The initial burden of producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter, the burden of producing evidence is on the party who would suffer a finding against that party in the absence of further evidence.” Mont. Code Ann. § 26-1-401.



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31. “Except as otherwise provided by law, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense the party is asserting.” Mont. Code Ann. § 26-1-402.
32. “Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.” 26 U.S.C.S. § 6001.
33. “Credible evidence is the quality of evidence which, after critical analysis, the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted (without regard to the judicial presumption of IRS correctness). A taxpayer has not produced credible evidence for these purposes if the taxpayer merely makes implausible factual assertions, frivolous claims, or tax protestor-type arguments. The introduction of evidence will not meet this standard if the court is not convinced that it is worthy of belief.”  
*Higbee v. Commissioner of Internal Revenue*, 116 T.C. 438, 442, 2001 U.S. Tax Ct. LEXIS 29, 9.

**DISCUSSION**

34. The DOR sent its first letter to the Taxpayer, dated January 31, 2017, eight years ago. Since then, the DOR has sent numerous letters notifying the Taxpayer of his Montana income tax filing obligation for tax years 2013 and 2014. The letters all requested the Taxpayer either file his income tax returns for those years or explain to the DOR why he did not have a filing requirement if he believed the DOR was in error. Each of the letters included the contact information for the individual the Taxpayer should contact if he had questions, needed assistance, or wished to file his tax returns. Most of those letters went unanswered. When the Taxpayer responded, more than three years after the DOR advised him that they had estimated his income and assessed tax for the

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years at issue, he provided general and imprecise information, which he stated was to the best of his recollection or that he would need to look into it further.

35. The DOR estimated the Taxpayer's 2013 and 2014 Montana source income from information returns filed with the DOR by the payors of that income. The DOR provided the Taxpayer multiple opportunities to file his tax returns or submit documentation to substantiate his claims that he did not have Montana source income or a tax filing obligation for the 2013 and 2014 tax years. Because the DOR did not receive information that would convince them that their estimation of income was in error, they made no adjustments. The Taxpayer filed his ODR appeal on April 14, 2021, and the ODR hearing was not held until January 10, 2023, giving the Taxpayer even more time to obtain any information that would support his argument that the DOR's estimate of his income was incorrect. On May 25, 2023, the ODR issued its decision affirming the DOR's estimation of the Taxpayer's income and assessment of tax on that income for the 2013 and 2014 tax years.
36. The Taxpayer filed a timely appeal to MTAB on June 23, 2023. The Board rescheduled the hearing and reset deadlines multiple times to allow the Taxpayer time to obtain information to support his argument at a hearing. After the last status update of August 9, 2024, informing the Board and DOR that the Taxpayer was unable to obtain any further tax documentation to support his argument, the DOR filed its Motion for Summary Judgment on November 18, 2024. The Taxpayer did not file a response.
37. It has been eight years since the DOR first sent notice to the Taxpayer informing him of his 2013 and 2014 Montana income tax filing obligation. During this time, the Taxpayer has been given multiple opportunities to provide information that supports his contention that the DOR's estimate of his income is incorrect, but he has not done so. The DOR estimated the Taxpayer's income from information returns filed by the payors of that income. The undisputed

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facts show that Montana source income was earned by or attributed to the Taxpayer for the 2013 and 2014 tax years. The Taxpayer bears the burden of producing credible evidence to demonstrate that the DOR used incorrect or incomplete information. The Taxpayer has not produced any evidence to dispute the DOR's estimation of income, which was based on information returns filed by the payors of that income. Because there are no genuine issues of material fact and the DOR is entitled to judgment as a matter of law, the Board grants the DOR's motion and upholds its estimation of the Taxpayer's Montana source income and assessment of Montana income tax, penalties, and interest due and accruing for the 2013 and 2014 tax years.

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**ORDER**

38. The DOR's Motion for Summary Judgment is granted.
39. The Board upholds the DOR's estimate of the Taxpayer's income and its assessment of tax, penalties, and interest due and accruing for tax years 2013 and 2014.

Dated this 30th day of January 2025.



A handwritten signature in blue ink, appearing to read "Travis Brown", written over a horizontal line.

Travis Brown, Chairman

A handwritten signature in blue ink, appearing to read "Amie Zendron", written over a horizontal line.

Amie Zendron, 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 Order Granting Department of Revenue's Motion for Summary Judgment, Statement of Undisputed Facts, Conclusions of Law, Order, 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 January 30, 2025, to:

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Adam Millinoff, Law Clerk