

Jim-Raymond:Etzler,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: IT-2023-10
Tax Years in Dispute 2017-2020

**ORDER GRANTING
DEPARTMENT OF REVENUE’S
MOTION FOR SUMMARY
JUDGMENT, STATEMENT OF
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 July 17, 2023, affirming the Montana Department of Revenue’s (DOR) estimation of income earned by Jim Raymond Etzler (Appellant)¹ and its assessment of tax, penalties, and interest on such income for tax years 2017, 2018, 2019, and 2020. The Taxpayer timely appealed that outcome to the Montana Tax Appeal Board (MTAB) on August 17, 2023.

The DOR filed a Motion for Summary Judgment and Brief in Support on October 26, 2023. The matter is fully briefed, and the Board reviewed the submissions of both parties. Because no genuine issue of material fact exists 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 accruing for the reasons stated herein.

ISSUE TO BE DECIDED

Whether the DOR erred in estimating the income earned by the Appellant and assessing tax, interest, and penalties on such income for tax years 2017 through 2020.

¹ Appellant initially filed his appeal with MTAB as “Jim-Raymond:Etzler” on August 17, 2023. In subsequent filings, he began spelling his name “Jim Raymond Etzler” and stated he would use that spelling in all filings. The Board maintained the caption as the case was originally filed. For purposes of this decision, both spellings refer to the same person, who is the Appellant in this case.

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EXHIBIT LIST

The Appellant attached the following Exhibits to his Notice of Appeal²:

1. Attachment A – Internal Revenue Code, 26 U.S.C. §§ 1-5 (1999);
2. Attachment B – H.R. Rep. No. 280, pt. 1 (1935);
3. Attachment C – 54 Fed. Reg. (Mar. 7, 1989);
4. Attachment D – Regulations for the Codification of Executive and Administrative Documents, 2 Fed. Reg. 2849 (Nov. 12, 1937);
5. Attachment E – TD 25-03, “Filing Documents for Publication with the Office of the Federal Register,” dated February 12, 1991;
6. Attachment F – Government in the Sunshine Act. 5 U.S.C. § 553 (1999);
7. Attachment G – Excerpt from Parallel Table of Authorities and Rules, C.F.R. Index;
8. Attachment H – 73 Stat. 141-154 (1959);
9. Attachment I – Letter from Barbara B. Kennelly, Cong. Member, H.R., to John Randall (Jan. 24, 1996);
10. Attachment J – T.D. 1944, 33 Treas. Dec. Int. Rev. (1914);
11. Attachment K – Excerpt from 20 C.F.R. Ch. 3 (1999);
12. Attachment L – List of Liability Statutes from Title 26 U.S.C. (source unknown);
13. Attachment M – Excerpt from 26 C.F.R. Ch. 1 (1999);
14. Attachment N – Excerpts from Internal Revenue Code, 26 U.S.C. §§ 3401-3405 (1999);
15. Attachment O – Excerpt from 1 C.F.R. Ch. 1 (1999);
16. Attachment P – Excerpt from 26 C.F.R. Ch. 1 (1990); and
17. Attachment Q – Excerpt from 26 C.F.R. Ch. 1 (1999).

² The Appellant included his Attachments A-Q with his Notice of Appeal. The Board labeled the attachments as Exhibits 1-17 per the Board’s policy requiring taxpayer exhibits be labeled numerically and DOR exhibits be labeled alphabetically. The Appellant’s attachments, which totaled 240 pages, appear to be photocopies or printouts of legal authority and related material. The Appellant did not include details, such as source, version, level of completeness, etc. of these documents. The Board has attempted to identify and properly list the Appellant’s exhibits here. However, many of these details remain unknown to the Board.

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The DOR attached the following Exhibits to its Motion for Summary Judgment:

- A. 2017 Form 1099-MISC and Schedule K-1:
- Form 1099-MISC, nonemployee compensation from Great Northern Cabinetry Inc.;
 - Form 1099-MISC, nonemployee compensation from Victory Nutrition International Inc.;
 - Schedule K-1 from Alpenglow at Big Sky;
 - Schedule K-1 from NW Sales Marketing Inc.;
 - Schedule K-1 from JBR LLC;
- B. Affidavit of Marla Wolstein, DOR Compliance Unit Manager for the DOR's Business and Income Tax Division, dated October 24, 2023;
- C. DOR Montana Individual Income Tax Return Estimates for Appellant for 2017, 2018, 2019, and 2020 Tax Years;
- D. 2018 Form 1099-MISC and Schedule K-1:
- Form 1099-MISC, nonemployee compensation from Tobacco Valley Construction Inc.;
 - Form 1099-MISC, nonemployee compensation from Great Northern Cabinetry Inc.;
 - Schedule K-1 from Alpenglow at Big Sky;
- E. 2019 Form 1099-MISC and Schedule K-1:
- Form 1099-MISC, nonemployee compensation from Great Northern Cabinetry Inc.;
 - Form 1099-MISC, nonemployee compensation from Ruis Construction, LLC;
 - Schedule K-1 from Alpenglow at Big Sky;
 - Schedule K-1 from JBR LLC;
- F. 2020 Form 1099-MISC and Schedule K-1:
- Form 1099-MISC, nonemployee compensation from Great Northern Cabinetry Inc.;

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- Form 1099-MISC, nonemployee compensation from GNC Manufacturing LLC;
 - Form 1099-MISC, nonemployee compensation from Tobacco Valley Construction Inc.;
 - Form 1099-MISC, nonemployee compensation from Ruis Construction, LLC;
 - Schedule K-1 from Alpenglow at Big Sky;
- G. DOR Estimation of Tax Liability dated September 20, 2022;
- H. Letter from Appellant objecting to DOR's assessment of tax received by DOR on October 24, 2022;
- I. DOR Response to Request for Informal Review dated November 18, 2022;
- J. Referral to the Office of Dispute Resolution filed by Appellant on December 20, 2022;
- K. ODR Findings of Fact, Conclusions of Law, and Order dated July 17, 2023;
- L. Notice of Appeal to MTAB;
- M. Appellant's Motion to Vacate Original Judgement With Prejudice; and
- N. Appellant's Motion to Change Hearing Venue and Date.

STATEMENT OF UNDISPUTED FACTS

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

MTAB Procedural Background

2. The Appellant timely appealed a decision of the DOR's Office of Dispute Resolution to the Montana Tax Appeal Board on August 17, 2023. *MTAB Dkt. 1*. The DOR submitted its Answer on September 15, 2023. *MTAB Dkt. 3*. On September 25, 2023, the Appellant responded to the DOR's Answer with *Appellant's Opposition to Respondent's Answer. MTAB Dkt. 4*.

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3. The parties attended a scheduling conference with the Board on September 26, 2023, and the Board issued its Scheduling Order on September 27, 2023.
MTAB Dkt. 5.
4. On October 13, 2023, the Appellant submitted a copy of his *Petition for Discovery* to the Board, which was directed to the DOR. *MTAB Dkt. 6.* The Board included it in the file and took no further action.
5. Also on October 13, 2023, the Appellant submitted a document to the Board titled *Motion to Post Pone Next Hearing Until Full Discovery Requirements are Complied with and There Has Been Time to Examine it for Accuracy* (sic). *MTAB Dkt. 7.* The Board denied the motion for being premature as the discovery process was ongoing. *MTAB Dkt. 9.*
6. On October 17, 2023, the DOR submitted a Motion to Strike the *Appellant's Opposition to Respondent's Answer* filed on September 25, 2023.
7. On October 18, 2023, the Appellant submitted a *Jurisdictional Challenge*.
MTAB Dkt. 10.
8. On October 26, 2023, the Appellant submitted his *Motion to Vacate Original Judgement with Prejudice* (sic), as well as his *Motion to Change Hearing Venue and Date*. *MTAB Dkt. 11, 12.*
9. Also, on October 26, 2023, the DOR filed a *Motion for Summary Judgment*. *MTAB Dkt. 13.* The Appellant filed his *Objection to Summary Judgement* (sic) the same day. *MTAB Dkt. 14.* The DOR submitted a *Reply Brief in Support of Montana Department of Revenue's Motion for Summary Judgment* the following day on October 27, 2023. *MTAB Dkt. 15.* On October 30, 2023, the Board received the Appellant's *Response in Opposition to Brief in Support of Summary Judgement* (sic). *MTAB Dkt. 16.*

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10. The DOR submitted a *Response in Opposition to Jurisdictional Challenge* on October 31, 2023. *MTAB Dkt. 18.*

11. On November 1, 2023, the Board issued an *Order Allowing Response and Vacating Hearing* due to a timeliness argument raised by the Appellant in his October 30, 2023, *Response in Opposition to Brief in Support of Summary Judgement* (sic). *MTAB Dkt. 20.* Upon reading that document, the Board concluded the Appellant mistakenly believed he was required to respond to the DOR's Motion for Summary Judgment by October 27, 2023, based on the deadline to file motions set in the Scheduling Order of September 27, 2023. The Board issued the order on November 1, 2023, giving the Appellant until November 16, 2023, the time allowed by Rule 56 of the Montana Rules of Civil Procedure, to respond to the DOR's Motion for Summary Judgment. *MTAB Dkt. 20.*

12. On November 7, 2023, the DOR filed its *Response to Motion to Vacate Original Judgement with Prejudice* (sic) and its *Response to Motion to Change Hearing Venue and Date.* *MTAB Dkt. 21, 22.*

13. On November 13, 2023, the Appellant filed a *Petition for Discovery Exculpatory Material Amended To Correct Errors.* *MTAB Dkt. 23.* The Board issued an *Order Acknowledging Receipt of Appellant's Petition for Discovery* on November 16, 2023, which, aside from adding the Appellant's petition to the record, took no further action. *MTAB Dkt. 24.*

14. On November 20, 2023,³ after the November 16th deadline the Board set for the Appellant's response, the Board received the Appellant's *Objection to Summary Judgement Rider/Supplement* (sic), and the DOR submitted a *Reply*

³ The Appellant sent the Objection to Summary Judgement Rider/Supplement (sic) to the Board via email after business hours on November 19, 2023, and the Board accepted the filing on November 20, 2023.

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Brief in Support of Motion for Summary Judgment. MTAB Dkt. 25, 26. On November 21, 2023, the Board received the Appellant's Response to Ms. Warren's Objection to Rider/Supplement. MTAB Dkt. 27.

15. Later that same day, November 20, 2023, the Board issued a *Notice of Fully Briefed Motion* and began to consider the *Motion for Summary Judgment* and the filings submitted by both parties. *MTAB Dkt. 28.*

Income Tax Estimates

16. The Appellant was domiciled in the State of Montana during tax years 2017 through 2020. *MTAB Dkt. 11, 12.*
17. The DOR received IRS Forms 1099-MISC from various payors reporting nonemployee compensation paid to the Appellant, as well as various Montana Schedules K-1 reporting the Appellant's share of income from partnerships or S corporations for tax years 2017 through 2020. *DOR Ex. A, D, E, F.*
18. All Forms 1099-MISC and Schedules K-1 filed with the DOR by the payors of that income listed a Montana address for the Appellant. *DOR Ex. A, D, E, F.*
19. The Appellant did not file income tax returns for tax years 2017 through 2020. *DOR Ex. B.*
20. Because the Appellant did not file Montana income tax returns, the DOR estimated his income and assessed his Montana income tax due pursuant to Montana Code Annotated § 15-30-2605. *DOR Ex. C.* To estimate the income and calculate the tax due, the DOR used the income reported to the DOR on the Forms 1099-MISC and Schedules K-1 and applied the standard deduction and one exemption. *Id.* The DOR estimated the Appellant owes \$50,164 in tax for the 2017-2020 tax years, which does not include accruing interest, late filing penalties, and late payment penalties. *Id.*

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21. On September 20, 2022, the DOR sent a letter to the Appellant notifying him that his tax had been estimated for the 2017-2020 tax years and requesting he either file signed income tax returns, notify the DOR if he believed he was not required to file tax returns for those years, or file a written objection by October 20, 2022. *DOR Ex. G.*
22. On October 24, 2022, the DOR received the Appellant's response, objecting to the assessments of tax and stating that he does not believe he has "any duty to pay a tax upon [his] right to exist and earn a living." *DOR Ex. H.* The Appellant's response did not claim there were any errors in the DOR's estimate. *Id.* The Appellant also stated the DOR's letter was sent to his previous Montana address and that he had notified the DOR he had moved to a new Montana address on July 27, 2022. *Id.*
23. The DOR processed the Appellant's objection letter as a request for informal review. *DOR Ex. B.* The DOR sent the Appellant its *Response to Request for Informal Review* dated November 18, 2022. *DOR Ex. I.* In its response, the DOR stated that the estimates were based on the information that had been reported to the DOR and that the Appellant had not provided any information to show that the DOR's information was inaccurate. *Id.* The response further stated that the DOR would still accept the Appellant's tax returns and indicated that filing his tax returns could result in a reduction to his Montana income tax liability. *Id.* Information on the process to appeal the DOR's decision to the ODR was included in the response. *Id.*
24. On December 2, 2022, the Appellant filed DOR Form APLS102F, Referral to the Office of Dispute Resolution, to appeal the DOR's determination. *DOR Ex. J.* In the appeal, the Appellant stated, "Montana does not have the power to tax my earnings..." *Id.*

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25. The ODR hearing was held on May 3, 2023, after which the ODR issued its Findings of Fact, Conclusions of Law, and Order dated July 17, 2023, upholding the DOR's estimates. *DOR Ex. K.*
26. The Appellant appealed the ODR's final determination to MTAB on August 17, 2023, arguing that the DOR was not authorized to assess tax against him. *MTAB Dkt. 1; DOR Ex. L.*

Summary of Arguments

27. The Appellant argued the following:
 - a. He is not a citizen of the United States, only a citizen of Montana, and thus, is not required to pay income tax. *MTAB Dkt. 10, 12, 14.*
 - b. He has the status of a "non-taxpayer" as distinguished from a "taxpayer" and that MTAB does not have jurisdiction to decide this case as a result. *MTAB Dkt. 1, 10, 14.*
 - c. He is not a "person" as that term is defined in 26 U.S.C. 7701(a)(1) as it is his belief that this code provision "refers only to statutory legal fictions created by and under the dominion of US Congress Etc." He further stated, "...**Appellant is not a statutory legal fiction**. The Appellant is a sovereign." (Emphasis in original.) *MTAB Dkt. 1.*
 - d. The Montana income tax is unconstitutional. *MTAB Dkt. 1.*
 - e. Selling labor in order to exist is not a taxable event. *MTAB Dkt. 1.*
 - f. The tax laws⁴ cited by the DOR are void for vagueness and overbreadth. *MTAB Dkt. 25.*
28. In its Motion for Summary Judgment, the DOR argued the following:
 - a. There are no genuine issues of material fact in dispute and the DOR is entitled to judgment as a matter of law.

⁴ The Appellant did not cite to a specific law that that he claimed was vague or overbroad. Thus, the Board read this statement to mean the Appellant was referring to all tax laws cited by the DOR.

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- b. The Appellant lived in Montana and earned taxable income via compensation for services performed in Montana during the 2017 through 2020 tax years as reported to the DOR by the payors of that income.
- c. The Appellant did not file income tax returns for those years.
- d. The DOR estimated the Appellant's taxable income and assessed tax, interest, and penalties due pursuant to Montana Code Annotated § 15-30-2605(2).
- e. There is no requirement to be a U.S. citizen to be subject to income tax in Montana. *MTAB Dkt. 13*.

JURISDICTION AND STANDARD OF REVIEW

- 29. The Montana Tax Appeal Board is an independent agency of the executive branch of state government, not affiliated with the Montana Department of Revenue. Mont. Const., Art. VIII § 7; Mont. Code Ann. § 15-2-101.
- 30. The Appellant filed a timely appeal of the DOR's decision to MTAB. Therefore, this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. § 15-2-302.
- 31. 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.
- 32. The Board has jurisdiction over this case and its order is final and binding upon all parties unless changed by judicial review. Mont. Code Ann. § 15-2-302(6).
- 33. "The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged

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with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.” Mont. Const., Art. III § 1.

34. The Montana Supreme Court has determined that “Constitutional questions are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers.” *Jarussi v. Board of Trustees*, 204 Mont. 131, 135-6, 664 P.2d 316 (1983).

CONCLUSIONS OF LAW

35. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
36. The statutes and rules in effect for tax years 2017 through 2020 govern this matter.

Summary Judgment

37. 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).
38. 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).

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39. “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.

Definitions

40. “The term ‘person’ shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.” 26 U.S.C. 7701(a)(1).
41. “‘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).
42. 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).
43. For federal individual income tax purposes, adjusted gross income means gross income minus allowed deductions. 26 U.S.C. § 62.
44. 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).
45. 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).

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46. “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). It also includes income from partnerships and S. corporations taken into account while a resident of the state, as well as nonemployee compensation attributable to the state. Mont. Code Ann. § 15-30-2101(18)(a)(xii), (xiii), and (xvi).
47. “Resident” includes “...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).

Income Tax Estimates

48. “Taxes shall be levied by general laws for public purposes.” Mont. Const., Art. VIII § 1.
49. The DOR is responsible for administering and enforcing Montana revenue laws. Mont. Code Ann. §§ 15-1-201, 15-1-202.
50. Each year individuals must pay tax on their taxable income as provided in Montana Code Annotated § 15-30-2103.
51. “All compensation for personal services... must be included in gross taxable income.” *United States v. Pugh*, 2007 U.S. Dist. LEXIS 84385, *14 (E.D.N.Y. 2007). This includes salary or wages paid in cash, as well as the value of property and other economic benefits received because of services performed, or to be performed in the future. *Id.* (citing *Commissioner v. Kowalski*, 434 U.S. 77 (1977); *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955); *Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002); and *United States v. Connor*, 898 F.2d 942, 943-44 (3d Cir. 1990)).

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52. “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).

DISCUSSION

53. For the reasons set forth below, this Board upholds the DOR’s estimate of the Appellant’s income and its assessment of his tax liability for tax years 2017, 2018, 2019, and 2020.

Summary Judgment

54. The DOR filed a Motion for Summary Judgment and Brief in Support to demonstrate to the Board that there were no genuine issues of material fact in dispute this case.
55. The Appellant filed three responses to the DOR’s motion, none of which demonstrated to the Board that there were any genuine issues of material fact in dispute. The Appellant’s filings continued to argue that the genuine issues of material fact in dispute include that he is a lawful non-taxpayer as opposed to a taxpayer, that he is not a U.S. citizen but is only a Montana citizen, and that the Board does not have jurisdiction to decide this matter because he is not a taxpayer. The Appellant argued that the Board should deny the DOR’s Motion for Summary Judgment “on the grounds that at this time the Montana Tax Appeal Board has no such authority, and such an act would be a tortious act.”
56. He further reasoned that the Board is not at liberty to grant summary judgment for the DOR because he denies being a taxpayer. Through his discovery requests, the Appellant attempted to shift the burden to the DOR to prove he was a taxpayer and U.S. citizen. He argued that the Board should deny the DOR’s Motion for Summary Judgment because the DOR failed to prove that

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he is a U.S. citizen and taxpayer through responses to his discovery requests. He argued that he has an absolute right to discovery and without the responses he was seeking, the DOR could not prove that he was a U.S. citizen and a taxpayer.

57. The responses the Appellant was seeking from the DOR, and the genuine issues of material fact in dispute that the Appellant argued exist in this case, do not in any way impact whether his income is taxable in Montana under the law. This Board disagrees that the Appellant's arguments demonstrate that there are genuine issues of material fact in dispute. The DOR's Motion for Summary Judgment is granted.

Income Tax Estimates

58. The undisputed facts that are relevant to this case are that the Appellant earned income in Montana for tax years 2017 through 2020, that he was domiciled in and a resident of Montana during that time, that he did not file tax returns for the years at issue, and that the DOR estimated his income tax liability based on information provided by the payors of such income due to the Appellant's failure to file tax returns.
59. Because the Appellant earned income in Montana from 2017 through 2020, while residing in Montana, the income he earned or that was attributed to him is taxable in Montana based on a plain language reading of the laws that determine what income is taxable in Montana, including Montana Code Annotated § 15-30-2101(32).
60. Because the Appellant did not file income tax returns for tax years 2017 through 2020, the DOR estimated his tax due based on the information provided to the DOR by the payors of that income. The DOR provided the Appellant with its estimated tax due and advised the Appellant in its letter dated November 18, 2022, that filing his income tax returns could result in a

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lower tax assessment. *DOR Ex. G, I*. This is because the DOR only has information on the Appellant's income provided by the payors, but does not have information on his expenses, if any, some of which could qualify for deductions that could reduce the Appellant's overall tax liability for the years in question if he filed returns. Rather than file income tax returns to properly report his income and claim any deductions he may be entitled to, the Appellant maintained his arguments that the Montana income tax laws do not apply to him.

61. The DOR estimated the Appellant's income tax due based on the information provided to it. The DOR gave the Appellant an opportunity to file his own tax returns and claim any deductions he may be entitled to. The Appellant chose not file income tax returns, thus the DOR's estimation of the Appellant's income tax for 2017 through 2020 is based on the best information available to the DOR. We uphold the DOR's estimate of the Appellant's income and its assessment of tax, interest, and penalties for tax years 2017 through 2020.

Constitutional Arguments

62. The Appellant raised several arguments as to why the Montana income tax laws do not apply to him. The arguments he advanced are the same as those commonly advanced by tax protestors, also sometimes referred to as tax defiers.⁵ Such arguments have been rejected and deemed frivolous by state and federal courts in numerous cases for many decades.⁶ Referring to frivolous tax arguments, the court in *Crain v. Commissioner*, 737 F.2d 1417, 1417 (5th Cir. 1984) stated, "We perceive no need to refute these arguments with somber

⁵ The term "tax protestor" here refers to those who make anti-tax arguments based on constitutional claims, often deemed frivolous by the courts, and refuse to pay tax based on those beliefs. It does not include those who pay tax under protest while working to resolve a dispute with the tax authorities, nor does it relate to any other form of protest.

⁶ The IRS has provided a summary of common frivolous tax arguments and the caselaw rejecting them on its website. *See* The Truth about Frivolous Tax Arguments (March 2022) at <https://www.irs.gov/pub/irs-utl/2022-the-truth-about-frivolous-tax-arguments.pdf>. (Last visited January 4, 2024.)

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reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.” In *Wnuck v. Commissioner*, 136 T.C. 498, 501-513 (2011), the United States Tax Court set forth reasons courts tend to rely on *Crain* for this proposition. Such reasons include the potentially limitless number of frivolous anti-tax arguments that could be made, the fact that many of these arguments have already been answered by the courts, and the likelihood the taxpayer will remain unmoved by the court’s explanation. *Id.* They also include the potential waste of resources to research, analyze, and explain in writing why each source cited by the taxpayer is inapposite to the issue litigated or is taken out of context.⁷ *Id.*

63. The Board notes that the citations the Appellant presented throughout his filings to advance his arguments were frequently incomplete, inapplicable to the issue discussed, or taken out of context. Many of the Appellant’s arguments have been litigated time and again and have failed repeatedly. For this reason, this Board will discuss them briefly, but will not discuss them in detail in this opinion.
64. The Appellant has advanced arguments that the DOR does not have the authority to impose an income tax on him based on his reading of the United States Constitution, the Montana Constitution, various federal and state statutes and regulations, and various court cases. This Board disagrees with his arguments. The DOR not only has the authority to administer and enforce the Montana revenue laws found in Title 15, chapter 30, but it is required to.
65. The Appellant claimed that he is neither a U.S. citizen, nor a citizen of any other country, and that he is only a citizen of Montana. He argued that since he is not a U.S. citizen, he cannot be subject to federal tax. He also argued that since the calculation of Montana adjusted gross income starts with a taxpayer’s

⁷ There are also additional reasons included in the Tax Court’s opinion that are not discussed here.

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federal adjusted gross income, of which he has none based on his interpretation of law, he cannot have Montana adjusted gross income and thus is not required to pay tax in Montana. He repeatedly argued that the DOR first had to prove he was a U.S. citizen and not simply a citizen of his state before assessing tax on his income. However, citizenship status is not an element used to determine if income is taxable in Montana, so this Board need not consider this argument.

66. The Appellant also argued that he is a lawful non-taxpayer as opposed to a taxpayer, thus the DOR has no authority to assess Montana income tax against him. This Board interpreted his argument to mean that he believed he needed to be categorized as or declared a taxpayer before Montana tax laws could apply to him. As discussed, this Board determined that the income paid to or attributed to the Appellant was taxable in Montana based on a plain language reading of the law. The Appellant's claim to be a lawful non-taxpayer does not change the fact that he earned compensation for services performed or that income from pass through entities was attributed to him during the 2017 through 2020 tax years. Thus, the Board declines to address this argument further.
67. The Appellant also argued that he is not a person, as that term is defined in 26 U.S.C. 7701(a)(1) and thus cannot be considered a taxpayer under the law because the term "taxpayer" refers to "any person subject to any internal revenue tax." *MTAB Dkt. 1*. He argued that the term "person" in 26 U.S.C. 7701(a)(1) refers only to statutory legal fictions, and he is a sovereign rather than a statutory legal fiction. The Board notes the definition of "person" in 26 U.S.C. 7701(a)(1) includes individuals, among others, and declines to address this argument further.
68. The Appellant argued that "[t]he State of Montana cannot define 'income' outside the definition provided by the Courts and Congress." *MTAB Dkt. 1*. He argued that "Montana is not free to name something 'income' that is not 'gain

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or profit' in the constitutional sense." *Id.* He cites to *Eisner v. Macomber*, 252 U.S. 189, 207 (1920), for the proposition that income is "[t]he gain derived from capital, from labor, or from both combined..." The Appellant seems to be arguing that the income he earned from the work he performed in Montana somehow does not qualify as income. This Board has read the Appellant's cited legal authority, and we believe that legal authority contradicts his argument. Because the Appellant's argument regarding the definition of income has been deemed frivolous by the courts, this Board will not discuss it further. This Board looks to the definitions of gross income, adjusted gross income, and taxable income found in Montana Code Annotated and the Internal Revenue Code, which include wages and compensation for services provided, among others.

69. The Appellant also argued that the Montana income tax is unconstitutional "as applied to [his] secured right to earn a living by selling [his] labor under [his] unlimited right to contract." *MTAB Dkt. 1*. This Board is tasked with resolving tax disputes based on the relevant law as applied to the facts and circumstances of each case that comes before us. As the question of whether states have the power to tax their citizens is outside this Board's jurisdiction to decide, we decline to discuss this argument further.
70. Additionally, the Appellant argued in his *Objection to Summary Judgement Rider/Supplement* (sic) submitted on November 19, 2023, that the tax laws the DOR cited were void for vagueness and overbreadth. He argued that the tax code provided by the DOR was vague because it "fails to clearly and exactly state which class of citizen is subject to the tax code." He argued that it was overbroad "because it is so vague that it impinges upon the right of the non-taxpayer to keep property that is rightfully theirs." These arguments seem to stem from his arguments that he is not a U.S. citizen, but only a citizen of Montana, and that he is a lawful non-taxpayer, as opposed to a taxpayer. As discussed previously, U.S. citizenship status does not impact whether income is

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taxable in Montana. Additionally, there is no requirement that someone be declared or determined to be a taxpayer rather than a non-taxpayer before their income is subject to Montana tax.

71. Constitutional claims are properly decided by a judicial body. As an administrative board, we do not decide matters relating purely to the constitutionality of the laws at issue in cases that come before us. We decided this matter based on the facts as presented by both parties and the plain language of the laws at issue. As such, we decline to discuss the Appellant's constitutional claims further.

MOTIONS BEFORE THE BOARD

DOR's Motion to Strike

72. On October 17, 2023, the DOR filed a Motion to Strike *Appellant's Opposition to Respondent's Answer*, which the Appellant filed on September 25, 2023.
73. The Montana Rules of Civil Procedure do not allow for a reply to an answer unless ordered by the [board]. The pleadings allowed by Rule 7 include a complaint, an answer to a complaint, and a reply to an answer if the [board] orders one.⁸ See M.R.Civ.P. Rule 7. The Board did not order the Appellant to file a reply to the DOR's answer. Thus, the *Appellant's Opposition to Respondent's Answer* is not a pleading allowed under the Montana Rules of Civil Procedure. For this reason, the DOR's Motion to Strike is granted.

Motion to Vacate Original Judgment with Prejudice

74. On October 26, 2023, the Appellant filed a *Motion to Vacate Original Judgment With Prejudice*. The Appellant argued that the DOR was not able to provide proof during discovery that he is a citizen of the United States, thus the original judgment should be vacated with prejudice.

⁸ M.R.Civ.P Rule 7 also allows for certain additional pleadings, none of which are at issue in this matter.

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75. The Board deemed this to be a motion to vacate the ODR's decision. The ODR's decision was the reason for and subject of this appeal. The Board decides appeals under § 15-2-302 *de novo*. The Board reviewed the parties' submissions to MTAB as part of this appeal and granted the DOR's Motion for Summary Judgment. The Appellant's motion is denied.

Jurisdictional Challenge

76. The Appellant filed his *Jurisdictional Challenge* on October 18, 2023, challenging the jurisdiction of both DOR and MTAB.
77. We interpreted the Appellant's challenge of the DOR's jurisdiction as a challenge of DOR's authority to impose a tax on his income. As discussed, the DOR has the authority and is required to administer and enforce Montana revenue laws found in Title 15, chapter 30, thus we declined to address this challenge further.
78. Next, we turn to the Appellant's challenge of MTAB's subject matter jurisdiction. The Montana Constitution directed the legislature to set up a process for tax appeals in Montana. *See* Mont. Const., Art. VIII § 7. The legislature created the Montana Tax Appeal Board and granted authority to the Board to decide income tax disputes. *See* Mont. Code Ann. §§ 15-2-101, 15-2-302. As this matter is an income tax dispute, the Board has subject matter jurisdiction to decide the matter.
79. Finally, we turn to the Appellant's personal jurisdiction challenge. It was the Appellant who filed an appeal to MTAB disputing the DOR's assessment of income tax against him. The Appellant voluntarily exercised his right to appeal to MTAB, thus he has availed himself of MTAB's decision on whether he owes income tax in Montana. MTAB is the proper forum to appeal an ODR decision regarding an income tax dispute per Montana Code Annotated § 15-2-

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302, thus the Board has jurisdiction to decide this matter, which includes whether or not the Appellant owes the tax at issue.

80. For these reasons, the Appellant's jurisdictional challenge is denied.

Motion to Change Hearing Venue and Date

81. The Appellant also filed a motion to change the venue and date of the hearing. The Board vacated the Scheduling Order on November 1, 2023, in its *Order Allowing Response and Vacating Hearing*. For this reason and because the Board granted the DOR's Motion for Summary Judgment, the Appellant's motion is moot and therefore denied.

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ORDER

- 82. The DOR's Motion for Summary Judgment is granted.

- 83. The Board upholds the DOR's estimate of Appellant's income and its assessment of tax, penalties, and interest due and accruing for tax years 2017, 2018, 2019, and 2020.

- 84. The DOR's Motion to Strike is granted.

- 85. The Appellant's Motion to Vacate Original Judgment with Prejudice is denied.

- 86. The Appellant's Jurisdictional Challenge is denied.

- 87. The Appellant's Motion to Change Hearing Venue and Date is denied.

Dated this 5th day of January 2024.





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 January 5, 2024, to:

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