

BEFORE THE MONTANA TAX APPEAL BOARD

**FILED**

APR 24 2024

Montana Tax Appeal Board

Zachary David Hubbard,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: IT-2023-17

**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 November 3, 2023, affirming the Montana Department of Revenue's (DOR) estimation of income earned by Zachary David Hubbard (Appellant) and its assessment of tax, penalties, and interest on such income for tax years 2019, 2020, and 2021. The Appellant timely appealed that outcome to the Montana Tax Appeal Board (MTAB or Board) on November 29, 2023.

The DOR filed a Motion for Summary Judgment and Brief in Support on February 9, 2024. The Appellant did not respond to the DOR's Motion for Summary Judgment. The matter is fully briefed, and the Board reviewed the submissions of both parties. We conclude 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, penalties, and interest due and accruing for tax years 2019, 2020, and 2021 for the reasons stated herein.

**ISSUE TO BE DECIDED**

Whether the DOR erred in estimating the income earned by the Appellant and assessing tax, penalties, and interest on such income for tax years 2019 through 2021.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

**EXHIBIT LIST**

The Appellant attached the following Exhibits to his Notice of Appeal<sup>1</sup>:

1. Notice of Non-Consent from Appellant addressed to DOR Compliance Unit Manager, Marla Wolstein, dated November 25, 2023 (5 pages);
2. Excerpt Describing “Absolute Solution to IRS Taxes” (Source Unknown) (4 pages);
3. Excerpt Titled “Understanding Jurisdiction” (Source Unknown) (19 pages);
4. Moses G. Washington, Meet Your Straw Man (revised Oct. 27, 2003) (Source Unknown) (7 pages);
5. Document containing definitions and analysis (Source Unknown) (3 pages);
6. Excerpt from “Denial of Corporate Existence: Statutory Recognition of the Right of a Man to Deny Corporate Existence” (Source Unknown) (1 page);
7. Why Your Legal Name is Written in All Capital Letters, <http://articleatlas.com> (3 pages);
8. Moses G. Washington, Meet Your Straw Man (revised Oct. 27, 2003) (Source Unknown) (7 pages);
9. Computer printout of 28 U.S.C. § 3002 (1990) <https://www.law.cornell.edu/uscode/text/28/3002> (4 pages).

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

- A. Appellant’s W-2’s for tax years 2019, 2020, and 2021 (9 pages);
- B. Affidavit of Marla Wolstein, DOR Compliance Unit Manager for the DOR’s Business and Income Division, dated February 9, 2024 (2 pages);

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<sup>1</sup> The Appellant included his Exhibits with his Notice of Appeal. The Appellant’s attachments appear to be photocopies or printouts of articles, 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.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

- C. DOR's Montana Individual Income Tax Return Estimates for Appellant for Tax Year 2019 (2 pages);
- D. DOR's Montana Individual Income Tax Return Estimates for Appellant for Tax Year 2020 (2 pages);
- E. Correspondence from DOR to Appellant (10 pages):
  - Estimation of Tax Liability, dated January 11, 2023;
  - Notice of Assessment for tax year 2019 dated January 19, 2023;
  - Notice of Assessment for tax year 2020 dated January 19, 2023;
  - Notice of Assessment for tax year 2021 dated January 19, 2023;
- F. DOR's Montana Individual Income Tax Return Estimates for Appellant for Tax Year 2021 (2 pages);
- G. Letter from DOR to Appellant: 2020 Montana Individual Income Tax Return and Any Other Non-Filed Returns Letter, dated October 4, 2022 (1 page);
- H. Letter from Appellant to DOR, received by DOR January 31, 2023 (20 pages);
- I. Appellant's Documents Denying Tax Liability, received by DOR February 1, 2023 (38 pages);
- J. DOR Email regarding Final Determination Letter (2 pages);
- K. Appellant's Request for Informal Review and Further Correspondence (60 pages);
- L. DOR's Response to 2nd Informal Review Request 2019-2021, dated April 14, 2023 (4 pages);
- M. Appellant's Referral to the Office of Dispute Resolution and Further Correspondence (64 pages).

**STATEMENT OF UNDISPUTED FACTS**

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

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

2. Appellant is a Montana resident who lived in or near Whitefish, Montana during tax years 2019, 2020, and 2021.
3. The DOR was provided Form W-2 Wage and Tax Statements by Diamond Plumbing & Heating Inc. reporting Appellant's wages for the 2019, 2020, and 2021 tax years. *Ex. A.* Additionally, Appellant received a Form 1099-R for tax year 2020 reporting a gross distribution of \$9,651.09 from a Roth IRA. *Id.*
4. Appellant did not file an individual tax return for tax years 2019, 2020, and 2021. *Ex. B.* As a result, the DOR calculated Appellant's taxable income for each year by using the income reported on the Form W-2 provided by Appellant's employer, and the IRA distribution reported on the Form 1099-R for tax year 2020, and applying the standard deduction and one exemption each year. *Ex. C.* The DOR then estimated Appellant's total tax liability to be \$4,732.68 for 2019, \$5,800.17 for 2020, and \$4,905.25 for 2021 which also includes interest, late filing penalties, and late payment penalties. *Ex. C, E.*
5. The DOR notified Appellant in a letter dated October 4, 2022, that his 2019, 2020, and 2021 Montana individual income tax liability had been estimated and requested Appellant file his tax returns to calculate his own tax liability. *Ex. G.* Appellant did not respond to the DOR's letter. *MTAB Dkt. 7.* The DOR sent Appellant an Estimation of Tax Liability for 2019, 2020, and 2021 on January 11, 2023. *Ex. E.* The DOR also sent a Notice of Assessment to Appellant, which included instructions and a deadline of March 6, 2023, to file an appeal. *Id.*
6. Appellant mailed several documents to the DOR during January and February of 2023, which the DOR deemed to be Appellant's Appeal. *Ex. E, H.*
7. Appellant submitted a Form APLS101F on March 9, 2023, requesting a second informal review. *Ex. K, L.* The DOR upheld Appellant's tax liability once

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

again. *Id.* Appellant appealed the DOR's determination to ODR on May 15, 2023, where the DOR's estimate of income tax, penalties, and interest were upheld. *Ex. M; MTAB Dkt. 2.*

8. The Appellant mailed a document packet to MTAB on November 29, 2023. The Appellant's cover page was addressed to DOR's Compliance Unit Manager, Marla Wolstein, at a DOR address. The Board believed the documents sent by the Appellant were mistakenly delivered and forwarded the packet to Ms. Wolstein. On December 5, 2023, Ms. Wolstein informed the Board that she believed the packet of documents was the Appellant's appeal of the ODR decision. The Board filed the Appellant's appeal as of November 29, 2023, and issued a Notice of Acceptance and Scheduling Conference on December 6, 2023.
9. The Appellant's appeal packet included a two-page, handwritten, unsigned note, which was not addressed to anyone. *MTAB Dkt. 1.* In the note, the Appellant argued that he did not identify as the "ALL CAPS name that the STATE uses" and that he was "seeking relief on the grounds the STATE has created a Fraudulent Entity" by spelling his name using all capital letters and stating that he is not responsible for the debt created by that entity. *Id.* The Appellant also asked for another hearing to prove that he is a living person rather than a fictional entity created by using all capital letters in the spelling of his name. *Id.* The Appellant asked to be declared a non-taxpayer as a remedy. *Id.*
10. After the Scheduling Conference, the Board issued a Scheduling Order on January 10, 2024, setting a deadline for [dispositive] motions of February 9, 2024, and a hearing date of February 27, 2024.
11. The DOR filed a Motion for Summary Judgment on February 9, 2024. The Board issued an order on February 12, 2024, vacating the Scheduling Order and setting a deadline of March 1, 2024, for the Appellant to file a response to



**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

the DOR's Motion for Summary Judgment. The Appellant did not file a response. Thus, the Board considers the matter fully briefed and ready for our analysis and decision.

**JURISDICTION AND STANDARD OF REVIEW**

12. 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.
13. 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.
14. 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.
15. 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).

**CONCLUSIONS OF LAW**

16. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
17. The statutes and rules in effect for tax years 2019 through 2021 govern this matter.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

**Summary Judgment**

18. 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).
19. 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).
20. “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**

21. “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).
22. “‘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).
23. 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).

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

24. For federal individual income tax purposes, adjusted gross income means gross income minus allowed deductions. 26 U.S.C. § 62.
25. 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).
26. 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).
27. “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).
28. “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**

29. “Taxes shall be levied by general laws for public purposes.” Mont. Const., Art. VIII § 1.
30. The DOR is responsible for administering and enforcing Montana revenue laws. Mont. Code Ann. §§ 15-1-201, 15-1-202.
31. Each year individuals must pay tax on their taxable income as provided in Montana Code Annotated § 15-30-2103.



**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

32. “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)).
33. “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**

34. The DOR’s Motion for Summary Judgment and Brief in Support demonstrate to the Board that there are no genuine issues of material fact in dispute in this matter. Because the Appellant did not respond to the DOR’s Motion for Summary Judgment to argue otherwise, this Board reviewed the pleadings and submissions of both parties. After a thorough review of the record, this Board agrees with the DOR and determines that no genuine issue of material fact is in dispute in this case. Therefore, we review the relevant laws based on the undisputed facts presented.
35. The following facts are undisputed. The DOR was provided Forms W-2 from Appellant’s employer reporting income paid to Appellant for the tax years 2019, 2020, and 2021, years in which he was domiciled in and a resident of Montana. The Appellant did not file individual tax returns for tax years 2019, 2020, and 2021. The DOR estimated the Appellant’s income tax liability based on information provided by Appellant’s employer due to Appellant’s failure to

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

file income tax returns. As of January 19, 2023, the Appellant owed \$15,438.10 in tax, penalties, and interest according to the DOR's calculations. The penalties and interest continue to accrue until paid.

36. Because Appellant earned income and received payments in Montana from 2019 through 2021, while residing in Montana, the income he earned and the payments he received are taxable in Montana based on a plain language reading of the laws that determine which income is taxable in Montana, including Montana Code Annotated § 15-30-2101(32).
37. Because the Appellant did not file income tax returns for tax years 2019 through 2021, the DOR estimated his tax due based on the information provided to the DOR by his employer. This Board agrees that the DOR was properly operating under Montana law, specifically Montana Code Annotated § 15-30-2605, when it estimated the Appellant's income and assessed tax, penalties, and interest.
38. The Appellant's requested remedy in his appeal was to be declared a non-taxpayer. He also argued that the spelling of his name in all capital letters referred to a fraudulent entity and that he did not owe the debt associated with such entity. These arguments are the same as those commonly advanced by tax protestors, also sometimes referred to as tax defiers.<sup>2</sup> Such arguments have been rejected and deemed frivolous by state and federal courts in numerous cases for many decades.<sup>3</sup> Referring to frivolous tax arguments, the court in *Crain v. Commissioner*, 737 F.2d 1417, 1417 (5th Cir. 1984) stated, "We

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<sup>2</sup> 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.

<sup>3</sup> 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 April 10, 2024.)

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

perceive no need to refute these arguments with somber 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.<sup>4</sup> *Id.*

39. Whether the DOR or other state agency spells the Appellant’s name with all capital letters has no bearing on whether or not the Appellant owes Montana income tax on the income he earned in Montana. The income paid to Appellant was taxable in Montana based on a plain language reading of the law, thus the Appellant owes tax on that income. Because these arguments have been deemed frivolous by courts in previous cases, the Board declines to address them further.
40. We find there are no genuine issues of material fact in dispute in this matter and the DOR is entitled to judgment as a matter of law. The DOR’s Motion for Summary Judgement is granted, and the Appellant’s underlying appeal is denied.
41. For the reasons set forth above, this Board affirms the DOR’s estimate of the Appellant’s income and its assessment of his tax liability for tax years 2019, 2020, and 2021, along with penalties and interest due and accruing.

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<sup>4</sup> There are also additional reasons included in the Tax Court’s opinion that are not discussed here.


**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

**ORDER**

42. The DOR's Motion for Summary Judgment is granted, and the Appellant's appeal is denied.
43. 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 2019, 2020, and 2021.

Dated this 24th day of April 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)*.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
*Zachary Hubbard v. STATE OF MONTANA, DEPARTMENT OF REVENUE*

**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 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 April 24, 2024, to:

Zachary David Hubbard  
P.O. Box 5286  
Whitefish, MT 59937

Samuel Kane  
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P.O. Box 7701  
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Rina Sanderson, Legal Secretary