

MICHELLE MANN,

Appellant,

v.

STATE OF MONTANA,  
DEPARTMENT OF REVENUE,

Respondent.

CASE №: IT-2023-13

**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 Office of Dispute Resolution (ODR) which affirmed the Department of Revenue’s (DOR) adjustments denying Michelle Mann’s (Taxpayer) Schedule C deductions on her Montana individual income tax returns for tax years 2019, 2020, and 2021. After the final audit determination resulting in tax due, the Taxpayer appealed to the DOR’s Office of Dispute Resolution (ODR), which held a hearing on June 14, 2023. In its opinion and order the ODR judge upheld DOR’s adjustments denying Taxpayer’s Schedule C deductions. The Taxpayer appealed that outcome to the Montana Tax Appeal Board (MTAB) on November 1, 2023. We affirm the DOR’s determination.

**ISSUE TO BE DECIDED**

Whether the DOR erred in denying Taxpayer’s Schedule C deductions on her 2019, 2020, and 2021 Montana individual income tax returns.

**EXHIBIT LIST**

The following evidence was submitted at the hearing:

Taxpayer Exhibits:

1. Text Correspondence between Taxpayer and Vicki L. Mangan, district consultant manager for Tupperware;

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2. Consultant Agreement for Tupperware U.S., Inc.;
3. New Consultant How-To Guide for Thirty-One Gifts.

DOR Exhibits:

- A. Letters from DOR to Taxpayer dated February 28, 2022, March 22, 2022, and May 12, 2022;
- B. Letters from Premium Retail Services dated May 25, 2022, and July 19, 2022;
- C. Audit Adjustment Letter dated June 3, 2022;
- D. Request for Informal Review dated June 29, 2022;
- E. Final Determination Letter dated August 16, 2022;
- F. Appeal to ODR dated September 14, 2022;
- G. Appeal to MTAB filed November 1, 2023;
- H. Taxpayer's Montana Tax Returns and Attachments for tax years 2019, 2020, and 2021;
- I. Audit Program Workbook.

**PROCEDURAL HISTORY**

Taxpayer claimed \$13,398, \$15,765, and \$17,162 in Schedule C expenses on her Montana individual income tax returns for tax years 2019, 2020, and 2021, respectively. *Ex. H.* The DOR disallowed Taxpayer's Schedule C deductions as they related to her W-2 employment with Premium Retail Services. *Ex. C, H.* Taxpayer submitted a Request for Informal Review with the DOR dated June 29, 2022. *Ex. D.* After its review, the DOR sent the Taxpayer a Response to the Request for Informal Review on August 16, 2022, upholding the DOR's adjustments. *Ex. E.* The Taxpayer appealed the DOR's adjustment to ODR on September 14, 2023, requesting that her Schedule C deductions be allowed. *Ex. F.* The ODR hearing was held on June 14, 2023, and the ODR issued its decision on September 26, 2023, affirming the DOR's denial of Taxpayer's Schedule C deductions. *MTAB Dkt. 1.* The Taxpayer appealed to MTAB on November 1, 2023, per Montana Code Annotated § 15-2-302. *Ex. G.* The MTAB hearing was conducted in Helena on February 15, 2024, at which the following were present:

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- a. Michelle Mann, Taxpayer; and
- b. Kristina Warren, DOR Counsel; Beth Parini, Tax Examiner; and Brian Olsen, Unit Manager.

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, a Zoom video recording of the 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 worked as a Merchandising Representative for Premium Retail Services (Premium) during tax years 2019, 2020, and 2021, and operated an online store for Thirty-One Gifts during tax years 2019 and 2020. *Ex. G, H, I; MTAB Hr'g Tr. 5:23-6:10, 9:2-12, 11:6-7.* Taxpayer asserts that her work for both companies was as an independent contractor. *Ex. D, F, G; MTAB Hr'g Tr. 5:23-6:10.*
3. Taxpayer's work with Premium involved visiting the local branches of different national corporations such as Best Buy, Target, and Home Depot, and filling their merchandise, putting up displays, and auditing the stores, among other duties. *MTAB Hr'g Tr. 6:11-7:2.* The job required Taxpayer to drive to the different stores in her personal vehicle and pay for her gas with personal funds. *Id.* The inventory used when stocking shelves was supplied by each store, although any necessary displays or signage were often sent to her personal residence first. *MTAB Hr'g Tr. 7:3-9.*
4. When asked whether she had a supervisor at Premium, Taxpayer responded, "Not directly, no. I mean, I do but I don't. She's somewhere in California, I don't know where exactly." *MTAB Hr'g Tr. 7:21-24.* Taxpayer further stated

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that if she failed to complete her job duties, they would be labeled past due, and continued failure would cause her to get written up. *MTAB Hr'g Tr. 7:25-8:7*. If the Taxpayer received enough writeups, it could result in her termination from Premium. *Id.*

5. Taxpayer conceded that if Premium were to stop shipping her the required displays and signage, and stopped giving her work assignments, she would not have a job. *MTAB Hr'g Tr. 8:8-22*.
  
6. Taxpayer uses an online portal to accept assignments from Premium, record her reports, and keep track of her work schedule. *MTAB Hr'g Tr. 6:5-10, 11:1-3*. The Premium portal acts as an intermediary where stores can submit requests to Premium, and then Premium displays the work orders on the portal. *MTAB Hr'g Tr. 15:16-22*. Taxpayer receives her work assignments from Premium and does not receive any work assignments directly from the stores. *Id.*
  
7. Taxpayer's work with Thirty-One Gifts involved operating an online retail store selling handbags. *MTAB Hr'g Tr. 9:3-12*. Taxpayer's work with Thirty-One Gifts was solely online and did not require any in-person events with customers. *Id.* Taxpayer testified that consultants for Thirty-One Gifts are required to pay for their websites, product samples, and any vendor events, both in-person and online. *Id.*
  
8. Taxpayer took out a number of deductions related to both Premium and Thirty-One Gifts. *MTAB Hr'g Tr. 10:10-20, 13:5-12, 17:14-17*. The deductions were for expenses related to the operation of her computer, printer, and phone, as well as travel expenses and internet costs. *MTAB Hr'g Tr. 10:10-20*. Taxpayer testified that she did not purchase her phone specifically for her work with Thirty-One Gifts and had owned the phone prior to her involvement with the company. *MTAB Hr'g Tr. 10:21-23*. Taxpayer stated that the sole purpose of the phone was to facilitate her work with Premium. *MTAB Hr'g Tr. 11:1-4*.



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However, Taxpayer does not have separate phones for personal and business purposes, only one phone for both. *MTAB Hr'g Tr. 17:18-20.*

9. Taxpayer presented a screenshot of a text conversation between herself and her district consultant manager for Tupperware, Vicki L. Mangan, who stated that Ms. Mann was a 1099 consultant and not employed by Tupperware. *Ex. 1; MTAB Hr'g Tr. 11:8-12:6.* The DOR objected to the exhibit, stating that Ms. Mann did not start selling Tupperware until 2022, which is outside the scope of the audit and therefore irrelevant to this appeal. *Id.*
10. Taxpayer also presented a consultant agreement from Tupperware which described the terms of the work agreement between her and the company. *Ex. 2; MTAB Hr'g Tr. 12:7-13:4.* The DOR objected to this exhibit as well because the agreement was not signed by the Taxpayer and because Taxpayer did not start selling Tupperware until after the audit period in this appeal. *Id.*
11. Taxpayer had worked for Premium for fifteen years at the time of the hearing. *MTAB Hr'g Tr. 15:1-3.* As of the hearing date, Taxpayer was paid by the hour but stated that in the past she was paid per job. *MTAB Hr'g Tr. 15:4-5.* Premium pays Taxpayer every two weeks and taxes are taken out of each paycheck. *MTAB Hr'g Tr. 15:10-15.*
12. Taxpayer conceded that she does not have any documentation from Premium stating that she is an independent contractor and not an employee. *MTAB Hr'g Tr. 16:1-4.* Taxpayer nodded her head affirmatively that she receives a W-2 from Premium. *MTAB Hr'g Tr. 16:1-4; MTAB Hr'g 27:13:27-36.* Taxpayer agreed that Premium offers health benefits for part-time employees but could not say for certain if they offered a 401K as well. *MTAB Hr'g Tr. 16:10-16.*
13. Taxpayer stated that she does not sell enough product with Thirty-One Gifts to receive a Form 1099. *MTAB Hr'g Tr. 17:3-13.* Taxpayer filed a Schedule C

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with her tax returns for the audit period to report her business expenses. *MTAB Hr'g Tr. 17:14-17*. Taxpayer testified that she could not recall whether she had tracked which expenses on her Schedule C were for Thirty-One Gifts, Premium, or personal use. *Id.*

14. DOR Tax Examiner, Beth Parini, was assigned to audit the Taxpayer's Montana tax returns for the 2019, 2020, and 2021 audit period. *MTAB Hr'g Tr. 18:22-19:9*. After Taxpayer's file was assigned to Ms. Parini, Ms. Parini then sent out a field audit letter informing Taxpayer of the DOR's intent to review Schedule C of her Montana tax returns on April 13, 2022. *Ex. A; MTAB Hr'g Tr. 19:18-20*. The initial field audit letter was only for tax years 2019 and 2020, but after Taxpayer filed a tax return for 2021, the DOR included the 2021 tax return in their audit. *Ex. A; MTAB Hr'g Tr. 20:20-23*. A subsequent letter was sent to Taxpayer rescheduling the field audit for May 10, 2022, after Taxpayer had requested an extension due to an upcoming surgery. *Ex. A; MTAB Hr'g Tr. 21:7-15*.
  
15. After the audit, DOR sent a letter to Taxpayer on May 12, 2022, requesting documentation from Premium establishing Taxpayer as either an employee or independent contractor. *Ex. A; MTAB Hr'g Tr. 21:16-20*. In Premium's response letter, the company stated that Taxpayer was currently employed by Premium as a Merchandising Representative. *Ex. B*. The letter also noted that Taxpayer's work was remote and required traveling between stores as well as the use of her personal vehicle, printer, internet and phone data. *Id.* Ms. Parini testified that the requirements stated in the letter from Premium, such as needing to use her personal phone and printer, do not establish Taxpayer as an independent contractor. *Ex. B; MTAB Hr'g Tr. 22:7-13*. Ms. Parini also pointed out that Taxpayer was described in the letter from Premium as an employee and deductions for employee businesses expenses are no longer allowed due to the federal Tax Cuts and Jobs Act of 2017 (TCJA). *Id.*

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16. Taxpayer testified that she attempted to contact the Department of Labor and Industry (DLI) multiple times and was unable to reach anyone. *MTAB Hr'g Tr. 13:13-25*. These attempts at contacting DLI included phone calls, leaving voice messages, and sending emails. *Id.* Taxpayer did not submit an application to DLI to be recognized as an independent contractor. *Id.*
  
17. Taxpayer submitted a request for an informal review with the DOR dated June 29, 2022. *Ex. D; MTAB Hr'g Tr. 22:14-22*. Since Taxpayer still maintained that she was an independent contractor, Ms. Parini sent another letter to Premium requesting that they clarify Taxpayer's employment status. *Id.* In their response, Premium indicated Taxpayer was employed by Premium. *Id.* The DOR sent Taxpayer an Audit Adjustment Letter on June 3, 2022, disallowing the Schedule C expenses as they were related to her employment with Premium and therefore did not qualify for Schedule C deduction. *Ex. C; MTAB Hr'g Tr. 23:3-8*.
  
18. Ms. Parini testified that the DOR did not know about the Taxpayer's work with Thirty-One Gifts until the matter went to ODR. *MTAB Hr'g Tr. 28:10-16*. Ms. Parini stated that while Taxpayer could have resubmitted a Schedule C for Thirty-One Gifts, the expenses would require substantiation such as providing her contract with the company, her Form 1099, daily mileage logs, and potentially more documentation. *MTAB Hr'g Tr. 23:14-23*. Furthermore, the expenses would need to have been ordinary and necessary for the business in order to be deducted. *MTAB Hr'g Tr. 28:4-6*.
  
19. DOR presented the audit program form used to make adjustments in Taxpayer's case. *Ex. I; MTAB Hr'g Tr. 24:5-25:8*. Ms. Parini testified that the adjustments she made on Taxpayer's audit program form were to disallow the deduction of work expenses related to Taxpayer's employment with Premium due to enactment of the TCJA, which suspended the ability of employees to

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deduct employee business expenses from their income for tax purposes from January 1, 2018 to December 31, 2025. *Ex. I; MTAB Hr'g Tr. 26:17-21.*

20. DOR Unit Manager, Brian Olsen, testified that no audit adjustments were made after the informal review because no new information was made available that was contrary to Ms. Parini's original audit adjustments. *Ex. D, E; MTAB Hr'g Tr. 29:23-31:12.*
21. Mr. Olsen disagreed with Taxpayer's argument that her ability to refuse or accept jobs and complete work on her own timeline means she is an independent contractor. *MTAB Hr'g Tr. 32:4-10.* Mr. Olsen testified that based on his training through the IRS Forum, these factors would be considered but are not determinative that a person is an independent contractor. *Id.*
22. Mr. Olsen testified that DLI primarily decides whether a person is an independent contractor, but workers' compensation State Fund may also make those determinations as well. *MTAB Hr'g Tr. 32:11-15.* Mr. Olsen also stated that the DOR would likely accept a signed contract between a business and an individual that the DOR felt was persuasive as evidence that a person is an independent contractor. *MTAB Hr'g Tr. 32:16-23.*

**JURISDICTION AND STANDARD OF REVIEW**

23. 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.*
24. 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



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had been previously rendered.” *McDunn v. Arnold*, 2013 MT 138, ¶ 22, 370 Mont. 270, 275, 303 P.3d 1279, 1282.

25. 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**

26. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
27. 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).
28. 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.
29. 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*.
30. 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*.

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31. “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)).
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. “If, in the opinion of the [DOR], any return of a taxpayer is in any essential respect incorrect, it may revise the return.” *Mont. Code Ann. § 15-30-2605(1)*.
34. “...[T]he amount of tax due under any return may be determined by the [DOR] within 3 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing...” *Mont. Code Ann. § 15-30-2605(3)*.
35. “Tax deductions are a matter of legislative grace and it is the taxpayer's burden to clearly demonstrate the right to the claimed deduction.” *Robinson v. Mont. Dep’t of Revenue*, 2012 MT 145 ¶ 12, 365 Mont. 336, 281 P.3d 218, 2012 Mont. LEXIS 194, 2012 WL 2673241 (citing *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L. Ed. 2d 226 (1992); *Baitis v. Department of Revenue*, 2004 MT 17, ¶ 28, 319 Mont. 292, 83 P.3d 1278; *GBN, Inc. v. Department of Revenue*, 249 Mont. 261, 266, 815 P.2d 595, 597 (1991)).
36. “In general. Except as provided in paragraph (b) of this section, any person subject to tax under Subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section [26 USCS § 6361(a)] as if it were imposed by Chapter 1 of Subtitle A), or any person required to file

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a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.” *26 C.F.R. § 1.6001-1(a)*.

37. “In general. Except as otherwise provided in this section and § 1.274-6T, a taxpayer must substantiate each element of an expenditure or use (described in paragraph (b) of this section) by adequate records or by sufficient evidence corroborating his own statement.” *26 C.F.R. §1.274-5T(c)(1)(1986)*.
  
38. 26 USCS § 67(a) states: “In general. In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income...”
  
39. However, the TCJA amended § 67 in 2017 by adding subsection (g), which suspended all miscellaneous itemized deductions subject to the 2-percent floor for tax years 2018 through 2025 (Suspension Period). In general, taxpayers are not permitted to claim miscellaneous itemized deductions, including unreimbursed employee business expenses, during the Suspension Period. *115 P.L. 97 and 26 USCS § 67(g)*.
  
40. “A dispute involving an employer, a worker, or [DLI] and involving the issue of whether a worker is an independent contractor or an employee, but not involving workers’ compensation benefits, must be brought before the independent contractor central unit of [DLI] for resolution.” *Mont. Code Ann. 39-71-415(2)(a)*.
  
41. In general, an independent contractor must obtain a personal workers’ compensation insurance policy or an independent contractor exemption

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certificate (ICEC). Mont. Code Ann. § 39-71-417(1)(b). The process to apply for an ICEC through DLI is set forth in Montana Code Annotated § 39-71-417.

42. “[W]hen a worker is required by 39-71-417, MCA, to have an independent contractor exemption certificate and does not, the worker is conclusively determined to be an employee for purposes of wage and hour, unemployment insurance, workers’ compensation, and income tax.” *Mont. Admin. R. 24.35.203(1)*.
  
43. “When a worker holds an independent contractor exemption certificate and is working under that certificate as required by 39-71-417, MCA, the worker is conclusively determined to be an independent contractor for purposes of wage and hour, unemployment insurance, workers’ compensation, and income tax.” *Mont. Admin. R. 24.35.203(2)*.
  
44. Montana Administrative Rule 24.35.202 establishes a two-part test to determine whether an individual is an independent contractor or an employee. The two parts of the test are: (a) whether the individual is and shall continue to be free from control or direction over the performance of the services, both under contract and in fact; and (b) whether the individual is engaged in an independently established trade, occupation, profession, or business. *Mont. Admin. R. 24.35.202(1)*.
  
45. “Decisions regarding employment status must comply with the criteria for an independent contractor found at 39-71-417, MCA, as well as with existing law on partnership, joint ventures and other employment entities.” *Mont. Admin. R. 24.35.202(4)*.
  
46. Montana Code Annotated § 39-71-417(4)(a) requires an applicant to swear and acknowledge: (i) that the applicant has been and will continue to be free from control or direction over the performance of the person’s own services, both



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under contract and in fact; and (ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to DLI.

47. “An individual is an employee and not an independent contractor if the hiring agent controls or retains the right to control the way the individual renders services.” *Mont. Admin. R. 24.35.302(1)*. Montana Administrative Rule 24.35.302(1) includes factors that serve as a general guideline when DLI evaluates whether control exists. DLI evaluates such factors on a case-by-case basis. When such factors are evaluated, there is a presumption the individual is an employee until it is proven to DLI’s satisfaction that the individual is an independent contractor. *Mont. Admin. R. 24.35.302(2)*.
48. “To be an independent contractor, an individual must be engaged in an independently established trade, occupation, profession or business.” *Mont. Admin. R. 24.35.303(1)*. Montana Administrative Rule 24.35.303(1) includes factors that serve as a general guideline when DLI evaluates whether an independently established business exists. DLI evaluates such factors on a case-by-case basis. When such factors are evaluated, there is a presumption the individual is an employee until it is proven to DLI’s satisfaction that the individual is an independent contractor. *Mont. Admin. R. 24.35.303(2)*.
49. “A final determination by either the department of labor and industry or the workers’ compensation court that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of [Title 15, chapter 30] is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding.” *Mont. Code Ann. § 15-30-2523*.



**DISCUSSION**

50. In general, independent contractors are self-employed and may enter into agreements with other businesses or individuals to provide services for a fee. In contrast, employees are generally hired, managed, and directed by the company or individual they work for.
51. Independent contractors and employees are treated differently under the law for various purposes, including for wage and hour disputes, unemployment insurance, workers' compensation, and income tax, among others. For example, employees may be entitled to certain benefits, such as health insurance and retirement benefits, and may be covered by their employer's workers' compensation insurance. Additionally, an employer is responsible for paying a portion of their employees' Medicare and Social Security tax. Employee income is generally reported to the tax authorities and provided to the taxpayer on a Form W-2. Prior to 2017, employees were permitted to claim deductions for certain employee business expenses. The expenses were required to have been ordinary and necessary for their job that were not reimbursed by the employer. Such deductions would typically be claimed on Form 2106 of the individual's federal Form 1040 individual income tax return. The deductions claimed on the federal income tax return generally flow through to the Montana income tax return subject to certain adjustments not at issue in this appeal.
52. In contrast, an independent contractor is not eligible to receive employee benefits from the companies or individuals that pay them for their services. Independent contractors are responsible for paying both the employee and employer portion of their Social Security and Medicare taxes on their income. Independent contractor income is generally reported to the tax authorities and provided to the taxpayer on a Form 1099. Independent contractors claim their income and deductions for certain ordinary and necessary expenses relating to their trade or business on Schedule C of their federal Form 1040 individual

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income tax return. The deductions claimed on the federal income tax return generally flow through to the Montana income tax return subject to certain adjustments not at issue in this appeal.

53. At times, there are disagreements as to whether a person is an independent contractor or an employee. Such disagreements are generally resolved by analyzing the facts and circumstances of each case against various factors. In Montana, the law requires these disagreements to be settled by DLI. For this reason, the factors used to determine whether a person is an independent contractor or an employee will not be discussed further in this opinion, and this Board must determine the Taxpayer's tax liability based on the evidence presented to us.

**Premium Retail Services**

54. Here, the Taxpayer receives a Form W-2 from Premium, and letters from Premium indicate she is their employee. Based on the information presented to this Board that the Taxpayer is a Premium employee, we must analyze the facts and the applicable law as such. Existing law does not permit the Taxpayer to claim deductions for her expenses related to her employment with Premium on Schedule C of her tax returns. She may have been eligible to claim certain employee business expenses on Form 2106 prior to the enactment of the TCJA, which changed that law in 2017.
55. Prior to the passage and implementation of the federal TCJA, employees were permitted to claim deductions for certain expenses ordinary and necessary for their job that were not reimbursed by their employer. These deductions were claimed on Form 2106 of the employee's Form 1040 federal income tax return. The TCJA amended 26 USC § 67 by adding (g) which suspended the employee business expense deductions for tax years 2018 to 2025. For this reason, Taxpayer is not permitted to claim deductions for her expenses related to her Premium employment on Form 2106 either.

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56. This Board recognizes that the Taxpayer's arrangement with Premium requires her to incur certain expenses related to her employment with Premium, but the present law does not provide a mechanism for her to claim deductions for those expenses. Although we understand the potential for frustration in such a situation, our decision must be based on the facts and evidence presented to us and the laws as written.
57. If the Taxpayer believes she is erroneously classified by Premium as an employee rather than an independent contractor, she must continue to pursue that claim through the established process at DLI as this Board does not have jurisdiction to change such a classification.

**Tupperware, Inc.**

58. The Taxpayer presented evidence that she is considered an independent contractor with regard to her work with Tupperware, Inc. Because the Taxpayer did not begin working with Tupperware, Inc. until 2022, which is after the audit period and outside of the scope of this appeal, we make no determination regarding the Taxpayer's status with regard to Tupperware.

**Thirty-One Gifts**

59. The Taxpayer presented evidence that she may be considered an independent contractor with regard to her work with Thirty-One Gifts. Based on the evidence presented, this Board agrees the Taxpayer may be considered an independent contractor and may have been entitled to deduct certain ordinary and necessary business expenses relating to Thirty-One Gifts on Schedule C of her tax return. Ms. Parini testified that the DOR did not know anything about the Taxpayer's work with Thirty-One Gifts until the ODR hearing. Prior to the hearing, the DOR had requested the Taxpayer provide substantiation for the deductions she claimed on her Schedule C, but the Taxpayer did not provide it. If she had, the DOR may have learned of the Taxpayer's work with Thirty-One Gifts before the ODR hearing and may have been able to work with her to



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properly report both her income and expenses related to Thirty-One Gifts. No evidence was presented regarding the amount of income the Taxpayer earned through Thirty-One Gifts or the amount of expenses she incurred in her endeavors to sell products. For this reason, this Board is unable to determine what income and expenses could have been reported on Schedule C and therefore must agree with the DOR's denial of deductions related to Thirty-One Gifts.

60. Income received by independent contractors must be reported on Schedule C even if they did not receive a Form 1099. The threshold for a payor to file a Form 1099 with the tax authorities is a matter of administrative convenience for the payor. Income received by a payee that amounts to less than the Form 1099 filing threshold is still generally considered taxable income. Certain expenses incurred in generating that income may be deductible, but those expenses must be ordinary and necessary to that specific trade or business. In other words, generally speaking, only certain expenses the Taxpayer incurred for the work she did with Thirty-One Gifts may have been deductible against her income from Thirty-One Gifts. For example, the portion of Taxpayer's phone or vehicle expenses incurred in her work for Thirty-One gifts must be separated from personal expenses or those expenses incurred for other work. Without being presented with specific income and deduction information, this Board must uphold the DOR's denial of deductions.
  
61. This Board upholds the DOR's denial of all of Taxpayer's Schedule C deductions and its assessment of tax, interest, and penalties due and accruing for the 2019, 2020, and 2021 tax years.

**BEFORE THE MONTANA TAX APPEAL BOARD**  
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**ORDER**

- 62. The Taxpayer's appeal is denied.
  
- 63. The Board upholds the DOR's denial of Taxpayer's Schedule C deductions and its assessment of tax, penalties, and interest due and accruing for tax years 2019, 2020, and 2021.

Dated this 17th day of April 2024.



  
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David L. McAlpin, Chairman

  
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Amie Zendron, Member

  
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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**  
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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 April 17, 2024, to:

Michelle Mann  
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Whitefish MT 59937

Kristina Warren  
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Rina Sanderson, Legal Secretary