

DANA MARIE SMITH,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: IT-2025-13

**ORDER DENYING APPELLANT'S
MOTION FOR SUMMARY
JUDGEMENT AND GRANTING
RESPONDENT'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

STATEMENT OF THE CASE

This matter comes before the Montana Tax Appeal Board (Board or MTAB) on appeal from a final determination of the Montana Department of Revenue's (Department or DOR) Office of Dispute Resolution (ODR) regarding Dana Marie Smith's (Taxpayer) 2023 Montana individual income tax liability. On July 23, 2025, Taxpayer filed a Motion for Summary Judgment. The DOR filed its Response and Cross-Motion for Summary Judgment on August 13, 2025. The matter is now fully briefed and ready for final decision by MTAB.

ISSUE TO BE DECIDED

Whether the DOR erred in revising the Taxpayer's 2023 individual income tax return, and assessing tax, penalties, and interest for the 2023 tax year.

EXHIBIT LIST

The following evidence was submitted with the Taxpayer's Motion for Summary Judgement and the DOR's Cross-Motion for Summary Judgement:

Taxpayer Exhibits: _____

1. IRS-accepted 2023 Federal Return;
2. 2023 Montana Form 2;
3. Department Rejection/Adjustment Letter (2023);
4. Excerpts from ODR Hearing, January 28, 2025;
5. ODR Hearing Order, dated May 9, 2025;

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6. Taxpayer's Post-Hearing Prejudice and Mischaracterization;
7. Taxpayer's Letter of Correction to ODR, dated May 9, 2025;
8. Taxpayer's Commentary on Department's Answer to Appeal;
9. 2024 Federal Return Form 1040;
10. 2024 Montana Individual Income Tax Return Form 2;
11. DOR Communication: Demand for Amended Return, dated May 13, 2025;
12. DOR's Adjustment Notice & Notice of Assessment of 2024 Return, dated May 12, 2025;
13. Request for Informal Hearing, dated June 21, 2025;
14. DOR's Collection Notice Letter, dated June 26, 2025;
15. DOR's Statement of Account, dated July 1, 2025;
16. Taxpayer's Letter to DOR Collection Services Bureau, dated July 7, 2025;
17. Transcript of July 10, 2025, voicemail from Collections Bureau; and
18. Montana MCA § 15-30-2110 (Repealed 2021).¹

DOR Exhibits:

- A. Adjustment Notice, dated May 23, 2024;
- B. Response to Request for Informal Review, Montana Individual Income Adjustment and blank Referral to Office of Dispute Resolution, dated July 25, 2025;
- C. Affidavit of Holly Labounta; and
- D. 2023 PacificSource W-2.

The ODR record has been incorporated into MTAB's record.

¹As a point of clarification, this appeal concerns tax year 2023. For that tax year, Mont. Code Ann. § 15-30-2110, required Montana individual income tax returns to begin with the taxpayer's federal adjusted gross income. Senate Bill 399 (2021) later restructured Montana's individual income tax system, and the portion of that bill repealing Mont. Code Ann. § 15-30-2110, became effective on January 1, 2024. Because the repeal applied prospectively, Mont. Code Ann. § 15-30-2110, (Repealed 2021), remains the controlling statute for tax year 2023.

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PROCEDURAL HISTORY

On April 6, 2024, Taxpayer filed a 2023 Montana Form 2 reporting zero wages and claiming a refund of \$1,896 based on withholding. *MTAB Dkt. 1*. On May 23, 2024, the DOR issued an Adjustment Notice, revising Taxpayer's return to include \$34,705.54 in Montana-source wages and correcting the withholding to \$1,896, thereby reducing the refund to \$57 and assessing \$1,839 in tax liability. *MTAB Dkt. 8*. On June 9, 2024, Taxpayer filed a Request for Informal Review, Form APLS101F/written objection, arguing that her employer's W-2 was "bad data" and insisting that Form 4852 provided the correct adjusted gross income (AGI). *Id.* On July 25, 2024, the DOR issued a Response to Request for Informal review affirming the DOR's adjustments. *Id.* On August 16, 2024, Taxpayer appealed to ODR. *Id.* On January 28, 2025, ODR held a hearing. *MTAB Dkt. 3*. On May 9, 2025, ODR issued a Final Agency Decision affirming the DOR's adjustments. *Id.* Taxpayer timely appealed to MTAB on May 15, 2025. *MTAB Dkt. 1*. On July 23, 2025, Taxpayer filed a Motion for Summary Judgment, arguing the DOR lacked authority to alter her IRS-accepted federal AGI. *MTAB Dkt. 6*. On August 13, 2025, the DOR filed a Response and Cross-Motion for Summary Judgment, asserting authority under Montana law to audit and revise returns and citing employer-reported W-2 data. *MTAB Dkt. 8*.

STATEMENT OF FACTS

1. To whatever extent the following statements of facts may be construed as conclusions of law, they are incorporated accordingly.
2. Taxpayer earned income from her employer, PacificSource, for services performed while in Montana for a portion of the 2023 tax year. *MTAB Dkt. 1*.
3. Taxpayer was employed by PacificSource during part of tax year 2023 and earned \$34,705.54 in Montana-source wages in that time. *MTAB Dkt. 8*.
4. PacificSource reported these wages, and \$1,896 in Montana income tax withholding, on a W-2 filed with the DOR. *MTAB Dkt. 3*.

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5. Taxpayer filed her 2023 Montana Form 2 showing zero wages but claimed \$1,896 in withholding and requested a full refund. *MTAB Dkt. 1.*
6. Taxpayer attached IRS Form 4852, which reported zero wages and \$1,896 withholding, instead of attaching the employer's W-2. *MTAB Dkt. 3.*
7. Taxpayer attached IRS Form 4852 to her filing, asserting the W-2 issued by PacificSource was incorrect. *MTAB Dkt. 3.*
8. Taxpayer conceded at the ODR hearing that she was employed by PacificSource as an employee, not a contractor. *MTAB Dkt. 3.*
9. Taxpayer did not request a corrected W-2 (Form W-2c) from her employer before filing Form 4852 with the DOR in April of 2024. *MTAB Dkt. 3.*
10. The IRS processed Taxpayer's 2023 federal return and issued a refund, but no substantive federal audit or determination was made regarding the accuracy of her taxes or of her Form 4852. *MTAB Dkt. 3.*
11. Upon review of the Taxpayer's filings, the DOR revised Taxpayer's Montana return using the employer provided W-2 information and issued an assessment. *Ex. B.* Since the Taxpayer's reported Montana source income did not match what was listed on the W2 provided by PacificSource, the DOR adjusted the Taxpayer's Montana source income from \$0 to \$34,706.00. *Ex. B.* Additionally, the Taxpayer's reported Montana withholding of \$1,800 was incorrect and was adjusted to match the employer reported value of \$1,839.00. *Ex. A.*
12. After the DOR revised the Taxpayer's filings, the Taxpayer's Montana tax liability was changed from \$0.00 to \$1,839.00 and the Taxpayer's refund was reduced from \$1,800 to \$57.00. *MTAB Dkt. 3.*

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13. Taxpayer timely appealed the DOR's adjustment to MTAB claiming that the employer data the DOR relied on was "bad data" and that Montana is required to use the federal AGI when calculating a resident's taxes. *MTAB Dkt. 1*.

JURISDICTION AND STANDARD OF REVIEW

14. 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. When a Taxpayer files a timely appeal of the DOR's decision to the MTAB this Board maintains jurisdiction to hear and decide this matter. Mont. Code Ann. § 15-2-302.
15. 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.
16. 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

17. To whatever extent the following conclusions of law may be construed as findings of fact, they are incorporated accordingly.
18. 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).

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19. 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.
20. 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.
21. "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)).
22. "Administrative agencies enjoy only those powers specifically conferred upon them by the legislature. Administrative rules must be strictly confined within the applicable legislative guidelines. Indeed, it is axiomatic in Montana law that a statute cannot be changed by administrative regulation. We look to the statutes to determine whether there is a legislative grant of authority." *Bick v. State Dep't of Justice, Div. of Motor Vehicles*, 224 Mont. 455, 457, 730 P.2d 418, 420 (1986).
23. "[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).
24. The Department is not bound to accept an IRS-processed return when credible evidence (e.g., employer-filed W-2) shows inaccuracy. *Western Airlines v. Michunovich*, 149 Mont. 347, 428 P.2d 3 (1967).

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25. “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.
26. The Board “may not amend or repeal any administrative rule of the department,” but may enjoin its application if the Board concludes the rule is “arbitrary, capricious, or otherwise unlawful.” Mont. Code Ann. § 15-2-301(5).
27. “If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.” Mont. Code Ann. § 15-30-2605(1).
28. "Montana taxable income" means federal taxable income as determined for federal income tax purposes and adjusted as provided in 15-30-2120. Mont. Code Ann. § 15-30-2101.
29. Adjustments to federal taxable income to determine Montana taxable income. (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income. Mont. Code Ann. § 15-30-2120.
30. Wages earned for services performed in Montana are Montana-source income subject to state tax. Mont. Code Ann. § 15-30-2101(21)(a).
31. “Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash.” I.R.C. § 61(a).

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32. “A person required to file a Montana Individual Income Tax Return must determine their Montana income tax liability in accordance with the applicable Montana statutes and administrative rules. All income, except income specifically exempted in Title 15, chapter 30, MCA, or these rules, is included in determining income subject to Montana income tax.” Mont. Admin. R. 42.15.108.
33. “Adjusted gross income. (1) Subject to subsection (15), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62.” Mont. Code Ann. § 15-30-2110 (Repealed 2021).

DISCUSSION

34. The issue before the Board is whether the DOR has legal authority to substitute its own AGI determination for the AGI reported by a taxpayer and accepted by the IRS. Appellant contends that because the IRS accepted her federal return without change, the DOR was bound by statute to accept her AGI as filed. She further asserts that the DOR’s adjustment constituted an “estimate” of income that exceeded its statutory authority.
35. The Board does not find Appellant’s argument persuasive. Mont. Code Ann. § 15-30-2110 (Repealed 2021), which governed the 2023 tax year, required that a Montana individual income tax return begin with the taxpayer’s federal AGI. That provision establishes a starting point for determining Montana taxable income, not a binding final figure. Montana law conforms to the federal tax base for administrative consistency, but it does not prevent the DOR from reviewing or correcting a return that is inaccurate. Mont. Code Ann. § 15-30-2605, expressly authorizes the DOR to audit, revise, and correct any return that is “...in any essential respect incorrect.” Reading these provisions together, the Board concludes that the DOR retains both the authority and duty to ensure that a taxpayer’s reported AGI accurately reflects income subject to Montana tax.

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36. Federal acceptance of a return does not preclude the DOR's independent review; the IRS's acceptance of a federal return is an administrative action that does not constitute an audit or legal determination of accuracy. Nothing in Montana law requires the DOR to adopt the IRS's acceptance as conclusive or to disregard reliable third-party information. The DOR is obligated to base its determinations on credible data available through employer reports and federal information sharing systems.
37. In this case, the DOR's adjustment was not an "estimate" of Appellant's income. It was a correction grounded in verified third-party information. The record shows that PacificSource reported \$34,705.54 in Montana-source wages and \$1,896 in Montana income tax withholding for Appellant in tax year 2023. Those figures were provided directly to the DOR through federal wage reporting. In contrast, Appellant filed her Montana Form 2 using IRS Form 4852 to report zero wages, claiming that her employer's W-2 was "bad data." Appellant did not request a corrected W-2 (Form W-2c) from PacificSource, nor did she produce any documentation demonstrating that the employer's wage report was inaccurate.
38. Federal and state law clearly define wages as taxable income. Section 61 of the Internal Revenue Code provides that gross income includes "compensation for services, including fees, commissions, fringe benefits, and similar items." Treasury Regulation § 1.61-1 further explains that compensation for services is taxable whether paid in cash or property. Montana law mirrors this rule in Mont. Code Ann. § 15-30-2101, and ARM 42.15.108, which provide that all income, except income specifically exempted, must be included in Montana taxable income. Wages paid for services performed in Montana are therefore Montana-source income subject to taxation.
39. The Board further finds that Appellant's use of Form 4852 did not comply with federal or state standards. IRS guidance requires taxpayers to first seek a

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corrected W-2 from their employer before submitting Form 4852. Appellant did not do so. Her filing substituted her own assertion for verified wage information and did not contain sufficient data for a proper tax determination. A return that fails to provide accurate or complete information is invalid under state law and cannot bind the DOR to accept the reported figures.

40. The Board further observes that Appellant's filings reflect a deliberate attempt to avoid established tax obligations rather than a good-faith misunderstanding of the law. The use of IRS Form 4852 to nullify verified wage information, without any supporting evidence or effort to correct the alleged error through proper channels, demonstrates a willful disregard for both federal and state reporting requirements. Such conduct undermines the integrity of the tax system and imposes an unnecessary administrative burden on the DOR and this Board. Taxpayers are entitled to dispute assessments through lawful means, but they are not entitled to disregard statutory obligations or to advance positions that have been uniformly rejected as contrary to law.
41. Based on the record, the Board finds that the DOR's adjustment of Appellant's AGI was lawful, necessary, and supported by credible evidence. The DOR did not "substitute its own AGI estimate" for the one accepted by the IRS; it performed its statutory duty under Mont. Code Ann. §§ 15-30-2110 and 15-30-2605, to correct a return that was incorrect in an essential respect. The DOR's reliance on the employer-filed W-2, rather than on Appellant's unsupported Form 4852, ensured an accurate determination of income and compliance with Montana law.
42. Accordingly, the Board concludes that the DOR acted within its legal authority in adjusting Appellant's 2023 return. Appellant has not met her burden of proving that the DOR's assessment was erroneous. The DOR's adjustment and final determination are therefore affirmed in full.

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ORDER

- 43. Taxpayer's Motion for Summary Judgment is denied.
- 44. The DOR's Cross-Motion for Summary Judgment is granted.
- 45. The DOR's determination of Taxpayer's 2023 Montana income tax liability, including tax, penalties, and interest, is affirmed.

Dated this 31st day of October 2025.



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

Travis Brown, Chairman

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

Adam Millinoff, Member

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

Christopher Murphy, Member

Notice: You are entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. The Department of Revenue shall promptly notify this Board of any judicial review to facilitate the timely transmission of the record to the reviewing court. *Mont. Code Ann. §15-2-303(2)*.

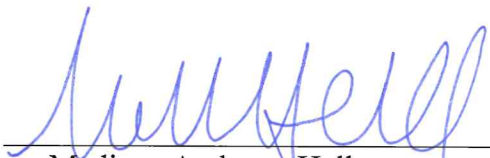
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Certificate of Service

I certify that I caused a true and correct copy of the foregoing Order Denying Appellant's Motion for Summary Judgment and Granting Respondent's Cross-Motion for Summary Judgment to be sent by email and United States Mail via Print & Mail Services Bureau of the State of Montana on October 31, 2025, to:

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Legal Administrative Assistant