

BEFORE THE MONTANA TAX APPEAL BOARD

FILED

AUG 28 2024

Montana Tax Appeal Board

NEIL JOSEPH STREBER,

Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent.

CASE №: IT-2024-18

**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 by the Office of Dispute Resolution (ODR), which upheld the Department of Revenue's (DOR) estimation of income earned by Neil Joseph Streber (Appellant) and its assessment of tax, interest, and penalties on such income for the 2020 tax year. The Appellant appealed that outcome to the Montana Tax Appeal Board (MTAB) on February 5, 2024.

The DOR filed a Motion for Summary Judgment and Brief in Support on May 31, 2024. The Appellant filed his Opposition to Respondent's Motion for Summary Judgment on June 20, 2024, and the DOR filed its Reply Brief in Support of Motion for Summary Judgment on July 2, 2024. 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 DOR erred in estimating the income earned by Appellant and assessing tax, penalties, and interest on such income for the 2020 tax year.

EXHIBIT LIST

The Appellant submitted Exhibits to ODR but did not submit Exhibits to MTAB in connection with his appeal. The ODR record has been incorporated into MTAB's record.

The DOR attached the following Exhibits to its Motion for Summary Judgment and Brief in Support:

- a. Appellant's 2020 Form W-2G issued by Montana Lottery and Appellant's 2020 Form W-2 issued by State of Montana (2 pages);
- B. Appellant's 2020 Form 2 Montana Individual Income Tax Return (3 pages);
- C. IRS Form 4852, Substitute for Form W-2, Wage and Tax Statement... (1 page);
- D. DOR Adjustment Notice dated March 31, 2023 (3 pages);
- E. Appellant's Form APLS101F, Request for Informal Review and letter to DOR, both dated April 24, 2023; Appellant's Form 2 Montana Individual Income Tax Return and supporting documents (8 pages);
- F. DOR's Response to Request for Informal Review dated June 8, 2023 (9 pages);
- G. Appellant's letter to DOR, dated July 10, 2023 (12 pages);
- H. ODR's Findings of Fact, Conclusions of Law, and Order – Nunc Pro Tunc, dated January 2, 2024 (24 pages); and
- I. Appellant's Form 801 Appeal to the Montana Tax Appeal Board (5 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.

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MTAB Procedural Background

2. The Appellant appealed an ODR decision to MTAB on February 5, 2024. *MTAB Dkt. 1.* The DOR submitted its Answer on March 6, 2024. *MTAB Dkt. 3.*
3. The parties attended a scheduling conference with the Board on March 12, 2024, at which time the Board scheduled the matter for hearing on June 18, 2024. *MTAB Dkt. 2, 4.*
4. On May 28, 2024, the Appellant filed his Request for Motion for Judicial Notice, in which he requested the Board take judicial notice of the information included in his submissions to the Board. *MTAB Dkt. 6.* The Board denied the Appellant's motion on June 26, 2024, because the motion included numerous broad requests that lacked specificity and did not address facts the Board has authority to take judicial notice of. *MTAB Dkt. 11.*
5. The DOR filed its Motion for Summary Judgment and Brief in Support on May 31, 2024, arguing that no genuine issues of material fact exist in this case and that the DOR was entitled to judgment as a matter of law. *MTAB Dkt. 7.*
6. On June 3, 2024, the Appellant filed his Affidavit of Truth and Fact. *MTAB Dkt. 8.*
7. On June 4, 2024, the Board vacated the hearing scheduled for June 18, 2024, and set a briefing schedule on the DOR's motion for summary judgment. *MTAB Dkt. 9.* In its order, the Board set a deadline for the Appellant's response to the DOR's motion for summary judgment of June 21, 2024, with the DOR's deadline to file a reply within 14 days after the filing of the Appellant's response. *Id.*
8. The Appellant filed his Opposition to the Respondent's Motion for Summary Judgment and an Affidavit of Truth and Fact on June 20, 2024. *MTAB Dkt. 10.*

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9. The DOR filed its Reply Brief in Support of Motion for Summary Judgment on July 2, 2024. *MTAB Dkt. 12.*
10. On July 8, 2024, the Board issued its Notice of Fully Briefed Motion and began its review of the parties' filings. *MTAB Dkt. 13.*

Income Tax Estimate and Tax Assessment

11. The Appellant lived in and worked in Montana during the 2020 tax year. *MTAB Dkt. 10.*
12. The DOR received a form W-2 from the State of Montana and a form W-2G from the Montana Lottery reporting income paid to the Appellant for tax year 2020. *Ex. A.*
13. The Appellant filed his 2020 Montana individual income tax return on or about March 23, 2023, after the DOR had estimated his income and assessed tax based on the W-2 and W-2G provided to it. *Ex. B.* The Appellant did not report any W-2 income on his Montana income tax return, but instead attached a Form 4832 showing his "wages, tips, and other compensation" as blank and included a statement under section 9 of that form that he did not receive any "wages." *Ex. B, C.*
14. The DOR sent the Appellant an Adjustment Notice dated March 31, 2023, notifying the Appellant that the DOR adjusted his 2020 Montana individual income tax due pursuant to Montana Code Annotated § 15-30-2605. *Ex. D.* The Adjustment Notice showed that the DOR added the income reported to it on Appellant's W-2, resulting in a net tax due of \$975, plus interest, a late filing penalty, and late payment penalties. *Id.*
15. The Appellant filed his Request for Informal Review, which the DOR received on April 26, 2023. *Ex. E.* In it, the Appellant objected to the DOR's

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adjustments, and included the Form 4852, Form W-G2, and an amended Montana individual income tax return showing a refund due to him of \$2,474. *Id.* The Appellant listed his address in Lewistown, Montana. *Id.*

16. The DOR issued its response to the Appellant's Request for Informal Review dated June 9, 2023, declining to make the requested adjustments to the income earned by the Appellant and instead assessing a frivolous tax return penalty of \$2,500 pursuant to Montana Code Annotated § 15-1-216(6). *Ex. F.* The DOR included a Statement of Account with its response showing the tax, penalties, and interest due and accruing on Appellant's account. *Id.*
17. On July 11, 2023, the Appellant filed an appeal of that decision to ODR. *Ex. G.* The ODR hearing was held October 19, 2023. *Ex. H.* The ODR issued its Findings of Fact, Conclusions of Law, and Order on January 2, 2024, upholding the DOR's adjustments and imposition of a frivolous return penalty of \$2,500. *Id.*
18. The Appellant filed an appeal of the ODR decision to MTAB on February 5, 2024. *MTAB Dkt. 1, Ex. I.*

Summary of Arguments

19. The Appellant argued the following:
 - a. He is not a taxpayer.
 - b. His earnings from the State of Montana do not meet the definition of wages under Internal Revenue Code §§ 3401 or 3121 and are therefore not taxable income.
 - c. He is not an employee as defined in Internal Revenue Code § 3401 but an unprivileged worker in the private sector.
 - d. He is not involved in a trade or business.
 - e. He is not a person as defined in the Internal Revenue Code.

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- f. When the word “includes” is used in the Internal Revenue Code, it refers only to what is included therein and not what is not.
 - g. The United States per Internal Revenue Code §§ 7701(9) and 7651 is confined within the borders of Washington D.C. *MTAB Dkt. 8, 10.*
20. 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.
 - b. The Appellant lived in Montana and earned taxable income via compensation for services performed in Montana for the State of Montana during the 2020 tax year.
 - c. The Appellant’s argument that he did not earn wages has been identified as a frivolous position for purposes of 26 U.S.C 6702 and therefore for Montana Code Annotated § 15-1-206(6), thus the DOR correctly assessed a \$2,500 penalty for filing a frivolous return. *MTAB Dkt. 7.*

JURISDICTION AND STANDARD OF REVIEW

21. 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.
22. 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.
23. 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.

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24. 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

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

Summary Judgment

27. 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).
28. 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).
29. "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

30. “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).
31. “The term ‘United States’ when used in a geographical sense includes only the States and the District of Columbia.” 26 U.S.C. § 7701(a)(9).
32. “The term ‘State’ shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.” 26 U.S.C. § 7701(a)(10).
33. “The term ‘United States person’ means...a citizen or resident of the United States...” 26 U.S.C. § 7701(a)(30).
34. “The terms ‘includes’ and ‘including’ when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.” 26 U.S.C. § 7701(c).
35. “‘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).
36. 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).
37. For federal individual income tax purposes, adjusted gross income means gross income minus allowed deductions. 26 U.S.C. § 62.

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38. 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).
39. 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).
40. “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).
41. “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).
42. “‘Employee’ includes any person who works for another for hire, except that the term does not include a person who is an independent contractor.” Mont. Code Ann. § 39-3-201(4).
43. “For purposes of this chapter [26 USC §§ 3401 et seq.], the term ‘employee’ includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term “employee” also includes an officer of a corporation.” 26 U.S.C. § 3401(c).
44. “The term ‘employee’ includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee...” 26 C.F.R. § 31.3401(c)-1.

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45. “‘Wages’ includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.” Mont. Code Ann. § 39-3-201(6)(a).
46. “For purposes of this chapter [26 USC §§ 3401 et seq.], the term ‘wages’ means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash...” 26 USC § 3401(a).¹

Income Tax Estimates

47. “Taxes shall be levied by general laws for public purposes.” Mont. Const., Art. VIII § 1.
48. The DOR is responsible for administering and enforcing Montana revenue laws. Mont. Code Ann. §§ 15-1-201 and 15-1-202.
49. Each year individuals must pay tax on their taxable income as provided in Montana Code Annotated § 15-30-2103.
50. “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,

¹ 26 USC 3401(a) lists several exclusions to the definition of wages, none of which are at issue in this case.

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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)).

51. “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).
52. “A person who files a frivolous return or report under [MCA] Title 15 is liable, in addition to any other penalty imposed, for a penalty of \$2,500. A frivolous return or report is one that is filed by a person and that omits information necessary to determine the taxpayer’s tax liability, shows a substantially incorrect tax, is based on a frivolous position, or is based on the taxpayer’s action to impede collection of taxes. Frivolous positions are those identified in 26 U.S.C. 6702 as those provisions may apply to provisions of [MCA] Title 15. The department may bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.” Mont. Code Ann. § 15-1-216(6).
53. “The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection...” 26 U.S.C. § 6702(c).
54. IRS Notice 2010-33 identifies some arguments that have been deemed “frivolous positions” for purposes of 26 U.S.C. § 6702(c).² One such argument is that “only certain types of taxpayers are subject to income and employment

² Additionally, the IRS has provided an updated 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 July 9, 2024.)

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taxes, such as employees of the Federal government, corporations, nonresident aliens, or residents of the District of Columbia or Federal territories.” See Rev. Rul. 2006-18, 2006-1 C.B. 743.

55. Attempts to circumvent federal and state tax by citing legal jargon and case law are a consistent feature of tax protestor rhetoric.

[The] effort to 'find some semantic technicality which will render him exempt from Federal income tax, which applies generally to all U.S. citizens and residents,' is unavailing, (citation omitted) It is well settled that wages fall within the scope of 26 U.S.C. § 61 and are thus subject to federal income tax.

Loofbourrow v. Commissioner, 208 F. Supp. 2d 698, 709. (citation omitted).

56. Compensation for services is includable in gross income. The filing of a Form 4852 showing no wages received to substitute a W-2 in order to avoid tax liability is considered a frivolous position. Rev. Rul. 2006-18, 2006-1 C.B. 743.

DISCUSSION

57. 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, penalties, and interest for the 2020 tax year.

Summary Judgment

58. 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.
59. The Appellant filed two responses to the DOR’s Motion: his Affidavit of Truth and Fact filed June 3, 2024, and his Opposition to Respondent’s Motion for Summary Judgment filed June 20, 2024. Neither of these filing demonstrated to

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the Board that there were any genuine issues of material fact in dispute. The Appellant's filings continued to argue that his earnings were not wages and that he was an unprivileged worker and not an employee. His arguments demonstrated to the Board that the parties have differing interpretations of the law but did not refute any of the undisputed facts the DOR set forth in its Motion for Summary Judgment.

60. The Appellant filed his Request for Motion for Judicial Notice with the Board on May 28, 2024. The Board denied that motion because the Appellant's requests lacked specificity as to what facts the Appellant was asking the Board to take judicial notice of. Additionally, it appeared to the Board that the Appellant was asking the Board to take judicial notice of his interpretation of law, rather than facts.
61. This Board disagrees that the Appellant's arguments demonstrate that there are genuine issues of material fact in dispute. Because there are no genuine issues of material fact in dispute and the DOR is entitled to judgment as a matter of law for the reasons stated herein, this Board grants the DOR's Motion for Summary Judgment.

Income Tax Estimates

62. The undisputed facts that are relevant to this case are: (a) the Appellant earned income in Montana for the 2020 tax year, (b) the State of Montana issued a W-2 showing wages paid by the State of Montana to Appellant in 2020, (c) the Appellant was domiciled in and a resident of Montana during that time, (d) he did not file a Montana income tax return for the year at issue, (e) 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 a tax return, (f) the Appellant filed a tax return amending the DOR's estimate showing no W-2 income and including a Form 4852 stating that he had no wages during the year

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at issue, and (g) the DOR rejected the Appellant's tax return and imposed a penalty for filing a frivolous return.

63. Because the Appellant earned income in Montana during 2020, while residing in Montana, the income he earned 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).
64. Because the Appellant did not file an income tax return for the 2020 tax year, 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 gave the Appellant an opportunity to file his own tax returns to include any information the DOR may not have taken into consideration. The Appellant then filed a tax return showing no wages earned in contradiction to the W-2 provided to the DOR from the State of Montana as the Appellant's employer, which the DOR rejected. Because the DOR's estimate included the Appellant's W-2 income, which is taxable under the plain language of Montana law, we uphold the DOR's estimation of the Appellant's income for tax year 2020 and its assessment of tax, interest, and penalties for tax year 2020.

Frivolous Arguments

65. The Appellant raised several arguments as to why the income he received from the State of Montana as his employer is not taxable. The arguments he advanced are the same or similar to those commonly advanced in tax protestor rhetoric, sometimes also referred to as tax defier rhetoric.³ These arguments have been rejected and deemed frivolous by state and federal courts in numerous cases for many decades.⁴ Referring to frivolous tax arguments, the

³ Tax protestor rhetoric refers to anti-tax arguments based on constitutional claims, often deemed frivolous by the courts, and the refusal to pay tax based on those beliefs.

⁴See Footnote 2, *supra*.

court in *Crain v. Commissioner*, 737 F.2d 1417, 1417 (5th Cir. 1984) stated, “We 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.” The United States Tax Court set forth reasons courts tend to rely on *Crain* for this proposition in *Wnuck v. Commissioner*, 136 T.C. 498, 501-513 (2011). 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.⁵ *Id.*

66. In a number of his filings, the Appellant discusses the DOR classifying his arguments as frivolous and questions why the DOR refers to his arguments as such when he has provided the same types of information the DOR has, such as case law, definitions, etc. The Board notes that it is not the DOR, nor the Board in this opinion, referring to the Appellant’s presentation as frivolous. It is the arguments themselves which have been adjudicated by courts to be frivolous arguments. These arguments have been made in court and have been defeated time and again. The Appellant seems to be asking for an explanation as to what is frivolous about these arguments. The Board notes that numerous court cases have already explained this, and the ODR opinion in this very case spent considerable time explaining this as well. This Board will briefly discuss these arguments herein, but we decline to discuss these arguments in great detail for those same reasons the court provided in the *Wnuck* opinion.

67. The Appellant argued that he was not involved in a trade or business. Because the DOR did not argue that he was, this argument requires no further analysis.

⁵ There are also additional reasons included in the Tax Court’s opinion that are not discussed here.

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68. The Appellant argued that he is not a person as defined in the Internal Revenue Code § 7701(a)(1). The Board notes that the definition of the word “person” in the Internal Revenue Code includes individuals, among others, and declines to address this argument further.
69. The Appellant argues that the United States is confined within the borders of Washington D.C. under Internal Revenue Code §§ 7701(9) and 7651.⁶ The definition of “United States” found in Internal Revenue Code § 7701(a)(9) states that when it is used in a geographical sense, the definition includes only the States and the District of Columbia. The Appellant’s argument appears to be based on his interpretation that the word “includes” means anything not included in the definition is excluded. However, this is not consistent with Internal Revenue Code § 7701(c), which states that the use of the terms “includes” and “including” does not exclude other things that are otherwise within the meaning of the defined term. For these reasons, we decline to further address the Appellant’s argument that the United States is confined to the borders of Washington D.C. The Appellant’s argument that the term “includes” excludes other things that are otherwise within the meaning of the term is also without merit. The Board also declines to address this argument further.
70. The Appellant also argues that he is not an employee as defined in Internal Revenue Code § 3401 but an unprivileged worker in the private sector. This argument is based on the Appellant’s argument that the term “includes” in a definition excludes anything not specifically listed therein. Internal Revenue Code § 3401 states that the term “employee” includes an officer, employee, or elected official of the United States, among others. The Appellant argues that he has “never been a government official nor held office of any kind,” and therefore is not an employee. He essentially argues he is not any of those things

⁶ 26 U.S.C. 7651 deals with the administration and collection of taxes in U.S. possessions such as Guam and the Virgin Islands and is irrelevant to the discussion of Montana income tax liability. Thus, the Board will not address it further in this opinion.

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that come after the word “includes” in the above referenced definition. However, as we noted above, that argument is inconsistent with Internal Revenue Code § 7701(c). According to the Appellant, he exchanges his labor with the State of Montana for money but argues he is an unprivileged worker rather an employee of the State of Montana, therefore the income he receives from the work he performs for the State of Montana is not taxable. This Board notes the Appellant’s relationship with the State of Montana in his capacity as a registered nurse at a Montana Department of Public Health & Human Services healthcare facility fits the plain language definitions of the term “employee” found in both federal and Montana law and set forth in this opinion. We disagree with the Appellant’s argument that he is not an employee of the State of Montana. His argument that he is not an employee based on his reading of the Internal Revenue Code definition of “employee” has been deemed a frivolous argument by the courts, thus the Board declines to discuss it further.

71. The Appellant also argued that his earnings from the State of Montana do not meet the definition of wages under Internal Revenue Code §§ 3401 or 3121 and are therefore not taxable income. According to the Appellant, wages are compensation for services performed by an “employee” for their “employer,” and he is not an employee based on his interpretation of the definition of the term. However, as we discussed above, the Appellant’s interpretation of the definition of the term “employee” has already been rejected by courts and considered a frivolous argument. He argues that he trades his time and labor for money and that unless one is working for the government in a privileged position, the compensation they receive from that endeavor is not considered taxable income. This argument has also already been rejected and deemed a frivolous argument by the courts. This Board disagrees with his arguments and notes the compensation the Appellant receives from his work for the State of Montana is taxable income in the State of Montana under the plain language of the law. Thus, we decline to address this argument further.

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72. The Appellant argued that he is not a taxpayer based on definitions he provided to the Board. In the Appellant's Opposition to Respondent's Motion for Summary Judgment filed June 20, 2024, the Appellant argued that he is "quite clearly not a taxpayer earning a wage as defined in the Internal Revenue Code..." He states this is important to determine who is subject to tax and who is not. The Appellant's argument is based on his erroneous interpretation of statutory definitions of words such as, "wages", "employee", "person", "United States", "states", etc. As we have already discussed, the Appellant's arguments regarding the definitions of these terms are inconsistent with the definitions provided in existing federal and state law, thus we need not discuss them further.
73. The Appellant argued that because the calculation of Montana taxable income starts with federal income, he can have no Montana taxable income because he has no federally taxable income. This Board is tasked with resolving Montana state income tax disputes in cases such as this. In order to do so, we must look to federal law as it relates to the issues before us. This Board notes the compensation the Appellant received from the State of Montana for the work he performed for the State of Montana in the State of Montana meets the plain language definition for Montana taxable income, which includes relevant federal law and definitions in the Internal Revenue Code necessary for us to reach our decision in this matter.
74. The Appellant disputed that his arguments were frivolous and requested an explanation as to how they are considered frivolous and what is different about the arguments he advanced versus the arguments the DOR advanced. The Board notes that the difference is that the arguments the Appellant advanced are the same as or similar to those which have already been adjudicated, rejected, and deemed frivolous by federal and state courts for decades. For this reason, the DOR is authorized to assess a penalty when such a position is advanced in a filing or report. The Appellant's use of a Form 4852 to argue his

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income was not taxable, and his arguments in support of that filing, have already been deemed frivolous by the courts. For this reason, this Board agrees with the DOR's assessment of a frivolous return penalty.

75. For the reasons stated herein, the Board grants the DOR's Motion for Summary Judgment and upholds the DOR's estimation of the Appellant's income and assessment of tax, penalties, and interest on that income for tax year 2020.

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ORDER

76. The DOR's Motion for Summary Judgment is granted, and the Appellant's appeal is denied.
77. The Board upholds the DOR's estimate of Appellant's income and its assessment of tax, penalties, and interest due and accruing for the 2020 tax year.

Dated this 28th day of August 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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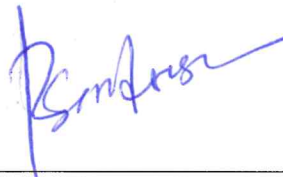
Certificate of Service

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 August 28, 2024, to:

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Rina Sanderson, Legal Secretary