

DA 19-0044

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 260N

JOE and JEAN SEIPEL,

Plaintiffs and Appellants,

v.

STATE OF MONTANA, DEPARTMENT OF REVENUE
and MONTANA ATTORNEY GENERAL,

Defendants and Appellees.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDV-18-0239
Honorable Elizabeth A. Best, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Joe Seipel and Jean Seipel, Self-Represented, Great Falls, Montana

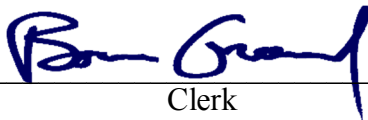
For Appellees:

Jessica M. DeMarois, Special Assistant Attorney General, Montana
Department of Revenue, Helena, Montana

Submitted on Briefs: September 18, 2019

Decided: October 29, 2019

Filed:


Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Joe and Jean Seipel appeal an Eighth Judicial District Court decision affirming a Montana Tax Appeal Board ("MTAB") order denying various deductions claimed on their 2003, 2004, and 2005 Montana tax returns. We affirm.

¶3 In 2003, 2004, and 2005, the Seipels filed joint federal and Montana individual tax returns. The Internal Revenue Service ("IRS") conducted audits of the Seipels' returns for these years and determined they owed substantial additional tax liability. In October 2009, the IRS notified the Department of Revenue ("DOR") of its final audit determination for the Seipels and provided copies of the Revenue Agent Reports containing all information used to compute the adjustments to their federal returns. The DOR adjusted the Seipels' Montana individual returns based on the federal adjustments. The claimed deductions were disallowed for not following recordkeeping rules.¹

¹ The reason for the audits and adjustments concerned claimed Schedule A deductions (itemized expenses) for the Seipels' religious nonprofit and Schedule C deductions (business profits and losses) for the Seipels' appraisal business.

¶4 In November 2009, the Seipels filed an audit re-consideration with the IRS. The DOR stayed the Montana assessments until the conclusion of the Seipels' federal appeal.² In January 2017, following the federal appeal, the DOR issued a final determination upholding the 2009 assessments and notified the Seipels that their assessed taxes, interest, and penalties were due, totaling \$176,049.61. The DOR also noted that the Seipels had never filed amended returns as required by § 15-30-2619, MCA. The Seipels appealed the DOR assessment to the Office of Dispute Resolution ("ODR"), claiming the State and IRS used incorrect income and expense information to calculate their taxes. The ODR denied the Seipels' appeal for failure to produce documents or testimony proving entitlement to the claimed deductions. In August 2017, the Seipels appealed to the MTAB, claiming the Revenue Agent Reports inaccurately reflected their federal adjusted gross income. The Seipels offered no relevant documentation to support their claimed deductions; instead they argued that they provided a box of original receipts to the IRS during the initial audit, proving entitlement to these deductions, which was never returned.³ In March 2018, the MTAB concluded the DOR appropriately recalculated the Seipels' state income tax liability based on the final Revenue Agent Reports because the Seipels failed to present relevant documents or file an amended return. In April 2018, the Seipels appealed to the District Court, arguing that the DOR erred by relying solely on

² The IRS, U.S. Tax Court, and Ninth Circuit Court of Appeals all dismissed the Seipels' appeal. The Ninth Circuit ultimately dismissed the Seipels' appeal for failure to file an opening brief.

³ Joe Seipel only raised this argument for the first time six days prior to the MTAB hearing at a show cause hearing on a request for extension.

the Revenue Agent Reports. On November 19, 2018, the District Court affirmed the MTAB order. The Seipels appeal.

¶5 The Seipels argue, *inter alia*, that the District Court erred in finding the MTAB order did not prejudice their substantial rights because the DOR and MTAB did not properly account for their non-profit and business write-offs.⁴

¶6 We review a district court decision affirming or reversing an administrative decision to determine whether the findings of fact are clearly erroneous and whether the agency correctly interpreted the law. *Laudert v. Richland County Sherriff's Dept.*, 2000 MT 218, ¶ 14, 301 Mont. 114, 7 P.3d 386. In assessing an agency's finding of fact, the review is confined to the record. *Benjamin v. Anderson*, 2005 MT 123, ¶ 30, 327 Mont. 173, 112 P.3d 1039. This Court may reverse or modify the district court decision if the appellant's substantial rights have been prejudiced. Section 2-4-704(2), MCA.

¶7 The Internal Revenue Code ("IRC") influences Montana's income tax law. *See* § 15-30-2110, MCA. Deductions from income are a matter of legislative grace and taxpayers have the burden to demonstrate the existence of claimed deductions. *Robison v. Mont. Dep't of Revenue*, 2012 MT 145, ¶ 12, 365 Mont. 336, 281 P.3d 218. Business expenses must be substantiated with accounting records pursuant to I.R.C. § 6001 and 26 C.F.R. § 1.446-1(a)(4). To claim charitable contributions, a taxpayer must provide support via cancelled checks, receipts, or other reliable written records. 26 C.F.R. § 1.70A-13(a)-(c). Additionally, if a taxpayer's taxable income is changed or corrected

⁴ In addition, the Seipels raise three new issues on appeal, including due process, equal valuation, and religious discrimination claims. This Court will not consider new issues raised for the first time on appeal. *Ellenburg v. Chase*, 2004 MT 66, ¶ 14, 320 Mont. 315, 87 P.3d 473.

by the IRS, a taxpayer must file an amended tax return within 90 days; otherwise, the department may estimate the taxable income from any information in its possession. Sections 15-30-2619, -2605(2), MCA.

¶8 The Seipels were audited by the IRS and DOR for failure to comply with recordkeeping rules for claimed Schedule A and C deductions. Following the DOR adjustments, the Seipels failed to file an amended return. Accordingly, the DOR correctly relied on the Revenue Agent Reports to make its assessment. Although the Seipels continue to assert that the Revenue Agent Reports were incorrect, they did not submit any relevant documentation at any stage of the process to support their claimed deductions. Instead, they argue that the reason they have not submitted adequate records is because the IRS possesses their box of tax documents and receipts. The taxpayer's burden of presenting evidence does not shift because his records were unintentionally lost either by the taxpayer or the government. *See Cook v. Comm'r.*, 1991 Tax Ct. Memo LEXIS 640 (U.S. Tax Court Dec. 2, 1991). The District Court correctly determined that the Seipels' rights were not substantially prejudiced.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶10 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JIM RICE

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ INGRID GUSTAFSON