

BEFORE THE MONTANA TAX APPEAL BOARD

T. J. MICHAEL BRANTLEY,)

Appellant,)

-v-)

DEPARTMENT OF REVENUE)
OF THE STATE OF MONTANA,)

Respondent.)

DOCKET NO.: IT-2014-1

FINDING OF FACT,
CONCLUSIONS OF LAW,
ORDER AND OPPORTUNITY
FOR JUDICIAL REVIEW

Statement of Issue

The issue before this Board is whether the DOR was correct in determining that Mr. Brantley was an itinerant worker and, therefore, ineligible to claim away-from-home expenses on his Montana Individual Income Tax Returns for tax years 2008 through 2011.

This matter comes before the Montana Tax Appeal Board (Board) for administrative review of the Final Agency Decision and Order entered by the Montana Department of Revenue (DOR) pursuant to §15-2-302, MCA. The Taxpayer, T. J. Michael Brantley, challenges the DOR's determination that he was ineligible to claim away-from-home expenses on his Montana Individual Income Tax returns for tax years 2008 through 2011. The Board held a hearing on September 16, 2014, at which his attorney, Thomas C. Morrison, represented Mr. Brantley. Also

present was T. J. Michael Brantley and his mother, JoEllen Clark. Tax Counsel Teresa G. Whitney, Field Auditor Bonnie Kennedy, and Unit Manager Douglas Peterson represented the DOR.

The record remained open for post-hearing briefs. The Board, having fully considered the testimony, exhibits, evidence, submissions, and all matters presented, finds and concludes as follows:

Evidence Presented

At the hearing before this Board, T.J. Michael Brantley (Taxpayer) testified that he has resided in Helena, Montana since 1981, and was absent from Montana for only about seven years of his life. Taxpayer attended Hobart Institute of Welding Technology in Ohio for ten months, in or about 1997, to become a certified welder. DOR Exh. 6, at 2. While living out of state, he married and his son Michael William was born in 1999. Brantley Testimony. Following his divorce, he relocated from Ohio to Helena Montana in 2004 and maintained a residence on his mother and stepfather's property in Helena for the next ten years. Appellant's Opening Br. at 2. Since 2005, Taxpayer has maintained 390 Lincoln Road West as his permanent mailing address, as evidenced by his Montana hunting license, his Montana fishing license and his Montana driver's license. *Id.* At 390 Lincoln Road West in Helena, he built a bunkhouse attached to his stepfather's and mother's workshop within the same

parcel. *See* Stipulated Exh. 4. He pays his mother, JoEllen Clark, \$75 per month to offset his living expenses and to pay for utilities associated with the bunkhouse. *See* DOR Exh. 6, at 2.

Mr. Brantley has sole custody of his son. He testified that he shoulders the whole responsibility of parenting his son. During the period in question, his son attended school in Helena at Jim Darcy School, CR Anderson Middle School and currently attends Capital high school. Brantley Testimony. Taxpayer testified that despite the nature of his work, he spends 120 days or more in Montana during the year. His mother testified that he attends at least 50% of the son's extra-curricular activities.

In 2004, Taxpayer took a union job as a journeyman pipe fitter with the Butte local Union 41 ("Union Hall.") Union Hall is the local union of United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of United States and Canada ("UA.") Stipulated Exh. 2, DOR-Brantley 000027. Taxpayer testimony established that UA, through local Unions, fill personnel or manpower needs of signatory employers (contractors) with union pipe fitters, who are members of the local chapter. Union Hall covers a 40-mile Free Zone from Anaconda, Butte, Bozeman, Deer Lodge, Great Falls, Glasgow, Havre, and Helena. *Id.*

Taxpayer testified that UA job assignments are ephemeral, and may last from a few days to seven or eight months. Brantley Audio 30:05 – 30:20. DOR also conceded to the fact that Taxpayer’s job assignments were temporary. Stipulated Exh. 2. Taxpayer testified that “Butte is just an address of the Union Hall,” and that there was no advantage to living in Butte because of the expansive size of the “jurisdiction.” He also testified that Helena was the “epicenter of where the work is,” and that living in Helena gave him more flexibility to travel to job assignments within the “Free Zone.” Hearing Audio 28:39 – 29:14.

During the DOR audit periods, the Local Union dispatched Taxpayer on temporary assignment to different parts of Montana, Idaho, Wisconsin, and Washington, depending on the manpower need of signatory employers (contractors). *See* DOR Exh. 6. at 2 (table of temporary assignments.) Taxpayer was required to bounce from state to state and region to region for short durations of time; several times a year. The nature of the job assignments was such that Taxpayer would necessarily have to incur substantial costs for commuting, lodging, and meals, in addition to his Helena household expenses. Stipulated Exh. 3 ; DOR Exh. 6.

Taxpayer returned to Helena each time after completion of his assignments. None of the assignments lasted longer than seven months; the longest trip was in 2009 to Moses Lake Washington. *See table of times excerpted below.* During the audit

period, the Taxpayer kept a spare vehicle, motorcycle, trailer, clothes, and furniture at 390 Lincoln Road West while he was on out-of-town assignments.

The DOR instigated an audit of Mr. Brantley and his stepfather, Mr. Clark, who also is a pipe fitter working from the same local Union Hall. Mr. Brantley's mother Mrs. Clark was the contact for both audits. Mr. Clark's audit is not at issue in the case because the DOR determined that Mr. Clark (his stepfather) has a tax home at 390 Lincoln Road West, with duplicated expenses. Mr. Clark and Mr. Brantley perform the same type of work and travel.

The parties stipulated facts 1-19 prior to hearing: (Final Joint Stipulated Facts, August 22, 2014.)

1. On or about August 14, 2013, the Montana Department of Revenue's (Department) auditor, Bonnie Kennedy, finalized and mailed an audit adjustment letter to Mr. T.J. Michael Brantley (Taxpayer) which contained adjustments to tax years 2008, 2009, 2010, and 2011 (Audit Period). Stipulated Exh. 1.
2. The Department mailed an adjustment letter to the Taxpayer at 390 Lincoln Road West, Helena, Montana, 59602, which was at the Taxpayer's permanent mailing address and his original power of attorney's address. Stipulated Exh. 1.
3. The Department's audit adjustment B disallowed the Taxpayer's claimed

unreimbursed travel expenses for each of the years in issue: to wit;

\$13,608 for tax year 2008
\$20,253 for tax year 2009
\$11,274 for tax year 2010
\$23,144 for tax year 2011

4. The auditor's Audit Program Form contains the auditor's work notes. Stipulated Exh. 2. The Taxpayer does not agree that this exhibit represents either correct conclusions of fact or law.
5. Neither the Department nor the Taxpayer disputes the amounts of the deductions nor that they were incurred for business travel away from Helena, Montana. The parties dispute whether these amounts were incurred while away from the taxpayer's home.
6. Taxpayer's deductions for business mileage were based on the then applicable IRS mileage rates.
7. The Taxpayer did not deduct any mileage while at job sites.
8. During the Audit Period, the Taxpayer's permanent mailing address was at 390 Lincoln Road West, Helena, Montana 59602. While Taxpayer worked at various jobs, he maintained travel logbooks. Stipulated Exh. 3.
9. The Taxpayer's claimed travel expenses were based on the following:

Year	Business Miles	Commuting Miles	Personal Miles	Meals	Lodging
2008	8,127	3,138	9,309	\$10,449	\$3,946
2009	9,414	3,416	5,273	\$12,650	\$8,750
2010	16,049	196	10,442	\$12,514	\$2,102
2011	26,051	4,231	5,026	\$7,750	\$6,220

10. While the Taxpayer worked at various jobs, he kept lodging receipts.

11. During the years in issue, the Taxpayer worked at the following places at the following times:

Tax Year 2008

1-01-08 to 1-10-08 worked in Oak Creek, Wisconsin – Bechtel Construction
1-14-08 to 2-01-08 worked in Burley, ID - Intermech
2-04-08 to 3-28-08 worked in Billings, MT - NewMech
03-31-08 to 04-17-08 unemployed in Billings, MT
04-18-08 to 05-02-08 worked in Billings, MT – NAES Power Contractors
05-05-08 to 06-06-08 unemployed in Billings, MT
6-10-08 to 8-21-08 worked in Moses Lake, WA - Intermech
08-25-08 to 09-12-08 worked in Billings, MT - NewMech
09-15-08 to 12-05-08 worked in Billings, MT – Jacobs Industrial Services
12-08-08 to 12-31-08 worked in Moses Lake, WA – Intermech

Tax Year 2009

1-01-09 to 07-30-09 worked in Moses Lake, WA - Intermech
08-03-09 to 08-21-09 worked in Great Falls, MT – NAES Power Contractors
08-31-09 to 10-16-09 worked in Laurel, MT - Weld Tech
10-18-09 to 12-31-09 unemployed in Helena, MT

Tax Year 2010

01-01-10 to 02-28-10 unemployed home in Helena, MT
03-01-10 to 03-11-10 worked in Anaconda, MT – Corval Group
03-14-10 to 03-19-10 worked in Lewiston, ID – S&D Iron Works
03-22-10 to 04-10-10 worked in Helena, MT - Tri County
04-12-10 to 04-15-10 worked in Billings, MT – JH Kelley
04-16-10 to 05-27-10 worked in Helena, MT – Tri County

05-28-10 to 06-16-10 worked in Butte, MT – Corval Group
06-17-10 to 08-06-10 unemployed in Helena, MT
08-09-10 to 08-13-10 worked in Pocatello, ID – JH Kelley
08-16-10 to 10-01-10 worked in Butte, MT - LoyClark
10-04-10 to 10-25-10 worked in Laurel, MT – Weld Tech
10-26-10 to 12-22-10 worked in Great Falls, MT – Corval Group

Tax Year 2011

01-01-11 to 01-11-11 unemployed in Helena, MT
01-13-11 to 01-27-11 worked in Pasco, WA – Parsons Constructors
02-01-11 to 08-25-11 worked in Hanford, WA – University Mechanical
09-06-11 to 10-14-11 unemployed in Moses Lake, WA
10-17-11 to 12-12-11 worked in Great Falls, MT - Impact Mechanical
12-13-11 to 12-31-11 unemployed in Helena, MT

12. Of the two issues in the Department's adjustment letter, Taxpayer does not dispute the pension issue and only disputes the disallowance of his travel expenses. The Department has increased Taxpayer's credit for taxes paid to another state.
13. As of September 3, 2013, the taxes, penalties, and interest owed because of the audit adjustments were \$6,231.61. Stipulated Exh. 2.
14. The auditor made the adjustments because she determined that the Taxpayer was an itinerant worker and because she determined that Taxpayer did not duplicate his living expenses. Stipulated Exh. 2, p. DOR-Brantley 000155.
15. The Taxpayer disputes the correctness of the auditor's determination both as to the auditor's findings of fact and as the auditor's analysis of law.
16. During the years at issue, the Taxpayer acquired housing in each area where

his temporary jobs were located.

17. During the years in issue, Taxpayer's son attended schools in Helena, both during the Taxpayer's presence and while the Taxpayer was working away from Helena.
18. In 2014, JoEllen Clark, the Taxpayer's mother, took photos of the bunkhouse. Stipulated Exh. 4.

The Parties presented the following additional evidence at the Hearing

Mr. Brantley testified that any time he worked within a few hours of Helena; he commuted on a daily basis. He cited travel to Great Falls for work as an example. Brantley testimony. *See also* Stipulated Exh. 2, DOR-Brantley 00020 (confidential.)

Auditor Kennedy testified that Mr. Brantley did not provide any documentation about rental payments in response to the Department's letter. *See also* Stipulated Exh. 2, DOR-Brantley 00046 (confidential.)

The letter to Mr. Brantley from the DOR, however, references unsubstantiated rental payments of \$75 per month. DOR Exh. 7, letter dated Nov. 8, 2013.

The audit forms (confidential) indicated that the DOR determined that Mr. Brantley did not pay rent to his parents. Stipulated Exh. 2, DOR-Brantley 000009.

Findings of Fact, Conclusions of Law and Discussion

The threshold issue is whether Taxpayer's home in Helena was his tax home for purposes of section 162(a)(2), IRC and therefore whether the DOR correctly classified Taxpayer as an itinerant worker for the purposes of a tax deduction. The State of Montana calculates taxable income and deductions under the Federal Internal Revenue Code. § 15-30-2101(10), MCA.

Section 162(a)(2) allows a taxpayer to deduct traveling expenses, including amounts expended for meals and lodging, if such expenses are (1) ordinary and necessary; (2) incurred while away from home; and (3) incurred in the pursuit of a trade or business. *Commissioner v. Flowers*, 326 U.S. 465, 470 (1946). For purposes of section 162, generally "home" (or tax home) means the vicinity of the taxpayer's principal place of business or employment. *Mitchell v. Commissioner*, 74 T.C. 578, 581 (1980); *Bixler v. Commissioner*, 5 B.T.A. 1181, 1184 (1927). A taxpayer's residence, when different from the vicinity of his principal place of employment, may be treated as his tax home if the taxpayer's employment is "temporary" rather than "indefinite." *Peurifoy v. Commissioner*, 358 U.S. 59, 60 (1958).

In this instance, there is no question, and the parties stipulated, that the expenses were ordinary and necessary, and that they were incurred in the pursuit of a

trade or business. Joint Stipulation of Facts and Exhibits at 2, ¶ 5. The sole question is whether Mr. Brantley incurred the expenses while “away from home.”

The DOR determined that Mr. Brantley met the legal definition of an itinerant worker without a tax home for the relevant tax years. Taxpayer contends he has a tax home in Helena and thus is entitled to deductions at issue.

The IRS developed a three-factor analysis to determine whether an individual who travels extensively for work may have a home at “a regular place of abode” or is considered an itinerant for tax purposes. Rev. Rule 73-529, 1973-CB 37¹. When a taxpayer’s principal place of work is a temporary construction site, and when the taxpayer also maintains a personal residence or family home remote from his temporary jobsite, the taxpayer’s home may be treated as his tax home if: (1) The taxpayer incurs duplicate living expenses while traveling and maintaining the home; (2) the taxpayer has personal and historical connections to the home; and (3) the taxpayer has a business justification for maintaining the home. *Lyseng v. Comm’r*, 2011 Tax Ct. memo LEXIS 222, at page 7, citing to *Hantzis v. Commissioner*, 638 F.2d 248, 255 (1st Cir. 1981), revg. T.C. Memo. 1979-299; *Minick v. Commissioner*, T.C. Memo 2010-12; *see also* Rev. Rul. 73-529, 1973-2 C.B. 37.

¹ Note that Rev. Rule 73-529 was corrected in announcement 73-113.

Specifically, the question of tax home is a factual test and, we must consider “all the facts and circumstances of a particular case ... in determining whether a taxpayer has a “home” for traveling expense deduction purposes.” Rev. Rul. 73-529, 1973-2 C.B. 37 (1973) (amended.)

The purpose of the deductions for expenses incurred away from home is to alleviate the burden on the taxpayer whose business needs require him or her to maintain two homes and therefore incur duplicate living expenses. *Kroll v. Commissioner*, 49 T.C. 557, 562 (1968). The duplicate costs are not deductible where the taxpayer maintains two homes [only] for personal reasons. Sec. 262; *Commissioner v. Flowers*, 49 T.C. at 474.

We first note that the example listed in the IRS Revenue Ruling is substantially similar to this case, and is illustrative.

Situation 1. A taxpayer, an outside salesman, has a sales territory covering several states. His employer has its main office in City A, and the taxpayer returns there for approximately one month each year for business and nonbusiness reasons. The taxpayer's work assignments are temporary and he has no way of knowing where future assignments will be located. He has lived in City A for 14 years, first with his wife in his own house until their divorce, and presently with his married sister in her house. The taxpayer pays his sister \$50 per month for a room in her house where he stays when he is in City A and where he also keeps his furniture and any clothing which he does not take on his out-of-town business trips. Rev. Rul. 73-529, 1973-2 C.B. 37 (1973).

*3 The taxpayer in *Situation 1* has satisfied all three objective factors set forth herein (including the historical lodging aspects of factor (3) above), and therefore is considered to have a ‘home’ in City A for purposes of section 162(a)(2) of the Code. Accordingly, his traveling expenses on trips away from that city, which are of such

duration as to require that he stop for substantial sleep or rest, if otherwise allowed under section 162, are deductible from gross income in computing his adjusted gross income as provided in section 62. Rev. Rul. 73-529, 1973-2 C.B. 37 (1973).

In this instance, the audit commenced because the DOR did not have any documentation of duplicative expenses. The auditor testified that if Taxpayer paid market rent, thereby incurring duplicative expenses, the taxpayer would meet the test for determining whether he had a tax home. *See also* Exh. 2 DOR-BRANTLEY 000009. In a letter to Taxpayer dated July 30, 2013, the auditor stated, "You have been deemed an itinerant worker because you do not duplicate your living expenses. You live where your job is located. You do not pay rent to you[r] parents and your property in Ohio is not your home because you do not return to it regularly." Exh. 2: DOR-BRANTLEY 000046. The Taxpayer brought substantial records to the hearing to demonstrate duplicative expenses, which he had not provided during the audit period.

We first note that a Taxpayer should be able to reasonably rely on the IRS examples when submitting their tax returns, without fear that a taxing jurisdiction will then disallow their deductions. *See for instance*, IRS Publication 465, p.4 Example 1, 2 and 3. (<http://www.irs.gov/pub/irs-pdf/p463.pdf>). The DOR auditor testified that during the audit Taxpayer could not show he made any rental payments. It is

disappointing that the parties did not exchange information about the duplicative expenses prior to the hearing, which might have prevented litigation.

While we analyze all three factors of the Revenue Ruling test, we also note that the DOR overemphasized the duplication of expenses as the *sine qua non* factor for determining whether the taxpayer had a tax home. There is no indication from the record that the DOR weighed all the facts and circumstances as required by Tax Court precedent. *See* Exh. 2: DOR-BRANTLEY 000046.

We now look at the evidence presented for the IRS' three-factor test:

Duplication of Expenses

Regardless of his temporary jobs, Taxpayer contributes to his Helena household over \$6,100² a year that goes towards food, weekly support for his son, and other costs associated with his bunkhouse. This contribution is not minimal. Taxpayer pays his mother \$75 per month to offset his living expenses and to pay for utilities associated with the bunkhouse. The taxpayer also provides in kind to family food expenses in the form of deer and elk. His mother has direct access to his accounts as she needs for living expenses of his son. Uncontroverted evidence shows Taxpayer duplicated his food and lodging expenses while on temporary job sites. For example, Stipulated Exhibit 2, Exhibit 3, and DOR Exhibit 6 are replete with food, travel mileage, and lodging expenses incurred by the taxpayer while away on projects.

² Calculated as \$75 monthly for one year (\$900), and \$100 a week for 52 weeks (\$5200).

DOR does not dispute the amounts stipulated by Taxpayer for lodging, meals, and travel. The Clark testimony and Taxpayer testimony provides competent evidence that Taxpayer contributed substantially, monetarily and in kind, to maintaining a household in Helena. Further, there is no indication that the duplicative amounts do not indicate market value, or that a specific market value is required. The Board concludes by a preponderance of the evidence that Taxpayer duplicated his expenses.

Historical Connection

We find the taxpayer satisfies the second factor. The record shows that Taxpayer has a personal and historical connection to Helena. This connection is substantial and not “tenuous.” *Cf Yankee v. Comm’r*, 2008 Tax Court Memo.

The Taxpayer has not abandoned Helena since his return in 2004. He “anchored” his life, and that of his lineal relatives around Helena, as their place of abode. His mother, stepfather, and son, all live at the main house in 390 Lincoln Road West. Taxpayer uses this address as his primary address on his Montana driver’s license, Montana hunting license, and Montana fishing license. The bunkhouse, which is part of the curtilage of the main residence, serves as his lodging. He keeps his spare vehicle, motorcycle, trailer, clothes, and furniture at 390 Lincoln Road West. He also filed his taxes in Montana; the earnings from the out of state projects were included in computing his gross earnings.

Business Justification

We also find the taxpayer meets the third factor. The facts in this case clearly demonstrate the business reasons for Taxpayer to maintain a continuing home in Helena. While those reasons most certainly include personal reasons relating to his family dynamics, his testimony indicates credible business reasons for keeping his home in Helena. *See Frederick v. US*, 603 F.2d 1292, 1295 (8th Cir. 1979, cited in *Farran v. Comm'r*, 2007 Tax Ct. Memo LEXIS 152); *Hantzis v. Commissioner*, 638 F.2d 248, 255 (1st Cir. 1981); *Bochner v. Commissioner*, 67 T.C. 824, 828 (1977); *Tucker v. Commissioner*, 55 T.C. 783, 787 (1971).

In examining the third factor, Taxpayer has a compelling business justification for maintaining the Helena home, similar to Rev. Ruling Situation 1; he has an expansive geographical territory that covers several states (including Montana, Idaho, Wisconsin, and Washington.) His Union Hall operates out of Butte Montana. He lives in Helena because, in his own words, it is the “epicenter” of the Union Hall “jurisdiction.” Brantley Testimony. Union Hall dispatches Taxpayer to the expansive territory on projects based on personnel needs and existing contracts with signatory contractors. Most of the job assignments require the taxpayer to stay for short durations (a few days or months) away from home. The longest duration of assignment was seven months. Taxpayer acquired temporary housing in each area while on job assignments, or commuted daily, and returned to the residence at 390

Lincoln Road West in Helena Montana, for business (because it is in the vicinity of Union Hall) and nonbusiness reasons (to parent his son and be part of his family.) He has lived in Helena since 2004. He presently lodges in a bunkhouse built adjacent to a workshop on his mother's property. The bunkhouse houses furniture, clothing, and other personal property that the taxpayer does not take on his out-of-town trips.

The ephemeral nature of Taxpayer's job assignments, punctuated by periods of inactivity typical in this trade and the prevailing economic climate made it practical for Taxpayer to maintain his home in Helena. The centrality of Helena as the "epicenter" of the 40-mile Free Zone (Anaconda, Butte, Bozeman, Deer Lodge, Great Falls, Glasgow, and Havre) alone is a legitimate business reason for Taxpayer to choose to reside in Helena. Helena is in the vicinity of Union Hall in Butte. Taxpayer was required to commute from state to state and region to region for short durations of time, several times a year to perform his trade. Taxpayer has credible business reasons for maintaining a home in Helena.

Further, the evidence demonstrates that Taxpayer also has a significant amount of assignments within the Free Zone where he can commute on a daily basis. *See* Stipulated Exh. 3. *See also* Brantley testimony relating daily commute to Great Falls work sites.

In sum, we find the evidence demonstrates Brantley has a tax home in Helena, and meets all the three IRS factors. The DOR relied on its assertion that Taxpayer did not duplicate his living expenses.³ Even arguing that Taxpayer did not duplicate his living expenses, duplication of expenses is not the *sine qua non* of eligibility. Where a Taxpayer meets the other two factors, the court will scrutinize all the facts and circumstances of the case and make a factual determination. We find the case of *Ralston v. C.I.R.*, 27 T.C.M. (CCH) 1312 (T.C. 1968) particularly illustrative in this matter, as it addresses how to consider workers traveling for short-term construction jobs. Under Tax Court's decision in *Ralston*, considering *all* the facts and circumstances of this case leads the Board to conclude that Taxpayer has a 'tax home' for traveling expense deduction purposes.

In *Ralston* the taxpayer incurred *only minimal expense* and he spent only 18 days out of the year (during the tax year in question) in Louisville, as a groom at a horse racing stable, but the Tax Court determined that there was a coalescence of other factors that suggested Mr. Ralston had the tax home he claimed. The taxpayer claimed that Louisville, Kentucky, was his tax home. The court concluded "where there has been a coalescence of place of abode and the performance of some work in the vicinity thereof for an employer who was based in the same vicinity, the courts

³ We are not convinced that DOR did not know about duplication of the expenses. See Stipulated Exh. 3: DOR-BRANTLEY 000021 - 000023.

have generally permitted a deduction for meals and lodging elsewhere.” *Ralston v. C.I.R.*, 27 T.C.M. (CCH) 1312 (T.C. 1968); *See also Pierce v. United States*, 271 F.Supp. 165 (W.D. Ark. 1967) (racetrack steward); *Schreiner v. McCrory*, 186 F.Supp. 819 (D. Neb. 1960) (insurance field representative); *Irving M. Sapson, supra* (traveling salesman); *Alois Joseph Weidekamp*, 29 T.C. 16 (1957) (parimutuel calculator); *Charles G. Gustafson*, 3 T.C. 998 (1944) (magazine salesman); *see also Burns v. Gray*, 287 F.2d 698 (C.A. 6, 1961) (racetrack starter) and *Nat Glogowski, Sr.*, T.C. Memo. 1967—236 (horseracing track auditor).

In this instance, we find there is a “coalescence” of four *Ralston* factors⁴ such that Taxpayer has a “tax home” in Helena. *Id.* (1) Taxpayer’s historical and familial connections were at all times in Helena; (2) he returned there on most, if not all, occasions when his work permitted and has made contributions, monetary and in kind, to support the Helena household; (3) Taxpayer’s employer was based in Butte and Helena is in the vicinity of the Union Hall Free zone. Therefore, it is makes business sense to live in Helena; and (4) Taxpayer in fact worked parts of the taxable year(s) in or around Helena, within the “Free Zone.”

⁴ *Ralston* court held: “ We think it significant that there is a coalescence of four important factors herein: (1) Petitioner’s historical and familial connections were at all times in Louisville; (2) he returned there on most, if not all, occasions when his work permitted and he made some contributions, albeit small, to support of the Louisville household; (3) petitioner’s employer was Louisville-based; and (4) petitioner in fact worked a part of the taxable year (and we infer of other years as well) in Louisville. *Ralston v. C.I.R.*, 27 T.C.M. (CCH) 1312 (T.C. 1968).

To be sure, an important element in these cases cited above, was the existence of duplicitous expenses. Nevertheless, *Ralston* exhorts that the controlling consideration was the coalescence of the factors noted above and that the overlap of actual expenses was not necessarily the key to decision. *Ralston v. C.I.R.*, 27 T.C.M. (CCH) 1312 (T.C. 1968).

The coalescence of factors described above also distinguishes the current case from the Montana Supreme Court's decision in *Robison v. Montana Department of Revenue*, 2012 MT 145. The Supreme Court there agreed with the district court's ruling that the taxpayer's employment was "indefinite... not temporary," because Robison did not know his employment would terminate in a short period of time; and because he was not told how long his work in Wyoming would last, he "never knew how long he would be employed at one site."

In this instance, the Taxpayer's uncontroverted testimony indicated that his employment was temporary. He knew, from previous assignments, and from the practice of his Local Union, that his temporary assignments would not last longer than one year. DOR conceded to this fact. Joint Stipulation of Facts and Exhibits at 2, ¶ 5. Therefore, as the Robison court in dicta indicated "it is not reasonable to expect people to move to a distant location when a job is foreseeably of limited duration." *Id.* (Citing *Kasun v. United States*, 671 F.2d 1059, 1061).

We also conclude that DOR's reliance on *James v. United States*, 308 F.2d 204 (9th Cir. 1962) is misplaced. See Exh. 2 DOR-BRANTLEY 000009. In *James*, a salesman, who maintained post office box and bank account and did personal business in Reno, Nevada, was not entitled to deduct the entire cost of meals and lodging while away from Reno. While in Reno, he stayed at hotel or motel and took his meals about town, and during year, he spent only about 30 days in Reno. He spent about the same amount of time in other cities of comparable size in his territory. He therefore did not meet the requirements of "tax home" under the rule. All the facts and circumstance indicate that this case is factually different.

The facts and circumstances in this case are also distinct from *Yanke v. Comm'r*, 2008 Tax Court memo LEXIS 132, cited by the Department of Revenue, where a son stored items and kept a room in his parent's house. In *Yanke*, the Journeyman taxpayer knew he would be working with contractors in California for at least three years; he only visited Boise for approximately 45 days throughout the year in question. There was no indication of rental funds paid, and no claim on the taxes of rental income paid. Further, the petitioner in that matter did not return to his parent's home in a regular fashion. The Tax Court concluded Mr. Yanke did not have a reasonable business reason for maintaining a home in Boise. See *Yanke v. Comm'r*. This case is not factually analogous.

Conclusion

We find that all the facts and circumstances demonstrate that Taxpayer had a tax home, and that it was 390 Lincoln Road West, Helena, Montana.

ORDER

The Montana Tax Appeal Board hereby reverses the determination of the Department of Revenue that T. J. Michael Brantley is an itinerant worker.

Dated this 18th of December 2014.

BY ORDER OF THE
MONTANA TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman


DAVID L. McALPIN, Board Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of December 2014, a true and correct copy of the foregoing has been served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Thomas Morrison
Attorney at Law
3B Arcade Building
111 North Last Chance Gulch
Helena, Montana 59601-4144

U.S. Mail
 Hand delivered
 Interoffice delivery

Teresa Whitney
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JERE ANN NELSON, office manager