

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NOS. 18572 & 19191
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

[Redacted] (Petitioner) protests the Notices of Deficiency Determination issued by the auditors for the Idaho State Tax Commission (Commission) dated December 10, 2004, and October 14, 2005, regarding the calendar years of 2000, 2001, and 2002, inclusive. The Notices of Deficiency asserted no additional amounts due by the partnership since the income adjustments are to be reflected on the returns of the partners.

The business of the partnership was to do [Redacted]. The petitioner has not identified the jobs for which work was done or made more than a feeble attempt to identify their expenses with various jobs.

The bulk of the matters in these dockets is that the petitioner has failed to provide the requested documentation. The taxpayer has the burden of proof with regard to both the law and the facts regarding deduction. The U. S. Supreme Court has stated:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.

\* \* \*

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S.Ct. 788, 790 (1934).

Estimates may be made of some expenses pursuant to Cohan v. Commissioner, 39 F.2d 540 (2<sup>nd</sup> Cir. 1930). The surrounding facts must be considered in attempting to make a reasonable estimate pursuant to Cohan. Some of these facts are the following:

<u>YEAR</u>	<u>SALES</u>	<u>COGS</u> <sup>1</sup>	<u>OTHER EXPENSES</u>	<u>NET INCOME (LOSS)</u>
1998	\$186,748	\$ 323,055	\$ 34,362	\$ (170,369)
1999	150,291	202,556	37,414	(89,679)
2000	142,259	786,780	21,664	(666,185)
2001	209,164 <sup>2</sup>	207,154	56,317	(97,327)
2002	<u>182,027</u>	<u>513,013</u> <sup>3</sup>	<u>27,238</u>	<u>(358,224)</u>
	<u>\$870,489</u>	<u>\$2,032,558</u>	<u>\$176,995</u>	<u>\$(1,382,084)</u>

The Commission finds it of interest that, taken as a whole, the expenses claimed with regard to the “business” in which the partnership engaged are in excess of two and one half times the amount of the sales. While showing a cost of goods sold greater than the amount of sales may be understandable in one year, when this has allegedly occurred over a five year period, it casts many shadows on the credibility of the accountings before us.

Given the facts set out above, several questions arise. It is unlikely that reasonable taxpayers would pursue a “business” such as the one reflected by the facts above for business reasons. According to the facts as the petitioner represents them, petitioner made no money from this endeavor. In fact, the petitioner lost a great deal of money. Did the petitioner really lose these amounts? Did the petitioner report all sales? Did the petitioner reflect expenses for work on property for the partners without reflecting any or adequate reimbursements from those partners?

---

<sup>1</sup> Cost of Goods Sold

<sup>2</sup> This includes \$43,020 from Form 4797 which passed through to the partners.

<sup>3</sup> This amount was adjusted. The petitioner failed to reflect the ending inventory at the end of 2001 of \$408,074 as the beginning inventory for 2002. This was corrected to properly state COGS.

Given the nature of the facts reflected in the tax return filings, the Commission finds these to be relevant questions.

As was stated above, the Cohan case provides authority to make certain estimates of expenses incurred by a taxpayer. A deduction will not be disallowed in its entirety for failure to establish the exact amount. Nowland v. Commissioner, T. C. Memo 1956-72 citing Cohan, supra. When a taxpayer establishes that he paid or incurred a deductible expense but does not establish the amount of the deduction, we may estimate the amount allowable in certain circumstances. Cohan, supra; Vanicek v. Commissioner, 85 T.C. 731, 742-743 (1985). There must be sufficient evidence in the record, however, to permit us to conclude that a deductible expense was paid or incurred in at least the amount allowed. Williams v. United States, 245 F.2d 559, 560 (5<sup>th</sup> Cir. 1957).

Given the poor quality of the records presented and the failure of the petitioner to identify the various jobs done and the costs related to each such venture, the Commission finds that the petitioner has failed to establish that it is entitled to a more beneficial result than was determined by the auditor. Therefore, the Commission finds that the Notices of Deficiency Determination should be affirmed.

WHEREFORE, the Notices of Deficiency Determination dated December 10, 2004, and October 14, 2005, are hereby APPROVED, AFFIRMED, AND MADE FINAL.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.

---