

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21579
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On October 10, 2008, the Idaho State Tax Commission’s (Commission) Income Tax Audit Bureau (ITA) issued a Notice of Deficiency Determination (NODD) to [Redacted] (petitioner) proposing additional income tax, penalty, and interest for the taxable year 2005 in the total amount of \$5,141. The petitioner filed a timely petition for redetermination. The petitioner was informed of his appeal rights in the Commission’s letters dated December 31, 2008, and January 15, 2009. The Commission, having reviewed the file, hereby issues its decision.

On March 10, 2008, the petitioner filed his 2005 Idaho income tax return. Based upon information available to the Commission, the ITA determined that the petitioner had not filed an amended Idaho income tax return for taxable year 2005 reporting adjustments to his federal taxable income as required by Idaho Code section 63-3069. Based upon that information, the ITA issued the NODD on October 10, 2008, disallowing the petitioner’s \$70,200 Schedule C deduction for “personal services” and allowing a \$4,985 deduction for self-employment tax. On the petitioner’s Schedule C consulting business, the petitioner had reported a net profit of \$359.49 (\$70,559.49 of gross receipts and a \$70,200 deduction for “personal services [IRC 162(A) Et. Seq.]”). Additionally, the ITA proposed that a 5 percent penalty be assessed since the petitioner did not provide the Commission with a copy of the final federal determination within sixty (60) days from the date of the determination.

The petitioner filed a petition for redetermination dated November 20, 2008. In his petition, the petitioner argued that “The IRS has, to this date, not sent any notice of deficiency of federal taxes to me for this year, 2005.” The Petitioner demanded a “Due Process Hearing as is required to be provided by law and the Constitution.”

On December 31, 2008, and again on January 15, 2009, the petitioner was apprised of his appeal rights. In response, the petitioner hand delivered a stack of receipts many of which were stapled together with some of the groupings identified with a number or letter that was circled. The ITA briefly reviewed the information provided and was unable to identify what deductions, if any, were allowable business expenses.

On March 31, 2009, the Commission returned the receipts to the petitioner requesting that the petitioner provide the Commission with an amended return for 2005 and provide the Commission with the specific documentation supporting the deductions that the petitioner would be claiming on the amended return. The petitioner was given a deadline of May 15, 2009. The petitioner did not meet that deadline, and as of the date of this decision, the petitioner has not provided the requested information.

As previously mentioned, the petitioner claimed a deduction of \$70,200 on his Schedule C for “personal services.” In *Clark v. Commissioner*, T. C. Memo 1966-22, the court stated:

Whatever may be the philosophical merits of taking into account the value of one's own services, when such services are in lieu of paid labor, such services are not considered an element of the deduction under our system of income taxation, just as the flow of satisfactions from services arising from one's exertions in his own behalf is not includible in his gross income. Surrey and Warren, *Cases on Federal Income Taxation*, p. 127 (1960); *cf. Frank Markarian*, 42 T.C. 640 (1964), *aff'd*. 352 F.2d 870 (C.A. 7, 1966); *Palmer Hutcheson*, 17 T.C. 14 (1951).

More specifically, in Remy v. Commissioner, T. C. Memo. 1997-72, the court specifically denied a cash basis taxpayer's attempt to deduct the value of his services under I.R.C. § 162(a), stating that:

The value of labor performed by a taxpayer does not constitute an amount "paid or incurred," and, for that reason, a cash basis taxpayer is not entitled to deduct the value of his or her own labor as a business expense under section 162(a). *Maniscalco v. Commissioner*, 632 F.2d 6, 7-8 (6th Cir. 1980), *aff'g*. T.C. Memo. 1978-274; *Grant v. Commissioner*, 84 T.C. 809, 819-820 (1985), *aff'd*. without published opinion 800 F.2d 260 (4th Cir. 1986); *Rink v. Commissioner*, 51 T.C. 746, 753 (1969); *Fisher v. Commissioner*, T.C. Memo. 1986-141; *cf. Hutcheson v. Commissioner*, 17 T.C. 14, 19 (1951); *Walter v. Commissioner*, T.C. Memo. 1979-132; *Jepps v. Commissioner*, T.C. Memo. 1978- 343; *Bers v. Commissioner*, T.C. Memo. 1976-263; *Butrick v. Commissioner*, T.C. Memo. 1972-59; *Escofil v. Commissioner*, T.C. Memo. 1971-131, *aff'd*. 464 F.2d 358 (3d Cir. 1972). To hold otherwise would be to allow a business deduction for unpaid compensation which was never reported as income. *See Hutcheson v. Commissioner, supra* at 19; *see also Stengel v. Commissioner*, T.C. Memo. 1992-570, *aff'd*. without published opinion 996 F.2d 1227 (9th Cir. 1993), . . .

Accordingly, the ITA was correct in disallowing the petitioner's deduction for "personal services."

As for the stack of receipts delivered to the Commission, the petitioner is normally required to present his evidence relating to a disallowed deduction in a manner that is logical and readily understandable. Otherwise, the petitioner runs the risk that the taxing agency or the court might misunderstand the evidence presented or might simply decline to wade through the records and documents submitted by the taxpayer in an effort to try to figure out what relevant evidence might be buried in the morass of papers. *See, e.g. Kersting v. C.I.R.*, T.C. Memo 1999-197 (U.S. Tax Court 1999) ("Petitioner invites the Court implicitly to wade through the numerous checks in the record, calculator in hand, to come up with the purported amounts of alleged business

expenses. We decline this invitation.”). This principle was artfully set forth some seventy years ago in Evergreen Cemetery Ass’n v. Comm’r, 25 B.T.A. 544 (1932):

The proper trial of a case before the Board requires thorough preparation, a clear understanding of the issues, and the marshaling of the evidence in such a way to indicate clearly the effect of the same and the issue to which it appertains. This is not accomplished by dumping into the hands of the Board a number of books of account and other similar evidence. Such evidence is not self-illuminating. The Board should not be asked to ferret out the correct answer to technical or difficult questions of law and fact from unexplained, uncoordinated evidence. Id at 551-552.

The stack of receipts provided by [Redacted] in support of his petition for redetermination is, likewise, “not self-illuminating.” The Commission declined the invitation to wade through the various pieces of paper the petitioner has provided in an effort to “ferret out” those receipts that could possibly relate to the petitioner’s Schedule C consulting business and has, in fact, returned said pieces of paper to the petitioner as previously discussed.

The petitioner has failed to meet his burden of proving error on the part of the deficiency determination. *Albertson’s, Inc. v. State Dept. of Revenue*, 106 Idaho 810, 814, (1984); *Parsons v. Idaho State Tax Comm’n*, 110 Idaho 572, 574 (Ct. App. 1986). Since the petitioner has not met this burden of proof of showing that the NODD prepared by the ITA is incorrect, the Commission upholds the ITA’s determination for 2005.

WHEREFORE, the Notice of Deficiency Determination dated October 10, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$4,183	\$209	\$903	\$5,295

Interest is calculated through August 31, 2009, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.