

Mrs. [Redacted] indicated she had done [Redacted] voluntarily for [Redacted] County since [Redacted]. She also worked with several [Redacted] in the area and for several different [Redacted]. It is not clear from the record that she was paid by these entities.

In January 2008, the petitioners' first great-grandchild was born. The parents of the child did not provide the needed care for the child, so the petitioners provided a good deal of such care for the child. The petitioners conceded that this cut into the time that they were able to commit to the [Redacted] activity.

It is well established that the allowance of deductions is a matter of legislative grace and that a taxpayer has the burden of establishing his right to the deductions. New Colonial Ice v. Helvering 292 U.S. 435, 440 (1934); AIA Services Corp. v. Idaho State Tax Commission, 136 Idaho 184, 187 (2001); Potlatch Corp. v. Idaho State Tax Commission, 128 Idaho 387, 389 (1996).

As a general rule, to deduct losses incurred in any activity, a taxpayer must show that he or she entered into the activity, or continued the activity, with an objective of making a profit. Sec. 1.183-2(a), Income Tax Regs. If the taxpayer engaged in the activity without such profit objective, deductions attributable thereto are allowed, but (as applicable here) only to the extent of the income derived from the activity. Sec. 183(b)(1) and (2). The test under section 183 is whether the taxpayer engaged in the activity with an actual and honest objective of making a profit. Beck v. Commissioner, 85 T.C. 557, 569 (1985); Flowers v. Commissioner, 80 T.C. 914, 931 (1983); Dreicer v. Commissioner, 78 T.C. 642, 644-646 (1982), affd. without opinion 702 F.2d 1205 (D.C. Cir. 1983); Golanty v. Commissioner, 72 T.C. 411, 425-426 (1979), affd. without published opinion 647 F.2d 170 (9th Cir. 1981).

Whether a taxpayer had an actual and honest profit objective is a question of fact to be resolved from all relevant facts and circumstances. Hulter v. Commissioner, 91 T.C. 371, 392-393

(1988); Golanty v. Commissioner, supra at 426. The burden of proving such objective is on the petitioner. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a). Greater weight is given to objective facts than to a petitioner's statement of intent. Sec. 1.183-2(a), Income Tax Regs.; Beck v. Commissioner, 85 T.C. at 570; Thomas v. Commissioner, 84 T.C. 1244, 1269 (1985), affd. 792 F.2d 1256 (4th Cir. 1986).

Section 1.183-2(b), Income Tax Regs., provides a nonexclusive list of factors which normally should be considered in determining whether an activity is engaged in with the requisite profit objective. The nine factors are: (1) The manner in which the taxpayer carries on the activity, (2) the expertise of the taxpayer or his advisors, (3) the time and effort expended by the taxpayer in carrying on the activity, (4) the expectation that assets used in the activity may appreciate in value, (5) the success of the taxpayer in carrying on other similar or dissimilar activities, (6) the taxpayer's history of income or losses with respect to the activity, (7) the amount of occasional profits, if any, which are earned, (8) the financial status of the taxpayer, and (9) whether elements of personal pleasure or recreation are involved. No single factor, nor the existence of even a majority of the factors, is controlling. Rather, it is an evaluation of all the facts and circumstances in the case taken as a whole which is determinative. Sec. 1.183-2(b), Income Tax Regs.; Abramson v. Commissioner, 86 T.C. 360, 371 (1986); Benz v. Commissioner, 63 T.C. 375, 382 (1974).

The petitioners have not established that they had advertised or had an office where they might generate business. There is no indication that the petitioners had a website through which they might generate income. Therefore, it appears that there is a serious question of whether they held themselves out as selling goods or services as required. McDowell v. Ribicoff, 292 F.2d 174 (3rd Cir. 1961).

The petitioners did not show a profit for any year here in record (2001-2009). In relating to their experience in showing profit, the petitioners relate that Mrs. [Redacted] had been involved in obtaining a grant in the amount of \$56,000. This grant was not for her [Redacted], but instead was for the [Redacted].

The petitioners have not established that they either had produced a profit in any year or had contemplated what it would have taken to produce a profit. Also, as indicated in Regulation § 1.183-2, the extent of personal pleasure should be considered. The travel undertaken by the petitioners would also appear to have supplied significant personal pleasure.

The petitioners indicated that the equipment used in the activity quickly becomes outdated. Due to the rate of development of the technology involved, the assets used in the business would not be expected to appreciate.

After reviewing the record, the Commission finds that the petitioners did not pursue the [Redacted] in a businesslike manner. They failed to project what would be needed to make the activity profitable or to make necessary adjustment to bring this about. No plan has been presented indicating what corrections or adjustments were needed or were being undertaken to obtain profits. While the record indicates that a significant amount of photography was done free for charitable organizations, this doesn't tend to bring profitability. Considering that the expenses on the average were more than thirteen times the income over an extended period of time, the Commission finds that the auditor's adjustment must be upheld.

The facts demonstrate that the petitioners were indeed negligent. In light of the surrounding facts, no reasonable person would have claimed such expenses as a business deduction. It appears clear that the expenses of a hobby were deducted as business expenses.

THEREFORE, the Notice of Deficiency Determination dated April 12, 2011, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest (computed to June 30, 2012):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,602	\$80	\$336	\$2,018
2008	904	45	132	1,081
2009	447	22	43	<u>512</u>
			TOTAL DUE	<u>\$3,611</u>

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

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

DATED this _____ day of _____ 2012.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2012, 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.
