

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24695
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated October 19, 2011, asserting an additional liability for Idaho income tax, penalty, and interest in the total amount of \$2,499 for 2010.

During 2010, the petitioner was employed by [Redacted], a [Redacted] [Redacted] company. Also for 2010, the petitioner filed a Schedule C (Profit or Loss From Business) claiming to be in the same or similar business as his employer. On this schedule C, the petitioner reported income in the amount of \$3,278 and total expenses of \$32,967 for a net loss of \$29,689. The auditor inquired as to the nature of the business and requested documentation for the claimed expenses. Some documentation was provided, but this was insufficient to adequately support the claimed deductions. Some of the invoices were billed to his employer. Some of the lodging showed more than one occupant, and the business purpose was not established for any of the occupants. Therefore, the auditor disallowed the amount of the loss claimed by the petitioner.

Both during the audit and during the administrative appeal, the petitioner was asked to provide documentation to support the deductions claimed and to supply documentation to show that the expenses claimed on his Schedule C had not been paid directly by or reimbursed by his employer. In addition, the petitioner was asked to supply information regarding the source of the

income reported. He supplied no additional information during the administrative appeal. Therefore, the Commission now renders its decision based upon the information currently in the file.

The petitioner contends that he traveled extensively to try to make his business profitable. He indicated that [Redacted] projects have eight main components, four of which his employer provided. He intended to provide three of the remaining four components. The petitioner further stated that he intended to take his business full-time if he could make it profitable. He submitted a number of documents indicating that he had traveled extensively. What is not clear is whether he legitimately had income for this business and whether the expenses were incurred for his business, for his employer's business, or for personal pleasure. While he supplied copies of numerous documents, they routinely lacked required information such as the business purpose for incurring the expense, or the person or persons entertained. It also is not at all clear whether such expenditures were paid directly or indirectly by his employer.

In Dowell v. U. S., 370 F.Supp 69 (ND Texas, 1974), the U.S. District Court held that Mr. Dowell's "blizzard" of bills, chits, etc. established the amounts, dates, and places of the claimed deductions rather than requiring that the taxpayers substantiate each such expenditure with the specificity required by statute. On appeal to the [Redacted] Circuit Court of Appeals, the decision of the U.S. District Court was vacated and remanded. The [Redacted] Circuit addressed the lack of documentation, in part, as follows:

Congress thus declared its intent to disallow entertainment deductions based solely on a taxpayer's "own unsupported, self-serving testimony." Estimates were not to be deductible corroboration was required. Reference to note omitted, supra.

Section 274(d) provides that the taxpayer must substantiate all expenses for travel, entertainment, or gifts whether falling within the requirements of § 274(a) or not by adequate records or by sufficient evidence corroborating his own

statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility, or receiving the gift.

Pursuant to authority granted in s 274(h), Treasury Regulation 26 CFR § 1.274-5 [footnote omitted] amplifies these substantiation *713 requirements. It provides that each element of each separate expenditure be supplied either through adequate records or through the taxpayer's own statement plus corroborative evidence sufficient to establish each element. § 1.274- 5(c)(3)(i) and (ii). These requirements are based solidly on legislative history. [footnote omitted]

* * *

It is evident from Dowell's testimony alone, R. at 151-56, that some of the statements introduced from clubs such as the Texas Club or credit services such as American Express were monthly statements without itemization of the persons entertained, specific dates or amounts (or, in the case of the American Express stubs, the location at which the expense was incurred). See Def. Ex. 3. Even if tickets listing separate expenditures were normally returned with the monthly statements, as in the case of American Express, for example, it is apparent that Hillcrest either did not retain such tickets or chose not to offer them in evidence. R. at 153; Def. Ex. 3. Dowell did not keep an appointment book or diary. R. at 152, so it is clear, at least with respect to those expenditures listed as monthly statements, that the "adequate records" requirement was not fulfilled with respect to each separate expenditure included in the monthly aggregates. In many cases, it appears that Dowell did not establish the elements of these expenditures by "other sufficient evidence." Dowell testified, for example, R. at 153, 156, that he could not recall the dates on which the charges from the Texas Club and American Express were incurred. The witnesses who testified in his behalf were generally no more specific. While most of these witnesses testified to having periodic business luncheons, dinners or meetings with Dowell at numerous named clubs or restaurants, and provided general descriptions as to the type of business usually discussed at such functions, most could not identify any particular dates on which they had dined with Dowell, where they had eaten on any given day, or the amount of any bill.[footnote omitted]

Dowell v. U.S., 522 F.2d 708, 713-716 (5th Cir. 1975).

The [Redacted] Circuit Court of Appeals, under similar circumstances as is found in this docket, has disallowed the entertainment expenses sought by the taxpayer. The Commissioner

similarly finds that the petitioner has failed to carry his burden of proof that he is entitled to the travel and entertainment deductions sought.

As to the other deductions sought, the petitioner also did not present sufficient documentation to support his position. The U.S. Supreme Court, in addressing such an issue stated, in part:

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., Inc. v. Helvering, 292 U.S. 435, 440 (1934).

The Commission finds that the petitioner has also failed to carry his burden of proof that he is entitled to the remainder of the deductions disallowed by the auditor.

THEREFORE, the Notice of Deficiency Determination dated October 19, 2011, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (calculated to November 15, 2012):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$2,317	\$116	\$147	\$2,580

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 _____ 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.
