

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-755-607-040
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination (NODD) issued by the staff of the Idaho State Tax Commission (Commission) dated October 17, 2014, asserting additional Idaho income taxes, penalties, and interest in the total amounts of \$5,455, \$3,628, \$5,149, and \$2,009 for 2010, 2011, 2012, and 2013, respectively.

The petitioners were Idaho residents at all times relevant to this matter. The auditor made the following adjustments:

	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Schedule C	\$23,963	\$27,033	\$52,032	\$10,000
Schedule A	35,001	10,836	13,250	15,497
Health Insurance Deduction	0	3,171	711	711

SCHEDULE C

From 2006, and possibly before, the petitioners filed a federal Schedule C (Profit or Loss From Business). The name given the “business” was “[Redacted].” For each year, the petitioners claimed substantial expenses, but no income. The auditor disallowed the deductions stating that they appeared to have no business purpose and were apparently not ordinary and necessary business expenses. The petitioners have given the Commission no further information or documentation during this administrative appeal. Accordingly, the auditor’s position with regard to these expenses is affirmed.

ITEMIZED DEDUCTIONS

The auditor made adjustments to the itemized deductions claimed by the petitioners. The

petitioners did not provide additional documentation or authority during this administrative appeal. The Commission finds that the auditor correctly adjusted the petitioners' itemized deductions. The adjustments are:

	2010	2011	2012	2013
Medical		419	2,782	
Interest	1,095	1,135	968	2,126
Misc	33,906	9,282		13,371
Other Misc.			9,500	
	35,001	10,836	13,250	15,497

The petitioners did address some of the claimed deductions during the audit. The petitioners stated:

Mr. [Redacted] works as a "Heavy Equipment Operator". He is responsible for paying for his expenses to get to Alaska, and then from there, they take him to the Artic [sic] Slope and other locations. Then, the [sic] get him back to Alaska. From Alaska, he goes home. He had a great deal of expenses for airline flights, travel, entertainment. It is customary in this industry to pay for the travel expenses to get to the main site even if you are an employee.

In addressing a similar situation, the U. S. Tax Court addressed the matter, in part, as follows:

The next issue is whether petitioner is entitled to deduct the cost of his round-trip airline tickets between Kenai and Anchorage. The costs of commuting between the taxpayer's residence and his place of employment are nondeductible personal expenses, regardless of the distance, Commissioner v. Flowers, 326 U.S. 465, 470 (1946); Coombs v. Commissioner, 608 F.2d 1269 (9th Cir. 1979), affg. in part 67 T.C. 426 (1976); sections 1.162-2(e) and 1.262-1(b)(5), Income Tax Regs. On the other hand, the cost of travel between two places of employment is deductible. Heuer v. Commissioner, 32 T.C. 947, 953 (1959), affd. per curiam 283 F.2d 865 (5th Cir. 1960). Because we have concluded that petitioner's involvement in his various [Redacted] Enterprises activities did not constitute profit activities, Kasilof was not one of petitioner's places of employment. Accordingly, the airfare expenses incurred by petitioner from Kenai to Anchorage, and back, are nondeductible personal expenses.

Edmands v. Commissioner, T.C. Memo 1989-507.

In another matter, the Tax Court stated, in part:

Section 262 [footnote omitted] states that personal expenses are not deductible, unless the contrary is ‘expressly provided’ in some other Code section. Section 162(a)(2) [footnote omitted] expressly permits a taxpayer to deduct travelling expenses, including amounts expended for meals and lodging, which might otherwise be personal expenses, if incurred ‘away from home in the pursuit of a trade or business.’ This section is intended to provide relief to the taxpayer who incurs ‘substantial continuing expenses’ of a home which are duplicated by living expenses incurred while traveling away from home on business. James v. United States, 308 F.2d 204 (9th Cir. 1962). To qualify for this deduction, all of the following conditions must be met:

- (1) The expense is a traveling expense (this includes such items as transportation fares and food and lodging expenses incurred when traveling);
- (2) The expense is incurred while ‘away from home; and
- (3) The expense is an ordinary and necessary business expense incurred in pursuit of a trade or business.

Commissioner v. Flowers, 326 U.S. 465, 470 (1946). See also Folkman v. United States, 615 F.2d 493, 496 (9th Cir. 1980).

Respondent does not dispute that Stephen’s expenses were ‘traveling expenses’ and were ‘incurred in pursuit of business.’ Instead, respondent argues that Stephen’s expenses were not incurred while away from home.

This Court has held that as a general rule ‘home,’ as used in section 162(a)(2), means the vicinity of the taxpayer’s principal place of employment and not where his or her personal residence is located. E.g., Mitchell v. Commissioner, 74 T.C. 578, 581 (1980); Daly v. Commissioner, 72 T.C. 190, 195 (1979), affd. 662 F.2d 253 (4th Cir. 1981).

Wirt v. Commissioner, T.C. Memo 1988-329.

#### HEALTH INSURANCE PREMIUMS

The petitioners claimed a deduction for Health Insurance premiums for 2011, 2012, and 2013. The auditor disallowed these deductions stating that the petitioners had failed to demonstrate that they had paid these premiums with after-tax funds. Again, the petitioners have failed to supply additional documentation or authority showing that the auditor was incorrect. Accordingly, these adjustments made by the auditor must be affirmed.

#### PONZI SCHEME

The petitioners allege that they invested \$10,000 in a Ponzi scheme called [Redacted] in

2012. They claimed \$9,500 of this loss on Form 4684 for 2012 and also claimed the full \$10,000 on their Schedule C for 2013. The petitioners did not submit sufficient documentation to show that they invested in [Redacted]. They did show that \$10,000 was withdrawn from a Roth IRA in 2012 for which no 1099-R was issued. Therefore, it appears that the transfer was from one custodian to another. The auditor disallowed both of the deductions claimed by the petitioners with regard to this activity.

If, as it appears, the investment in [Redacted] was made inside a Roth IRA and the entire amount that the taxpayer had invested in Roth IRAs was not withdrawn during a year currently before the Commission, no deduction is available. I.R.S. Notice 1989-25, Q & A-7, 1989-1 C.B. 662. Since the petitioners have failed to demonstrate that all of their Roth IRAs were distributed in the years currently before the Commission, the auditor's position taken in the NODD is upheld.

WHEREFORE, the Notice of Deficiency Determination dated October 17, 2014, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following taxes, penalties, and interest (computed to April 30, 2016):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$4,590	\$230	\$880	\$5,700
2011	3,159	158	479	3,796
2012	4,633	232	531	5,396
2013	1,939	97	159	<u>2,195</u>
			TOTAL DUE	<u>\$17,087</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 \_\_\_\_\_ 2016.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2016, 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.

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