BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of [Redacted] Petitioners.	)	DOCKET NO. 1-330-685-952 DECISION

The Idaho State Tax Commission (Commission) reviewed your case and this is our final decision. We uphold the Notice of Deficiency Determination (Notice) dated January 23, 2018. This means **you need to pay $4,155** of tax, penalty, and interest for taxable year 2013. The Commission now DEMANDS immediate payment of this amount.

BACKGROUND

[Redacted] (Petitioners) are Idaho residents and have been filing Idaho resident income tax returns since at least 1996. For the year under review, 2013, Petitioners filed a joint income tax return reporting income from wages, interest, pension and annuities, and social security benefits. Petitioners also had a Schedule C business in 2013 that they ran as a sole proprietorship.

The Commission's Income Tax Audit Bureau (Bureau) selected Petitioners' 2013 return for review. The Bureau notified Petitioners of the items being reviewed, and requested specific documentation and information to complete the review. Petitioners adequately substantiated some, but not all the deductions and expenses under review. Therefore, the Bureau issued a Notice making numerous adjustments to Petitioners' 2013 return. Petitioners, through their appointed representative (AIF), protested the Notice, specifically, the following items:

- Schedule A-Medical and Dental Expenses
- Schedule A- Gifts to Charity
- Schedule A-Casualty and Theft Losses
- Schedule C-Business Expenses

For each of the protested items, Petitioners' AIF stated in the appeal letter that Petitioners' oral testimony, along with the documentation previously provided, would substantiate the expenses and deductions claimed.

Two separate hearings were held in this matter, one with the AIF and the appeals specialist and the second included [Redacted] as well as the auditor from the Bureau. No additional documentation was submitted at the end of either meeting, but [Redacted] did give verbal statements and a written narrative about the deductions for charitable contributions, the casualty loss and a portion of the business expenses claimed. The Commission has reviewed all information contained in the file and that obtained during the informal hearings and upholds all adjustments.

LAW AND ANALYSIS OF ISSUES

Deductions/expenses are a matter of legislative grace and only as there is clear provision therefore can any particular deduction be allowed. *See New Colonial Ice Co., Inc. v. Helvering*, 292 U.S. 435, 54 S.Ct. 788 (1934). Petitioner bears the burden of proving that he is entitled to the deduction. *See Higgins v. C.I.R.*, T.C.M. 1984-330 (1984). The burden rests upon the taxpayer to disclose his receipts and claim his proper deductions. *See United States v. Ballard*, 535 F.2d 400 (1976). Moreover, it is well established that the Tax Commission is not required to accept self-serving testimony in the absence of corroborating evidence. *See Niedringhaus v.* Commissioner, 99 T.C. 202, 212 (1992); *Tokarski v. Commissioner*, 87 T.C. 74, 77 (1986). If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed, and that taxpayer must bear his misfortune. *See Burnet v. Houston*, 283 U.S. 223, 51 S.Ct. 413 (1931).

Petitioners claimed medical and dental expenses on their 2013 return. These expenses included items such as a Select Comfort mattress, a gym membership, fees paid to a health coach and lodging in Arizona.

Deductible medical expenses are amounts paid for the diagnosis, mitigation, treatment, prevention of disease or for the purpose of affecting any structure or function of the body. *See* Internal Revenue Code (I.R.C.) § 213(d) (1). To get a medical deduction, a taxpayer must show both that the expenditure was an essential element of medical care and that were it not for medical reasons the expenditure would not have been incurred. Consideration is given to the motive of the taxpayer, but that factor is not alone determinative. Expenses merely beneficial to the individual's general health aren't deductible as costs for medical care. *See* Treasury Regulation (Tres. Reg.) § 1.213-1(e)(l)(ii).

In the present matter, Petitioners provided adequate documentation to show payment of the items referenced above occurred in taxable year 2013. However, Petitioners failed to show the expenses fell within all parameters of I.R.C. § 213. Petitioners did not provide anything to show the mattress they purchased was unique, that is was used to treat a medical condition or that the mattress was prescribed by a physician as treatment for a medical condition. As for the gym membership and health coach fees, Petitioners did not show these expenses were incurred to cure a specific ailment or disease. Petitioners also did not show the lodging expenses incurred were primarily for and essential to medical care.

It was stated in Petitioners' protest letter that various physicians would be providing documentation to show the bed, gym membership and travel to Arizona were necessary for health care. At no point during the audit or in the administrative review process have Petitioners provided any information from a physician. Therefore, it is determined these items are personal expenses, not allowable medical expenses. Personal, family and living expenses are not deductible. *See* I.R.C. § 262.

In taxable year 2013 Petitioners claimed as itemized deductions gifts to charity, both cash and noncash donations. I.R.C. § 170 provides for a deduction from adjusted gross income for charitable contributions made during a taxable year. The allowance of a deduction is subject to

verification under regulations prescribed by the Secretary. *See* I.R.C. § 170(a)(1); and Tres. Reg. § 1.170A-13.

The nature of the required substantiation depends on the size of the contribution and on whether it is a gift of cash or noncash property. For all contributions of $250 or more, the taxpayer generally, must obtain a contemporaneous written acknowledgment from the donee. *See* I.R.C. § 170(f)(8)(A). "Separate contributions of less than $250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals $250 or more." *See* Tres. Reg. § 1.170A-13(f)(1).

Additional substantiation requirements are imposed for contributions of property with a claimed value exceeding $500. *See* I.R.C. § 170(f)(11)(B). For contributions of property with a claimed value exceeding $5,000 the substantiation requirements include the need for a "qualified appraisal." *See* I.R.C. § 170(f)(11)(C). "Similar items of property" must be aggregated in determining whether gifts exceed the $500 and $5,000 thresholds. *See* I.R.C. § 170(f)(11)(F). "For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property." *Id*. The term "similar items of property" is defined to mean "property of the same generic category or type," such as clothing, jewelry, furniture, electronic equipment, household appliances, or kitchenware. *See* Tres. Reg. § 1.170A-13(c)(7)(iii). I.R.C. § 170(f)(8)(A) provides that an individual may deduct a gift of $250 or more only if he substantiates the deduction with "a contemporaneous written acknowledgment of the contribution by the donee organization." *See* Weyts v. Commissioner, T.C.M. 2003-68.

This acknowledgment must: (1) include a description of any property other than cash contributed; (2) state whether the donee provided any goods or services in exchange for the gift; and (3) if the donee did provide goods or services, include a description and a good-faith estimate of their value. *See* I.R.C. § 170(f)(8)(B); and Tres. Reg. § 1.170A-13(f)(2). The acknowledgment

is "contemporaneous" if the taxpayer obtains it from the donee on or before the earlier of: (1) the date the taxpayer files a return for the year of contribution or (2) the due date, including extensions, for filing that return. *See* I.R.C. § 170(f)(8)(C).

Petitioners did provide documents to substantiate the amounts deducted as gifts to charity and a large portion of Petitioners' gifts by cash or check were allowed. Where Petitioners and the Commission largely disagree is the determination of the fair market value of the non-cash contributions.

The receipts provided by Petitioners did not contain specific itemization with respect to the property they claimed to have contributed in accord with the above statute and regulations, and most receipts were unreadable. As an example, the description on one receipt, after close examination, simply stated, truckload. The dollar amount, $1,000, appears to have been added after the fact by Petitioners. During the administrative review process the Commission asked for more specific information on the non-cash contributions. [Redacted] provided a written response which states:

> "Most of the charitable donation documents were not readable. As a result, I will lose a substantial amount of deductions. The charity we donate to does not place a fair market value on each item when we donate them. Frankly, it has taken a time-consuming effort to get the information I am providing you. Included in this memo is a copy of the "fair market value" that the IRS uses. This information is a joke. We donated some high-end clothes that are considered trash when rated by this sheet."

Petitioners did not present to the Commission any underlying records, or other evidence showing their cost or other basis, or the manner of acquisition of the property alleged to have been contributed. Petitioners have failed to carry their burden of showing entitlement to noncash charitable contribution deductions in excess of the amounts allowed by the Bureau.

Also deducted on Petitioners' 2013 Schedule A was a casualty loss for $3,646, related to koi fish. Petitioners maintain that a lawn maintenance company was responsible for damage to

their fish pond and killing their koi fish.

The general rule, under I.R.C. § 165(a), allows as a deduction, any loss during the taxable year that is not compensated for by insurance or otherwise. I.R.C. § 165(c)(3) addresses the limitation on losses of individuals, stating, the loss shall be limited to losses of property not connected with a trade or business, if the losses arise from fire, storm, shipwreck, or other casualty.

For property held for personal use, the amount of casualty loss is the lesser of (1) the property's adjusted basis or (2) its decline in value, i.e. its fair market value immediately before the casualty minus its fair market value immediately afterward. *See* Tres. Reg. § 1.165-7(b)(1). The methods available for calculating the amount of a deductible casualty loss are also defined by Tres. Reg. One method outlined in Tres. Reg. § 1.165-7(a)(2)(i) requires a competent appraisal be used to ascertain the fair market value of the property immediately before and immediately after the casualty. The second method allows the use of the cost of repairs to the damaged property as evidence of the amount of the casualty loss. *See* Tres. Reg. § 1.165-7(a)(2)(ii). If the cost of repairs method is used, the taxpayer must show that (a) the repairs are necessary to restore the property to is previous condition, (b) the cost is not excessive, (c) the repairs do not go beyond the damage, and (d) the value of the property after repairs does not exceed the value before the casualty. *See* Tres. Reg. § 1.165-7(a)(2)(ii).

In the present matter, to substantiate their casualty loss Petitioners provided a written statement describing their version of the events and their assessed value of the damaged property, and a flyer from a koi fish farm. Petitioners did not establish that the loss was a direct result of the casualty, the cost or other adjusted basis of the fish, the values before and after the casualty, and the amount of insurance or other compensation received or recoverable. Petitioners did contact the lawn maintenance company seeking damages, but did not file suit against them and claim to have received no compensation from either the lawn company or their homeowner's insurance.

Petitioners have not adequately substantiated the casualty loss claimed on their 2013 return, therefore, no deduction is allowed.

Petitioners' 2013 return included a Schedule C-Profit or Loss from Business. The business activity listed was [Redacted] , reporting $131 in gross receipts and $13,514 in expenses. The Bureau asked Petitioners for documentation to substantiate the business expenses, giving them a detailed list of the types of documentation needed. Petitioners responded, giving receipts, invoices, credit card statements, cancelled checks, handwritten notes, spreadsheet and billing statement. After review, some of the business expenses were adequately substantiated and allowed. Others were disallowed, and Petitioners did not object. However, Petitioners continue to object to the disallowance of certain office expenses, memberships and computer expenses.

I.R.C. § 162(a) states in part, that "[T]here shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." To qualify as a deduction under I.R.C. § 162(a) an item must (a) be paid or incurred during the taxable year, (b) be for carrying on any trade or business, (c) be an expense, (d) be a necessary expense, and (e) be an ordinary expense. A trade or business expense is "ordinary" if it is normal or customary within a particular trade, business or industry. An expense is "necessary" if it is appropriate and helpful for the development of the taxpayer's business.

In the present matter, the 2013 return showed [Redacted] profession as retired; however, he reported wages from a University and the principal business listed on his Schedule C was education. The Bureau reviewed all items shown on Petitioners' Schedule C. Some of the items disallowed by the Bureau, which Petitioners' objected to, included business expenses for two separate internet providers, credit reports, AAA membership, and services for OnStar and Sirius radio. Petitioners provided proof of payment for the majority of these expenses, but failed to

provide either the business purpose or the business use percentage. Without sufficient and complete substantiation of the expenses, no deduction is allowed.

CONCLUSION

For most of the deductions and expenses under review in this matter, Petitioners simply did not produce the required receipts and other documentation required for the deduction. Therefore, Petitioners must bear their misfortune and pay the additional tax associated with the disallowed deductions and the disallowed expenses.

The Notice dated January 23, 2018, and directed to [Redacted] , is hereby AFFIRMED by this decision.

YEAR	TAX	PENALTY	INTEREST	TOTAL
2013	$3,321	$166	$668	$4,155

Interest is calculated through June 14, 2019.

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

DATED this _____ day of _____ 2019.

IDAHO STATE TAX COMMISSION

_____
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2019, 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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