



numerous unsubstantiated deductions which are listed on the both the modified and the initial Notices issued to Petitioners regarding their Idaho individual income tax returns for taxable years 2015 through 2017. Audit had numerous communications via letters and telephone calls with Petitioners requesting information to substantiate their deductions and income claimed on their returns for taxable years 2015 through 2017. Audit, after reviewing information from Petitioners, issued a Notice. Petitioners protested the Notice and provided additional information. Audit accepted Petitioners' protest with the additional information. Audit adjusted the Notice allowing some deductions where Petitioners subsequently provided adequate support and issued Petitioners a modified Notice. Petitioners did not withdraw their initial protest. Audit then transferred the matter for administrative review.

The Commission sent Petitioners a letter outlining two methods for redetermining a protested Notice. Petitioners opted for an informal hearing where they maintained their opposition to the denial of their claimed deductions on the referenced returns. Petitioners provided some photographs in place of receipts or invoices which were not accepted as adequate documentation. The Commission decided the matter based upon all available information.

### **LAW AND ANALYSIS**

Idaho Code section 63-3002 adopts the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income. Internal Revenue Code section 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." However, deductions/expenses are a matter of legislative grace and only as

there is clear provision therefore can any particular deduction be allowed. *New Colonial Ice Co., Inc. v. Helvering*, 292 U.S. 435, 54 S.Ct. 788 (1934). The petitioner bears the burden of proving that he is entitled to the deduction. *Higgins v. C.I.R.*, T.C. Memo. 1984-330 (1984). The burden rests upon the taxpayer to disclose his receipts and claim his proper deductions. *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. *Niedring 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. *Burnet v. Houston*, 283 U.S. 223, 51 S.Ct. 413 (1931).

Petitioners did not provide adequate justification for deductions claimed on their Idaho individual income tax returns. Internal Revenue Regulation 1.274-5(T)(c)(1) states in part that the taxpayer must keep "adequate records" to justify the claimed business deductions. In *Reinke Est. v. Comr.*, 46 F.3d 760 (8<sup>th</sup> Cir. 1995), the court states that in cases where the taxpayer fails to present any evidence from which the court can make an estimate, the taxpayers' claimed deductions will not be upheld.

For evidence to be adequate, Petitioners must either provide primary or, in some cases, secondary evidence that they actually incurred the expenses associated with the claimed business deductions. Primary evidence is documentary proof created contemporaneously with the expense demonstrating the date, amount, and purpose of the expense. See *Boyd v. Comm'r*, 122 T.C. 305, 320 (2004). Secondary evidence is reconstructed evidence not created contemporaneously with the expense, such as

testimonial evidence. See *Id.* To be persuasive, secondary evidence must establish the same facts as primary evidence: the date, amount, and purpose of the expense. See *Id.* Critically, secondary evidence may only be presented instead of primary evidence when “the taxpayer establishes that the failure to produce adequate records is due to the loss of such records through circumstances beyond the taxpayer’s control.” 26 C.F.R. § 1.274-5T. Such circumstances include “destruction by fire, flood, earthquake, or other casualty.” *Id.*

Here Petitioners presented photographs as a substitute for actual receipts or invoices. The photographs, presented as secondary evidence in lieu of primary evidence, do not appropriately establish the date, amount, and purpose of the expense. Furthermore, Petitioners have not presented any justifications for relying upon secondary evidence instead of primary evidence. They have not shown a loss of primary records due to circumstances beyond their control. Petitioners have not provided evidence to justify the absence of adequate documentation for deductions claimed on their Idaho individual income tax return for taxable years 2015 through 2017.

Because Petitioners have not provided adequate documentation, Petitioners are not entitled to their previously disallowed claimed deductions. The Commission upholds the Notice, as modified by Audit.

## **CONCLUSION**

The Commission upheld the adjustments to Petitioners’ Idaho individual income tax returns for taxable years 2015 through 2017. On appeal, a deficiency determination issued by the Commission “is presumed to be correct and the burden is on the Petitioners to show that the Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*,

148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (*citing Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioners to provide adequate evidence to establish the amount asserted in the Notice is incorrect. Here, Petitioners did not provide adequate evidence.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2020, 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.

\_\_\_\_\_

\_\_\_\_\_

Copy To:

[REDACTED]

[REDACTED]