

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
[REDACTED],)	DOCKET NO. 1-713-047-552
Petitioner.)	DECISION
)	

[REDACTED] (Petitioner) protests the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated February 14, 2019. The NODD asserted liability for Idaho income tax, penalty, and interest in the total amounts of \$2,911 and \$16,733 for 2015 and 2016, respectively. Petitioner did not request a hearing and submitted only an amended return during this appeal.

For 2015, Petitioner filed a Form 43 (Idaho part-year & nonresident income tax return) indicating that she was a resident for 12 months during 2015. During the audit, the auditor determined that Petitioner had moved to Idaho in August of 2015. For 2016, Petitioner filed an Idaho Form 40 (Idaho individual income tax return).

On the 2015 income tax return filed by Petitioner, she reported none of the profit from her business as a book publisher as Idaho source income. Since the auditor determined that Petitioner moved to Idaho in August of 2015, he attributed a proportionate share of Petitioner’s income to Idaho. It appears that Petitioner has not opposed this adjustment.

Petitioner filed her Idaho income tax returns with a Schedule C (Profit or Loss From Business) stating that she was a book publisher. The auditor audited the business expenses claimed by Petitioner. After his review of documentation submitted by Petitioner, he issued the NODD.

With the protest filed, Petitioner submitted additional documentation which the auditor reflected in a modified report, slightly reducing the amount due. Petitioner filed an amended 2016

Idaho income tax return reducing the gross income she had previously reported from \$435,050 to \$99,367 during this appeal. The amended return requested a refund in the amount of \$3,488 plus applicable interest. Documentation in the file indicates that Petitioner had received substantially more income than was shown in her amended return. Her sales from credit and debit card sales alone exceeded \$300,000. Accordingly, the Commission did not accept this amended return.

The Commission requested copies of substantially all of Petitioner's financial records for 2016 that the gross income of Petitioner's business might be properly determined. Petitioner did not supply this documentation. Therefore, the Commission decides this matter based upon the information in the file at this time.

The burden of proof in a refund case is squarely upon the taxpayer. The Eighth Circuit Court of Appeals stated, in part:

Appellant has a distinctly different and greater burden in a tax refund case, since he has assumed the additional responsibility of proving what the correct tax should be so that the exact amount of refund can be determined. *Helvering v. Taylor*, 293 U.S. 507 at 514-15 (1935); *United States v. Pfister*, 205 F.2d 538 (8 Cir. 1953). A tax refund suit is similar to an action for "money had and received" and the burden is always on the taxpayer to show the exact amount the government is wrongfully holding.

Ehlers v. Vinal, 382 F.2d 58, 65-66. (8th Cir. 1967).

In this matter, Petitioner's records leave much to be desired. The Commission has not been presented journals or ledgers to support Petitioner's positions. Self-serving documents have been prepared and presented without proper supporting documents. Petitioner has not shown how the numbers appearing on her returns have been compiled. Receipts for travel have been submitted without the required information pursuant to Treasury Regulation section 1.274-5. Many questionable documents preclude the systematic computation of Petitioner's Idaho taxable income and the related tax. Accordingly, the Commission finds that Petitioner has failed to carry her

burden of proof that she is entitled to the refund claimed by the filing of her amended 2016 Idaho income tax return.

Deductions are a matter of legislative grace and the taxpayer must prove that he or she is entitled to each deduction and the amount thereof. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934). Taxpayers must substantiate each claimed deduction by maintaining sufficient records to allow the correct determination of the taxpayer's tax liability. *Higbee v. Commissioner*, 116 T.C. 438, 440 (2001). A taxpayer's general statement that their expenses were incurred in pursuit of their business is not sufficient to establish that the expenses had a reasonably direct relationship to the taxpayer's trade or business. *Ferrer v. Commissioner*, 50 T.C. 650, 177, 185 (1968), *aff'd per curiam*, 409 F.2d 1359 (2d Cir. 1969); *Near v. Commissioner*, T.C. Memo 2020-10.

One of the deductions claimed by Petitioner and denied by the auditor was characterized on Petitioner's 2015 income tax return as "SECTION 465(d) CARRYOVER." In addressing this issue, the auditor found that it was a net operating loss incurred in 2014, a year for which Petitioner did not file an Idaho income tax return, since she was apparently not a resident of Idaho for any portion of the year. A net operating loss incurred in deriving (federal) taxable income must be added back in determining Idaho taxable income. Idaho code section 63-3022(b). Since Petitioner was a nonresident at the time, she incurred the net operating loss, the loss is not deductible in determining Idaho taxable income.

A court may estimate the amount of a deductible expense if it is established that a qualifying expense is incurred, but the taxpayer is unable to substantiate the exact amount. *See Cohan v. Commissioner*, 39 F.2d 540, 543-544 (2d Cir.1930); *Vanicek v. Commissioner*, 85 T.C. 731, 742-743 (1985). Some deductions specified in Internal Revenue Code (IRC) section 274 are

subject to strict substantiation rules. This includes travel, meals, and entertainment. To meet these rules, a taxpayer must establish by adequate records or by sufficient evidence corroborating the taxpayer's own statement (1) the amount, (2) the time and place of the travel or use, and (3) the business purpose. IRC § 274. To establish by adequate records, the taxpayer must provide (1) an account book, a log, or similar record and (2) documentary evidence which together are adequate to establish each element of an expenditure. Temporary Income Tax Regulation § 1.274-5T(c)(2)(i). Receipts were presented for various flights and other travel. Business purpose was not established for any of the travel or entertainment expenditures. Accordingly, Petitioner is not allowed a deduction for these expenditures.

A portion of the expense claimed for both 2015 and 2016 was for the use of Petitioner's automobile. Automobiles are considered to be "listed property." Internal Revenue Code § 280F(d)(4). There are specific recordkeeping requirements for the use of "listed property." The U. S. Tax Court stated, in part:

Section 274(d) provides that no deduction or credit shall be allowed for, inter alia, any traveling expense or entertainment expense, or any expense related to listed property as defined in section 280F(d)(4), unless the taxpayer substantiates through adequate records or sufficient evidence corroborating his or her own statement the amount of the expense, the time and place of the expense, and the business purpose of the expense. A taxpayer may satisfy the "adequate records" test if he or she maintains an account book, a diary, a log, a statement of expense, trip sheets, or similar records prepared at or near the time of incurring the expenditure and documentary evidence of certain expenditures, such as receipts or paid bills, that show each element of each expenditure or use. See sec. 1.274-5T(c)(2), Temporary Income Tax Regs., 50 Fed. Reg. 46017 (Nov. 6, 1985). In the absence of adequate records to establish each element of an expense under section 274(d), a taxpayer may alternatively establish each element: "(A) By his own statement, whether written or oral, containing specific information in detail as to such element; and (B) By other corroborative evidence sufficient to establish such element." Sec. 1.274-5T(c)(3)(i), Temporary Income Tax Regs., 50 Fed. Reg. 46020 (Nov. 6, 1985). The taxpayer is not allowed a deduction or credit on the basis of approximations or unsupported testimony. *Id.* para. (a), 50 Fed. Reg. 46014.

Ghadiri-Asli v. Commissioner, T.C. Memo 2019-142.

Petitioner did not present adequate documentation for any use of her automobile. Accordingly, this deduction is not allowable.

For 2016, Petitioner claimed employee business expenses in the amount of \$22,540. However, it appears that Petitioner was not an employee during any part of 2016. Petitioner did not submit documentation to verify that she was entitled to these deductions. Further, it appears that if such deductions were allowable, they should be claimed as business expenses rather than as employee business expenses.

Petitioner claimed a deduction for business use of a portion of her residence for both 2015 and 2016. She was asked by the auditor to identify the portion of her residence that was used regularly and exclusively for her business. Petitioner did not provide this information. In addressing a claimed home office deduction, the U. S. Tax Court addressed the matter, in part, as follows:

Petitioner and Mr. Velinsky also deducted \$4,800 in rent for use by Mr. Velinsky of a home office. Section 280A(a) provides the general rule that no deduction is allowed for the business use of a dwelling unit which is used by the taxpayer as a residence. Section 280A(c)(1)(A) provides, however, that the general rule will not apply as long as a portion of a taxpayer's residence is exclusively used on a regular basis as the principal place of business for any trade or business of the taxpayer. See *Commissioner v. Soliman*, 506 U.S. 168 (1993).

Under the facts of this case, Mr. Velinsky's home office was not used exclusively for business. Petitioner testified that the home office was not used exclusively for Mr. Velinsky's business, and that she and Mr. Velinsky used the home office for other purposes. She testified that she used the home office to study and to read. It is well settled that a home office must be exclusively used for business in order for the expenses connected with its use to be deductible. Therefore, we sustain respondent's disallowance of the claimed deduction for home office expenses.

Velinsky v. Commissioner, T.C. Memo 1996-180.

Petitioner has the burden of proof with regard to the business use of her home. She has not submitted the requested information. Therefore, the Commission finds that she has

failed to carry her burden with regard to this deduction and, therefore, is not entitled to a deduction for the business use of her home for either 2015 or 2016.

A good deal of documentation was requested from Petitioner which has not been presented. In addressing such a situation, the U. S. Tax Court stated, in part:

Petitioner has not established the factual allegations in its petition which are material and essential. Respondent was under no obligation to introduce evidence to rebut a fact alleged but not proven by petitioner. *Short v. Philadelphia B. & W. R. Co.*, 23 Del. 108; 76 Atl. 363. The rule is well established that the failure of a party to introduce evidence within his possession and which, if true, would be favorable to him, gives rise to the presumption that if produced it would be unfavorable. *Walz v. Fidelity-Phoenix Fire Ins. Co. of New York*, 10 Fed.(2d) 22; certiorari denied, 271 U.S. 665; *Equipment Acceptance Corporation v. Arwood Can Mfg. Co.*, 117 Fed. (2d) 442; *Hann v. Venetian Blind Corporation*, 111 Fed.(2d) 455; *Bomeisler v. Jacobson & Sons Trust*, 118 Fed.(2d) 261; *Sears, Roebuck & Co. v. Peterson*, 76 Fed.(2d) 243. This is especially true where, as here, the party failing to produce the evidence has the burden of proof or the other party to the proceeding has established a prima facie case. *Moore v. Giffen*, 110 Cal.A. 659; 294 Pac. 730; *Indianapolis & Cincinnati Traction Co. v. Montfort*, 80 Ind.A. 639; 139 N.E. 677.

Wichita Terminal Elevator Co. v. Commissioner, 6 T.C. 1158, 1165, aff'd, 162 F.2d 513 (10th Cir.1947).

THEREFORE, the Notice of Deficiency Determination dated February 14, 2019, is hereby MODIFIED, and as so modified, is APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest calculated to July 31, 2020:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2015	\$ 1,845	\$ 92	\$ 316	\$ 2,253
2016	14,365	718	1,932	<u>17,015</u>
				\$19,268

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

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

DATED this _____ day of _____ 2020.

IDAHO STATE TAX COMMISSION

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.

