BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of [redacted], Petitioner.	)	DOCKET NO. 1-469-589-504
	)	DECISION

[redacted] (Petitioner) protests the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated March 12, 2019. The NODD asserted liability for Idaho income tax, penalty, and interest in the total amounts of $5,259 and $2,348 for 2015 and 2016, respectively.

Petitioner was an employee during each of the years here at issue. He also reported a business by the name of [redacted] ([redacted]) with the reported principal business of "heavy equipment operations." For 2015, this activity reported gross income of $4,400 and total expenses of $47,168. For 2016, the results of this activity were reported as $7,800 of gross income and $30,355 of expenses.

Petitioner claimed employee business expenses for 2015 in the amount of $17,355 and for 2016 in the amount of $3,800. Petitioner claimed an Idaho deduction in the amount of $2,092 for health premiums paid in 2016.

The auditor made the following adjustments:

1. denied most of the claimed expenses for [redacted]
2. denied all of Petitioner's claimed employee business expenses
3. allowed an additional deduction for bonus depreciation, and
4. denied a deduction for payment of health insurance premiums.

Petitioner addressed only issues in item one above. Accordingly, the Commission will address only those issues in this decision.

The auditor examined the income and expenses of [redacted]. The auditor found that the only deductions that were allowable were depreciation deductions for a Bobcat 763 beginning in 2012, the year of purchase.

The letter of protest filed on behalf of Petitioner raised several issues with regard to disallowed deductions. The letter contends that the Commission has valid receipts for the following items which were claimed for deduction pursuant to Internal Revenue Code (IRC) section 179 which were disallowed by the auditor:

- snow blade for $2,700
- subsoiler for $11,300
- Bobcat loader for $14,522
- Big Tex trailer for $3,750
- sheepsfoot roller for $3,200
- smoothfoot roller for $2,500
- hay forks for $1,500

Petitioner elected to deduct the Bobcat loader, the Big Tex trailer, the snow blade and the subsoiler pursuant to IRC section 179 for 2015. He elected to deduct the sheepsfoot roller, the smoothfoot roller, and the hay forks pursuant to IRC section 179 for 2016.

There were problems with the documentation submitted. The snow blade acquisition was claimed as a deduction pursuant to IRC section 179 for *2015*. The receipt submitted for the snow blade is not one issued by a known vendor. It is a handwritten invoice signed by (as best can be determined) only by Petitioner. The only portion of the date filled out is the year – *2016*. Accordingly, we have only Petitioner's self-serving testimony as to this acquisition. The amount shown on this document appears to be $220. Petitioner also cited no authority for his contention that a 2016 purchase could be claimed as a 2015 deduction.

The document submitted by Petitioner for the subsoiler is simply written by Petitioner on a piece of notebook paper and states that he bought the subsoiler for $11,300 at a farm auction in

Dickinson, N.D. The notebook paper bears no date. Accordingly, for this acquisition also, we have only Petitioner's self-serving statement and we have nothing to establish the year of the alleged purchase.

Petitioner submitted an order from Sport Land Trailer Sales for the Big Tex trailer dated October 25, 2012. The sales price shown on the invoice is $3,570, not the $3,750 asserted by Petitioner. This trailer was purchased by Petitioner on December 3, 2012. Accordingly, the Commission finds that the trailer is subject to depreciation beginning in 2012.

The receipt for the sheepsfoot roller and the smoothfoot roller is on an invoice number 0124652 which bears no date. It appears to have been signed by Petitioner. Petitioner has submitted invoice numbers 0124651, 0124653, and 0124656 for billings to clients for work he had done for them. Therefore, it is clear that the invoice is Petitioner's invoice, not one issued by a vendor. Further, the invoice lists no date for the alleged acquisition. Therefore, again, we have only Petitioner's self-serving statement.

The auditor allowed depreciation with regard to Petitioner's Bobcat loader beginning in 2012, the year of purchase. Petitioner cites *Consumers Power Co. v. Commissioner*, 89 T.C. 710 (1987) and *Oglethorpe Power Corporation, v. Commissioner*, T.C. Memo 1990-505 as authority for the proposition that depreciation shouldn't start until three years later in 2015 when the asset was, allegedly, *placed in service*. In addressing the definition of "placed in service" from these two Tax Court decisions, the Fifth Circuit Court of Appeals stated, in part:

> 3. *The Meaning of "Placed in Service"*
> The legislative history related to the investment credit indicates that, contrary to the Tax Court's interpretation of the "placed in service" requirement, Congress did not intend to impose the stringent requirement of regular achievement of anticipated production levels when it created the credit. In addition, the Commissioner's own regulations interpreting the relevant statutory provisions support our interpretation of the phrase "placed in service." These regulations do not require that property entitled to depreciation and credits must first meet expected output goals before it

[redacted]

> may be deemed to have been placed in service [footnote omitted]; to the contrary, these regulations reveal that defectively or disappointingly performing property may still be considered to have been placed in service. For these reasons, we reject the Tax Court's narrow analyses of the "placed in service" determination in *Oglethorpe* and *Consumers.*

Sealy Power v. Commissioner, 46 F.3d 382, 393 (5th Cir. 1995).

Treasury Regulation section 1.167(a)-11(e)(1) provides the following definition of "placed in service:"

> In general. The term "first placed in service" refers to the time the property is first placed in service by the taxpayer, not to the first time the property is placed in service. Property is first placed in service when first placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

The Commission finds that, given this definition that both the Bobcat loader and the Big Tex trailer purchased by Petitioner in 2012 should be depreciated beginning in 2012.

For 2016, Petitioner states that the auditor incorrectly disallowed the following:

Les Schwab Tires	$ 1,003.10
Salmon River Auto Supply	242.74
Al's Cycle Inc.	154.09
Cycles Sleds & Saws	795.00
Bobcat of Big Sky	3,408.61
Les Schwab Tires	608.62
Carquest Auto Parts	120.27
Salmon River Auto Supply	242.74
Bobcat of Big Sky	244.12
Carquest Auto Parts	70.68
Carquest Auto Parts	53.96
Huston Irrigation	145.22
Bird's Tire & Auto	40.00
O'Reilly Auto Parts	54.96
Carquest Auto Parts	77.76

The first receipt from Les Schwab Tires was for tires and replacement wheels for a trailer. Petitioner had at least two trailers licensed at that time. One, the one used for the business, was new in 2012. Another trailer purchased by Petitioner was a 1995 model. Since the receipt didn't

[redacted]

identify which trailer the tires and wheels were for, it was not possible for the auditor to determine whether this was an allowable deduction. No further clarification has been submitted. Accordingly, the Commission finds that this item is not deductible. The second receipt from Les Schwab Tires is for a payment on account and is, therefore, not deductible.

Two claimed expenditures were to Salmon River Auto Supply, each in the amount of $242.74, one dated April 30, 2016, the other from Petitioner's bank statement when the transaction cleared on May 2, 2016. A receipt was submitted for the first. However, no description of the item purchased is shown. No receipt was found in support of a second claimed expenditure to Salmon River Auto Supply. The second was from Petitioner's bank statement showing that the expenditure was charged to Petitioner's bank account on May 2, 2016. The Commission finds that neither of these claimed expenditures is adequately documented to be allowed as a deduction.

A receipt was submitted for the expenditure to Al's Cycle Inc. showing that the item purchased was a kickstarter arm. Petitioner has not established whether this was for some of his work machinery or for one of his motorcycles or ATVs.

The next receipt is from Cycles Sleds & Saws L.L.C. and shows the amount of the expenditure, but a hand-written note covering the description of what was purchased characterized the expenditure as "tools." The hand-written note is simply the self-serving testimony of Petitioner.

The next item is an expenditure to Bobcat of Big Sky in the amount of $3,408.61. Petitioner submitted an invoice with sufficient information to establish that it was for maintenance for his Bobcat loader. The Commission finds that this amount is sufficiently documented, therefore deductible.

Petitioner claimed deductions for three expenditures to Carquest Auto Parts. Documentation for these expenditures are notes on Petitioner's bank statements. Two of the notes are "maintenance." The third such notation is "filters." No invoice with description of what was purchased was found. This is also the nature of the documentation (or lack thereof) for the expenditures to Huston Irrigation, Bird's Tire & Auto, and O'Reilly Auto Parts. Again, all that was presented was self-serving testimony.

Self-serving statements generally are not considered adequate documentation to establish one's basis in property. In addressing such a matter, the U. S. Tax Court stated, in part:

> To qualify for a straight-line depreciation deduction, petitioner has the burden of proving (a) her basis in the property, (b) its useful life, and (c) salvage value. *Vogue Silk Hosiery Co.*, 27 B.T.A. 131, 134 (1932). This, in our estimation, she has failed to do.
>
> In support of the cost basis claimed for lot 8, petitioner has introduced a ledger sheet and no more. Without a proper foundation establishing when the ledger entries were made and to whom the amounts shown therein were paid, we find ourselves hard pressed to accept this self-serving evidence in lieu of more persuasive evidence such as receipts, invoices, canceled checks or construction contracts.
>
> The same rationale applies to the cost basis claimed for lot 9. Moreover, in light of Anna's assertion that she originally purchased lot 9 from her mother for $63,000, her (Anna's) unexplained failure to call her mother as a witness suggests that had her mother testified, such testimony would have been harmful to the position taken by Anna. Cf. *Wichita Terminal Elevator Co.*, 6 T.C. 1158 (1946), affd. 162 F.2d 513 (C.A. 10, 1947), and *Max Cohen*, 9 T.C. 1156 (1947), affd.176 F.2d 394 (C.A. 10, 1949) . Nor did petitioner offer any documentation, such as a deed or bill of sale, to support her claim. Accordingly, we hold for respondent.

Petrossi v. Commissioner, TC. Memo 1970-45.

In a later decision, the U. S. Tax Court stated, in part:

> With respect to the other claimed deductions, the only documents presented to substantiate petitioner's claimed business expenses were credit card summaries, charge slips showing various purchases, and a crude ledger for 1990, which appears to have been prepared from canceled checks. These credit card summaries contain personal expenses, [footnote omitted] what appears to be military memorabilia-related expenses, and what purports to be business expenses. Other than the credit card summaries and petitioner's less then credible, vague, and self-serving

[redacted]

> testimony, there is no corroborative evidence of the business purpose of these expenses. As we have stated many times before, this Court is not bound to accept a taxpayer's self-serving, unverified, and undocumented testimony. *Tokarski v. Commissioner* 87 T.C. 74, 77 (1986). While there are undoubtedly business expenses contained within the credit card summaries, we cannot in most instances determine which expenses relate to the military memorabilia activity, [footnote omitted] are personal expenses, or are truly business expenses. Except as noted above, petitioner has produced insufficient evidence to persuade us that respondent's disallowance of the deductions reported in Schedules C of the returns is in error. Consequently, with the exceptions noted above, we uphold respondent's disallowance of deductions.

Shea v. Commissioner, 112 T.C. 183, 188-189 (2000).

Petitioner could have submitted testimony from those from whom he purchased the equipment. He has failed to do so. The Commission finds unsupported self-serving evidence to be inadequate.

Petitioner also refers to *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930) for the proposition that the Commission should allow the alleged purchase of the assets to be deducted pursuant to IRC section 179. We have only Petitioner's self-serving testimony as to the acquisition of these assets. Therefore, the Commission has inadequate basis for the estimation of the costs incurred.

> The taxpayer bears the burden of establishing entitlement to claimed deductions. *INDOPCO, Inc. v. Commissioner*, 503 U.S. at 84; *Welch v. Helvering*, 290 U.S. at 115; see Rule 142(a). Taxpayers are required to maintain sufficient books and records to substantiate their claimed deductions. Sec. 6001; sec. 1.6001-1(a), Income Tax Regs. In certain circumstances, if a taxpayer establishes that a deductible expense has been paid or incurred but is unable to substantiate the precise amount, we may estimate the amount of the deductible expense, bearing heavily against the taxpayer responsible for the inexactitude. *Cohan v. Commissioner*, 39 F.2d 540, 543-544 (2d Cir. 1930). We cannot estimate deductible expenses, however, unless the taxpayer presents evidence providing a sufficient basis for making an estimate. *Vanicek v. Commissioner*, 85 T.C. 731, 742-743 (1985). Without such a basis, any allowance would amount to unguided largesse. *Williams v. United States*, 245 F.2d 559, 560 (5th Cir. 1957).

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

[redacted]

However, Petitioner has generated income for [redacted] and must have incurred certain expenses in the production of the income. Pursuant to *Cohan, supra,* the Commission finds that Petitioner should be allowed additional business expenses in the amounts of $500 and $1,000 for 2015 and 2016, respectively.

The auditor also explored whether IRC section 183 (Activities not engaged in for profit) applied. Petitioner did not file Idaho income tax returns for 2013 or 2014. The results reported for the years for which income tax returns were filed up through the years here at issue are as follows:

	INCOME	EXPENSES	NET INCOME/(LOSS)
2012	$2,750	$65,046	($62,296)
2015	4,400	47,168	($42,768)
2016	7,800	30,355	(22,555)
	$14,950	$142,569	($127,619)

For 2016, Petitioner reported $7,800 of income for this activity. He claimed a deduction for $7,000 for "FUEL FOR EQUIPMENT." With fuel priced at about $2.50 per gallon, that equals about 3,120 gallons. The Bobcat should burn about 2 gallons per hour; therefore 3120 gallons should yield about 1,560 hours of work. With $7,800 income reported, that is about $5.00 per hour charged for the machine and the operator. It appears that the machine alone would cost at least $100 per hour to rent. This strains one's sense of credibility. The Commission finds that IRC section 183 might well be applicable to this matter.

The Commission approves the auditor's determination with the exception of Petitioner being allowed an additional $3,408.61 for maintenance for 2016, depreciation allowed for Petitioner's Big Tex trailer beginning in 2012, and additional business expenses in the amounts of $500 and $1,000 for 2015 and 2016, respectively.

[redacted]

THEREFORE, the Notice of Deficiency Determination dated March 12, 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 amount of income tax, penalty, and interest (computed to August 31, 2020):

YEAR	TAX	PENALTY	INTEREST	TOTAL
2015	$ 4,432	$ 222	$ 775	$ 5,429
2016	1,722	86	237	2,045
				$ 7,474

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

[redacted]

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:

Receipt No.

[redacted]

_____

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[redacted]