

BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



FILED
GA. TAX TRIBUNAL

JUN 11 2014

LINDA DODGEN & WILLIAM
DODGEN,

Petitioners,

v.

DOUGLAS J. MACGINNITIE,
Commissioner, Georgia Department of
Revenue,

Respondent.

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Yvonne Bouras
Yvonne Bouras
Tax Tribunal Administrator

TAX TRIBUNAL DOCKET
NO.: TAX-IIT-1344716

DECISION

2014-9 Ga. Tax Tribunal, June 11, 2014

This matter was duly noticed and called for trial on April 18, 2014. Upon consideration of the testimony and evidence presented, and having given Petitioners the opportunity to present additional evidence, which Petitioners have failed to do, this Tribunal finds as follows:

1.

Petitioners are married and have been Georgia residents at all relevant times. During 2011, which is the year in issue, Petitioner William Dodgen was employed by the Henry County Board of Commissioners and Petitioner Linda Dodgen was employed by the Georgia Farm Bureau. Additionally, Petitioner Linda Dodgen sold insurance as an independent insurance agent. Petitioners filed their Georgia income tax return for 2011 as married filing jointly.

2.

The substantial bulk of the issues in this case arise from deductions claimed by Ms. Dodgen with respect to her activities as an insurance agent on the Schedule C that she filed with respect to those activities.

3.

To arrive at a Georgia taxpayer's Georgia taxable net income, it is necessary to first compute the taxpayer's federal adjusted gross income. This is because a taxpayer's Georgia taxable net income is computed by beginning with the taxpayer's federal adjusted gross income and then adjusting this number as required by O.C.G.A. § 48-7-27.

4.

On Petitioners' 2011 federal income tax return, Petitioners claimed a loss on Schedule C with respect to Ms. Dodgen's business as an insurance agent in the amount of \$45,873. This loss reduced the Petitioners' federal adjusted gross income as reported on their return to \$46,562.

5.

Respondent selected Petitioners' return for audit. After review on audit, Respondent disallowed in its entirety all of the business expenses claimed on the Schedule C to Petitioners' 2011 income tax return.

6.

As a result of this disallowance and adjustment to Petitioners' return, Respondent issued an Official Assessment and Demand for Payment No. L0763053408 dated May 22, 2013. This assessment reflects additional Georgia income tax due from Petitioners in the amount of \$3,347.00, plus penalty and interest. As of the date of the trial in this matter, the liability under the assessment for tax, penalty, and interest totaled \$4,658.25.

7.

Since the Official Assessment was issued, Respondent has made additional adjustments to Petitioners' tax return. Respondent has not sought to increase the assessment to reflect these additional adjustments, however, and at trial sought only the amount owed with respect to the original assessment plus interest.

8.

The issues in this case generally fall into two broad categories. The first is that many of the expenses claimed on the Schedule C with respect to Ms. Dodgen's business as an insurance

agent are related to her employment by Georgia Farm Bureau rather than her business as an independent insurance agent. As such, these expenses are only deductible as unreimbursed employee business expenses, which are reported on Petitioners' Schedule A. Unreimbursed employee business expenses reported on Schedule A are only deductible to the extent they exceed 2% of the taxpayers' adjusted gross income. IRC § 67(a). The second recurrent set of issues arises because Petitioners have not been able to produce documentation which satisfies the substantiation requirements with respect to claimed deductions.

9.

Based upon the evidence at trial, in order to compute Petitioners' Georgia taxable net income correctly, the computations reflected on Petitioners' 2011 federal income tax return must be adjusted in the following ways:

- a. Petitioners reported \$5,280 in unemployment compensation on line 19 of their 2011 tax return. Petitioners actually received \$6,600 in unemployment compensation for 2011.
- b. Petitioners claimed a total business loss of \$45,873 on line 12 of their 2011 tax return. The Schedule C presented to the Tribunal in their Petition and at trial reflects a business loss of \$32,436, however. There was some evidence at trial that the Internal Revenue Service may have received two different Schedules C with respect to Petitioners' 2011 tax return. Perhaps this larger loss of \$45,873 that appears on the Petitioners' 2011 federal income tax may have been reflected on the second Schedule C. However, no evidence was produced at trial with respect to this second Schedule C, or this larger loss. Further, Petitioners deny any knowledge of the existence of a second Schedule C. In any event, any additional business loss over and above the \$32,436 reflected on the Schedule C that was before the Tribunal at trial is unsubstantiated and, therefore, disallowed.

- c. On the Schedule C presented to the Tribunal, Petitioners claimed \$1,849 in advertising expenses. The testimony revealed that such amount included \$57.77 for promotional calendars. Petitioners have substantiated the amount paid for the calendars, plus \$50 in advertising expenses, and have shown that such expenses were related to Petitioner Linda Dodgen's employment. The entirety of advertising expenses listed on Schedule C is therefore disallowed, and \$107.77 is moved to Schedule A as unreimbursed employee expenses.
- d. On the Schedule C presented to the Tribunal, Petitioners claimed \$14,924 in car and truck expenses. To substantiate such amount, Petitioners presented a handwritten calendar. On various days of this calendar, Petitioners noted a client name and put a mileage amount in parenthesis. The calendar does not designate the beginning or ending location of any trip, does not separate out commuting mileage, and fails to distinguish between mileage related to Petitioners' employment and mileage related to Petitioners' business. Petitioners have thus failed to substantiate their car and truck expenses adequately as required by IRC § 162(a) and the regulations under this section. Accordingly, the entirety of such car and truck expenses must be disallowed. See Westerman v. Comm'r, T.C. Memo 2011-204 (2011).
- e. On the Schedule C presented to the Tribunal, Petitioners claimed \$9,696 in expenses for insurance other than health. The testimony established that most of this expense is with respect to personal life insurance. The only business-related insurance expense identified was some \$973.53 paid as premiums for Errors and Omissions Insurance. Maintaining such insurance is necessary for Petitioner Linda Dodgen's employment. The entirety of such expenses is therefore disallowed on Schedule C, and \$973.53 attributable to the Errors and Omissions insurance is moved to Schedule A as an unreimbursed employee expense.

- f. On the Schedule C presented to the Tribunal, Petitioners claimed \$1,374 in interest expense. The evidence showed that this interest is related to a personal camper. The entirety of such interest is therefore disallowed as non-deductible personal interest.
- g. On the Schedule C presented to the Tribunal, Petitioners claimed \$565 in legal and professional services. Petitioners failed to provide any substantiation for this amount, and it is therefore disallowed in its entirety.
- h. On the Schedule C presented to the Tribunal, Petitioners claimed \$4,368 in office expenses. Petitioners have substantiated \$261.59 of these expenses as amounts related to stamps and a tailgate toss. These latter amounts are related to Linda Dodgen's employment, however. The entirety of such office expenses are therefore disallowed on Schedule C, and \$261.59 is moved to Schedule A as an unreimbursed employee expenses.
- i. On the Schedule C presented to the Tribunal, Petitioners claimed \$225 in taxes and licenses. This amount included \$180.50 in ad valorem taxes on Petitioners' private vehicles, and an additional \$25 for Petitioner Linda Dodgen's insurance license. The insurance license is necessary for Petitioner Linda Dodgen's employment. The entirety of such expense is therefore disallowed on Schedule C, and the \$180.50 in ad valorem taxes is moved to Schedule A as personal property taxes. The \$50 license fee is moved to Schedule A as an unreimbursed employee expense.
- j. On the Schedule C presented to the Tribunal, Petitioners claimed \$1,894 in travel and \$567 in meals and entertainment expenses. Petitioners have supplied some receipts, but provided no evidence regarding the circumstances of such expenditures. Petitioners have thus failed to meet the strict substantiation requirements for travel, meals, and entertainment, and such expenses are

disallowed in their entirety. IRC § 274. See Westerman v. Comm'r, T.C. Memo 2011-204 (2011).

- k. On the Schedule C presented to the Tribunal, Petitioners claimed \$6,512 in expenses for utilities. Such amounts constitute the entirety of Petitioners' cell phone, electric, and gas bills for their home. Although Petitioners have a work area in their home, the testimony showed that such area is not used exclusively for business and clients are only rarely met there. Further, Petitioner Linda Dodgen has a regular office outside her home. Finally, Petitioners' 2011 tax return did not include Form 8829 *Expenses for Business Use of Your Home* where such home office expenses are properly reported. Petitioners have failed to substantiate what portion, if any, of such expenses are related to Petitioner Linda Dodgen's business and, therefore, such expenses are non-deductible personal expenses and are disallowed in their entirety.
- l. On the Schedule C presented to the Tribunal, Petitioners claimed \$1,134 in real estate taxes related to their home. Such amount was already claimed on Schedule A. This Schedule C deduction is therefore disallowed in its entirety.
- m. The foregoing adjustments to Petitioners' 2011 tax return result in an increase in federal adjusted gross income from \$46,562 as reported to federal adjusted gross income for 2011 as adjusted of \$103,627. Because the \$6,247 in medical expense claimed on Petitioners' Schedule A is less than 7.5% of Petitioners' federal adjusted gross income, the medical expenses must be disallowed in their entirety.
- n. Petitioners have claimed \$1,540 in mortgage interest premiums on Schedule A. Such amounts are not reflected on Petitioners' Form 1098, and are not otherwise substantiated. Such amount is therefore disallowed.

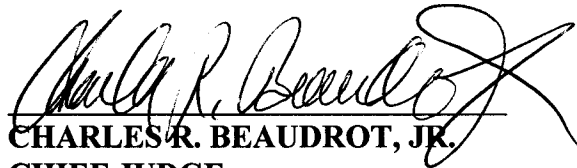
10.

Giving effect to all of the foregoing adjustments to Petitioners' 2011 tax returns, the Petitioners' total Georgia income tax liability is \$4,865. This is more than the \$4,658.25 now owed on the Official Assessment which Respondent is seeking.

11.

Because Respondent is not seeking to increase the amount of Petitioners' assessment, the Official Assessment and Demand for Payment No. L0763053408 is upheld in its entirety and judgment is rendered in favor of Respondent.

SO ORDERED, this 17th day of June, 2014.


CHARLES R. BEAUDROT, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL

LINDA DODGEN & WILLIAM DODGEN,

PRO SE PETITIONERS

SAMUEL S. OLENS, Attorney General, W. WRIGHT BANKS, JR., Deputy Attorney General, WARREN R. CALVERT, Senior Assistant Attorney General, FRANCES C. MULDERIG, Senior Assistant Attorney General

ATTORNEYS FOR RESPONDENT, DOUGLAS J. MACGINNITIE, Commissioner, Georgia Department of Revenue