IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Income Tax

CLEVELAND D. MCCORD, JR.,   )
)
            Plaintiff,   )   No. 000626B
)
        v.   )
)
DEPARTMENT OF REVENUE,   )
STATE OF OREGON,   )
)
            Defendant.   )   **DECISION**

A trial was held on October 5, 2000. Cleveland D. McCord, Jr. participated on his own behalf. Larry Boyd represented the defendant.

At issue are assessments made for the tax years 1994, 1997 and 1998. In a Journal Entry filed June 30, 2000, the court determined that the appeal was too late for the 1994 and 1997 tax years. The appeal is dismissed as to those two years.

The trial and the following discussion concern only the 1998 tax year.

STATEMENT OF FACTS

Plaintiff claims he was in a home-based business as an independent distributor during the 1998 tax year. He was involved with long distance phone services and some referral work for a tax preparer.

Defendant's auditor reviewed plaintiff's records. Defendant's representative determined there was no real business purpose and no substantiation. He disallowed Schedule C business losses in the amount of $17,023 and asserted a tax due of $2,110.

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At trial plaintiff offered some receipts. However, some were in another person's

name. Detail was lacking. For instance, there were numerous items for food purchased at Safeway; no relation to a business purpose was shown. Most of the items appeared to be related to personal living costs.

For 1998, plaintiff claimed no income from sales. He reported no sales and no gross income. This is inconsistent with his stance of having a business and profit motive during this and earlier time periods. His federal tax return listed "bad debts from sales or services" at $7,000. The return also deducted $1,777 for "credit card interest on business purchases." No supporting details were offered.

COURT'S ANALYSIS

Plaintiff did offer some receipts for 1998 charitable donations to Goodwill. Defendant recommended at trial that the 1998 tax be reduced by $50 for this category. The court concurs.

The income tax laws allow as a deduction from gross income all "ordinary and necessary" business expenses. *IRC § 162.* According to *IRC § 274*, a taxpayer must substantiate expenditures by adequate records or other corroborating evidence. There must be substantiation of each element of an expense, including the amount, the time and place, the business purpose and the business relationship. It is incomplete where there was no record to show when client meetings were held or what was discussed.

Where the evidence is inconclusive or unpersuasive, the taxpayer will have failed to meet his burden of proof. *Reed v. Dept. of Rev., 310 Or 260, 798 P2d 235 (1990).*

As to the other amounts, plaintiff has not shown any direct correlation between the amounts spent and a business purpose. There must be something more, such as annotations, log books, or notes made at the time to demonstrate more than the fact that

food was eaten or a room was rented.

ORS 305.427 applies to the burden of proof in such proceedings. It states, in

material part:

"* * * a preponderance of the evidence shall suffice to sustain the burden of
proof. The burden of proof shall fall upon the party seeking affirmative relief *
* *."

It is clear that plaintiff has not proven entitlement to the relief he has requested.

CONCLUSION

IT IS THE DECISION OF THE COURT that the 1998 tax due shall be reduced from

$1,738 to $1,688, with penalty and interest adjusted accordingly.

IT IS FURTHER DECIDED that the appeal is dismissed as to tax years 1994 and

1997.

Dated this _____ day of November, 2000.

_____
JEFF MATTSON
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR
DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST.,
SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS
AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND
CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE MATTSON ON NOVEMBER
22, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 22, 2000.**