IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

H. WAYNE GUINN and SUSAN J. GUINN,	)	
	)	
Plaintiffs,	)	TC-MD 040472D
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	**DECISION and JUDGMENT**

Plaintiffs appeal Defendant's Notices of Assessment issued as part of its conference letter dated March 17, 2004. A trial was held Thursday, January 27, 2005, in the courtroom of the Oregon Tax Court, Salem, Oregon. H. Wayne Guinn (Guinn) appeared on behalf of Plaintiffs. Matt Thompson (Thompson), Tax Auditor, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Over approximately a 12-month period beginning in March 2002, Defendant audited Plaintiffs' Oregon income tax returns for tax years 1999 and 2000. (Def's Brief at 2.) On March 25, 2003, Defendant issued its Notices of Deficiency. (Def's Exs M-1 to M-4.) In response to Defendant's Notices of Deficiency, Plaintiffs exercised their right to a conference. Conferences were held on September 24, 2003, and December 2, 2003. (Def's Ex A-1; conference notes B-1 to B-4.) On March 17, 2004, Defendant's conference officer issued her report and Notices of Tax Assessment. (Def's Exs A-1 to A-8 and M-5 to M-8.)

Plaintiffs appeal Defendant's Notices of Assessment with the four noted exceptions. Plaintiffs agree that the amount ($226.00) deducted as a business expense for life insurance premiums was in error. (Guinn's letter at 2, Jan 16, 2005.) Second, Plaintiffs agree that the

amount ($17.25) deducted as a tax for the licensing fee paid to the Department of Motor Vehicles was in error. (*Id*. at 4.) Third, Plaintiffs agree that they incorrectly prepared Form 8829, *Expenses for Business Use of Your Home*. (*Id*. at 4.) On the form, Plaintiffs incorrectly allocated a portion of their total mortgage interest expense as business use of their home. The parties agree that after correcting for the mortgage interest allocation, Plaintiffs do not have an allowable current year deduction for business use of their home. Based on the court's decision, the amount of the carryover of unallowed expenses for each year will be determined by Defendant. Finally, Defendant concluded that Plaintiffs failed to properly report rental income. Guinn asked that he be forgiven because it was his intent "to report all of my income" and "account for all business expenses related to that source of income." (Def's Ex A-6; Guinn's letter at 5, Jan 16, 2005.) In accordance with IRC § 280A(c)(5) (2000), Defendant limited the allowable expenses to the amount of gross rental income. (Def's Ex A-6.)

II. ANALYSIS

In analyzing the issues before the court, the court is directed to determine "the *correct amount of deficiency, even if the amount so determined is greater or less than the amount of the assessment determined by the Department of Revenue, and even if determined upon grounds other or different from those asserted by the department,* provided that claim for such additional tax on other or different grounds is asserted by the department before or at the hearing or any rehearing of the case before the tax court." ORS 305.575[1] (emphasis added).

At a pretrial conference, Plaintiffs were advised by the court that they had the burden of proof to support the income reported and deductions claimed on their filed income tax returns.

[1] References to the Oregon Revised Statutes (ORS) are to year 1999 unless otherwise noted. There have been no changes to ORS 305.575 from 1999 to the present.

See ORS 305.427. Many of the items at issue are deductions claimed by Plaintiffs as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. *See* IRC § 162(a). It is a well settled principle that "[d]eductions are strictly a matter of legislative grace, and a taxpayer must meet the specific statutory requirements for any deduction claimed." *Gapikia v. Commissioner*, 81 TCM (CCH) 1488 (2001) (citations omitted). "Taxpayers are required to maintain records sufficient to substantiate their claimed deductions." *Id*. For example, IRC § 274 imposes "strict substantiation of expenses for travel, meals and entertainment, and gifts, and with respect to any listed property as defined in section 280F(d)(4). Sec 274(d). Listed property includes any passenger automobile * * *. Sec. 280F(d)(4)(A)(i)(ii)(iv)." *Boyd v. Commissioner*, 83 TCM (CCH) 1253 (2002). As the following analysis will detail, the lack of proper substantiation or documentation can result in the denial of a claimed deduction.

For ease of reference, the court will analyze the issues in the order presented in the conference officer's report, dated March 17, 2004.

A. *Gross Receipts and Cost of Goods Sold*

Plaintiffs reported gross receipts from the sale of Guinn's book, *21st Century*, in the amount of $560.00 for tax year 1999. (Def's Ex D-8.) Guinn introduced into evidence a copy of his book, retailing for $10.99. (Ptfs' Ex Item 6A.) At trial, Guinn did not provide any evidence to support the amount ($560.00) reported as income from the sale of books. He stated that because Defendant accepted his reported amount he did not think it was necessary to provide the court with documentation to support that amount. Defendant did not disagree with Guinn's statement and confirmed that the auditor reviewed Plaintiffs' bank statements and other related information. (Def's Exs C 20-21; C-24.)

Plaintiffs deducted $2,476.00 for cost of goods sold. (Def's Ex D-8.) Plaintiffs determined that amount based on the difference between the value of inventory on hand at the end of the year and the publishing expenses for the books incurred during the year. Defendant allowed $56.25 as the cost of goods sold on the basis that Plaintiffs sold 15 books. (Def's Ex A-1.) After reviewing Guinn's contract with Winepress Publishing, Defendant concluded that Plaintiffs paid $3.75 per book for production, shipping and handling. (Def's Ex A-1.) At trial, Thompson stated that he was unable to determine the correct amount for cost of goods sold because it was unclear to him how many books Guinn had sold.

The number of books sold by Guinn and corresponding cost of goods sold are at issue. Plaintiffs disagree with Defendant's conclusion that Guinn only sold 15 books. Guinn wrote that "[t]hese are proof that the conference officer's statement that I sold '15 books' in Item 1 was unfounded based on the information, verbal and in writing provided to her." (Guinn's letter at 1, Jan 16, 2005.) In one document submitted to Defendant on October 18, 2003, Guinn wrote that during 1999 he sold 391 books (net). (Def's Ex B-12.) Guinn submitted the same number for books sold (391) to the court. (Ptfs' Ex Item 1A at 1.) Statements from the publisher show total shipments of Guinn's book in the amount of 301, not 391[2]. (Ptfs' Ex Item 1A at 3 and 5.) Based on Plaintiffs' statement from his publisher, the total number of books sold by Guinn for tax year 1999 was 301.

Plaintiffs appear to have made errors on the tax returns in reporting both the gross receipts and cost of goods sold. Plaintiffs' evidence, a copy of the book with the printed retail

[2] Plaintiffs appear to have incorrectly added the total of the two shipments (212 plus 89). (Ptfs' Ex Item 1A at 1.)

price on the back cover of the book, supports a retail price of $10.99 per book.[3] The court cannot accept Plaintiffs' tax return reporting that gross receipts or sales were $560.00 for the sale of 301 books or $1.86 per book. (Def's Ex D-8.) Further, Plaintiffs reported a cost of goods sold based on the total purchase price of all books printed, not those that were sold. Defendant correctly states that the court has previously held that, "except for those professionals who have established their status by actually earning income, writers are required to capitalize their expenses until income is earned from the writing to offset those expenses." *Perry v. Dept. of Rev.*, 14 OTR 395, 399 (1998). *See* IRC § 263A(h)(2), stating that even though qualified creative expenses are not required to be capitalized, qualified creative expenses does "not include any expense related to printing."

Based on the testimony and evidence, the court concludes that the total gross sales for 1999 should be $3,307.99.[4] The court accepts Defendant's cost of goods sold per book in the amount of $3.75 and allows a cost of goods sold deduction in the amount of $1,128,75.[5] As a result, Plaintiffs' gross income for 1999 from the sale of Guinn's books is $2,179.24.

For tax year 2000, Plaintiffs wrote: "With regards to income from sale of books, even though I made it clear and provided documentation showing the sale of 117 books in the year 2000 you see that the conference officer totally disregarded this information to come to her own conclusions that she would 'allow 33 books.'" (Guinn's letter at 4, Jan 16, 2005; Ptfs' Ex Item 10A at 1.) In support of their letter and the number of books sold, Plaintiffs submitted a handwritten note, stating "missing books [117] sold to Appalachian & Ingram." (Ptfs' Ex Item

[3] Plaintiffs claimed a charitable deduction for tax year 2000, stating that the retail value of the books donated was $10.99. (Def's Ex C-11.)

[4] 301 books sold at $10.99 (retail price per book) = $3,307.99.

[5] 301 books sold at $3.75 = $1,128.75.

10A at 12.) Further, Plaintiffs provided other documents showing shipments to Book World Services/CDS and WinePress Publishing of 71 books. (Ptfs' Ex Item 10A at 10.) Plaintiffs did not offer any explanation or reconciliation of these shipments with Guinn's determination of the number of books sold in 2000.

Based on Plaintiffs' evidence and testimony, the court accepts Plaintiffs' conclusion that 117 books were sold by Guinn in 2000, resulting in gross receipts in the amount of $1,285.83.[6] As previously stated, the evidence supports a retail price of $10.99 for the book and a cost of goods sold amount of $3.75 per book. After deducting cost of goods sold in the amount of $438.75,[7] Plaintiffs' gross income from the sale of Guinn's books for tax year 2000 is $847.08.

B. *Business Mileage*

For tax year 1999, Plaintiffs claimed a business deduction for the use of their automobile in the amount of $1,178.00. (Def's Ex D-8.) The conference officer wrote that "[i]n 1999, a mileage rate of $.325 cents was allowed per mile. Therefore, you claimed 3,625 business miles." (Def's Ex A-2.) The auditor and conference officer denied the deduction because they concluded that Plaintiffs failed to maintain a log that substantiated the deduction and, further, each questioned the business purpose of the mileage claimed by Guinn. (Def's Exs A-1; A-2.)

In order for a taxpayer to deduct the miles traveled in his personal automobile as a business expense during a taxable year, a taxpayer must substantiate by adequate records or by sufficient evidence corroborating his own statement: (1) the amount of the expenditure; (2) the mileage for each business use of the automobile and the total mileage for all uses of the automobile during the taxable period; (3) the date of the business use; and (4) the business

[6] 117 books sold at $10.99 (retail price per book) = $1,285.83.

[7] 117 books at $3.75 = $438.75.

purpose of the use of the automobile. Treas Reg § 1.274-5T(b)(6). While the Internal Revenue Service regulations do not require a specific form of record to be maintained, it is clear that the taxpayer should keep a diary, account book, trip sheet, or something similar, in which entries can be made while the taxpayer has full present knowledge of the reasons for the travel. *See* Treas Reg §1.274-5T(c)(2)(i). "A taxpayer is required by section 274(d) to substantiate a claimed expense by adequate records or by sufficient evidence corroborating the taxpayer's own statement establishing the amount, time, place, and business purpose of the expense. Sec. 274(d). *Even if such an expense would otherwise be deductible, the deduction may still be denied if there is insufficient substantiation to support it.* Sec. 1.274-5T(a)." *Boyd v. Commissioner*, 83 TCM (CCH) 1253 (2002) (emphasis added).

Plaintiffs submitted a handwritten document entitled "1999 Vehicle Use/Mileage Log." (Ptfs' Ex Item 2A.) The two handwritten sheets provided columns for dates, location, business purpose, and miles driven. For all entries, Plaintiffs did not place information in each of the columns. For the following reasons, the court concludes that these pages were not prepared at the time Guinn made the trips: the dates were not in chronological order; the miles driven were not listed for all dates; and the writing was neat and there were no stains on the pages even though Guinn told the auditor he did not submit the original log because "of sloppy writing and spills." (Def's Exs A-1; B-16–18.) Further, the dates on the handwritten sheets and total miles traveled for the year were different from those on the typed sheets. (Ptfs' Ex Item 2A; Def's Ex B 16 to 18.) In determining whether the mileage is a deductible business expense, the court concludes that it will review only those trips reported and completely documented in both logs.

The conference officer's report raised some questions about Guinn's "need to go to Vancouver to go to the library when you live in Tualatin" and the need "to drive to the airport to

mail" his books. (Def's Ex A-2.) During trial, Guinn testified that he traveled from his place of employment in Tualatin, Oregon, to Vancouver, Washington, to use the library. After completing his research and written correspondence at the library, Guinn traveled to the Portland Airport to use the 24-hour post office, depositing in the mail his material to his publisher or other promotional documents. Guinn testified that he did no personal business while in Vancouver, Washington. After responding to the conference officer's comments, Guinn asked in his letter dated January 16, 2005, and during trial the following question: "Is it the duty of the State to determine whether or not I ran my business and made business decisions (where to drive and who to meet with) in the best and most efficient manner or is that mine?"

In response to Guinn's question, there are two criteria that must be met for an expense to be an allowable business deduction: it must be ordinary *and* necessary. "To be 'necessary' an expense must be 'appropriate and helpful' to the taxpayer's business." * * * "To be 'ordinary' the transaction which gives rise to the expense must be of a common or frequent occurrence in the type of business involved." *Boyd* (citations omitted). With respect to the term "ordinary", the Oregon Tax Court stated that, "an ordinary expense is one which is customary or usual. *This does not mean customary or usual within the taxpayer's experience but rather in the experience of a particular trade, industry or community*." *Roelli v. Dept. of Rev*., 10 Or 256, 258 (1986) (citing *Welch v. Helvering*, 290 US 111, 54 SCt 8, 78 LEd 212 (1933)) (emphasis added). In *Roelli*, a taxpayer who invested funds in a Swiss bank claimed as an ordinary and necessary business expense a trip to Switzerland to discuss reinvestment of the funds. The Tax Court found that the trip was neither necessary nor reasonable because he could have telephoned or used the mail to discuss investment options, and the cost of the trip was equivalent to 11 to 13 percent of the amount in the taxpayer's account.

In this case, the court agrees with Guinn that it was "appropriate and helpful" to his business to use the Vancouver library and the services of the U.S. Post Office at the Portland Airport. *See Boyd*. However, the court disagrees with Guinn that it would be a "common or frequent occurrence" for someone in Guinn's same situation to use a branch library similar in size to the Vancouver Public Library for research when the largest main library in the immediate area is located in downtown Portland, a distance closer to his work and home and within the same state. *Roelli* at 258. Further, the expenses incurred in traveling to Vancouver, Washington, from Tualatin, Oregon, are not "reasonable in amount" compared to other available alternatives for the same activities, *i.e.*, research and mailing. *Id*. Having failed to meet both required criteria, ordinary and necessary, the court agrees with Defendant that the mileage Plaintiffs claimed for travel to Vancouver, Washington, is not an allowable business expense.

After comparing Guinn's 1999 handwritten vehicle use/mileage log to his typed log, the court concludes that some of the use of Guinn's personal vehicle qualifies as a business expense. (Ptfs' Ex Item 2A; Def's Exs B-16 to 18.) For example, Guinn's trips to meet with his publisher in February 1999, June 1999, and August 1999 are allowed. Other trips to print book materials or travel to and from the airport for a business trip are allowed. However, mileage claimed for trips to meet with Guinn's attorney is, as will be discussed later, personal, not business. As previously discussed, Guinn's mileage expense for trips to Vancouver, Washington, do not meet the ordinary and necessary requirements to qualify as a business expense. In sum, the court concludes that Plaintiffs can claim 1,543 miles as a business expense for tax year 1999.

C. *Other Expenses*

For tax year 1999, Plaintiffs claimed subscriptions, bank fees, and a city application fee for an alarm system as business expenses. (Def's Ex A-2.) At trial, Guinn testified that, during

1999, the bank fees were incurred for stop payments made on checks written by his ex-wife. He testified those fees related to expenses for the production of income. Guinn testified that he only claimed a business expense for a subscription to The Oregonian during the time he was writing the book. He stated that, "[s]taying up on local events was a critical piece in writing the book and making it as current and relevant to the present as possible." (Guinn's letter at 2, Jan 16, 2005.) With respect to the city application fee, Thompson testified that even if he concluded it was a business expense, the deduction would be limited under IRC 280A, business use of the home.

For tax year 2000, Plaintiffs claimed bank fees in the amount of $93.00. The auditor determined that the bank fees were paid to obtain a "home equity line of credit." (Def's Ex C-39 and C-57.) Defendant concluded that those expenses were personal.

The court concludes that there is no provision in the law to support Plaintiffs' claim that the bank fees are a qualified business expense. For tax year 1999, Plaintiffs' itemized category report states that $72.50 of the claimed deduction was an annual fee and upgrade fee paid to U.S. Bank. (Def's Ex C-29.) Plaintiffs did not provide evidence to show that the U.S. Bank account was available for business, rather than personal use. The balance of the deduction for bank fees appears to be for stop payments on checks written by Guinn's ex-wife. Those charges were incurred by Guinn for a personal reason and cannot be deducted as an ordinary and necessary business expense. For tax year 2000, the bank fees paid to obtain a home equity loan are personal and are not an allowable business deduction. The alarm fee is not allowable business expense and, as Defendant stated, even if it was allowed, the deduction would be limited and would not reduce Plaintiffs' taxable income. The court concludes that Plaintiffs' subscription deduction for The Oregonian in the amount of $36.21 is disallowed because Plaintiffs were

unable to persuade the court that the expenditure was not motivated primarily by personal or family considerations. *See* IRC § 262.

D. *Legal Fees*

For tax year 1999, Plaintiffs' claimed $2,200 for legal fees incurred "to recover funds." (Guinn's letter at 2, Jan 16, 2005.) Guinn wrote that "[a] majority of the actions taken by the attorney were for the preservation and return of funds necessary to complete payments on the already contracted book project." (*Id*.) Defendant concluded "that all professional services provided are a result of the dissolution of the marriage, including the restraining order regarding assets." (Def's Ex A-2.)

When considering whether the deduction for legal fees is an allowable expense, the Supreme Court defined the "pivotal" issue in the context of whether the litigation costs were a "'business' rather than a 'personal' or 'family' expense." *United States v. Gilmore*, 372 US 39, 49, 83 SCt 623, 9 LEd 2d 570 (1963.) IRC 262 states, in pertinent part, that "no deduction shall be allowed for personal, living, or family expenses." Expenses incurred in divorce litigation are generally not deductible because they are considered personal or family expenses. *Gilmore*, 372 US at 50 n19 (citing *Richardson v. Commissioner*, 234 F2d 248 (CA 4th Cir); *Smith's Estate v. Commissioner*, 208 F2d 349 (CA 3rd Cir); *Joyce v. Commissioner*, 3 BTA 393). However, IRC 212(2) allows a deduction for ordinary and necessary expenses paid during the taxable year "for the management, conservation, or maintenance of property held for the production of income."

In determining whether a deduction is business or personal, the Court concluded that it must decide "whether or not the claim arises in connection with the taxpayer's profit-seeking activities." *Gilmore* at 48. In a later case, the Court concluded that the "deductibility of such professional fees depends upon the origin and nature of the claim against the taxpayer rather than

the consequences to the financial condition of the taxpayer for failure to defeat the claim." *Melat v. Commissioner*, 65 TCM (CCH) 2868 (1993) (citing *Gilmore* and *United States v. Patrick*, 372 US 53 (1963). In this case, Plaintiffs allege that "the original court action was solely to recover funds" which "led to an ultimate consequence of a complete dissolution of marriage." (Guinn's letter at 2, Jan 16, 2005.)

The origin and character of the claim in this case is the dissolution of a marriage. Guinn wrote that his ex-wife Lydia Guinn left him while he was "at work," taking money from various joint bank accounts. (*Id*.) As a consequence, Guinn sought legal advice. Plaintiffs emphasize that the Temporary Asset Restraining Order was necessary to protect the "funds that had been set aside for paying the up front costs of publishing the book, and promotional fees." (*Id.*) A Temporary Asset Restraining Order (Order) is one of the common documents filed in a divorce proceeding. The content of the Order was general, seeking to protect and preserve Plaintiffs' assets during the time they were trying to reach a settlement of the disposition of their joint assets. The inclusion of a statement in the Order specifically referencing Guinn's "personal injury settlement in the approximate sum of $17,000" does not change the origin and nature of the claim from personal to business. Plaintiffs are focused on the outcome or consequence (specifically their use of the funds) whereas, the Supreme Court has held that it is the origin and nature of the claim and its connection with profit-seeking activities that influence the characterization of the expense as business or personal.

Even if the court was persuaded that Plaintiffs' claim for a portion of the legal fees should be allowed as an ordinary and necessary business expense, Plaintiffs failed to substantiate how they computed the amount they claimed. The documents for professional services from Guinn's attorney state that the services were for dissolution of marriage with no allocation of attorney's

time spent and fee charge for the Order. (Ptfs' Ex Item 5A at 5, 7 and 10.) There was no other evidence submitted to the court.

The court concludes that Defendant's denial of the legal fees as an ordinary and necessary business expense is correct.

E. *Travel Expenses*

On their 1999 income tax return, Plaintiffs deducted as travel expenses the costs incurred for trips to Los Angeles, Orlando, and Michigan. The auditor and conference officer disallowed the cost of Plaintiff's (Susan J. Guinn) airfare for all trips and all travel costs deducted by Plaintiffs for their three trips to Michigan. (Def's Ex A-3-4.) Plaintiffs rebut Defendant's adjustment, stating Susan J. Guinn was a "partner in this business venture" and there "were two necessary business reasons to travel to Michigan. First was the promotion of the book" and "[t]he second reason for traveling to Michigan was to take care of property that I [Guinn] owned." (Guinn's' letter at 3, Jan 16, 2005.)

Even though Plaintiffs believed that it was "necessary and customarily required to have the wife be a visible and an active participant in promotion and sales of this type of book", the law has narrowly defined when travel expenses incurred by a spouse may be an allowable deduction. (Guinn's letter at 3, Jan 16, 2005.) The law requires that travel expenses paid or incurred with respect to a spouse (Susan J. Guinn) are only deductible if *all* of the following three requirements are met:

1. The spouse is an employee of Guinn;
2. The travel expenses incurred by the spouse are for a bona fide business purpose; *and*
3. The travel expenses could be deducted by the spouse.

IRC Sec 274(m)(3) (emphasis added). In this case, Plaintiffs are unable to meet all three

requirements. Generally, a partner is not an employee. If Susan J. Guinn is a partner, she is not an employee of Guinn. Plaintiffs offered no evidence to show that she was an employee of Guinn. Defendant's disallowance is upheld.

Guinn wrote to the court and testified that the trips to Michigan were for two "necessary business reasons." (*Id*.) Beginning with Guinn's stated purpose to "take care of property that" he owned, Defendant testified that Plaintiffs' purpose for traveling to Michigan was to complete the sale of Guinn's property which in prior years was his personal residence. (*Id.*) Guinn did not refute Defendant's testimony. However, he did testify that because Michigan is a community property state his "wife had to be party to the final closing documents." (*Id*.) Travel expenses incurred for the sale of a personal asset like a residence do not qualify as allowable ordinary and necessary business expenses.

Guinn also wrote and testified that while he was in Michigan he "set-up meetings with distributors there. This led to a new distribution relationship in 2000 with a different distributor other than the initial distributor-than Books, Etc." (*Id.*) Because the court previously determined that the time spent in Michigan to complete the sale of Guinn's property was personal, Guinn can deduct all travel costs incurred where both business and personal activities take place *only* if the travel was primarily for business. *See* Treas Reg 1.162-2(b)(1) (emphasis added). The issue of whether a trip is primarily for business, allowing all travel costs to be deducted, or primarily for personal reasons, disallowing the deduction for all travel costs, is a question of fact. The burden of proof to show the travel was primarily business-related is on Plaintiffs. *Ballatine v. Commissioner*, 46 TC 272 (1966), *acq*., 1966-2 C.B 4 and IRC Regs.1.162-2(b)(2).

Guinn testified that his interviews with distributors took place in Grand Rapids and his lodging in Michigan was located conveniently between Grand Rapids and the home he sold.

Further, he testified that the "third trip to Michigan" was to transfer the title to the property, which this court has already concluded was personal business. Guinn provided no documentation to the court to support the time he spent talking to distributors in Grand Rapids. However, the fact that he negotiated a contract with another distributor indicates he spent some time on a business activity. Unfortunately, the court has no information to determine the answer to the important question of whether the time spent in Michigan was primarily for business. Without any evidence to carry their burden of proof, the court must deny Plaintiffs' deduction of the travel expenses to Michigan.

On their 2000 tax year income tax return, Plaintiffs claimed airfare expenses in the amount of $611.00 for a four-day trip to Tennessee. Guinn testified that he and his wife traveled to three different cities in two days to promote his book. He wrote that his "publicist Class Promotional Services arranged this" promotional tour to "one church in Erwin, TN and three radio stations (two in Knoxville, TN and one in Bristol, TN)." (Guinn's letter at 4, Jan 16, 2005.)

Based on Guinn's testimony, the court concludes that the primary purpose for the trip was to promote his book. One-half ($305.50) of the expenses claimed for airfare is an allowable business expense. Airfare for Susan J. Guinn is not an allowable business expense as previously discussed.

F. *Meals and Entertainment*

For tax year 1999, Plaintiffs deducted $170.33 as a business expenses for meals. (Def's Ex D-8.) Defendant's auditor and conference auditor allowed $85.16, disallowing the balance because Plaintiffs failed to substantiate or show a business purpose. In his letter to the court, Guinn wrote that the meal expenses were incurred during Plaintiffs' trip to Orlando and his

wife's one-half share of the meal expenses was $26.99. (Guinn's letter at 3, Jan 15, 2005.) Because the court previously concluded that travel expenses incurred by Susan J. Guinn are not allowable deductions, the court accepts Defendant's disallowance of $26.99 for Susan J. Guinn's meal expenses.

With respect to the meals expense disallowed by the auditor and conference officer, Guinn wrote that, "[t]he other expenses relate to meetings with fellow employees, business associates, etc. who were helping in the promotion of the Book. The Re-Declare Group was the name given to a group of volunteers who helped in the promotion of the book in that part of the title of the Book * * *. The charges for this group of six individuals to meet were $32.50." (Guinn's letter at 3, Jan 15, 2005.) Guinn testified that the promotion of his book was discussed with those six volunteers during the meal. The court agrees with Plaintiffs that $32.50 is an allowable business expense.

The balance disallowed by Defendant for a business meal expense is accepted by the court. Guinn offered a generalized response to the requirement that a specific business purpose including names of individuals entertained and time is necessary to substantiate a deduction for meals. *See* IRC § 274(d). Without evidence to show the business purpose, the claimed deduction must be disallowed.

To recap tax year 1999, the court concludes that $32.50 is an allowable deduction for business meal expenses prior to the 50 percent limit. The court accepts Defendant's adjustment in the amount of $83.49.

For tax year 2000, Plaintiffs deducted $139.00 for meal expenses during their four-day trip to Tennessee. (Def's Ex C-8.) Defendant allowed a business deduction in the amount of $30.00 before the 50 percent limitation required by IRC § 274. Defendant's conference officer

stated that even though the expenses were not identified she decided "[i]n the interest of fairness" to allow slightly more than one-half of the amount claimed for the Tennessee trip as an allowable "meal expense." (Def's Ex A-5.) As previously discussed, the court agrees with Defendant that Susan J. Guinn's meal expenses in the amount of $28.84 are not an allowable business expense.

With respect to the balance ($80.00) of the meal expenses claimed, there were two separate events. One expense, in the amount of $15.00 was claimed for lunch with a prospective tenant and the other was lunch for "Fiscal Staff." (Def's Ex C-39.) Guinn provided no additional information about the lunch for "Fiscal Staff." Absent required substantiation, the court affirms Defendant's adjustment denying the deduction claimed for the "Fiscal Staff" lunch.

In response to Defendant's denial of the deduction for lunch with a prospective tenant, Guinn testified that the lunch meeting was conducted at a time convenient to both him and the prospective tenant. There is evidence that Plaintiffs had identified a tenant, Jeff Edwards, prior to the time of the claimed expense. (Def's Ex C 38-39.) Without evidence identifying the person, the court agrees with Defendant that this expense is not an ordinary and necessary business expense.

For tax year 2000, the court accepts Defendant's adjustment, allowing $30.00 for meal expenses prior to the 50 percent limit.

G. *Telephone Expenses*

Plaintiffs deducted $1,482.01 as telephone expenses, including $142.24 for AT&T Wireless for tax year 1999. (Def Ex D-23; C-34) In Guinn's letter dated January 16, 2005, at page 3-4, he wrote that "most of the monthly charges in question related to an 800 number maintained so people could call me and special fax services for sending and receiving faxes on the one phone number. The cell phone in question was purchased when the book project was

started and service ended when the promotional phase was done in 2000." After reviewing the additional telephone records provided by Plaintiffs, the conference officer allowed a business deduction in the amount of $628.00 even though Plaintiffs failed to properly identify each person or business entity called and the business purpose.

At trial, Plaintiffs did not provide any additional support for the telephone expenses claimed as an allowable business deduction. Guinn testified that he believed the allowable expense should be $1,000.00. He criticized the conference officer for stating that he used the cell phone for personal long distance calls, and the home phone for business calls. Guinn testified that he used long distance calling cards for his personal calls and the cell phone was for business only. Thompson testified that IRC 262 requires that the first line into a personal residence is a non-deductible expense. Defendant submitted copies of Plaintiffs' telephone bills for January, March and September 1999. (Def's Exs B-19 to B-40.)

Plaintiffs ask the court to conclude, based on Guinn's testimony, that the telephone expenses claimed are allowable business deductions. As is the case for all business deductions, the taxpayer is required to document the business purpose. The court was not provided with any documentation, except Defendant's exhibits that failed to identify the party called and the business purpose. The court concludes that Defendant was generous in allowing 50 percent of all the long distance charges as business expenses when, even though asked by the auditor, Plaintiffs failed to provide detailed substantiation. The court accepts Defendant's adjustment for tax year 1999.

For tax year 2000, the conference officer allowed telephone expense identified as long distance for business use in the amount of $597.00. (Def's Ex A-5.) The conference officer disallowed an internet expense in the amount of $200.00, concluding "there is a highly personal

component." (*Id*.) In response, Guinn states the disallowed deduction relates to utilities, "where the office was maintained, rooms were rented out, and books, and promotional materials were stored." (Guinn's letter at 4-5, Jan 16, 2005.) Guinn's response does not provide relevant information to support the telephone or internet expenses claimed. Without adequate substantiation and documentation, the court must accept Defendant's adjustment.

H. *Advertising*

For tax year 2000, Plaintiffs claimed advertising costs in the amount of $123.95 for the room in their home they rented to a third party. (Def's Ex C-8.) Plaintiffs concluded that Defendant disallowed the deduction. (Guinn's letter at 4, Jan 16, 2005.) Plaintiffs are incorrect. Defendant allowed the deduction; however, it was limited by IRC § 280A(c)(5). (Def's Ex A-6.) At trial, Guinn acknowledged during the discussion of Form 8829, *Expenses for Business Use of Your Home*, that he understood the auditor's adjustment. The court accepts Defendant's adjustment in the amount of $123.95.

I. *Charitable Deduction*

For tax year 2000, Plaintiffs claimed a noncash charitable deduction in the amount of $549.50. (Def's Ex C-11.) The amount of the contribution was computed as follows: "50 books at 10.99 each." (*Id*.) Defendant alleges that Plaintiffs improperly computed the amount of the allowable contribution deduction. Citing IRC § 170 and Treas Reg 1.170A-4A-(c), Defendant concludes that the amount of the allowable contribution deduction should be $187.50 (50 books at $3.75, the amount determined as Plaintiffs' cost.) (Def's Brief at 22-23.)

At trial, Guinn argued that Defendant should not be allowed to request the court to reduce Plaintiffs' charitable deduction. As previously discussed, the court must "determine the *correct*

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amount of deficiency." ORS 305.575 (emphasis added). The court agrees with Defendant that the amount of the allowable contribution deduction for tax year 2000 is $187.50.

J. *Rental Income*

In its Brief, Defendant concluded that Plaintiffs may have failed to report rental income received from property they owned in Michigan for tax year 1999. (Def's Brief at 17.) During the trial, Defendant did not present any evidence to support its claim and there was no testimony. Without evidence to support the claim and an opportunity for Plaintiffs to refute it, no adjustment to Plaintiffs'1999 taxable income can be allowed.

K. *Costs and Disbursements*

Plaintiffs allege that they are entitled to recover "expenses related to appeal." (Ptfs' Complaint.) In its opening remarks of this section, the court quoted a "well settled principle" that "deductions are strictly a matter of legislative grace, and a taxpayer must meet the specific statutory requirements for any deduction claimed." *Gapikia v. Commissioner*, T.C. Memo 2001-83, 2001 WL 332038 (citations omitted). In addition to meeting the statutory requirements, taxpayers are required to maintain records and documents to support both income reported and deductions claimed on their income tax returns. "[F]or the purpose of ascertaining the correctness of any return * * * records and memoranda" can be requested by the Department of Revenue. ORS 314.425(1). Defendant made such a request. In fact, Defendant made numerous requests for records or documents to support items on Plaintiffs' income tax return. Contrary to Plaintiffs' belief, they failed to produce adequate documentation to overturn many of the Oregon Department of Revenue adjustments. There is no basis for this court to award them costs when Defendant took actions authorized by law.

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L. *Defendant's Compliance with the Court's Order*

Plaintiffs ask "the court to rule on the evidence that the Department of Revenue in their 7/20/2004 'RESPONSE TO MAGISTRATE TO PROVIDE INFORMATION' provided false and incomplete statements." (Guinn's letter at 1, Jan 16, 2005).

During one of the first case management conferences held for this appeal, Guinn stated that two prior telephone conferences with Defendant had been tape recorded. Defendant responded that none of the telephone conferences with Guinn had been recorded. To resolve that misunderstanding, the court requested Defendant "to review its own records and to submit a written statement responding to Plaintiffs' allegations." (Order for Defendant to Provide Information and Order Denying Plaintiffs' Request for Immediate Relief From Defendant's Tax Assessments (Order), filed July 8, 2004.) Further, the Order requested Defendant to submit "all relevant tapes, handwritten notes and audit contact file notes." In response, Defendant's representative, Julie Smith, provided a written response and submitted numerous documents.

At trial, Defendant again submitted those documents. It also provided the court with copies of records and documents Plaintiffs submitted in response to Defendant's request for supporting documentation of items reported on Plaintiffs' filed tax returns. Plaintiffs allege that Defendant should have submitted copies of those documents in response to the court's Order.

The court's Order was issued to secure for Plaintiffs, information recorded or related to two telephone conferences. The court's Order did not request Defendant to provide Plaintiffs with copies of all material secured during the course of a two-year audit. Defendant provided requested information and additional information outside the scope of the court's Order. Plaintiffs fail to acknowledge that Defendant's exhibits aided the court in its findings, and with

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respect to the mileage and travel issue, ultimately proved beneficial to Plaintiffs. The court disagrees with Plaintiffs' characterization of Defendant's response to the court's Order.

III. CONCLUSION

After a careful review of the evidence and testimony, the court's findings are set forth below. Now, therefore,

IT IS ADJUDGED that the proposed adjustments contained in Defendant's conference officer's report dated March 17, 2004, are accepted with the following exceptions:

For tax year 1999, Plaintiffs' gross income from the sale of Guinn's book is $3,307.99 and the costs of goods sold is $1,128.75;

For tax year 2000, Plaintiffs' gross income from the sale of Guinn's book is $1,285.83 and the costs of goods sold is $438.75;

For tax year 1999, Plaintiffs are allowed a business mileage deduction in the amount of 1,543 miles;

For tax year 2000, Plaintiffs are allowed a travel expense deduction in the amount of $305.50;

For tax year 1999, Plaintiffs are allowed a business meal deduction in the amount of $32.50 in addition to the amount allowed by Defendant;

IT IS FURTHER ADJUDGED that Plaintiffs' allowable charitable deduction for tax year 2000 is $187.50;

IT IS FURTHER ADJUDGED that Defendant's claim that Plaintiffs failed to report rental income for tax year 1999 is denied;

IT IS FURTHER ADJUDGED that Plaintiffs' request for costs and disbursements is denied; and

IT IS FURTHER ADJUDGED that Defendant did not provide false and incomplete statements in response to the court's Order, filed July 8, 2004.

Dated this _____ day of April 2005.

_____
JILL A. TANNER
PRESIDING MAGISTRATE

THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.

This Document Was Signed by Presiding Magistrate Jill A. Tanner on April 19, 2005 . The Court Filed this Document on April 19, 2005.