United States Tax Court

T.C. Memo. 2022-40

CHRISTIAN SEZONOV AND FRANCINE M. SEZONOV,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 26650-17. Filed April 20, 2022.

Christian Sezonov and Francine M. Sezonov, pro sese.

Richard L. Wooldridge, *John D. Davis*, and *Nancy P. Klingshirn*, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

MARVEL, *Judge*: Respondent determined deficiencies in petitioners' federal income tax for tax years 2013 and 2014. After concessions by both parties, the sole issue remaining for decision is whether petitioners, Christian Sezonov and Francine M. Sezonov (collectively, Sezonovs), are real estate professionals within the meaning of section 469(c)(7)[1] who are entitled to deduct certain losses claimed on their 2013 and 2014 Schedules E, Supplemental Income and Loss, in connection with two rental properties located in Florida.

[1] Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Served 04/20/22

[*2] FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulated facts and facts drawn from stipulated exhibits are incorporated herein by this reference. The Sezonovs are married and resided in Ohio when they petitioned this Court.

The Sezonovs timely and jointly filed their 2013 and 2014 Forms 1040, U.S. Individual Income Tax Return. During the years at issue, Mr. Sezonov was the only member of Design Build Service, LLC (DBS), a single-member LLC through which he operated a wholesale HVAC business. Mr. Sezonov operated the HVAC business full time and with no employees throughout 2013 and 2014.

In 2013 DBS purchased two properties in Florida: a property on Reybell Lane in Palm Coast, Florida (Reybell property), and a property on Marina Bay Drive in Flagler Beach, Florida (Marina Bay property) (collectively, Florida rental properties). DBS purchased the Reybell property on April 24, 2013, and it purchased the Marina Bay property on November 21, 2013. The Sezonovs through DBS rented out both properties during 2013 and 2014 while maintaining their primary residence in Ohio.

After DBS purchased the Reybell property, the Sezonovs leased the property to its previous owners until June 14, 2013. When those tenants vacated the property, the Sezonovs cleaned and furnished the property to prepare it for future rentals. Once this work was completed, the Sezonovs leased the Reybell property to a tenant for a one-year term beginning September or October 2013.

After DBS purchased the Marina Bay property, the Sezonovs hired contractors to make improvements and repairs to the property so that it could be leased as a short-term vacation rental. Additionally, shortly after purchasing the property, DBS filed a lawsuit against the Marina Bay property's condominium association to secure the rights to a boat slip that should have been conveyed with the property.

The Marina Bay property was first made available to rent in December 2013, and it was rented for the first time in January 2014. Most of the Marina Bay property leases were for one-month terms.

Mrs. Sezonov advertised the Florida rental properties and communicated with renters and prospective renters via email. In between rentals, Mrs. Sezonov would clean and prepare the Marina Bay

[*3] property for its next renter or hire a cleaner to do so on her behalf. Mr. Sezonov assisted in responding to emails, as well as performing maintenance and repairs for the properties, but Mrs. Sezonov was responsible for most of the day-to-day management.

The Sezonovs did not maintain contemporaneous records of the hours that they worked on their Florida rental properties. However, in 2019 and 2020, while this case was pending, Mrs. Sezonov created time logs estimating the time that she and Mr. Sezonov had worked on the Florida rental properties in 2013 and 2014. The time estimates shown on the logs are summarized below:[2]

	Mrs. Sezonov		*Mr. Sezonov*	
	2013	*2014*	*2013*	*2014*
Marina Bay Property	254:20	77:50	202:25	26:40
Reybell Property	222:00	2:30	203:05	0:00
Total Time	**476:20**	**80:20**	**405:30**	**26:40**

The Sezonovs reported the income, expenses, and losses associated with the Florida rental properties on Schedules E attached to their 2013 and 2014 federal income tax returns. The Sezonovs did not make an election to aggregate their rental activities under section 469(c)(7)(A).

On October 6, 2017, respondent issued a statutory notice of deficiency to the Sezonovs, disallowing the Schedule E loss deductions that they claimed on their federal income tax returns for 2013 and 2014.

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[2] The Court calculated these totals by summing all of the log entries prepared by Mrs. Sezonov, and the times are given in hours (on the left side of the colon) and minutes (on the right). These totals assume, for all entries where both Mr. and Mrs. Sezonov are listed, that each worked the full hours claimed. Additionally, these totals correct two presumed errors with respect to the Marina Bay property in which Mrs. Sezonov placed a number in the "minutes" column that appears to belong in the "hours" column on entries dated November 14, 2013, and January 6, 2014. Finally, these totals omit one of a pair of duplicate entries listed with respect to the Marina Bay property, dated July 22, 2013.

[*4] The Sezonovs timely petitioned this Court on December 26, 2017, and we held a trial on October 26, 2020.

OPINION

Generally, the Commissioner's determination of a deficiency is presumed correct, and the taxpayer bears the burden of proving the determination is erroneous. Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). Deductions are a matter of legislative grace, and the taxpayer bears the burden of proving he is entitled to any claimed deduction. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992). The taxpayer must maintain records to adequately substantiate the nature, amount, and purpose of a claimed deduction. § 6001; *Higbee v. Commissioner*, 116 T.C. 438, 440 (2001).

For tax years 2013 and 2014, the Sezonovs claimed deductions on their Schedules E for losses connected with the Florida rental properties. Respondent disallowed the claimed loss deductions.

Section 162 generally allows a taxpayer to deduct ordinary and necessary expenses paid or incurred in carrying on a trade or business. Special rules apply, however, to losses from passive activities. In the case of individual taxpayers, section 469 disallows a deduction for "passive activity loss." § 469(a)(1), (b). A "passive activity loss" is the excess of the aggregate losses from all of the taxpayer's passive activities for the taxable year over the aggregate income from all of his passive activities during the taxable year. § 469(d)(1). A "passive activity" is any trade or business in which the taxpayer does not materially participate or any rental activity regardless of whether the taxpayer materially participates in such activity. § 469(c)(1) and (2). Although section 469(c)(2) generally treats all rental activity as passive, section 469(c)(7) carves out an exception for the rental activities of certain taxpayers engaged in a real property trade or business, i.e., real estate professionals. If a taxpayer qualifies as a real estate professional, then the rental activity is treated as a trade or business subject to the material participation requirements of section 469(c)(1) rather than as per se passive. § 469(c)(7)(A)(i); *see also Aragona Tr. v. Commissioner*, 142 T.C. 165, 171 (2014).

Section 469(c)(7)(B) provides that a taxpayer qualifies as a real estate professional for a given taxable year if: (1) "more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or

[*5] businesses in which the taxpayer materially participates" and (2) "such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates." In the case of a joint return, these requirements are considered satisfied only if either spouse separately satisfies both requirements. *Id.*

In assessing a taxpayer's material participation, we treat each interest in rental real estate as a discrete real estate activity unless the taxpayer makes an election to treat all such activities as a single activity.[3] § 469(c)(7)(A). However, in determining whether the 750-hour requirement is satisfied, all of the taxpayer's real property trade or business activity is taken into account, regardless of whether the taxpayer has made an election to aggregate. *See Almquist v. Commissioner*, T.C. Memo. 2014-40, at *11.

Temporary Treasury Regulation § 1.469-5T(f)(4) provides that "[t]he extent of an individual's participation in an activity may be established by any reasonable means." This does not require the taxpayer to maintain contemporaneous daily time reports or similar documents if the taxpayer's participation can be established by other reasonable means. *Id.* "Reasonable means" includes, but is not limited to, "the identification of services performed over a period of time and the approximate number of hours spent performing such services during such period, based on appointment books, calendars, or narrative summaries." *Id.*

The Sezonovs contend that either or both of them is a real estate professional within the meaning of section 469(c)(7) for tax years 2013 and 2014. To support this contention, the Sezonovs introduced into evidence time logs containing estimates of the time they spent working on the Florida rental properties in the years at issue. The Sezonovs did not keep any contemporaneous records of the hours they worked, but Mrs. Sezonov used various documents, such as rental agreements and emails related to the Florida rental properties, to assist her in estimating the time. The time logs she prepared are the only documents in the record that describe the personal services the Sezonovs performed

[3] In determining whether a married taxpayer materially participated in a real property trade or business, but not for any other purpose under section 469(c), work performed by the taxpayer's spouse is treated as performed by the taxpayer. Treas. Reg. § 1.469-9(c)(4); *see Oderio v. Commissioner*, T.C. Memo. 2014-39, at *5–6.

[*6] and estimate the time spent performing those services.[4] The time logs, however, are often unclear about who worked which hours, and the time estimates appear excessive in several respects.

Even if we were to accept the time logs as credible and accurate in all respects, they are insufficient to prove that either of the Sezonovs qualifies as a real estate professional within the meaning of section 469(c)(7). For tax year 2013 the Sezonovs estimate in the time logs that Mrs. Sezonov spent 254 hours and 20 minutes on the Marina Bay property and 222 hours on the Reybell property, for a combined total time of 476 hours and 20 minutes. They estimate that Mr. Sezonov spent 202 hours and 25 minutes on the Marina Bay property and 203 hours and 5 minutes on the Reybell property, for a combined total of 405 hours and 30 minutes. For tax year 2014 the Sezonovs estimate in the time logs that Mrs. Sezonov spent 77 hours and 50 minutes on the Marina Bay property and 2 hours and 30 minutes on the Reybell property, for a combined total of 80 hours and 20 minutes. Mr. Sezonov's estimated time in 2014 is 26 hours and 40 minutes for the Marina Bay property and 0 hours for the Reybell property, for a combined total of 26 hours and 40 minutes.

Both Mr. and Mrs. Sezonov's estimated hours fall well short of the 750 hours that are required to qualify them as real estate professionals in each of the years at issue. For 2013 the Sezonovs estimate that Mrs. Sezonov spent less than 500 combined hours working on both Florida rental properties (including time spent travelling to and from the rental properties from her home in Ohio). For 2014 they estimate that Mrs. Sezenov spent less than 100 hours working on the Florida rental properties. Likewise, they estimate that Mr. Sezonov spent less than 500 hours working on the Florida rental properties in 2013 and less than 50 hours in 2014. Additionally, Mr. Sezonov fails to satisfy the requirement of section 469(c)(7)(B)(i) because he did not spend more time working in the real estate rental business than in his HVAC business in either year.

Because neither Mr. Sezonov nor Mrs. Sezonov has established that he or she meets the 750-hour requirement for either year, neither qualifies as a real estate professional under section 469(c)(7) for 2013 or 2014. Accordingly, the Florida real estate rental activities in 2013 and

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[4] At trial Mrs. Sezonov credibly testified about the types of services she performed for the real estate rental activities, but she was uncertain with respect to the time spent performing those services.

[*7] 2014 are passive activities regardless of whether the Sezonovs materially participated in those activities. We therefore sustain respondent's determination disallowing the passive activity losses.

We have considered the parties' other arguments and, to the extent they are not discussed herein, find them to be irrelevant, moot, or without merit.

To reflect the foregoing,

Decision will be entered under Rule 155.