

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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|--------------------------|---|---------------------|
| GREGORY RAIFMAN & SUSAN |) | |
| RAIFMAN, |) | |
| |) | |
| Petitioner(s), |) | |
| |) | |
| v. |) | Docket No. 3897-14. |
| |) | |
| COMMISSIONER OF INTERNAL |) | |
| REVENUE, |) | |
| |) | |
| Respondent |) | |

ORDER

On September 10, 2014, petitioners filed a Motion For Partial Summary Judgment with Memorandum Of Authorities In Support Of Motion For Partial Summary Judgment and Declaration Of Susan Raifman In Support Of Motion For Partial Summary Judgment. Petitioners request that the Court apply the Doctrine of Judicial Estoppel to rule that they were victims of theft by ClassicStar and that they are entitled to deduct a theft loss on their 2009 tax return of \$2,475,000 under Rev. Proc. 2009-20, 2009-14 I.R.B. 749.

Respondent raises a question concerning this Court's jurisdiction over petitioners' claimed theft loss in 2009, a year not in issue in the instant case. Petitioners seek redetermination of the deficiency for 2008 that resulted, in part, from the disallowance of a theft loss deduction that was carried back from petitioners' 2009 tax year. Generally, this Court has jurisdiction to consider later years not before the Court as may be necessary to correctly redetermine the deficiency for years currently before the Court. I.R.C. sec. 6214(b); Vincentini v. Commissioner, T.C. Memo. 2008-271. Accordingly, this Court may consider petitioners' 2009 tax year in order to redetermine the correct amount of the theft loss carryback for 2008.

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Petitioners contend that they are entitled to deduct a theft loss in tax year 2009 because they were the victims of a “specified fraudulent arrangement” as defined in Section 4.01 of Rev. Proc. 2009-20:

Specified fraudulent arrangement. A specified fraudulent arrangement is an arrangement in which a party (the lead figure) receives cash or property from investors; purports to earn income for the investors; reports income amounts to the investors that are partially or wholly fictitious; makes payments, if any, of purported income or principal to some investors from amounts that other investors invested in the fraudulent arrangement; and appropriates some or all of the investors’ cash or property.

Respondent concedes in his moving papers that a theft occurred with respect to petitioners’ investment in the ClassicStar Mare Leasing program. However, as respondent argues, petitioners have not established that the theft was a “specified fraudulent arrangement”. Specifically, petitioners have not established that ClassicStar purported to earn income for its investors. The excerpts from the Order of the United States District Court of the Western District of Kentucky in *In Re ClassicStar Mare Lease Litigation* that petitioners offer as evidence do not address any purportedly earned income (District Court Order). Instead, the District Court Order excerpts state that over \$600 million was invested in the Mare Leasing Program, that ClassicStar represented to potential investors that they could realize a sizeable gain upon the sale of their investment, and that these representations were false. The District Court Order excerpts may establish that ClassicStar perpetrated a fraud, but not that it purported to earn income for its investors.

Additionally, petitioners have not established that ClassicStar reported to the investors any income amounts that were partially or wholly fictitious. The District Court Order excerpt that petitioners offer as evidence does not address any fictitious reports of income. Instead, the District Court Order excerpt states that ClassicStar promised and listed, at inflated prices, thoroughbred and quarter horse breeding pairs which it did not own or would be unable to produce in order to induce investors to exchange their pairings for interest in the mineral programs of GeoStar, an entity related to ClassicStar. The District Court Order excerpt establishes that ClassicStar fraudulently obscured its shortfall of thoroughbred inventory, but it does not establish that ClassicStar reported to investors any growth or income from their investment.

Moreover, petitioners have not established that ClassicStar made any payments of purported income or principal to investors from amounts that other investors invested in the fraudulent arrangement. The District Court Order excerpts that petitioners offer as evidence do not provide any examples of payments to investors. Instead, the District Court Order excerpts discuss payments made by ClassicStar to its principals and to GeoStar as support for piercing the corporate veil between ClassicStar, its related entities, and its principals.

Upon due consideration of the foregoing, it is

ORDERED that petitioner's Motion For Partial Summary Judgment is deemed moot in part as it pertains to petitioners' request therein that the Court apply the Doctrine of Judicial Estoppel and rule that they were victims of theft by ClassicStar, because respondent concedes a theft occurred. It is further

ORDERED that petitioner's Motion For Partial Summary Judgment is denied in part as it pertains to petitioners' being entitled to deduct a theft loss on their 2009 tax return of \$2,475,000 under Rev. Proc. 2009-20, because petitioners have failed to show that ClassicStar's Mare Leasing Program was a "specified fraudulent arrangement" under Section 4.01 of Rev. Proc. 2009-20.

(Signed) Thomas B. Wells
Judge

Dated: Washington, D.C.
February 27, 2015