

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WILLIAM FRENCH ANDERSON &)	
KATHRYN D. ANDERSON,)	
)	
Petitioners,)	
)	
v.)	Docket No. 23789-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	

ORDER

This case was called for hearing on respondent’s Motion for Summary Judgment, filed March 15, 2018, at the trial session of the Court in Oklahoma City, Oklahoma, on June 12, 2018. The parties appeared and were heard.

By notice of deficiency dated August 11, 2016, respondent disallowed petitioners’ deductions claimed for legal expenses for tax years 2013 and 2014, as respondent determined that those amounts did not constitute ordinary and necessary business expenses under section 162.¹ Petitioners incurred those expenses in attempting to appeal the criminal conviction of petitioner William French Anderson (Mr. Anderson).

On June 12, 2018, the Court issued an Order ordering the parties to file a joint report providing the Court with a copy of the redacted transcript of the hearing. That order explained that the name of a minor child was disclosed during the hearing.

On July 23, 2018, the Court issued an Order for the parties to show cause why this case should not be submitted on the existing record as of June 12, 2018.

¹Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years at issue. All Rule references are to the Tax Court Rules of Practice and Procedure.

On July 24, 2018, the Court held a conference call with the parties. Neither party expressed a willingness to submit the case on the existing record and we will not do so.

Discussion

Summary Judgment

Pending before the Court is respondent's Motion for Summary Judgment. Upon due consideration, and for the reasons detailed below, we deny respondent's motion.

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1998). Either party may move for summary judgment on all or any part of the legal issues in controversy. Rule 121(a). The Court may grant summary judgment only if there are no genuine disputes or issues of material fact. Naftel v. Commissioner, 85 T.C. 527, 529 (1985). A fact is material if it impacts the outcome of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party moving for summary judgment bears the burden of proving that there is no genuine issue of material fact, and factual inferences will be construed in the manner most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985). Generally, the deductibility of legal fees as an ordinary and necessary business expense will turn on whether or not it can be established that the claim giving rise to those fees originated from a taxpayer's conduct of a trade or business. Guill v. Commissioner, 112 T.C. 325, 328-329 (1999). In this regard, ascertaining a claim's origin and the circumstances from which it arose is a factual determination. Id.

Respondent contends he is entitled to summary judgment with respect to the deductibility of petitioners' legal expenses at issue. Respondent argues that Mr. Anderson's legal expenses are nondeductible personal expenses. In support of this position, respondent argues that the claim underlying Mr. Anderson's criminal conviction, and subsequently the legal expenses at issue here, originates from Mr. Anderson's personal conduct and was wholly removed from the scope of his trade or business. Petitioners argue that Mr. Anderson's legal expenses are deductible, ordinary and necessary, expenses related to his trade or business. In support of their position, petitioners allege that Mr. Anderson is innocent and that Mr. Anderson was falsely accused and convicted of crimes he did not commit in furtherance of an effort to deprive him of his intellectual property.

Based on the record before the Court, there appears to be a genuine dispute as to an issue of material fact regarding Mr. Anderson's actual innocence. In other words, the parties fundamentally dispute whether or not Mr. Anderson factually engaged in the physical act elemental to the crime for which he was convicted. We observe that, to this extent, respondent's motion appears to rely exclusively on Mr. Anderson's criminal conviction, but avoids substantively addressing the question of material fact essential to the dispute in that criminal case and now the dispute before this Court.² Instead, respondent's motion appears to conflate a context for the claim with the origin of the claim. We find this approach unavailing due to the factually intensive nature of the origin-of-the-claim inquiry before this Court, and because petitioners' argument in that respect appears to fundamentally rely on a factual finding that Mr. Anderson did not engage in the acts for which he was convicted.

Hearing Transcript

During the hearing, certain confidential information such as the name of a minor child was disclosed. On June 12, 2018, the Court ordered the parties to redact from the transcript that identified the name of any minor children and/or information considered confidential pursuant to Rule 27(a).

On July 23, 2018, the parties each filed status reports and reported that they were unable to agree to certain redactions. In respondent's status report, he requested: (1) the names of the mother and father of that minor child be redacted because they are not parties to this case, and (2) that he be allowed to file a motion under Rule 27(d)(1) for the filing of the transcript with redactions of the mother's and father's names. Petitioners' status report states that they disagree with respondent's proposed redactions with regards to the names of the mother and father.

Tax Court Rule 27(a) generally provides that in an electronic or paper filing with the Court, a party or nonparty making the filing should refrain from including or should take appropriate steps to redact certain specified information, including

²We also observe that respondent has neither pleaded nor otherwise attempted to raise an affirmative defense with respect to this matter. See Rules 39 and 142(a); see also Monahan v. Commissioner, 109 T.C. 235 (1997).

(1) taxpayer identification numbers, (2) dates of birth, (3) names of minor children, and (4) financial account numbers. The Rules further provide procedures for redaction and protective orders under Rule 103(a) when good cause is shown. See Rule 27(d).

Section 7458 provides that “[h]earings before the Tax Court and its divisions shall be open to the public”. Section 7461(a) similarly provides that “all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.” The determination of whether to seal evidence in a case requires a balancing of privacy interests against the probative value of the confidential information. See sec.7461(b)(1); Rule 103(a).

Respondent seeks to redact the names of the mother and father which such names are not covered under Tax Court Rule 27(a). Although the Court understands respondent’s concerns, we find that redacting the names of the mother and father are not appropriate at this time. Therefore the Court expects that the parties’ positions will be further developed as they prepare for trial and may at a later time, file a motion under Rule 103(a) or take such action as it deems appropriate.

In consideration of the foregoing, it is

ORDERED that respondent’s Motion for Summary Judgment, filed March 15, 2018, is denied. It is further

ORDERED that the Court’s Order to Show Cause dated July 23, 2018, is hereby discharged. It is further

ORDERED that the Clerk of the Court shall detach from petitioners’ Status Report filed July 23, 2018, the redacted transcript of the hearing held on June 12, 2018, and record it in the Court’s record, as a separate docket entry, as of the date the corresponding Status Report was filed. It is further

ORDERED that the Clerk of the Court shall serve a copy of this Order and a copy of the redacted transcript on eScribers, LLC, 7227 N. 16th Street, Suite 207, Phoenix, Arizona, 85020. It is further

ORDERED that jurisdiction of this case is no longer retained by the undersigned and is restored to the general docket.

The staff of eScribers, LLC, is reminded that in the event any third party shall order from eScribers, LLC a copy of the transcript of the hearing in this case, eScribers, LLC shall not provide the unredacted transcript and shall provide the redacted version only.

**(Signed) Joseph W. Nega
Judge**

Dated: Washington, D.C.
February 13, 2019