

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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| JASON M. SCHEURER, |) | |
| |) | |
| Petitioner(s), |) | |
| |) | |
| v. |) | Docket No. 25308-14. |
| |) | |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent |) | |

ORDER

Currently before the Court is petitioner's Motion for Leave to Supplement the Record with Deposition Testimony of Kevin Zinn, filed March 14, 2016. Petitioner seeks to take a post-trial deposition of Kevin Zinn, who is currently incarcerated, and have the transcript of that deposition admitted into evidence in this case. We conclude that the additional information petitioner seeks to present would be cumulative and of questionable relevance to the issues this Court must decide. The proposed deposition procedure would also be unfairly burdensome to respondent. We will therefore deny the Motion.

This case was tried in Washington, D.C., on November 6, 2015. On the morning of trial petitioner sought a continuance, contending that the trial should be postponed until such time as Kevin Zinn, then incarcerated in Mississippi, became available to testify. Petitioner represented that Mr. Zinn would be incarcerated until 2019. After hearing argument on this motion we denied it, noting (among other things) that Mr. Zinn's testimony could well turn out to be cumulative.

During the trial petitioner put on his own testimony and that of three other witnesses to elucidate the business relationships at issue in this case. Petitioner allegedly formed a partnership with Louis Jasikoff that did business with Continental, an entity owned by Mr. Zinn. Mr. Jasikoff and Manuel Larenas, a former employee of Continental, testified about the nature of these relationships. The main questions the Court must decide are: (1) whether petitioner and Mr. Jasikoff engaged in a trade or business through an alleged partnership during the tax year in issue; (2) whether petitioner substantiated that he had transferred certain sums to

SERVED Mar 24 2016

Continental; and (3) if so, whether these transfers constituted ordinary and necessary business expenses of the alleged partnership, as opposed to a loan or capital contribution to Continental.

In his Motion for Leave to Supplement the Record with Deposition Testimony of Kevin Zinn, petitioner states that Mr. Zinn has recently been moved to the Federal correctional facility in Fort Dix, New Jersey, and that authorities there might permit him to be deposed. Petitioner asserts that Mr. Zinn's testimony would relate to the payments petitioner allegedly made to Continental and would help to show that petitioner "has done all that can possibly be expected of him to substantiate his claims."

Reopening the record for the submission of additional evidence lies within the sound discretion of the Court. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 331 (1971); accord Butler v. Commissioner, 114 T.C. 276, 286-287 (2000), modified on other grounds, Porter v. Commissioner, 132 T.C. 203 (2009). A court will not grant a motion to reopen the record unless, among other requirements, the evidence in question is not merely cumulative; the evidence is material to the issues involved; and the evidence probably would change the outcome of the case. See Coleman v. Commissioner, T.C. Memo. 1989-248 (citing Edgar v. Finley, 312 F.2d 533 (8th Cir.1963)).

We find that none of these requirements is met here. Taxpayers must maintain sufficient records to substantiate their claimed deductions, retain these records for as long as the contents may become material, and keep these records available for inspection. Sec. 6001; sec. 1.6001-1(a), (e), Income Tax Regs. In an effort to substantiate his alleged transfers to Continental, petitioner put on the testimony of three witnesses (including his own) and all the documentary evidence that he could muster. We conclude that any testimony by Mr. Zinn, in the absence of additional documentary evidence, would be cumulative and would not affect the Court's resolution of this question. To the extent the Court finds that petitioner has established a deductible expense, the evidence presented at trial is sufficient to determine the amount so deductible.

The Court concludes that Mr. Zinn's testimony would also be cumulative, or irrelevant, with respect to the other issues the Court must decide. Mr. Zinn's testimony would be irrelevant on the question whether petitioner and Mr. Jasikoff engaged in a trade or business through a partnership during the tax year at issue. Mr. Zinn's testimony would also be irrelevant, or cumulative, as to whether the

advances petitioner allegedly made to Continental constituted ordinary and necessary business expenses of the alleged partnership.

Petitioner filed his Motion four months after the trial ended and a full month after respondent filed his opening post-trial brief. Petitioner's proposed deposition of Mr. Zinn in Fort Dix, New Jersey, would burden respondent by the need to attend the deposition and to submit additional briefing to address whatever testimony Mr. Zinn might supply. Petitioner has presented nothing to the Court that would suggest that any benefit from Mr. Zinn's testimony would justify the burden that would fall on respondent should we grant this Motion.

For the foregoing reasons, it is

ORDERED that petitioner's Motion for Leave to Supplement the Record with Deposition Testimony of Kevin Zinn, filed March 14, 2016, is denied.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
March 23, 2016