

UNITED STATES TAX COURT
WASHINGTON, DC 20217

BLOCK DEVELOPERS, LLC, WILLIAM J.)
MAXAM, APC, TAX MATTERS PARTNER,)
ET AL.,)

Petitioner(s),)

v.)

Docket No. 3198-10, 23598-12,
23599-12, 23600-12.

COMMISSIONER OF INTERNAL REVENUE,)

Respondent)

ORDER

We have already released the opinion in these cases. Petitioners moved for reconsideration under Rule 161. The Court assumes the parties know the background facts of the case and motion.

Petitioners make three arguments:

the Court should have allowed various business deductions that Block Developers claimed;

the Court should have made a finding that the patent sale and royalty were at fair market value; and

I.R.C. § 6223(c)(3) required the Commissioner to have provided notices to Block Developers’ indirect partners.

Business Deductions

In the opinion we made no finding on Block Developer's business expenses. Block Developers argues that this was substantial error because the parties had stipulated to those expenses. The problem for Block Developers on this point is that we found that it was not engaged in any real business activity but was only a conduit to shunt money to the Janssons' Roth IRAs. *See Block Developers, LLC v. Commissioner*, 114 T.C.M. 68, 74-75 (2017). Without any business activity there can't be business-expense deductions. *See, e.g., Frempong-Atuahene v. Commissioner*, 56 T.C.M. 1245, 1250 (1989) ("petitioners failed to prove that they were carrying on a trade or business . . . during the years in issue. Consequently, all claimed business losses are disallowed"); *see also Chin v. Commissioner*, 85 T.C.M. 814, 816-17 (2003) (rent not deductible where no business activity on premises). And a fair reading of the stipulations doesn't show that the Commissioner agreed to the deductions claimed but only that the stipulated exhibits would show those expenses "if any." Simply having records of expenses isn't enough; there must be proof there was a real business.

Fair Market Value Findings

Block Developers also urges the Court to revisit our reasoning that we didn't need to make findings on whether the sale of patents and royalty rate were at fair market values. If Block Developers were a real business, and if it bought SR Products' patents at a fair market value, and if SR Products then paid a fair market royalty to Block Developers, then there would not be the shift of value that Notice 2004-8, 2004-1 C.B. 33 warns taxpayers the IRS thinks is abusive.

That's a lot of "ifs", and the major finding of the opinion was that Block Developers stumbled on the first one -- it wasn't a real business. *See Block Developers, LLC*, 114 T.C.M. at 75. And it doesn't matter if something that wasn't a real business papers a correct sales price and royalty rate for patents that it didn't use for any business purpose.

Notice to Indirect Partners

The Court discussed this argument at pages 20 through 24 of the slip opinion. *Id.* at 73-74. Block Developer's motion reiterates the arguments that we already rejected -- all of which seem traceable to its continued overlooking of the phrase "information furnished to the Secretary under paragraph (1) or (2)" in the

Code itself. *See* I.R.C. § 6223(c)(3). The information about the indirect partners that the IRS had here was just not furnished under those paragraphs.

It is therefore

ORDERED that petitioners' motion for reconsideration is denied. It is also

ORDERED that on or before February 21, 2018 the parties submit the computations under Rule 155 or file a joint status report describing their progress.

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(Signed) Mark V. Holmes
Judge
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Dated: Washington, D.C.
December 19, 2017