UNITED STATES TAX COURT
WASHINGTON, DC 20217

KELLE C. HICKAM & NANCY HICKAM,	)	
	)	
Petitioners,	)	**CT**
	)	
v.	)	Docket No. 7737-18.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R

This case is before the Court on petitioners' Motion for Partial Summary Judgment (motion) filed July 16, 2018. On August 9, 2018, respondent filed an Objection to Motion for Partial Summary Judgment (objection). On November 1, 2018, petitioners' motion was assigned to the undersigned for disposition.

After review of the record on petitioners' motion, the Court concludes that there are genuine issues of material facts and petitioners are not entitled to judgment as a matter of law.

Petitioners resided in Colorado at the time the petition in this case was filed.

Background

On April 23, 2018, petitioners timely filed the petition in this case. In their petition in paragraph 5, "Explain why you disagree with the IRS determination in this case", petitioners list six reasons enumerated in 6 numbered paragraphs why they disagree with the Internal Revenue Service's (IRS)[1] notice of deficiency. Specifically, petitioners stated:

[1]The Court uses the term "IRS" to refer to administrative actions taken outside of these proceedings. The Court uses the term "respondent" to refer to the Commissioner of the Internal Revenue, who is the head of the IRS and is respondent in this case, and to refer to actions taken in connection with this case.

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(1) The casualty and theft losses noted in the lead sheets were not included in the deductions for 2015.
(2) American opportunity credit not applied in 2015.
(3) The 2nd vehicle mileage deductions were omitted for 2015 and 2016.
(4) Depreciation deductions for 2015 are disputed between the IRS Auditors.
(5) The Failure to File Penalty lead sheet is inaccurate.
(6) The Negligence or Disregard of the Rules or Regulation is inaccurate.

On June 14, 2018, respondent filed an answer. In his answer respondent responded to the numbered paragraphs on the petition. Respondent answered that he admitted (that is agreed with) what petitioners listed in paragraphs 1, 3, and 4 on the petition. In paragraph 1 petitioners indicated they were disputing a notice of deficiency. In paragraph 3 petitioners indicated the notice of deficiency was for years 2014, 2015, and 2016. In paragraph 4 petitioners selected to have their case conducted under the regular tax case procedures.

Respondent also answered that he denied what petitioners listed in paragraphs 5 and 6 on the petition for lack of sufficient information. Paragraph 5, as indicated above, lists petitioners' explanation of why they disagreed with the IRS determination. In paragraph 6, "State the facts upon which you rely" petitioners wrote "[s]ee attached sheet for the facts upon which we relied."

On July 16, 2018, petitioners filed this motion requesting the Court grant partial summary judgment for the following deductions: (1) the casualty and theft losses in the amount of $31,261 for 2015, that was originally deducted as returns and allowances; (2) business mileage deduction for the 2nd vehicle in the amount of $6,598.70 for 2015; and (3) a net operating loss carryback in the amount of $90,036 instead of $84,452 as allowed in the notice of deficiency. Petitioners stated that respondent in his answer "admitted their (sic) error with regards to the allegations contained in paragraphs 1, 3, and 4 of the Petition." To support their motion petitioners included, among other things: (1) an incomplete copy of the notice of deficiency; (2) Workpaper #401; (3) Gross Receipts Lead Sheet; (4) Workpaper #518, Schedule C - Returns Allowances Lead Sheet; and (5) 2nd vehicle log titled "Bigtime Car & Truck Expenses for 2015". Petitioners, however, appear to believe that respondent's numbered paragraphs in his answer refer to their numbered responses in the petition's paragraph 5. They do not.

Respondent's paragraphs in his answer refer to the numbered paragraphs on the petition.

On August 9, 2018, respondent filed his objection. Respondent stated that there are disputes and genuine issues as to each of the central material facts upon which petitioners rely as a basis for their motion.

Discussion

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a).[2] The Court may grant summary judgment only "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b); see Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Petitioners, as the moving party, bear the burden of proving that no genuine dispute exists as to any material fact and that petitioners are entitled to judgment as a matter of law. See FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Group, Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986).

Summary Judgment is not appropriate under these circumstances. Petitioners have failed to show that they have provided respondent with all

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[2]Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.

requested documents and receipts to substantiate deductions in excess of what has been allowed. Drawing all factual inferences against petitioners, as the moving party, petitioners have not established that there is not any genuine dispute as to any material fact and have not established that they are entitled to judgment in their favor as a matter of law. This case requires more evidentiary development.

First, regarding the casualty and theft losses, respondent stated in his objection that petitioners did not claim any deduction for returns and allowances on their 2015 Federal income tax return. Respondent also stated that during the examination of the return the IRS allowed petitioners a deduction for returns and allowances of $32,000. It is not clear based on petitioners' motion whether petitioners are now asserting that they are entitled to an additional deduction for casualty and theft losses of $31,261. Thus, a genuine dispute as to this material fact exists.

Second, with respect to a business mileage deduction respondent disputes that petitioners have established they are entitled to claim car and truck expenses in excess of the amount already allowed based on the information petitioners have provided. Petitioners have not in their motion pled anything that indicates that a dispute as to this material fact regarding this deduction does not exist.

Third, as to the net operating loss carryback (NOL), respondent stated that petitioners were allowed a NOL of $28,450 and $56,002 for the years 2014 and 2015, respectively. Respondent asserts that he has correctly calculated the NOL for 2015 and petitioners have not established they are entitled to a NOL in excess of $56,002 for 2015. Accordingly, there is a genuine issue of dispute as to the correct amount of the NOL for 2015. Upon due consideration and for cause, it is

ORDERED that, petitioners' Motion for Summary Judgment is denied without prejudice.

(Signed) Diana L. Leyden
Special Trial Judge

Dated: Washington, D.C.
November 27, 2018