

**STATE OF WISCONSIN  
TAX APPEALS COMMISSION**

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**FRANCESCA A. VEGLIA-DANSKY,**

**DOCKET NO. 06-I-04**

Petitioner,

vs.

**DECISION AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

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**DAVID C. SWANSON, COMMISSIONER:**

This matter comes before the Commission following a hearing conducted via telephone on March 13, 2007 by the undersigned Commissioner. Petitioner Francesca A. Veglia-Dansky (“Petitioner”) appeared at the hearing representing herself, and submitted a post-hearing brief. Attorney Sheree Robertson appeared for respondent, the Wisconsin Department of Revenue (the “Department”), and submitted a post-hearing brief in response. At the hearing, the Commission received and entered into evidence Petitioner’s exhibits A and B and the Department’s exhibits 1 through 10. Petitioner and Shirley Henika, the Department’s Resolution Officer assigned to this matter, both provided sworn testimony at the hearing.

Having considered the sworn testimony and the parties’ exhibits and briefs, and acting pursuant to Wis. Stat. § 73.01(4)(em)2, the Commission finds, concludes, decides and orders as follows:

## FINDINGS OF FACT

1. By notice to petitioner dated December 6, 2004, the Department issued an assessment of income tax against petitioner for the years 2000, 2001 and 2002 (the “years at issue” or “period at issue”) in the total amount of \$5,419.67, including tax and interest (the “assessment”). (Dept. Ex. 1.)

2. By letter dated December 11, 2004, petitioner filed with the Department a petition for redetermination of the assessment. (Dept. Ex. 2.)

3. By Notice of Action dated November 7, 2005, the Department denied the petition for redetermination. (Dept. Ex. 3.)

4. On January 3, 2006, Petitioner filed a timely petition for review of this matter with the Commission.

5. Petitioner was a full-year resident of Wisconsin during the years at issue and filed a Wisconsin income tax return for each of those years.

6. Petitioner has a Bachelor of Arts degree in music from the University of Wisconsin-Madison and a Master’s degree from the Manhattan School of Music.

7. During the years at issue, Petitioner was employed full-time by the Milwaukee Public School System (“MPS”) as a “permit teacher” to teach music. As a permit teacher at MPS, Petitioner held a provisional license to teach while she pursued certification. During 2001 and 2002, Petitioner also taught music at the Wisconsin Conservatory of Music. Her wages from teaching constituted her main source of income during the period at issue.

8. For the year 2000, Petitioner filed Wisconsin Income Tax Return Form 1, with an attached copy of her 2000 Internal Revenue Service (“IRS”) Form 1040 U.S. Individual Income Tax Return, including Schedule C (together, the “2000 Return”). (Dept. Ex. 4.)

9. For the year 2001, Petitioner filed Wisconsin Income Tax Return Form 1, with an attached copy of her 2001 IRS Form 1040 U.S. Individual Income Tax Return, including Schedules C and E (together, the “2001 Return”). (Dept. Ex. 5.)

10. For the year 2002, Petitioner filed Wisconsin Income Tax Return Form 1, with an attached copy of her 2002 IRS Form 1040 U.S. Individual Income Tax Return, including Schedules C and E (together, the “2002 Return”). (Dept. Ex. 6.)

11. On her 2000 Return Schedule C “Profit or Loss from Business,” Petitioner reported income and expenses derived from the business of “fine arts, lessons voice/piano, performance, theater sets & designs,” including \$485 in gross income and expenses totaling \$11,454. Petitioner’s net loss of \$10,969 was deducted as a business loss on Line 12 of her 2000 IRS Form 1040. Her Schedule C expenses included the following: Insurance, \$139; Mortgage interest, \$364;<sup>1</sup> Office expense, \$2,023; Rent or lease of vehicles, machinery and equipment, \$2,301; Repairs and maintenance, \$2,948; Supplies, \$301; Travel, \$365; Meals and entertainment, \$887; Utilities, \$1,277; Wages, \$215; and Business use of home, \$634 (carried over from 2000 IRS Form 8829).

12. On her 2001 Return Schedule C “Profit or Loss from Business,” Petitioner reported income and expenses derived from the business of “fine art

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<sup>1</sup> Petitioner also deducted \$364 in mortgage interest as an itemized deduction on Line 10 of Schedule A of her 2000 IRS Form 1040.

endeavors,” including \$1,065 in gross income and expenses totaling \$10,565. Petitioner’s net loss of \$9,500 was deducted as a business loss on Line 12 of her 2001 IRS Form 1040. Her Schedule C expenses included the following: Office expense, \$1,479; Travel, \$1,134; Education expense, \$1,975; Voice lessons, \$640; Music items, \$414; Uniforms and dresses, \$843; Ticket, \$500; Additional travel expenses, \$2,054; and Business use of home, \$1,526 (carried over from 2001 IRS Form 8829).

13. On her 2002 Return Schedule C “Profit or Loss from Business,” Petitioner reported income and expenses derived from the business of “independent artists, writers & performers,” including \$565 in gross income and expenses totaling \$4,554. Petitioner’s net loss of \$3,989 was deducted as a business loss on Line 12 of her 2000 IRS Form 1040. Her Schedule C expenses included the following:<sup>2</sup> Insurance, \$176; Mortgage interest, \$1,792; Office expense, \$290; Supplies, \$165; Travel, \$697; Meals and entertainment, \$162; Utilities, \$870; and gowns, shoes, hair and make-up for performances, \$403.<sup>3</sup>

14. During the years at issue, Petitioner resided at 3268 S. 9<sup>th</sup> Street in Milwaukee, Wisconsin (the “Duplex”).

15. Petitioner and Leah Fein (a/k/a Leah Fein-Zerbe) purchased the Duplex in 1999 as equal co-owners. Ms. Fein moved out of the Duplex during 2000, and Petitioner resided at the Duplex until mid-2003.

16. The 2003 City of Milwaukee Combined Property Tax Bill for the

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<sup>2</sup> Some reported expenses are rounded off to the nearest dollar amount.

<sup>3</sup> Petitioner also attached 2002 IRS Form 8829 Expenses for Business Use of Your Home, but apparently did not add the additional \$4,554 in expenses listed on that form to the total expenses claimed on her 2002 Schedule C.

Duplex was issued to both Petitioner and Ms. Fein. (Dept. Ex. 7.)

17. Ms. Fein quitclaimed her share of the Duplex to Petitioner on or about June 16, 2003 in exchange for \$1.00 consideration. (Dept. Ex. 8.)

18. In a letter to Ms. Fein dated May 20, 2000, Petitioner discussed the agreements she had made with Ms. Fein regarding the Duplex and their arrangements for going forward after Ms. Fein had moved out. Petitioner stated that Ms. Fein was responsible for renting her portion of the Duplex to mutually agreed upon tenants and making half of the required mortgage payments. (Dept. Ex. 9.)

19. In a letter to Petitioner dated March 10, 2001, Ms. Fein stated that she was unable to continue making mortgage payments on the Duplex, that her tenants were behind in rent payments to her, and that she had filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. Ms. Fein also noted that she had offered to sell or give her share of the Duplex to Petitioner in 2000. (Dept. Ex. 10.)

20. On her 2001 Return Schedule E "Supplemental Income and Loss," Petitioner reported income and expenses derived from the rental of a portion of the Duplex, including \$5,900 in income consisting of rents received and \$18,208 in total expenses. Petitioner's net loss of \$12,308 was deducted as a loss from rental real estate on Line 17 of her 2001 IRS Form 1040. Her 2001 Schedule E expenses included the following: Mortgage interest, \$4,349; Other, \$11,413;<sup>4</sup> and depreciation, \$2,446 (carried over from 2001 IRS Form 4562).

21. On her 2002 Return Schedule E "Supplemental Income and Loss,"

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<sup>4</sup> The \$11,413 total in "Other expenses" listed on Line 18 of the 2001 Schedule E is further identified only as "BUS PERCENT O", and is not otherwise explained on the 2001 Return.

Petitioner reported income and expenses derived from the rental of a portion of the Duplex, including \$10,040 in income consisting of rents received and \$10,824 in total expenses. Petitioner's net loss of \$784 was deducted as a loss from rental real estate on Line 17 of her 2002 IRS Form 1040. Her 2002 Schedule E expenses included the following: Advertising, \$80; Cleaning and maintenance, \$1,441; Insurance, \$900; Repairs, \$850; Supplies, \$831; Utilities, \$776; "Pay off loan for bathroom redecoration," \$3,500; and depreciation, \$2,446 (carried over from 2002 IRS Form 4562).

22. On IRS Form 1040 of her 2002 Return, Petitioner claimed \$250 in "Educator expenses" (Line 23) and \$1,677 in "Tuition and fees deduction" (Line 26), for a deduction totaling \$1,927. Petitioner also claimed a deduction of \$1,677 for tuition on Line 11 of her Wisconsin Form 1.<sup>5</sup> (Dept. Ex. 6.)

23. In the assessment, the Department disallowed (1) all of Petitioner's reported Schedule C expenses for 2000, 2001 and 2002 (the "Schedule C Expenses"), (2) all of her reported Schedule E expenses for 2001 and 2002 (the "Schedule E Expenses"), and (3) the \$250 "Educator expenses" deduction and one of the \$1,677 tuition deductions claimed for 2002 (the "Educator Expenses Deduction"). (Dept. Ex. 1.)

24. On November 14, 2006, the Commission issued an order scheduling this matter for a telephone hearing on January 31, 2007.<sup>6</sup>

25. On January 16, 2007, Petitioner filed a large packet of documents with the Commission. On January 24, 2007, Petitioner filed a second large packet of

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<sup>5</sup> The Department argues that Petitioner deducted the same tuition payment twice.

<sup>6</sup> The Commission scheduled a telephone hearing to accommodate Petitioner, who was a resident of Florida at the time of the hearing.

documents with the Commission. None of the documents were marked as exhibits, indexed or otherwise organized in any way. To afford Petitioner another opportunity to organize these documents and present them as exhibits at the hearing, the Commission postponed the hearing until March 13, 2007 and set February 27, 2007 as the deadline for Petitioner to organize and label any prospective exhibits to be offered at the hearing. (Commission Memorandum and Notice and Order of Telephone Hearing, Jan. 26, 2007.)

26. Petitioner never filed any labeled exhibits or any index to organize the various documents she filed with the Commission in this matter.

27. At the hearing, Petitioner offered only two documents as exhibits, which were both accepted and entered into evidence: (1) a copy of page 2 of a document from National City Mortgage dated May 9, 2001 and signed by Petitioner on May 12, 2001, according to which Petitioner apparently agreed to make six monthly mortgage payments of \$1,370.41 between May and October, 2001, with additional notes written by Petitioner in the bottom margin (Pet. Ex. A); and (2) a copy of a letter from Petitioner addressed "To Whom It May Concern" dated August 17, 2001, which discusses the circumstances of the bankruptcy of Leah Fein-Zerbe and Petitioner's attempts to stay current with mortgage and other payments related to the Duplex (Pet. Ex. B).

#### **CONCLUSION OF LAW**

Petitioner has failed to satisfy her burden of proof in this matter.

## DECISION

Assessments made by the Department are presumed to be correct, and the burden is on the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). Tax exemptions, deductions, and privileges are matters of legislative grace and will be strictly construed against the taxpayer. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958).

The dispute in this matter focuses on the Department's disallowance for Wisconsin income tax purposes of (1) the Schedule C Expenses, (2) the Schedule E Expenses, and (3) the Educator Expenses Deduction. A discussion of each of these three disputes follows.

### **1. The Schedule C Expenses**

In general, Wisconsin follows federal law with respect to income tax. Section 162(a) of the Internal Revenue Code (the "Code") provides that there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

In its brief, the Department argues that Petitioner's Schedule C expenses were not deductible because Petitioner's "fine arts activities" were not engaged in for profit under Section 183(a) of the Code. In this case, Petitioner's "fine arts activities" consisted of a combination of providing voice and other music lessons, as well as performing, which required additional study and auditions. The Department argues

that Petitioner's expenses in connection with these activities were personal expenses, not necessary business expenses.

While that may be true with respect to some of Petitioner's claimed expenses, it is unreasonable for the Department to insist that Petitioner's expenses related to providing voice or other music lessons in exchange for a fee were personal and not business-related. Moreover, the Department's argument could exclude almost any artistic endeavor from treatment as a business, at least in years when that activity generates a financial loss, which is an overly-broad reading of the limits imposed by Sections 162 and 183(a).

However, that issue is beyond the scope of this decision, because Petitioner has failed to substantiate any of her claimed Schedule C Expenses. At the hearing, Petitioner offered only two documents as evidence in support of her case, and neither has any bearing on the Schedule C Expenses. Petitioner testified that the Schedule C Expenses were necessary business expenses, but did not provide any documentation or other evidence of any specific Schedule C Expense. As a matter of law, Petitioner's uncorroborated testimony as to these expenses is insufficient to satisfy her burden of proof and overcome the presumption of correctness attached to the assessment. *See, Conrad LeBeau v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-383 (WTAC, June 22, 1984), *aff'd*, 133 Wis. 2d 476, 394 N.W.2d 920 (Ct. App., August 7, 2986) (unpublished decision); *St. Charles Lockett v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-807 (WTAC 1986).

Prior to the hearing, the Commission afforded Petitioner ample time to

organize her case and documents, but Petitioner failed to do so. Consequently, the Commission must presume this portion of the assessment is correct and affirm the Department's disallowance of the Schedule C Expenses.

## **2. The Schedule E Expenses**

Petitioner and Leah Fein (a/k/a Leah Fein-Zerbe) purchased the Duplex in 1999 as equal co-owners, and Ms. Fein moved out of the Duplex during 2000. In a letter to Ms. Fein dated May 20, 2000, Petitioner discussed the agreements she had made with Ms. Fein regarding the Duplex and their arrangements for going forward after Ms. Fein had moved out. Petitioner stated that Ms. Fein was responsible for renting her portion of the Duplex to mutually agreed upon tenants and making half of the required mortgage payments. In a letter to Petitioner dated March 10, 2001, Ms. Fein stated that she was unable to continue making mortgage payments on the Duplex, that her tenants were behind in rent payments to her, and that she had filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. Ms. Fein also noted that she had offered to sell or give her share of the Duplex to Petitioner in 2000. According to Petitioner's testimony, Ms. Fein's portion of the Duplex was rented out for portions of 2000, 2001 and 2002. On or about June 16, 2003, Ms. Fein quitclaimed her share of the Duplex to Petitioner.

It is essentially undisputed that Petitioner rented out Ms. Fein's portion of the Duplex during 2001 and 2002. The Department does not challenge Petitioner's reporting of the rents she received as income on Schedule E, only her reported expenses. However, while Petitioner likely had some allowable expenses with respect

to these rental activities, she has failed to substantiate any of the claimed expenses.

Petitioner is not eligible to claim an expense for depreciation of the rented portion of the Duplex during 2001 and 2002, because Ms. Fein still owned that portion of the Duplex during those years. *See*, Code § 168. Petitioner argues that she had assumed all of Ms. Fein's responsibilities with respect to the property beginning in 2000, but Ms. Fein's name remained on the deed and property tax bill until 2003. Petitioner's document from National City Mortgage (Pet. Ex. A) does not substantiate her case. First, Petitioner provided only page 2 of the document, which makes it impossible to determine the context of any statement included therein. Second, the mere fact that Petitioner alone agreed to the terms of this document does not prove that Ms. Fein was no longer the co-owner of the Duplex. Thus, the Department was correct in disallowing Petitioner's Schedule E depreciation expenses for 2001 and 2002.

With respect to her claimed mortgage interest deduction for 2001, Petitioner's only evidence of payment is the document from National City Mortgage (Pet. Ex. A). However, this document does not prove that Petitioner actually made any mortgage payments during 2001, only that some were due, and does not state what portion of any of these required payments consisted of mortgage interest.

Petitioner has not substantiated any part of the lump sum claim of \$11,413 in "Other expenses" reported on her 2001 Schedule E. Similarly, Petitioner has not substantiated any of her Schedule E Expenses for 2002. Absent any substantiation of the Schedule E Expenses, the Commission must presume the assessment is correct and affirm the Department's disallowance of these expenses.

**3. The Educator Expenses Deduction**

At the hearing, Petitioner did not address the disallowance of her 2002 Educator Expenses Deduction in her testimony and did not offer any evidence in support of her position. During her testimony, Ms. Henika stated that she believed that Petitioner had conceded this issue. Again, absent any evidence to the contrary, the Commission must presume that the assessment is correct regarding this issue.

For the reasons discussed herein,

**IT IS ORDERED**

The Department's action on Petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 11<sup>th</sup> day of February, 2008.

**WISCONSIN TAX APPEALS COMMISSION**

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David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"