

**STATE OF WISCONSIN  
TAX APPEALS COMMISSION**

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**DARRYL & CHRISSANN JAEGER,**

**DOCKET NO. 23-I-067**

Petitioners,

vs.

**WISCONSIN DEPARTMENT OF REVENUE,**

Respondent.

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**DECISION AND ORDER**

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**JESSICA ROULETTE, COMMISSIONER:**

This case comes before the Commission for decision following a trial on September 16, September 17, and September 19, 2024, in Madison, Wisconsin. Petitioners appear pro se by Darryl Jaeger of Kewaskum, Wisconsin. Respondent, the Wisconsin Department of Revenue, is represented by Attorney Dominic Weisse. The issue for determination is whether Petitioners operated a for profit business which would allow deductions on Schedule Fs for profit and loss from farming for the relevant time period.

Having considered the entire record, the Commission finds, concludes, and orders as follows:

**FINDINGS OF FACT**

**Jurisdictional Facts**

1. By notice dated February 24, 2022, Respondent, the Wisconsin

Department of Revenue ("Department"), issued an income tax assessment against Petitioners for the years 2018, 2019, and 2020 ("audit period") in the amount of \$7,753.72, including interest, computed to April 25, 2022. (Trial Exhibit ("Tr. Ex.") A).

2. Petitioners filed a timely petition for redetermination by correspondence received by the Department on March 3, 2022. (Tr. Ex. B).

3. On July 15, 2022, the parties signed a stipulation and agreement extending the time for the Department to act upon the petition for redetermination to November 28, 2022. (Tr. Ex. M).

4. On September 26, 2022, the parties signed a stipulation and agreement extending the time for the Department to act upon the petition for redetermination to February 28, 2024. (Tr. Ex. N).

5. By notice of action dated January 6, 2023, the Department denied Petitioners' petition for redetermination. (Tr. Ex. C).

6. On March 3, 2023, Petitioners filed a timely petition for review with the Commission. (Commission file).

#### **Material Facts**

7. During the audit period and up to the date of the hearing in this matter, Petitioners resided in Kewaskum, Wisconsin and were both employed in work with W-2 wages. Petitioners' W-2 wages during the audit period were \$234,627 in 2018, \$446,575 in 2019, and \$241,607 in 2020.

8. In 2006, Petitioner Darryl Jaeger began conducting cattle-related activities which he considered to be a business, which he has variously labeled in his

federal tax filings as cattle feeding and cattle raising.

9. In 2006 and 2007, Petitioners owned farm-related equipment and owned no cattle.

10. From sometime during 2006 to September 2024, including during the audit period, Petitioners' cattle-related activities took place on farmland belonging to Darryl Jaeger's uncle, Jerome Schwartz.

11. Petitioner Darryl Jaeger created a document which he refers to as a "business plan" in 2018 and last updated on May 1, 2024. This document reflects the overall net worth of the cattle-related enterprise belonging to Petitioners, with a focus on the estimated value of their assets. It does not include a narrative explaining changes to the business between 2006 and the audit period, during the audit period, or subsequent to the audit period. Nor does it set forth financial goals, economic challenges, or opportunities that might move the enterprise into a profitable state. There is no discussion in the document about resources that are currently available, that need to be acquired, or risks to the enterprise. (Tr. Ex. 49.)

12. Petitioner Darryl Jaeger testified that Petitioners wanted to have a farming business to provide income during retirement.

13. Petitioner Darryl Jaeger testified that he grew up on a farm and comes from a farming family. He indicated that he has spent many years' vacations, evenings, and weekends performing labor on the farm owned by Mr. Schwartz. Some of this labor was in support of Mr. Schwartz's farming enterprise, and some of it was in support of cattle owned by Petitioners.

14. Petitioners provided no written reports, receipts for fees paid, or contemporaneous notes regarding any consultations with any professionals, including any agronomist.

15. Petitioners provided no evidence indicating membership in any cattle raising or other farming professional associations, nor any evidence of having participated in UW-Extension or other educational coursework, seminars, or programs on the business of cattle raising or other farming business topics.

16. Petitioner Darryl Jaeger attended Marquette University from 1987 to 1992 and studied engineering. During the years that he attended college, Mr. Jaeger assisted Mr. Schwartz on Mr. Schwartz's farm on weekends.

17. Petitioners reported -\$2,140 of income from sales of livestock in 2018, -\$5,350 of income from sales of livestock in 2019, and -\$8,445 of income from sales of livestock in 2020. The reported negative sale income was ultimately added to reported costs and losses, leading to combined reported negative income from the farm totaling -\$84,181 during the audit period. (Tr. Ex. 28, pp. 12-14).

18. For each year during the audit period, Petitioners attached a Schedule F to their Wisconsin and federal tax returns on which they claimed they were engaged in the business of farming during that calendar year. Schedule F is a form filed with taxpayers' Federal tax return, on which taxpayers engaged in a farming business should report profit and loss from that farming business. Petitioners reported the cost of cattle they claim to have purchased in the year in which they claim to have purchased the cattle. (Tr. Ex. 28, pp. 12-14).

19. During the period under review, Mr. Jaeger provided no third-party documentary evidence regarding the number of cattle owned by Petitioners. Documents provided by Mr. Jaeger and his previous representatives claimed that he owned inconsistent numbers of cattle during and after the audit period. Even after extensive testimony on this topic, the Commission cannot state with certainty the number of cattle Petitioners owned at any point during the audit period.

20. Petitioner Darryl Jaeger testified that beginning in 2006, and continuously through the end of 2017, his business activity was a cattle feedlot, designated on his Schedule F as "Cattle Raising" in 2006 through 2016, and as "Cattle Care" in 2017. From 2006 through the end of 2017, Petitioners bought supplies and bought and maintained farming equipment to assist in raising crops on Jerome Schwartz's farm to provide feed crops for cattle owned by Jerome Schwartz. Petitioners did not keep contemporaneous, detailed records of hours worked, the location, or the timing of the use of supplies purchased by Petitioners, nor did they maintain contemporaneous, detailed records of the ultimate disposition of crops raised during the audit period. They did not keep records of crop shares paid or received or report the income or expenses associated with the crop shares on Schedule F.

21. Petitioner Darryl Jaeger testified that he changed his business activity from "Cattle Raising" to "Cattle Care" in 2018. The only documentary evidence introduced in support of this change is the net worth statement described in paragraph 11 above. Petitioner Darryl Jaeger testified that the main change to the business was that Petitioners no longer purchased cattle to raise and sell for beef, instead they began

purchasing cattle to breed, and subsequently raising the cattle born to the breeding stock, to sell those newborn cattle for meat after they reached an appropriate size. No documentary or expert testimony was introduced describing whether or not one form of business was more profitable than the other, nor if there were circumstances that would make one or the other more profitable.

22. Petitioner Darryl Jaeger testified that beginning in 2018 and continuously until the date of trial, his business activity was as a cow-calf beef cattle raising operation, which, beginning with his 2017 income tax return, he designated on his Schedule F as "Cattle Care." Mr. Jaeger testified that, because he completed his 2017 return in 2018, he used an inaccurate description of the business as it was conducted throughout 2017 on the return he completed and filed for 2017. Mr. Jaeger further testified that, beginning January 1, 2018, and continuing until the date of trial, Petitioners bought and fed cattle, bought supplies, and bought and maintained farming equipment to assist in raising crops on Jerome Schwartz's farm to provide feed crops for the cattle owned by both Mr. Schwartz and by Petitioners. Petitioners did not keep contemporaneous, detailed records of hours worked, the location, or the timing of the use of supplies purchased by Petitioners, nor did they maintain contemporaneous, detailed records of the ultimate disposition of crops raised and cattle cared for during the audit period.

23. Petitioner Darryl Jaeger estimated at trial that, during the audit period, he spent an average of fifteen to twenty hours each week on his farming activities, including both labor on the farm, which included feeding cattle, tending crops, and repairing equipment, as well as what Petitioner described as two hours per week of

“bookwork,” which Petitioner described as time spent at his computer finding parts and updating ledgers. He specifically noted that the amount of time spent engaged in farm-related labor during any given week or month varied considerably. Petitioners provided no detailed, contemporaneous records of the hours worked.

24. Petitioner Darryl Jaeger testified that he was able to feed his cattle every day or every other day, and that he used vacation time to complete farming duties: in 2018, 2019, and 2020, he used about one month of paid vacation time each year, and he used about one week of unpaid leave every year to complete farming duties. Mr. Jaeger could not tell the Commission whether the vacation time used was spent to cultivate crops or other specific farming activities. Petitioners did not provide any contemporaneous, detailed records of vacation time used on farming activities.

25. Petitioners did not maintain either a separate credit card or a separate bank account for their business, and they wrote approximately five (5) checks per year for business purposes.

26. Petitioners maintained no contemporaneous books of account for the cattle farming activities. Petitioners offered a “cattle tracking sheet” into evidence, but that document had not been updated in almost four months. When that document was created and how often it was updated was not clear from the document itself nor from Mr. Jaeger’s testimony. (Tr. Ex. 54.)

27. The Jaeger family consumed two (2) head of cattle in 2013 and two (2) head of cattle in 2016. Other disposition of cattle, per the “cattle tracking sheet,” (Tr. Ex. 54) did not suggest the regular sale of cattle or clarify the path towards the cattle

farming activity becoming profitable.

28. Darryl Jaeger testified that at the end of 2019, he owned nine (9) head of cattle. Petitioners reported a fertilizer expense of over \$34,000.00 for 2019 on their Schedule F. Some of the fertilizer claimed as a business expense was used to grow crops to feed the nine head of cattle Petitioners claimed to own, and some of the fertilizer was used on crops to feed cattle owned by his uncle, Jerome Schwartz. Petitioners did not know where all of the fertilizer was used, but Darryl Jaeger testified that it was used both in 2019 and in 2020 on crops on Mr. Schwartz's farm. Mr. Jaeger testified that he had a verbal agreement with his uncle to offset the feed cost for Mr. Jaeger's cattle in the future and went on to testify that he feeds his cattle hay and corn, which he obtained from his uncle at no cost. Mr. Jaeger testified that his uncle sells crops, and that there is no documentation regarding what portion of the fertilizer claimed as an expense by Petitioners in 2019 was used on the crops ultimately sold by Mr. Schwartz.

29. Petitioners claimed depreciation deductions for farm expenditures for only 2018 during the period under review (Tr. Ex. 28, pp. 12-14). The item depreciated and its purchase price is (Tr. Ex. 21): Kubota F3080, farm equipment used to move feed, bought in 2018 in Illinois from a John Deere dealer for \$9,000.00, used exclusively on the farm by Mr. Jaeger to feed Petitioners' cattle. \$9,000.00 of depreciation was claimed on Petitioners' 2018 Schedule F for this equipment. Exhibit 21 reflects Petitioners' estimate of the equipment value in December 2022 as \$15,000.00.

30. Petitioners deducted \$34,415.00 for fertilizers and lime as a farming expense for 2019 (Tr. Ex. 28, p. 13).



31. Petitioners deducted \$336.00 for feed as a farming expense in 2020 (Tr. Ex. 28, p. 14).

32. Petitioners deducted \$127.00 for seeds and plants as a farming expense in 2020 (Tr. Ex. 28, p. 14).

33. Petitioners deducted \$915.00 for veterinary, breeding, and medicine as a farming expense in 2020 (Tr. Ex. 28, p. 14).

34. Petitioners deducted gasoline, fuel, and oil costs as farming expenses for each year during the audit period (Tr. Ex. 28, pp. 12-14).

35. Petitioners deducted the cost of repairs and maintenance, and supplies, as farming expenses of the property for each year during the audit period (Tr. Ex. 28, pp. 12-14).

36. Petitioners reported the following non-farm income, farm income, farm expenses, and farm loss as stated on their tax returns (Tr. Exs. F, G, and H):

<u>Year</u>	<u>Non-farm income</u>	<u>Farm income</u> <sup>1</sup>	<u>Farm expenses</u>	<u>Total Farm loss</u>
2018	\$234,627	-\$2,140	\$14,153	\$16,293
2019	\$446,575	-\$5,350	\$44,643	\$49,993
2020	\$241,607	-\$8,445	\$9,450	\$17,895

#### APPLICABLE LAW

##### Wis. Stat. § 71.01 Definitions.

(4) "Federal taxable income" and "federal adjusted gross income" of natural persons . . . mean taxable income or

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<sup>1</sup> This figure represents reported income from the sale of cattle, after subtracting the cost of cattle purchased. Petitioners reported income from the sale of cattle in the year the cattle were sold. Petitioners reported the money spent to purchase cattle in the year in which they purchased the cattle, which does not comport with the instructions for this line of Schedule F and makes the math used to calculate farm income inaccurate as well.

adjusted gross income as determined under the internal revenue code<sup>2</sup> or, if redetermined by the department, as determined by the department under the internal revenue code or as may be determined on final appeal therefrom.

**26 I.R.C. § 162 Trade or business expenses.**

**(a) In general**

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. . . .

**26 I.R.C. § 183 Activities not engaged in for profit.**

**(a) General rule**

In the case of an activity engaged in by an individual . . . , if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section.

. . .

**(d) Presumption**

If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit. . . .

**26 C.F.R. § 1.183-2 Activity not engaged in for profit defined.**

**(a) In general.** For purposes of section 183 and the regulations thereunder, the term *activity not engaged in for profit* means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212. Deductions are allowable under section 162 for expenses of carrying on activities which constitute a trade or business of the taxpayer . . . . Except as provided in section 183 and § 1.183-1, no deductions are allowable for expenses incurred in connection with activities which are not engaged in for profit. Thus, for example, deductions are not allowed under section 162 or 212 for activities are carried on primarily as a sport, hobby, or for

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<sup>2</sup> Wis. Stat. §§71.01 (6)(k) and (6)(L) provide the definition of "Internal Revenue Code" under Wisconsin law for the audit period.

recreation. The determination whether an activity is engaged in for profit is to be made by reference to objective standards, taking into account all of the facts and circumstances of each case. Although a reasonable expectation of profit is not required, the facts and circumstances must indicate that the taxpayer entered into the activity, or continued the activity, with the objective of making a profit. In determining whether such an objective exists, it may be sufficient that there is a small chance of making a large profit. Thus it may be found that an investor in a wildcat oil well who incurs very substantial expenditures is in the venture for profit even though the expectation of a profit might be considered unreasonable. In determining whether an activity is engaged in for profit, greater weight is given to objective facts than to the taxpayer's mere statement of intent.

**(b) Relevant factors.** In determining whether an activity is engaged in for profit, all facts and circumstances with respect to the activity are to be taken into account. No one factor is determinative in making this determination. In addition, it is not intended that only the factors described in this paragraph are to be taken into account in making the determination, or that a determination is to be made on the basis that the number of factors (whether or not listed in this paragraph) indicating a lack of profit objective exceeds the number of factors indicating a profit objective, or vice versa. Among the factors which should normally be taken into account are the following:

(1) Manner in which the taxpayer carries out the activity.

...

(2) The expertise of the taxpayer or his advisors.

...

(3) The time and effort expended by the taxpayer in carrying on the activity.

...

(4) Expectation that assets used in the activity may appreciate in value.

...

(5) The success of the taxpayer in carrying on other similar or dissimilar activities.

...

(6) The taxpayer's history of income or losses with respect to the activity.

...  
(7) The amount of occasional profits, if any, which are earned.

...  
(8) The financial status of the taxpayer.

...  
(9) Elements of personal pleasure or recreation.

...

## ANALYSIS AND OPINION

### Standard of Review

Under Wisconsin law, tax exemptions, deductions, and privileges are a matter of legislative grace and are to be strictly construed against the granting of the same. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958). Furthermore, assessments made by the Department are presumed to be correct, and the burden is upon the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984). Testimony by interested parties that is not corroborated by other evidence will not overcome the presumption of correctness. *Dvorak v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-600 (WTAC 2002).

### Trade or Business

Petitioners have claimed that during the audit period they operated a cattle care business, and that they should be allowed to deduct the expenses of the cattle care business. The Department's assessment against Petitioners is based upon the Department's denial of Petitioners' deductions of expenses claimed in connection with the business in question.

Under § 162 of the Internal Revenue Code (I.R.C.), all "ordinary and necessary" expenses paid or incurred in carrying on a "trade or business" during the taxable year are deductible by individuals. I.R.C. § 183 provides that if an individual is not engaged in the activity for profit, only limited deductions attributable to that activity are allowed.<sup>3</sup>

### **Factors for Determination of "Activity not Engaged in for Profit"**

There is no legal presumption that Petitioners' cattle care enterprise was a trade or business engaged in for profit. Instead, Treas. Reg. § 1.183-2(b) provides that in determining whether or not an activity is engaged in for profit, "all facts and circumstances with respect to the activity are to be taken into account. No one factor is determinative in making this determination." As noted above, the Regulation lists nine factors to consider in making this determination. Each factor is analyzed individually below.

#### *1. The Manner in Which the Taxpayers Conducted the Activity*

Maintaining complete and accurate books and records, conducting the activity in a manner substantially similar to comparable businesses which are profitable, and making changes in operations to adopt new techniques or abandon unprofitable

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<sup>3</sup>I.R.C. § 183(d) establishes presumptions to help define an "activity not engaged in for profit." One of the presumptions is that "if the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity," then the activity is engaged in for profit. The case currently before the Commission cannot qualify as an activity engaged in for profit under this presumption. During all 3 years of the audit period - 2018 to 2020 - Petitioners sustained substantial farming losses. They have also continued to sustain such losses up to the date of the hearing in this matter since they claim to have sold approximately 10 head of cattle in the seventeen (17) years in which they have carried on cattle related activity. All cattle they claim to have sold were sold after July of 2022, which is well after the audit period. The presumption of the I.R.C. that their farming activity was engaged in for profit during the audit period is not applicable here. *Also see* Treas. Reg. § 1.183-1(c).

methods are all activities which suggest that a taxpayer conducted an activity for profit. Treas. Reg. § 1.183-2(b)(1). Petitioners did not maintain complete and accurate books and records. Instead, they used personal bank accounts for expenses related to activities connected to the cattle and other farm-related costs. Petitioners did not distinguish between the funds they spent on farm-related costs necessary to raise their own cattle and funds spent to benefit the owner of the farmland, his cattle, or his other farm-related costs.

There is no evidence in this case that Petitioners had a business plan for their cattle-related farming activities. Petitioners maintained a net worth balance sheet, which they used to assess what they referred to as the “profitability” of their enterprise. However, whether Petitioners could sell off all assets associated with the business, pay any debts associated with the business, and be left with a positive sum of money, has nothing to do with whether their enterprise can be considered an activity operated for profit under applicable tax law. The fact that Petitioners do not keep contemporaneous records of how many head of cattle they own, added to the fact that they have never reported a profit in the more than seventeen (17) years of operating a cattle-related enterprise, leads the Commission to conclude that they are not maintaining their books and records in a business-like manner and do not have a plan to make this farm into a profitable business, as that phrase is used in applicable tax law.

Petitioners kept no contemporaneous business records for the cattle-related enterprise. Among the few records offered into evidence by Petitioners, there was a spreadsheet purporting to track cattle owned by Petitioners. After hearing Petitioner

Darryl Jaeger's testimony regarding the spreadsheet, the Commission does not believe that the spreadsheet was accurate or kept contemporaneously with the facts it purported to demonstrate. This was reinforced by the inconsistent answers in the record as to the straightforward question of how many head of cattle Petitioners owned at the end of each year of the audit period. The spreadsheet, if accurate, arguably reflects the claim that Petitioners could report a profit in coming years. In order to achieve the goal of demonstrating a likelihood of profitability in coming years, the spreadsheet could detail 1) changes in operations that suggest the activity is conducted for profit; 2) adoption of new techniques that suggest that the activity is conducted for profit; or 3) abandonment of unprofitable methods. However, merely documenting a change from purchasing young cattle to purchasing breeding cattle, without tracking the actual expenses associated with either "business model," is insufficient to meet Petitioners' apparent goal. Given the Petitioners' history of inaccurate tax filings and the multiplicity of contradictory details offered at trial, the Commission cannot say with certainty that there is currently any profit potential for the Petitioners' cattle operations.

Petitioners also had no information as to what sales of cattle they expected or what profit might be realized from such future sales. In order for a business to be considered in a "start-up" phase<sup>4</sup> in which there are current losses which are expected to be offset by future profits, there must be some evidence offered to articulate why future profits are expected. An inconsistent spreadsheet claiming to list the births, deaths, and

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<sup>4</sup> Treas. Reg. § 1.183-2(b)(6).

other dispositions of cattle is inadequate to demonstrate what cattle are expected to be sold in the future. There is not adequate evidence in the record to show that the future sale of cattle will enable Petitioners to realize a profit.

Petitioners introduced no evidence that their record-keeping practices are similar to the way that profitable cattle-related farming businesses are operated. They introduced no evidence that their plan to stop raising purchased cattle and instead breed cattle for future sale was being conducted in a way that was similar to the way profitable cattle-related farming businesses are operated. They did not even introduce evidence that Mr. Schwartz's cattle-related farming business operated on the same location and utilizing some of the same resources was operated in a similar way to Petitioners' enterprise and was profitable. Petitioners failed to show that the changes they claim to have made to their cattle-related enterprise, from feeding and caring for cattle to breeding and raising young cattle, will improve profit potential.

The Commission particularly notes that Petitioners provided neither documentary nor testimonial evidence of any veterinary expenses associated with their cattle-related enterprise with the exception of a very small figure of \$915.00 for 2020. The Commission does not believe that Petitioners could truly operate a cattle-related business, which now purports to include breeding cattle and raising newborn cattle for sale, with no veterinary expenses in the first two years and such minimal veterinary expenses in the third year. The lack of records for such ordinarily anticipated expenses for a livestock business reinforces the idea that this farming activity was not, in fact, a business, but a family activity conducted for personal reasons and additionally used by



Petitioners in an effort to reduce tax liability.

In summary, Petitioners have failed to show that they meet any of the elements of Factor 1, maintaining complete and accurate books and records; conducting the activity in a manner substantially similar to comparable businesses which are profitable; making changes in operations that suggest the activity is conducted for profit; adopting new techniques that suggest that the activity is conducted for profit; or abandoning unprofitable methods suggest that a taxpayer conducted an activity for profit.

## 2. *The Expertise of the Taxpayers or Their Advisors*

Efforts to gain experience, a willingness to follow expert advice, and preparation for an activity by extensive study of its practices may indicate that a taxpayer has a profit objective. Treas. Reg. § 1.183-2(b)(2). A taxpayer's failure to obtain expertise in the economics of an activity indicates that he or she lacks a profit objective. *See Burger v. Commissioner*, 87-1 USTC ¶ 9137, 809 F.2d 355, 359 (7<sup>th</sup> Cir. 1987), *aff g.* T.C. Memo. 1985-523 [Dec. 42,428(M)].

Petitioner Darryl Jaeger has experience in cattle farming. However, although Mr. Jaeger made a point of stating that he changed his business model in 2018, Mr. Jaeger provided no evidence, documentary or testimonial, that he did research about cattle farming methods, types, or profitability, before or during the audit period. Mr. Jaeger's testimony regarding consulting with agronomists was contradictory and unreliable and was not supported by documentary evidence.

Although the Commission has no doubt that Petitioner Darryl Jaeger

knows a great deal about cattle, and about the day-to-day work required to raise cattle, this knowledge is not the same as knowing how to operate a cattle farming business for profit. Petitioners introduced no evidence that they sought expert advice or otherwise attempted to develop expertise on the business side of cattle farming. Petitioners demonstrated expertise in caring for cattle, but they failed to demonstrate any effort to obtain expertise in the business of cattle farming, and therefore do not fulfill Factor 2.

### *3. Taxpayers' Time and Effort*

The fact that a taxpayer devotes much time and effort to an activity may indicate that he or she has a profit objective. Treas. Reg. § 1.183-2(b)(3).

Petitioners maintained their off-farm jobs during the period under review and could only work on the cattle-related enterprise on evenings, weekends and during paid and/or unpaid leave from that full-time employment. While spending vacations, regular evenings and weekends, and even occasional unpaid time away from full-time employment is a substantial time commitment, it is not sufficient to indicate that Petitioners had a profit objective. Many people spend substantial amounts time engaged in hobbies and interests that have no profit objective, and which might similarly require physical labor and financial investment.

Petitioners did not maintain any records regarding the time spent on the cattle-related activities, and Mr. Jaeger's rough estimates regarding the time spent on the activity did not carry Petitioners' burden of persuasion on this factor.

### *4. Expectation That Assets Used in the Activity Will Appreciate in Value*

A taxpayer may intend to make an overall profit when appreciation in the

value of assets used in the activity is realized. Treas. Reg. § 1.183-2(b)(4).

Petitioners claim to have owned cattle during the audit period, and they also claim to expect that these cattle may be sold for profit someday. However, Petitioners did not maintain accurate, contemporaneous records of the number of cattle owned, nor did they produce credible evidence regarding the cost of feed or veterinary care of the cattle they claimed to own. Petitioners had no way of knowing if the income from their cattle-related enterprise would exceed the claimed expenses of the enterprise.

Petitioner Darryl Jaeger also testified about several pieces of farming equipment which he purchased for below-market prices, which he would be able to sell if he liquidated his farming-related assets. Rather than supporting his claim that these purchases assist Petitioners in meeting this factor, they actually undermine his claim to be in the business of cattle farming. If Petitioners were in the business of selling farming equipment, purchasing such an asset and anticipating that it would appreciate in value prior to sale might meet this factor. It does not support a claim to be in the cattle farming business.

#### *5. Taxpayers' Success in Other Activities*

The fact that a taxpayer previously engaged in similar or dissimilar activities and made them profitable may show that the taxpayer has a profit objective. Treas. Reg. § 1.183-2(b)(5).

Petitioners' W-2 income during the audit period suggests that they have been successful in their traditional employment positions. Petitioner Darryl Jaeger testified that he graduated from Marquette University with an engineering degree, and

that he had a successful career in farm-related engineering work. There is evidence that Petitioners have been previously engaged in dissimilar activities and that those activities were profitable.

However, prior to the audit period, Petitioners reported ownership of a cattle-related enterprise beginning in 2006. Throughout the twelve (12) years of cattle-related activity prior to the audit period, Petitioners never reported a profit. Since Petitioners had claimed to run a cattle-related enterprise for fifteen (15) years through the end of the audit period, and they have never reported a profit in a single year, Petitioners have failed to demonstrate their ability to profitably operate a cattle-related enterprise. Their success in a dissimilar enterprise is not sufficient to overcome the evidence of 15 years of an unsuccessful similar enterprise; as such they fail to meet this factor.

#### *6. Taxpayers' History of Income or Losses*

A history of substantial losses may indicate that the taxpayer did not conduct the activity for profit. However, a series of losses during the initial or start-up stage of an activity may not necessarily be an indication that the activity is not engaged in for profit. Treas. Reg. § 1.183-2(b)(6). Petitioners contend that they changed their business model in 2018, and it will take several years before the calves they have started producing can be raised to the appropriate age to sell for profit.

There are two main problems with this contention. First, Petitioners' own tax returns reported that the business model changed in 2017. At trial Mr. Jaeger testified that this characterization of the enterprise for 2017 was his mistake, and that Petitioners' business model actually first changed in 2018. Petitioners failed to provide documentary

evidence that supports a changed business model, whether in 2017 or in 2018. The kinds and amounts of costs claimed on the returns did not change significantly during the audit period, with the exception of a very large deduction for fertilizer in 2019, which was also the year in which Petitioners' off-farm income roughly doubled. Deducting pre-paid farm business expenses such as fertilizer that is used over multiple years is addressed by IRS Publication 225, Ch. 4, p. 19 (2018), which explains that Schedule F deductions only cover expenses for supplies used in that year, with some exceptions that do not appear to apply. Petitioners claimed to have owned three head of cattle in 2018 and nine head of cattle in 2020. No documentary evidence was offered to support the claim of ownership, the claimed expenses for the enterprise did not steadily increase from 2018 to 2020, and the Petitioners claimed no veterinary expenses for 2018 and 2019, with minimal veterinary expenses claimed for 2020. The cumulative effect of this lacking evidence is that the Petitioners' claim that they owned cattle is unverifiable. In turn, the Commission is unable to find that Petitioners have carried their burden of persuasion on the question of whether they were in the start-up phase of a newly launched for-profit business of raising cattle.

Mr. Jaeger testified that he expects to report a profit in future years by selling cattle owned by Petitioners. However, Petitioners failed to prove that they own the number of cattle they claim to own. Accordingly, vague projections regarding the sale of such cattle do not support a claim to operate a profitable cattle farm.

Fifteen years of cattle-farming losses, with no profitable years, is strong evidence that the Petitioners are not in the business of cattle-farming for profit, and that

they do not meet this factor.

#### *7. Amount of Occasional Profits, If Any*

The amount of any occasional profits the taxpayer earned from the activity may show that the taxpayer had a profit objective. Treas. Reg. § 1.183-2(b)(7). Petitioners have had only losses from their cattle-related enterprise. This factor does not assist Petitioners' arguments in favor of finding they operated a for-profit business during the audit period.

#### *8. Financial Status of the Taxpayer*

The receipt of a substantial amount of income from sources other than the activity, especially if the losses from the activity generate large tax benefits, may indicate that the taxpayer does not intend to conduct the activity for profit, particularly if there are personal or recreational elements involved. Treas. Reg. § 1.183-2(b)(8). Petitioners were employed off-farm during the audit period and did not rely on cattle farming for income.

The fact that they earned income from other sources would not alone indicate that the cattle farming was not for profit. However, Petitioners earned a substantial income from sources other than cattle farming. Not only were Petitioners' W-2 wages high, Petitioners claimed substantial deductions for cattle farming, resulting in large tax benefits. Although this was true during the entire Audit Period, it was especially vivid in 2019. Petitioners' 2019 W-2 income was \$446,575, almost \$212,000 above their 2018 income. At the same time, Petitioners claimed \$49,993 in farm losses in 2019, compared to only \$16,293 in 2018. Both non-farm income and claimed farm losses in 2020

were close to those reported in 2018. No credible evidence was introduced explaining the inconsistency. The only evidence addressed at all was the claim of a large purchase of fertilizer in 2019. Petitioner Darryl Jaeger testified that the fertilizer was not used entirely during 2019, was not used solely for the benefit of his alleged cattle farming business, and that it was also used for the benefit of his uncle's cattle farming business. Petitioners neither kept records of crop shares paid or received as instructed in IRS Publication 225, Ch. 3, p. 10 or Ch. 12, pp. 75-76 (2018) nor reported the income or expenses associated with the crop shares on Schedule F. Business owners are not entitled to deduct expenses used to benefit someone else's business, and it strains credulity to imagine that Petitioners thought otherwise. The substantial tax benefits Petitioners gained through these claims of being in the business of cattle farming, along with the long-term personal gain Petitioners hope for (primarily addressed next, as part of the analysis of Factor 9), indicate that they failed to carry their burden of persuasion on Factor 8 as well.

#### *9. Elements of Recreation or Personal Motives*

The presence of recreational or personal motives in conducting an activity may indicate that the taxpayer is not conducting the activity for profit. Treas. Reg. § 1.183-2(b)(9).

There are elements of personal motives for Petitioners in conducting the cattle-related enterprise. The farm is currently titled in a revocable trust, with Petitioners as beneficiaries. The Commission believes that Mr. Jaeger does put time and effort into assisting Mr. Schwartz with raising crops and cattle on the farm. Those efforts are likely both to allow Mr. Schwartz to make a profit, and, if the trust is not revoked, to keep the

farm in the family upon Mr. Schwartz's passing. The Commission sees Mr. Jaeger's efforts as a rational investment of time and money for eventual gain. That rational investment meets the meaning of "personal motive" as that phrase is used in this factor but is quite different from being a for-profit business.

After reviewing these factors along with the testimony and other evidence in this case, we conclude that Petitioners' activities on the property during the period under review constituted an "activity not engaged in for profit." Petitioners may eventually have documentation sufficient to demonstrate ownership of cattle, and they may sell cattle in the future, and the income from those sales may someday exceed the costs for feeding and caring for those cattle.

While this eventual activity may become a trade or business for profit at some time in the future, it was not one during the audit period. The evidence, read in the light most favorable to Petitioners, suggests that the intent on the part of Petitioners was to ensure that Mr. Schwartz is able to retain ownership of the family farm, and to maintain or even increase the value of that farm in anticipation of the Petitioners' eventual ownership of the family farm. Less generously, the evidence can also be read to suggest that Petitioners have used Mr. Schwartz's farm, which they hope to own one day, as a tax-avoidance mechanism.

#### **CONCLUSION OF LAW**

In the instant case, Petitioners did not operate their cattle-related enterprise in a businesslike manner. Each of the I.R.C. § 183 factors tend to show that their cattle-related enterprise was not operated for profit and, therefore, was not a trade or business



within the meaning of I.R.C. § 162. In view of the foregoing, Petitioners have failed to meet their burden in this case, and the Department's assessment is therefore upheld.

**IT IS ORDERED**

That the Department's action on Petitioners' petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 23<sup>rd</sup> day of January, 2025.

**WISCONSIN TAX APPEALS COMMISSION**




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Elizabeth Kessler, Chair



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Jessica Roulette, Commissioner



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Kenneth P. Adler, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"