STATE OF WISCONSIN

TAX APPEALS COMMISSION

WILLIE & RITA HYCHE,

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DOCKET NO. 24-I-004

DECISION AND ORDER

JESSICA ROULETTE, COMMISSIONER:

This case comes before the Commission for decision following a trial held on May 12, 2025, in Madison, Wisconsin. Petitioners appear pro se by Willie Hyche and Rita Hyche of Mequon, Wisconsin. Respondent, the Wisconsin Department of Revenue, is represented by Attorney Bridget Laurent. The two issues for determination are the appropriate amount of charitable deductions the Petitioners are eligible to claim for the relevant time period, and whether Petitioners operated a for profit business which would allow business deductions 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 January 6, 2023, Respondent, the Wisconsin Department of Revenue ("Department"), issued an income tax assessment against Petitioners for the years 2018, 2019, 2020, and 2021 ("audit period") in the amount of $16,145.52, including interest, computed to March 8, 2023. (Trial Exhibit ("Tr. Ex.") A).

2. Petitioners subsequently mailed a letter with voluminous enclosures to the Department, which the Department treated as a timely petition for redetermination.

3. The parties subsequently signed a stipulation and agreement extending the time for the Department to act upon the petition for redetermination.

4. By Notice of Action dated December 12, 2023, the Department denied Petitioners' petition for redetermination. (Tr. Ex. B).

5. On January 22, 2024, Petitioners filed a timely petition for review with the Commission. (Commission file).

Material Facts

6. During the audit period and up to the date of the hearing in this matter, Petitioners resided in Mequon, Wisconsin and received retirement income in each year of the audit period, along with income from wages in 2020 and 2021. Petitioners' taxable retirement income during the audit period was $66,596.20 in 2018, $91,425 in 2019, $89,041 in 2020, and $95,474 in 2021. Petitioners' taxable income from wages was $91,296 in 2020 and $3,088 in 2021. Petitioners also received nontaxable Social Security income

during the audit period.

7. In 2002, and continuing through the audit period, Petitioner Willie Hyche began trading stocks on a regular basis.

8. In 2018, Petitioner Willie Hyche reported his occupation as "Stock Trader."

9. In 2019, 2020, and 2021, Petitioner Willie Hyche reported his occupation as "Day Trader."

10. Petitioners did not elect to change their accounting method from the standard cash accounting method for any year of the audit period.

11. The Internal Revenue Service did not approve a change in Petitioners' accounting method from the standard cash accounting method for any year of the audit period.

12. Petitioners reported capital gains on both Schedule C and Schedule D during the audit period.

13. Petitioners did not use or maintain a separate business bank account during the audit period.

14. Petitioners deducted losses from trading activity in an Individual Retirement Account (IRA) from the income they reported on their Wisconsin tax returns during the audit period.

15. Petitioners did not have a business plan for the day trading business.

16. Petitioners did not maintain business records for the day trading business.

17. Petitioners had no documentary evidence substantiating their deductions for payment for professional tax or legal advising services for the day trading business during the audit period.

18. Petitioners had no certifications, licenses, credentials, or proof of enrollment in any educational program or course showing that either Willie or Rita Hyche had or obtained the professional knowledge necessary to carry on day trading activity for profit.

19. Petitioners deducted business losses during the audit period from their taxable income, reducing Petitioners' Wisconsin income tax liability from $16,472 to $464. Petitioners' deduction of business losses from income during the audit period resulted in a total reduction of $16,008 in tax owed by Petitioners to the State of Wisconsin.

20. For each year during the audit period, Petitioners attached a Schedule C to their Wisconsin and federal tax returns on which they claimed they were engaged in the business of trading of equities and securities during 2018, and for the business of day trading in 2019, 2020, and 2021. Schedule C is a form filed with a taxpayer's Federal tax return, on which a taxpayer can report profit or loss from a business. (Tr. Ex. D, pp. 9-10; Tr. Ex. E, pp. 15-16; Tr. Ex. F, pp. 22-23; Tr. Ex. G, pp. 23-24).

21. For the audit period, Petitioners reported use of a cash accounting method on the Schedule C they completed and filed for each year of the audit period. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15; Tr. Ex. F, p. 22; Tr. Ex. G, p. 23).

22. Petitioners did not substantiate with documentary evidence the figures they reported on any of the Schedule C forms they filed for any year of the audit period. Petitioners did not keep contemporaneous, detailed records of hours worked, the location, or the timing of the use of business supplies purchased by Petitioners during the audit period.

23. Petitioner Willie Hyche spent a substantial amount of his time on a daily basis executing trades of stocks and equities during the audit period.

24. Petitioners maintained no contemporaneous books of account for the trading activities. Petitioners entered a "profit and loss history" document for the period of April 1, 2024, through March 25, 2025, into evidence. That document did not substantiate any trading activity during the audit period. (Tr. Ex. 2.)

25. Petitioners entered a packet of reports from TradeStation which contained information regarding trading activity in 2019, 2020, and 2021. The reports reflect only trades made within an IRA belonging to the Hyches. (Tr. Ex. 1.)

26. Petitioners made charitable contributions in the amount of $6,725 in 2018, $5,590 in 2019, $4,476 in 2020, and $2,964 in 2021. These figures are less than the amounts claimed by the Hyches on their tax returns and are the amounts supported by documentary evidence admitted at trial. (Tr. Ex. H.)

27. Petitioners reported depreciation expenses for their trading enterprise for only 2019 during the period under review in the amount of $1,240. (Tr. Ex. E, p. 16). No documentary evidence substantiates this reported expense.

28. Petitioners reported car and truck expenses in the amount of $2,110

in 2018, $0 in 2019, $0 in 2020, and $2,116 in 2021. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15; Tr. Ex. F, p. 22; Tr. Ex. G, p. 23). No documentary evidence supports this reported expense in either of the years for which it was reported.

29. Petitioners reported commissions and fees expenses in the amount of $3,103 in 2018, $22,934 in 2019, $10,213 in 2020, and $2,131 in 2021. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15; Tr. Ex. F, p. 22; Tr. Ex. G, p. 23). No documentary evidence supports this reported expense.

30. Petitioners reported an insurance expense for only 2018 in the amount of $980. No documentary evidence supports this reported expense. (Tr. Ex. D, p. 9).

31. Petitioners reported legal and professional services expenses in the amount of $450 in 2018 and $12,844 in 2019, and $0 in 2020 and 2021. No documentary evidence supports this expense in either of the years in which it was reported. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15).

32. Petitioners reported office expenses in the amount of $1,710 in 2018, $6,933 in 2019, $6,210 in 2020, and $0 in 2021. No documentary evidence supports this expense in any of the three years in which it was reported. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15; Tr. Ex. F, p. 22; Tr. Ex. G, p. 23).

33. Petitioners reported repairs and maintenance expenses in the amount of $0 in 2018, $1,733 in 2019, $0 in 2020, and $1,200 in 2021. No documentary evidence supports this expense in either of the years in which it was reported. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15; Tr. Ex. F, p. 22; Tr. Ex. G, p. 23).

34. Petitioners reported supplies expenses in the amount of $0 in 2018, $5,834 in 2019, $229 in 2020, and $1,129 in 2021. No documentary evidence supports this expense in any of the three years in which it was reported. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15; Tr. Ex. F, p. 22; Tr. Ex. G, p. 23).

35. Petitioners reported a taxes and licenses expense in the amount of $1,202 in 2019. No documentary evidence supports this reported expense. (Tr. Ex. E, p. 15).

36. Petitioners reported travel expenses in the amount of $1,392 in 2019. No documentary evidence supports this reported expense. (Tr. Ex. E, p. 15).

37. Petitioners reported utilities expenses in the amount of $454 in 2018 and $1,837 in 2019. No documentary evidence supports this expense in either of the years in which it was reported. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15).

38. Petitioners reported expenses for the business use of their home in the amount of $1,500 in 2018, $0 in 2019, $1,857 in 2020, and $1,080 in 2021. No documentary evidence supports this expense in any of the years in which it was reported. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15).

39. Petitioners reported other expenses in the amount of $12,937 ($6,733 for computers and $6,204 for platform fees) in 2019, $77,565 ($68,702 for bad debts, $653 for dues and publications, and $8,210 for educational expenses) in 2020, and $72,000 ($72,000 for bad debts) in 2021. No documentary evidence supports these expenses in any of the three years in which they were reported. (Tr. Ex. E, p. 15, 18; Tr. Ex. F, p. 22, 25; Tr. Ex. G, p. 23, 26).

40. Petitioners reported gross receipts or sales as income in the amount of -$11,233 in 2018, $0 in 2019 and 2020, and $5,000 in 2021. No documentary evidence supports these reported amounts. (Tr. Ex. D, p. 9; Tr. Ex. E, p. 15; Tr. Ex. F, p. 22; Tr. Ex. G, p. 23).

41. Petitioners reported the following non-trading income, trading income, trading expenses, and trading loss as stated on their tax returns (Tr. Exs. D, E, F, and G):

Year	Non-trading income	Trading income[1]	Trading expenses	Total Trading loss
2018	$66,596	-$11,233	$10,307	$21,540
2019	$181,837	-$4,088	$68,886	$72,974
2020	$92,129	$0	$96,074	$96,074
2021	$90,557	$110	$79,656	$79,546

APPLICABLE LAW

Wis. Stat. § 71.01 Definitions.
(4) "Federal taxable income" and "federal adjusted gross income" of natural persons . . . mean taxable income or adjusted gross income as determined under the internal revenue code[2] 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.

I.R.C. § 162 Trade or business expenses.[3]
(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. . . .

[1] This figure represents reported positive and negative income. Petitioners presented no evidence, documentary or testimonial, that explained how this figure was calculated.
[2] Wis. Stat. §§71.01 (6)(k) and (6)(L) provide the definition of "Internal Revenue Code" under Wisconsin law for the audit period.
[3] "I.R.C. § 162" is alternatively cited as "26 U.S.C. § 162." This decision refers to the statute as the Internal Revenue Code, or I.R.C., throughout.

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. . . .

Treasury Regulation § 1.183-2 Activity not engaged in for profit defined.[4]

(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 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

[4] "Treasury Regulation § 1.183 -2" is alternatively cited as "26 C.F.R. § 1.183 -2." This decision refers to the regulation as "Treas. Reg." throughout.

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.

. . .

I.R.C. § 408 Individual retirement accounts.

(a) **Individual retirement account**

For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution . . ., no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

. . .

(d) **Tax treatment of distributions**

(1) **In general.** Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

. . .

(e) **Tax treatment of accounts and annuities**

(1) **Exemption from tax.** Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual

retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

. . .

(i) **Reports.** The trustee of an individual retirement account . . . shall make such reports regarding such account . . . to the Secretary and to the individuals for whom the account . . . is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating $10 or more in any calendar year, and such other matters as the Secretary may require. The reports required by this subsection—

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

. . .

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 Petitioners 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 first a business of trading stocks and equities and subsequently a business of day trading, and that they should be allowed to deduct the expenses and losses of the trading business from their taxable income for each year of the audit period. A portion of the Department's assessment against Petitioners is based upon the Department's denial of Petitioners' deductions of expenses and losses claimed in connection with the trading 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.[5]

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

There is no legal presumption that Petitioners' trading enterprise was a trade or business engaged in for profit. In the absence of such a presumption, Treas. Reg. § 1.183-2(b) provides that in determining whether or not an activity is engaged in for

[5]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 4 years of the audit period - 2018 to 2021 - Petitioners sustained substantial losses. They also reported losses from the trading business in the 16 years prior to the audit period. The presumption of the I.R.C. that their trading activity was engaged in for profit during the audit period is not applicable here. *Also see* Treas. Reg. § 1.183-1(c).

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 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 their IRA for their reported trades, and they used their personal bank accounts for expenses related to activities connected to their trading activity.

There is no evidence in this case that Petitioners had a business plan for their trading activity. Petitioners paid fees for at least one trading platform during the audit period, and Petitioner Willie Hyche spent several hours each weekday during the audit period executing trades of stocks and equities. However, trades executed inside of an IRA do not produce positive or negative taxable income at the time of the trades, due to the tax rules applicable to such accounts. Accordingly, none of the trading activity within the IRA, nor any of that activity's associated fluctuations in asset value, are relevant to whether Petitioners conducted a for-profit business which produced positive or negative income during the audit period. The fact that Petitioners do not keep

contemporaneous records of eligible trading activity, added to the fact that they have never reported a profit in the more than twenty (20) years of operating a trading 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 trading activity into a profitable business, as that phrase is used in applicable tax law.

Petitioners kept no contemporaneous business records for the trading enterprise. Among the few records offered into evidence by Petitioners, there was a packet of reports of trading activity on the TradeStation platform during three of the four years of the audit period. After hearing Petitioner Willie Hyche's testimony regarding his trading activity, the Commission determines that the TradeStation reports do not reflect trading activity which could be properly reported as resulting in either income or loss from business activity during the audit period. Given the Petitioners' history of inaccurate tax filings and the Petitioners' failure to provide evidence of trading activity outside of their IRA, the Commission cannot say with certainty that there is currently any profit potential for the Petitioners' trading operations.

Petitioners introduced no evidence that their record-keeping practices are similar those of profitable trading businesses. They introduced no evidence that their trading activity was being conducted in a way that was similar to the way profitable trading businesses are operated.

The Commission particularly notes that Petitioners provided neither documentary nor testimonial evidence of any trading activity other than that conducted on the TradeStation platform, inside of their IRA. The requirements and restrictions

pertaining to IRAs are found at I.R.C. § 408. An IRA is a trust.[6] In general, the beneficiary of an IRA is assessed tax when a distribution is taken from the IRA.[7] When an IRA holds stocks, increases or decreases in value of those stocks are not reported on the individual beneficiary's tax return in the year the increase or decrease occurs, because the IRA is not relevant to an individual's tax return until funds are distributed from the IRA.[8] There are specific exceptions to this general rule, but none of those exceptions apply to Petitioners.

Because the increase in value of stocks held in an IRA does not produce taxable income in the year in which the increase occurs, and because the decrease in value of stocks held in an IRA does not produce deductible losses in the year in which the decrease occurs, the TradeStation records entered as Exhibit 1 at trial do not assist the Petitioners in their quest to demonstrate that the Department's assessment is incorrect. The lack of records for trading activity conducted outside of their IRA, combined with the testimony of Willie Hyche that he intends to continue with his trading activity despite twenty years of documented losses, including significant loss of the family's retirement savings, reinforces the idea that this trading activity was not, in fact, a business, but an 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, including maintaining complete and accurate books and records; conducting the activity in a manner substantially similar to comparable businesses which

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[6] I.R.C. § 408(a).
[7] I.R.C. § 408(d)(1).
[8] I.R.C. § 408(e)(1).

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, which, had they done so, could have suggested that they conducted the 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 (7th Cir. 1987), *aff'g.* T.C. Memo. 1985-523 [Dec. 42,428(M)].

Petitioner Willie Hyche has experience in trading stocks and equities. There is only evidence, unfortunately, that when Mr. Hyche makes trades, he loses money. Mr. Hyche provided no evidence, documentary or testimonial, that he did research about trading, or accounting methods, or profitability, before or during the audit period.

Although the Commission has no doubt that Petitioner Willie Hyche spends a large amount of time in front of his computer screens, executing trades, this activity does not demonstrate that he knows how to operate a trading business for profit. Petitioners introduced no evidence that they sought expert advice or otherwise attempted to develop expertise on the business side of trading 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).

Petitioner Willie Hyche devoted substantial time to the activity of making trades. There is no evidence in the record that either Petitioner devoted any time to maintaining business records or learning about the trading business or applicable tax regulations. Many people spend substantial amounts of time engaged in hobbies and interests that have no profit objective, and which might similarly require labor and financial investment.

Petitioners demonstrated that Mr. Hyche devoted substantial time to trading activity, but they did not demonstrate that either Petitioner devoted any time to maintaining business records or learning about or improving the conduct of the trading enterprise. Factor 3 is neutral for Petitioners.

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 used computers in their trading enterprise. Computers are a depreciating asset, and there is no expectation that computers used in the trading activity will appreciate in value. Factor 4 weighs against the Petitioners.

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 offered no evidence that they had a record of success in other

profitable activities. Factor 5 weighs against the Petitioners.

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 have reported involvement in a trading enterprise since 2002. There is no record of any profits being reported from the trading enterprise since Petitioners first reported the trading activity. By 2018, the first year of the audit period, Petitioners were entering their sixteenth year of their trading enterprise. Petitioner Willie Hyche began listing his occupation as "Day Trader" in 2019, and continued to do so in 2020, and 2021. Day traders may, in some cases, take advantage of particular tax regulations found at I.R.C. § 435.[9] However, Petitioners did not offer evidence of their business model, nor did they develop an argument that their business model changed during the audit period. Additionally, Petitioners did not change their accounting method as would be necessary for a trader to take advantage of certain provisions of I.R.C. § 435. The Commission concludes that Petitioners have not carried their burden of persuasion on the question of whether they were in the start-up phase of a newly launched for-profit day trading business.

Sixteen years of trading-related losses, with no profitable years, is strong

[9] See Appendix A.

evidence that the Petitioners are not in the business of trading for profit, and that they do not meet Factor 6.

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 trading 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 had substantial income from other sources during the audit period and did not rely on trading activity for income.

The fact that they earned income from other sources would not alone indicate that the trading activity was not for profit. However, Petitioners received a substantial income from sources other than trading. Not only was Petitioners' retirement income substantial, Petitioners also earned W-2 wages in at least two of the years during the audit period. Petitioners claimed substantial deductions for the trading enterprise, resulting in large tax benefits during the audit period. Although this was true during the entire audit period, it was especially vivid in 2019. Petitioners' 2019 non-trading income was $181,837, more than $115,000 greater than their 2018 income. At the same time,

Petitioners claimed $72,974 in trading-related losses in 2019, compared to only $21,540 in trading-related losses in 2018. Petitioners' non-trading income in 2020 and 2021 was roughly half their 2019 non-trading income. Nonetheless, their claimed trading losses in 2020 exceeded their non-trading income for 2020. Their claimed trading losses for 2021 were less than those claimed in 2020, but greater than those claimed in 2019. No credible evidence was introduced explaining the inconsistency between the claimed losses during the four years of the audit period. The substantial tax benefits Petitioners gained through their claim of being in the business of trading lead the Commission to conclude that Petitioners 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 Petitioner Willie Hyche in conducting the trading enterprise. The Commission believes that Mr. Hyche spends a significant amount of time each day that markets are open in conducting trades. That time spent, unfortunately, has resulted in over twenty years of losses. The Commission sees Mr. Hyche's efforts as generating pride and contributing to his personal identity, and it specifically notes Mr. Hyche's testimony that he intends to continue with the trading activity because he identifies as a trader. Mr. Hyche's investment of time to bolster his identity as a trader meets the meaning of "personal motive" as that phrase is used in this factor, and the Commission concludes that Factor 9 does not support a

determination that Petitioners were engaged in trading activity as a for-profit business.

After reviewing these factors along with the testimony and other evidence in this case, we conclude that Petitioners' trading activities during the period under review constituted an "activity not engaged in for profit."

Petitioners may change their business practices and recordkeeping, and they may one day conduct trades outside of an IRA. While this eventual activity may become a trade or business for profit at some time in the future, Petitioners' trading enterprise 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 conduct trades and time the market to produce profits, despite having been unable to do so since 2002. Less generously, the evidence can also be read to suggest that Petitioners have used the trading activity as a tax-avoidance mechanism.

CONCLUSION OF LAW

In the instant case, Petitioners did not operate their trading enterprise in a businesslike manner. Each of the I.R.C. § 183 factors shows that their trading 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. The Department's assessment is therefore upheld, with the amendments reflecting the substantiated charitable deduction amounts of $6,745 for 2018, $5,590 for 2019, $4,476 for 2020, and $2,964 for 2021.

IT IS ORDERED

That the Department's action on Petitioners' petition for redetermination is affirmed as amended by the inclusion of the substantiated charitable deductions.

Dated at Madison, Wisconsin, this 31st day of July, 2025.

WISCONSIN TAX APPEALS COMMISSION

Elizabeth Kessler, Chair

Jessica Roulette, Commissioner

Kenneth P. Adler, Commissioner

ATTACHMENT: **"NOTICE OF APPEAL INFORMATION"**

APPENDIX A

I.R.C. § 475 Mark to market accounting method for dealers in securities.

(a) **General rule.** Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

(1) Any security which is inventory in the hands of the dealer shall be included in inventory at its fair market value.

(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

(A) the dealer shall recognize gain or loss as if such security were sold for its fair market value on the last business day of such taxable year, and

(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

(b) **Exceptions**

(1) **In general.** Subsection (a) shall not apply to—

(A) any security held for investment,

(B)

(i) any security described in subsection (c)(2)(C) which is acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and (ii) any obligation to acquire a security described in clause (i) if such obligation is entered into in the ordinary course of such trade or business and is not held for sale, and

(C) any security which is a hedge with respect to—

(i) a security to which subsection (a) does not apply, or

(ii) a position, right to income, or a liability which is not a security in the hands of the taxpayer.

To the extent provided in regulations, subparagraph (C) shall not apply to any security held by a person in its capacity as a dealer in securities.

(2) **Identification required.** A security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

(3) **Securities subsequently not exempt.** If a security ceases to be described in paragraph (1) at any time after it was identified as such under paragraph (2), subsection (a) shall apply to any changes in value of the security occurring after the cessation.

(4) **Special rule for property held for investment.** To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

(c) **Definitions.** For purposes of this section—

(1) **Dealer in securities defined.** The term "dealer in securities" means a taxpayer who—

(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

(2) **Security defined.** The term "security" means any—

(A) share of stock in a corporation;

(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership

or trust;

(C) note, bond, debenture, or other evidence of indebtedness;

(D) interest rate, currency, or equity notional principal contract;

(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency; and

(F) position which—

(i) is not a security described in subparagraph (A), (B), (C), (D), or (E),

(ii) is a hedge with respect to such a security, and

(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

Subparagraph (E) shall not include any contract to which section 1256(a) applies.

(3) **Hedge.** The term "hedge" means any position which manages the dealer's risk of interest rate or price changes or currency fluctuations, including any position which is reasonably expected to become a hedge within 60 days after the acquisition of the position.

. . .

(d) **Special rules.** For purposes of this section—

(1) **Coordination with certain rules.** The rules of sections 263(g), 263A, and 1256(a) shall not apply to securities to which subsection (a) applies, and section 1091 shall not apply (and section 1092 shall apply) to any loss recognized under subsection (a).

(2) **Improper identification.** If a taxpayer—

(A) identifies any security under subsection (b)(2) as being described in subsection (b)(1) and such security is not so described, or

(B) fails under subsection (c)(2)(F)(iii) to identify any position which is described in subsection (c)(2)(F) (without regard to clause (iii) thereof) at the time such identification is required,

the provisions of subsection (a) shall apply to such security or position, except that any loss under this section prior to the disposition of the security or position shall be recognized only to the extent of gain previously recognized under this section (and not previously taken into account under this paragraph) with respect to such security or position.

(3) **Character of gain or loss**

(A) **In general.** Except as provided in subparagraph (B) or section 1236(b)—

(i) **In general.** Any gain or loss with respect to a security under subsection (a)(2) shall be treated as ordinary income or loss.

(ii) **Special rule for dispositions.** If—

(I) gain or loss is recognized with respect to a security before the close of the taxable year, and

(II) subsection (a)(2) would have applied if the security were held as of the close of the taxable year,

such gain or loss shall be treated as ordinary income or loss.

(B) **Exception.** Subparagraph (A) shall not apply to any gain or loss which is allocable to a period during which—

(i) the security is described in subsection (b)(1)(C) (without regard to subsection (b)(2)),

(ii) the security is held by a person other than in connection with its activities as a dealer in securities, or

(iii) the security is improperly identified (within the meaning of subparagraph (A) or (B) of paragraph (2)).

. . .

(f) **Election of mark to market for traders in securities or**

commodities

(1) **Traders in securities.**

(A) In general. In the case of a person who is engaged in a trade or business as a trader in securities and who elects to have this paragraph apply to such trade or business—

(i) such person shall recognize gain or loss on any security held in connection with such trade or business at the close of any taxable year as if such security were sold for its fair market value on the last business day of such taxable year, and

(ii) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(B) Exception. Subparagraph (A) shall not apply to any security—

(i) which is established to the satisfaction of the Secretary as having no connection to the activities of such person as a trader, and

(ii) which is clearly identified in such person's records as being described in clause (i) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

If a security ceases to be described in clause (i) at any time after it was identified as such under clause (ii), subparagraph (A) shall apply to any changes in value of the security occurring after the cessation.

(C) Coordination with section 1259. Any security to which subparagraph (A) applies and

which was acquired in the normal course of the taxpayer's activities as a trader in securities shall not be taken into account in applying section 1259 to any position to which subparagraph (A) does not apply.

(D) Other rules to apply. Rules similar to the rules of subsections (b)(4) and (d) shall apply to securities held by a person in any trade or business with respect to which an election under this paragraph is in effect. Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.

. . .

(3) Election. The election[] under paragraph[. . .] (2) may be made separately for each trade or business and without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(g) **Regulatory authority.** The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules—

(1) to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section,

(2) to provide for the application of this section to any security which is a hedge which cannot be identified with a specific security, position, right to income, or liability. . . .

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. **The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier,** within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. **The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.**

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is *https://wicourts.gov*.

This notice is part of the decision and incorporated therein.