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Here is some guidance on the issue of the tax deductions for the business use of automobiles. Since this is an easy target area for the IRS I believe it is important to once again over some important tax cases of what many of you should be aware of. Also it being close to year end as I originally write this I find this a good time to remind my clients to check the odometers of their business use vehicles and record that amount and use it to help you calculate your total miles driven and with the proper record keeping business miles, commuting miles and personal miles.

In Ward v. Commissioner, T.C. Summary Opinion 2011-67 the taxpayer, Sondra Ward, claimed over \$25,000 of sole proprietor automobile business related expenses and wound up with the tax court determining that she owed \$8,925 in additional taxes + \$1,785 in accuracy-related penalty for her 2005 tax return. As a background Mrs. Ward worked as a real estate agent in Idaho and as such her job duties required her to do an extensive amount of driving. Mrs. Ward drove a 1996 Audi for most of 2005 and on December 21, 2005 she purchased a 2006 BMW X5 for \$449,431.50. The BMW had 66 miles on it when she drove it off the lot and 1,111.7 miles at the end of the years, thus Mrs. Ward (and her husband her drove the card on occasion in 2005 as well) drove the BMW 1,045.7 miles from December 21 to December 31, 2005.

Mrs. Ward claimed \$2,349 of depreciation expense for the BMW and upon examination by the IRS Mrs. Ward raised the issue that since the vehicle as of a certain class in terms of gross vehicle weight and that the vehicle was used greater than 50% of the time for business use that she was in fact entitled to a \$25,000 section 179 expense deduction and \$1,099 depreciation deduction. On December 11, 2007, Mrs. Ward provided the IRS examiner a computer printout of her mobile phone daily calendar covering December 21 through 31, 2005. After printing the phone calendar Mrs. Ward added handwritten mileage amounts for most of the entries. As a result the revenue agent determined that the business use % of the BMW for 2005 was 42.7%. Since this was below 50% the \$25,000 section 179 expense deduction was denied and the revenue agent recalculated depreciation expense for the BMW of \$528. At trial Mrs. Ward introduced into evidence the mileage log, her phone calendar, and maps of the area in which she works. The phone calendar did not include the mileage amounts but instead the mileage amounts were handwritten and added AFTER THE CALENDAR WAS PRINTED IN 2007; thus, they were NOT CONTEMPORANTOUSLY RECORDED. Also the records did not include the addresses of the homes she showed to clients. The entries included vague descriptions such as "Sweet showing", "Drop off See's Candy and Calendars", "Flyers to all listings", and "Show mclane invest prop". Accordingly, IRS said the taxpayer did NOT maintain adequate records.

Another case of note was Joanna Sue Martinez v. Commissioner in T.C. Memo. 2011-34. In this case the taxpayer worked as a phlebotomist and was employed by Southern Nevada Labs. Her agreement with her employer was that she would be paid \$900 every 2 weeks to visit 60 patients, draw blood for testing, and return the blood to the lab. The taxpayer drove her own vehicle and also purchased some supplies (but was provided essential supplies by her employer). She claimed \$17,355 in vehicle expenses as an itemized deduction on her 2006 federal income tax return based on 39,000 miles driven

and 100% business use of her automobile. The taxpayer did not keep records of the business use of her vehicle and ultimately the judge in the case determined a deficiency of \$2,160.

In both of these cases the taxpayer clearly had jobs which required extensive business use of their vehicles but they did not keep adequate records and in the case of Mrs. Ward in trying to correct the records she did not do so contemporaneously. It is very important to note that often times in dealing with the IRS or state agencies that the FORM IS JUST AS IMPORTANT IF NOT EVEN MORE IMPORTANT THAN THE SUBSTANCE.

I am not trying to scare you away from claiming legitimate business expenses that you should be entitled to claim on your tax returns but rather to make emphasis with you the importance of keeping adequate and contemporaneous records. Keeping such records truly can be a hassle but it is a necessary evil. Don't make yourself an easy target for the IRS. Going forward it is easiest to keep a log book with you and record the necessary information such as business purposes, odometer readings before and after business related travel, addresses, etc. We all know about the huge deficits that the government has so they are grasping at any and all sources of revenue they can. In the case of Ms. Martinez the fight ended up being on just over \$2,000. This is not big money by any accounts but for a deficit ridden nation they are happy to take it. Let's not make it easy on the government.

Feel free to contact me with and questions/concerns.

Regards  
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