

BOARD OF TAX APPEALS
STATE OF LOUISIANA

PENNY FALGOUT
PETITIONER

DOCKET NO. 12274A

DEPARTMENT OF REVENUE
RESPONDENT

JUDGMENT WITH WRITTEN REASONS

This matter came before the Board for hearing on the merits on October 7, 2020. Presiding at the hearing were: Judge Tony Graphia (Ret.), Chairman, and Board Members Cade R. Cole and Francis J. "Jay" Lobrano. Present before the Board were Debra Morris representing the Department of Revenue ("Department") and Penny Falgout ("Petitioner") appearing *pro se*. At the conclusion of the hearing, the Board took the matter under advisement. The Board now renders Judgment in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED, AND DECREED that Judgment be hereby rendered in favor of the Petitioner and against the Department and that the Assessment addressed to Spence and Penny Falgout bearing Letter ID: L0178439904 BE AND IS HEREBY INVALIDATED, and Petitioner does not owe Individual Income Tax, Penalties, and Interest for the tax periods December 31, 2014 through December 31, 2017.

JUDGMENT RENDERED AND SIGNED in Baton Rouge, State of Louisiana, this day FEBRUARY 10, 2021.



JUDGE TONY GRAPHIA (RET.), CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS

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WRITTEN REASONS FOR JUDGMENT

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Petitioner appeals from a Notice of Assessment and Notice of Right to Appeal to the Louisiana Board of Tax Appeals (“Assessment”) concerning Individual Income Tax for the tax periods ending December 31, 2014 through December 31, 2017 (“Tax Periods”). The Assessment is addressed to Spence and Penny Falgout. The amount assessed is \$5,211.43 in tax, \$1,296.49 in interest calculated to December 19, 2019, a \$653.63 Late Payment Penalty calculated to December 19, 2019, and a \$781.71 Understatement Penalty, for a total assessed amount of \$7,943.26.

Petitioner explained her situation through her testimony given at the hearing. In 2013, Petitioner started a business named Country Guns,

Inc. Petitioner intended to sell gun safety training courses. Petitioner incurred expenses advertising her business. Petitioner introduced exhibits at the hearing showing that she procured a website and business cards. The business cards state “8 Hr. Course Certificate needed to apply for your concealed weapons permit.” The business cards identify “Spence/Penny Falgout” as “NRA Certified Instructors,” and show the URL of Petitioner’s website. Petitioner also committed a room of her residence for use as a classroom. Petitioner’s business suffered losses in 2014, 2015, and 2017. 2016 was a wash. Petitioner ultimately closed the business in 2017. Petitioner claimed related business expenses on her individual income tax returns for the Tax Periods. However, the auditor determined that Petitioner’s gun safety instruction business was a hobby and that Petitioner’s expenses were not deductible.

Petitioner claimed expenses for another business entitled Country Oilfield Rentals, LLC. Petitioner testified that she used a portion of her home exclusively for storing rental equipment for this business. Petitioner’s photographs admitted into evidence show a section of her home that appears to be a garage filled with various types of equipment. The auditor disallowed Petitioner’s claimed expenses for this business as well.

At the hearing, the Department argued that the expenses at issue should have been reported on the corporate income tax returns of Country Guns, Inc. and Country Oilfield Rentals, LLC. However, the Department called no witnesses and introduced no evidence at the hearing. The Department also declined to cross-examine Petitioner when

given the opportunity to do so. Nothing in the record shows that Country Guns, Inc. or Country Oilfield Rentals, LLC actually incurred any business expenses whatsoever. The Department's arguments are not evidence.

Petitioner bears the burden of proving that she incurred business expenses. Petitioner has met this burden with testimony and exhibits. Petitioner expended her own time and money to take training courses to become a certified instructor. Petitioner marketed her business herself on a website she obtained. Petitioner's name is prominently listed on her business card as an instructor. The name of the business on the card is "Country Guns," not "Country Guns, Inc." Petitioner dedicated a portion of her own home to her rental business. In sum, Petitioner has shown that she is the proper person to claim the business expense deductions at issue. The Department's legal argument does not call this factual conclusion into question. The Assessment is based on the disallowance of deductions to which Petitioner properly claimed on her return. Therefore, the Assessment is erroneous and must be invalidated.

Baton Rouge, Louisiana this day FEBRUARY 18, 2021.

FOR THE BOARD:



**JUDGE TONY GRAPHIA, (RET.)
CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS**