

BOARD OF TAX APPEALS  
STATE OF LOUISIANA

JIMMY L. SEAY,  
PETITIONER

VS.

DOCKET NO. C06736C

LOUISIANA DEPARTMENT OF REVENUE,  
RESPONDENT

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ORDER WITH WRITTEN REASONS  
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This matter came before the Board for a hearing on the merits on November 3, 2022. Presiding at the hearing were Francis J. “Jay” Lobrano, Chairman, Vice-Chairman Cade R. Cole, and Judge Lisa Woodruff-White (Ret.). Present before the Board were Miranda Scroggins, attorney for the Louisiana Department of Revenue (the “Department”), and Jimmy L. Seay (the “Taxpayer”), representing himself. At the conclusion of the hearing, the Board took this matter under advisement. The Board now issues this Order for the following reasons.

**Background**

Taxpayer appeals from a Notice of Assessment (the “Assessment”) dated December 20, 2019 for Individual Income Tax for the years 2015 (the “2015 Tax Year”), 2016 (the “2016 Tax Year”), 2017 (the “2017 Tax Year”), and 2018 (the “2018 Tax Year”) (collectively the “Tax Years at Issue”). The Assessment shows tax due in the amount of \$15,330.00, interest calculated to April 17, 2019, in the amount of \$2,606.47, and

penalties calculated to April 17, 2019, in the amount of \$3,818.08, for a total tax, penalty, and interest due in the amount of \$21,754.44.

Taxpayer claimed business expense deductions on his Federal Form Schedule C and farming business expense deductions on his Federal Form Schedule F for the Tax Years at Issue. Taxpayer incurred the claimed expenses in the course of cutting, baling, and selling hay. Taxpayer claims that he conducted a for-profit hay farming business. Despite his stated intent to make profit, however, he reported hay farming losses in each of the Tax Years at Issue.

By letter dated April 17, 2019, the Department informed Taxpayer that his Returns for the Tax Years at Issue were under review. The Department requested documents supporting Taxpayer's business expense deductions. Taxpayer provided the Department with his Federal Income Tax Returns for the Tax Years at Issue and some supporting documents. Taxpayer claims that he sent documents to the Department's Lafayette audit office. The Department stated that it did not receive all of the documents that Taxpayer claims to have sent. In addition, the Department alleged that most of the documents received were illegible. Ultimately, the Department found that the Taxpayer failed to provide documents sufficient to substantiate his business expense deductions. The Department disallowed the deductions and adjusted Taxpayer's liability accordingly. The Department then issued the Assessment. Taxpayer filed his Petition for redetermination of the Assessment on February 18, 2020.

## Testimony and Evidence

Taxpayer started working in the hay business in high school. He testified that he did so because it was a good way to make money. While in high school he worked for a man named Mr. Armstrong. Taxpayer saw that Mr. Armstrong made money by selling hay to local stores. Taxpayer claims to have learned from Mr. Armstrong that he should set a good price, produce a good product, and be loyal to customers.

Mr. Armstrong encouraged Taxpayer to take over his hay business when he retired. However, Taxpayer did not go into hay farming full-time. During the Tax Years at Issue, Taxpayer worked for Angus Chemical Company ("Angus"). Taxpayer testified that his job with Angus sometimes required him to work up to 12 hours per day. His hay farming losses offset his income from Angus and generated tax refunds.

Around 2012 Taxpayer's family started selling hay. Prior to that time, Taxpayer's family made hay only for use with their own horses. Sometime after 2012, Taxpayer started his own hay farming business. Initially, Taxpayer cut hay wherever he could get work. Eventually, he learned he could better control the product quality if the land had irrigation. This led Taxpayer to narrow his cutting to only nearby properties with irrigation.

Taxpayer would make his first cuts from March to April. Six to eight weeks later, he would make another round of cuts. If there was sufficient rain, he would make a third round of cuts. Taxpayer would begin selling hay in October and beyond.

Taxpayer testified he was cutting 261 acres annually. This figure included about 140 acres of commercial cuttings. For more than one-half of the 261 acres, he left the bales behind for his customers to take. However, Taxpayer also leased lands for hay farming. Taxpayer testified that he made more money when he did not have to leave the hay behind for his customers.

During the Tax Years at Issue, Taxpayer was making and selling round and small square bales of hay. Taxpayer testified that from 2015 to 2018, the revenue for the small square bales increased from \$3.50 a bale in 2015, to \$5.00 to \$6.00 a bale in 2018. Likewise, the large round bales increased in price from \$35.00 a bale in 2015 to \$50.00 (early in the season) to \$75.00 a bale (later in the season, like December).

Taxpayer testified he had four tractors, all of which were paid for as of 2021. When questioned about the need for four tractors for 261 acres, Taxpayer testified that his father and brother also cut some of the land. Taxpayer's family owns 168 acres of cotton farmland. Taxpayer does not work on the family farm. However, Taxpayer did construct a barn on the family farm to store his tractors, hay, and equipment. The barn had its own utility meter. Taxpayer's testimony and photos of the barn show that it was used exclusively in his hay farming business.

Taxpayer testified that his business suffered because of flooding in 2016. Not only did the flood negatively impact his cuttings in 2016, but its effects continued into later years. In 2017, Taxpayer cut weeds and resprayed his farmlands. In 2018, Taxpayer was still spraying damaged

farmland and only one-half of the acreage could produce good standing hay with stable roots.

Taxpayer's reported yearly losses are consistent with his testimony about the effects of the 2016 flood. Nevertheless, Taxpayer's revenues actually increased to \$9,350.00 in 2018. Because of rising hay prices, Taxpayer projected he would have earned \$58,850.00 in 2022, and after expenses, a profit of \$25,361.00. However, he became discouraged after the Department found his hay farming to be a hobby and he ceased his business.

Taxpayer introduced multiple documents into evidence, indicating expenses for equipment (flatbed trailer, hay cutter, two tractors), fuel, utilities, barn construction and maintenance (metal and other building materials for the barn), and equipment repair or maintenance. Taxpayer also introduced the agreements by which he leased land to farm hay. As evidence of his income, Taxpayer introduced receipts for cuts and copies of checks from customers for hay purchases.

Laura Perkins, Assistant Director, Field Audit Income Division, testified for the Department regarding documents provided by Taxpayer and why the adjustments were made during the audit. Ms. Perkins identified three primary concerns with Taxpayer's business expense deductions: excessive expenses on Schedules C and F; expenses reported in "even round" numbers; and duplicated expenses on Schedules C and F. Further, Ms. Perkins indicated there was no supporting documentation for: chemicals; depreciation; fertilizer and lime; feed; seeds and plants; fuel, oil and gas; and supplies. Ms. Perkins

acknowledged that Taxpayer provided a utility bill from Entergy, but noted that, because Taxpayer and his father share the same name and reside at the same address, that the bill could have been for the family farm.<sup>1</sup> Taxpayer testified that he provided 12 months of utility bills to the Lafayette auditor and other documents that he did not have at the hearing. Taxpayer indicated multiple times during his testimony that he backs up all his documents on a PDF and that he still has the documents, including those he provided to the Department officials.<sup>2</sup>

The Department introduced Taxpayers' Returns into evidence. The evidence shows that for the Tax Years at Issue, Taxpayer claimed income and expenses on Schedules C and F as follows:

<b>Tax Year</b>	<b>Schedule C Income</b>	<b>Schedule C Expenses</b>	<b>Schedule F Income</b>	<b>Schedule F Expenses</b>
2015	0	\$22,250.00	\$3,300.00	\$33,830.00
2016	0	\$60,111.00	\$2,300.00	\$33,283.00
2017	\$3,000.00	\$88,858.00	0	\$12,202.00
2018	\$9,350.00	\$75,479.00	0	0

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<sup>1</sup> Taxpayer explained, to the Board's satisfaction, that the bill could be identified as addressed to him and not his father, and that the bill showed a separately itemized charge for the barn used in his hay farming business that was not intermingled with the charges for utilities at the family farm.

<sup>2</sup> Taxpayer indicated he was contacted by and worked with three (3) different individuals from the Department during the audit period. Taxpayer testified he provided the documents that were requested, including 12 months of utility bills.

As mentioned above, Taxpayer's Schedules C and F losses reduced his taxable income and generated Louisiana tax refunds. The amounts of the refunds for the Tax Years at Issue were:

<b>Tax Year</b>	<b>LA Tax Refunds</b>
2015	\$816.00
2016	\$3,717.00
2017	\$4,054.00
2018	\$3,619.00

After disallowing the business expense deductions, LDR calculated taxes due as follows:<sup>3</sup>

<b>Tax Year</b>	<b>Tax Due</b>
2015	\$3,364.00
2016	\$3,746.00
2017	\$4,226.00
2018	\$3,994.00

### **Law and Analysis**

In 26 CFR § 1.183-2, the IRS promulgated the "Hobby-Loss Rule." The Hobby-Loss Rule employs an objective test for deciding whether an activity is engaged in for profit (i.e. a business) or for recreational purposes (i.e. a hobby). *Westbrook v. Comm'r*, 68 F.3d 868, 876 (5th Cir.

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<sup>3</sup> LDR Exhibit 3, Audit Schedules.

1995). The test is whether the Taxpayer's motivation for conducting the activity was to make a profit. 26 CFR § 1.183-2(a). Profit motive is established by objective evidence, not by self-serving statements. *Id.*

26 CFR § 1.183-2 sets out a non-exclusive list of nine factors to guide the inquiry of whether an activity is engaged in for profit:

(1) the extent to which the taxpayer carries out the activity in a businesslike manner; (2) the expertise of the taxpayer or his advisors; (3) the time and effort expended by the taxpayer in carrying on the activity; (4) the expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in other similar or dissimilar activities; (6) the taxpayer's history of income or losses attributable to the activity; (7) the amount of occasional profits, if any, which are earned; (8) the taxpayer's financial status; and (9) any elements of personal pleasure or recreation in the activity.<sup>4</sup>

No one factor is the most important. 26 CFR § 1.183-2(b). Nor does the test depend on counting the number of factors that favor a particular conclusion. *Id.* Further, the fact that the chance of profit was small does not negate the intent to make a profit that could be very large, i.e. a speculative investment on an oil well. *Id.*

### ***Manner in Which Taxpayer Carries on the Activity***

This factor considers whether the taxpayer carried on the activity in a businesslike manner. This can be shown with evidence that the Taxpayer emulated the methods of successful, similar businesses. Likewise, the Taxpayer can show that they adapted their business methods to maximize profits and minimize losses. The U.S. Tax Court has specifically looked for documentation of complete and accurate books and records sufficient to enable informed business decisions. *See Dodge v. Comm'r*, T.C. Memo. 1998-89; 1998 WL 88175, at \*4; *Lamb v. Comm'r*,

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<sup>4</sup> 26 CFR § 1.183-2(b)1-9.



71 T.C. Memo (CCH) 2665 (T.C.1996), 1996 WL 144369, at \*2 (approving of fisherman's separate account and log with coordinates of good fishing spots). A Taxpayer with no record-keeping system, or with a system that shows no effort to improve operations, is less likely to have a profit motive. *See Ford v. Comm'r*, 751 Fed.Appx. 843, 847 (6th Cir. 2018).

The Taxpayer here can show that he kept some business records. The records submitted into evidence were lease contracts, receipts, and customers' check payments. It is not clear how Taxpayer could have used these documents to make informed business decisions. Taxpayer also testified that he had a cash receipt book, three different bank accounts that he deposited money into, and other business records on his home computer. However, Taxpayer did not introduce any documentation of these records into evidence at the hearing. Furthermore, Taxpayer had no written business plan with his strategy or goals. The lack of sufficient documentation in the record weighs against the Taxpayer.

Nevertheless, the Taxpayer's testimony that he discontinued cuttings at lands without irrigation to produce a better quality product shows that he was making informed business decisions. In addition, he leased land on which he could harvest the hay for himself because this was more profitable than simply cutting hay for others to harvest. However, there is nothing in the record showing how Taxpayer's business records influenced these decisions. This factor weighs slightly against the Taxpayer.

#### ***The Expertise of Taxpayer or his Advisors***

This factor examines the taxpayer's preparation for the activity by extensive study of business, economic, and scientific practices, or

consultation with those who are expert therein. A taxpayer operating a for-profit enterprise would presumably adopt the best practices arrived at by these studies. However, this factor allows for the possibility that an entrepreneur might not adhere to learned wisdom if attempting to develop new techniques.

Taxpayer's testimony demonstrated his understanding of the business of hay farming, the factors impacting the business, the seasons for work and the forecast and demand for hay in Louisiana. Taxpayer also indicated that one of his advisors and customers was the 2013 Farmer of the year, Harper Armstrong. The Taxpayer demonstrated to the Board that he had learned the business, possessed extensive knowledge about the growing, producing, and selling of hay, and that he had obtained expertise outside of his own experience. This factor weighs heavily in favor of the Taxpayer.

*The Time and Effort Expended by the Taxpayer in Carrying on the Activity*

This factor looks at whether the taxpayer devoted their personal time to the endeavor. This is especially significant if the endeavor is not of a substantially personal or recreational nature. The taxpayer may also show an intent to earn a profit by withdrawing from another occupation.

Hay farming required the Taxpayer to spend six to eight hours at a time cutting hay on a tractor. This activity is not of a substantially recreational nature. Nor was this activity personal in nature, since Taxpayer did not harvest the hay for his own use. Furthermore, although Taxpayer maintained his salaried employment with Angus, the evidence shows that he devoted significant time and effort to his hay farming

business. This is evident not only from the hours that he spent cutting in the field, but because he worked for years to restore his farmlands after the 2016 flood. This factor weighs heavily in favor of the Taxpayer.

***Taxpayer's History of Income or Losses with Respect to the Activity***

This factor takes into account the customary period necessary to establish profitability for a new venture. Sustained losses beyond that period may indicate that the activity is not engaged in for profit. However, this factor also allows for leniency when periods of unprofitability result from circumstances outside the Taxpayer's control. On the other hand, a series of profitable years would indicate a profit motive.

Taxpayer had a history of losses. Some of these losses can be attributed to the 2016 flood. That was a circumstance beyond Taxpayer's control. As mentioned above, the flood's impact on Taxpayer's business was not only felt in 2016. By 2018, Taxpayer was only able to obtain good standing hay from one-half of the 261 acres that he normally farmed. Furthermore, Taxpayer's Schedule C reported \$6,350.00 more income in 2018 than in 2017. Although the increase did not yield a profit, it supports Taxpayer's testimony concerning the work he put in to restore the land. In light of all of the facts in the record, this factor weighs in the Taxpayer's favor.

***The Amount of Occasional Profits, If Any, Which are Earned***

This factor weighs the realization of, or opportunity for, profit compared to the losses incurred in the activity. An occasional small profit does not mean that an activity was engaged in for profit if the activity generates large losses, or if the taxpayer made large investments in the

activity. However, the opportunity for substantial profit from a speculative venture is generally sufficient to demonstrate a profit motive even though the actual profits are small and infrequent.

Taxpayer's reported losses are excessive in comparison to his profits. However, a substantial portion of his reported expenses appear to be the result of depreciation of automobiles and a misapplication of Section 179 to his leased tractor, discussed in further detail below. The testimony regarding the impact of the 2016 floods for three of the four Tax Years at Issue is also relevant and given significant weight in considering this factor. Lastly, Taxpayer testified that rising hay prices would have resulted in realizing a profit of \$25,361.00 in 2022, had he remained in the business.<sup>5</sup> In fully considering all of the relevant evidence, this factor weighs neither in favor of nor against the Taxpayer.

### *The Financial Status of Taxpayer*

This factor suggests that if the taxpayer does not have substantial income from capital or other sources, then the activity is more likely to be a profit-seeking venture. Contrarily, if the activity generates losses that offset tax liability from other income, then the activity is less likely to be engaged in for profit. A profit motive is particularly unlikely when the activity is of a personal or recreational nature.

Taxpayer's salary from Angus was his primary source of income. His losses from his hay farming business offset that income and allowed him to receive refunds. These objective facts tip the scales for this factor against the Taxpayer. However, the Board finds that the Taxpayer's

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<sup>5</sup> Taxpayer forecasted revenue of \$58,850.00 for 2022. He estimated that this would have resulted in a profit of \$25,361.00, after expenses.

testimony credibly establishes that he did not engage in hay farming with the intent to offset his wage income. Thus, this factor only slightly favors the Department.

### *Elements of Personal Pleasure or Recreation*

Obviously, if there are personal or recreational reasons for the activity, then it is less likely that the Taxpayer engaged in the activity to make a profit. However, the Taxpayer does not have to show that they engaged in the activity exclusively for profit. The fact that the taxpayer derives personal pleasure from the activity does not necessarily negate the existence of a profit motive.

Some activities, like gambling<sup>6</sup>, can be profitable but also possess an obvious recreational component. Cutting and harvesting hay with a tractor, however, does not have an obvious recreational component. The Department could have argued that this activity was in some non-obvious way recreational, but it did not do so. Moreover, Taxpayer's testimony about the time and effort he put into his business confirms that it was not recreational in nature. Taxpayer expended significant effort to produce a quality hay product, obligated himself to make payments on four leases of seven years in duration, narrowed his work to lands with irrigation to improve product quality, worked to restore the lands after the 2016 flood, and showed dedication to providing a good service to his customers. All of this evidence shows an intent to maintain and grow a profit-seeking venture. This factor weighs heavily in favor of the Taxpayer.

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<sup>6</sup> See *Jun Wu v. Comm'r*, 8009-16S, 2019 WL 3361951, at \*4 (T.C. July 25, 2019) ("Gambling is routinely thought of as a recreational activity.").

### **Conclusion on Hobby-Loss Rule**

Considering the law and evidence, the Board finds that the Taxpayer entered into, and continued, hay farming with the intent to make a profit. The nature of Taxpayer's work was not in any way recreational. Furthermore, the Taxpayer's reported profits and losses were generally consistent with his testimony regarding the 2016 flood and other impacts for the Tax Years at Issue. Finally, the Taxpayer's demonstrable knowledge, skills, business practices, customer base, experience, and investments in equipment and supplies all weigh more heavily towards an intent to operate the business for a profit. The Board finds that the Department incorrectly applied a Hobby-Loss determination, and that Mr. Seay was operating a trade or business.

### **Substantiation of Ordinary and Necessary Expenses**

Taxpayer is entitled to deduct ordinary and necessary business expenses incurred during the Tax Years at Issue. IRC 162(a). An ordinary expense is one that is common and accepted in the relevant industry. *INDOPCO, Inc. v. Comm'r*, 503 U.S. 79, 85–86 (1992). A “necessary” expense must be helpful and appropriate for the development of the business. *Comm'r v. Tellier*, 383 U.S. 687 (1966). The expenses must directly relate to the Taxpayer's business. *See Hymel v. Comm'r*, 794 F.2d 939, 940 (5th Cir. 1986).

For each category of expenses, the Board rules as follows:

#### ***Construction of the Barn***

Taxpayer introduced an invoice for steel trusses, boards, treated posts, and lean-to trusses that he claims are materials used to construct

a barn.<sup>7</sup> Taxpayer also introduced seven invoices from Ram Rent-All, Inc., for scaffolding, ladders, and lifts (i.e. cranes), which he claims were rented for the construction of the Barn.<sup>8</sup> Taxpayer testified that the Barn was used to store hay and equipment for his hay farming business. Taxpayer's statement is corroborated by photographs of the Barn's interior showing hay bales and his John Deere Tractor.<sup>9</sup> Based on the uncontradicted evidence, the Board finds that the barn was exclusively used in Taxpayer's hay farming business during the Tax Years at Issue.

Amounts paid for new buildings are capital expenditures and are not deductible. IRC 263(a)(1); 26 CFR 1.263(a)-(2)(a). Capital expenditures are instead added to the Taxpayer's basis in the property and accounted for through depreciation or by realizing a lesser amount of capital gain when the asset is sold. *Woodward v. Comm'r*, 397 U.S. 572, 574 (1970). Accordingly, Taxpayer may not deduct the expenses for constructing the Barn. These expenses will be added to his basis in the Barn and may be depreciated under the appropriate depreciation schedule.

### ***Utilities for the Barn***

The Taxpayer claimed deductions for utilities for the Barn. Utilities may be deductible if they ordinary and necessary expenses of conducting Taxpayer's hay farming business. See *Hoakison v. Comm'r*, 124 T.C.M. (CCH) 320 (T.C. 2022); *Weeldreyer v. Comm'r*, 86 T.C.M. (CCH) 622 (T.C. 2003). As explained above, the Board finds that expenses for operation of

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<sup>7</sup> T/P Exhibit 5.

<sup>8</sup> T/P Exhibit 6

<sup>9</sup> T/P 14, in globo.

the Barn are deductible under IRC 162(a). The Board also finds that the barn had a separate utility meter from other property on the family farm. Therefore, Taxpayer may deduct utility expenses that he paid for the Barn during the Tax Years at Issue.

*Seeds and plants, fertilizer and lime, chemicals, and farming related supplies*

Through his testimony, Taxpayer explained that he purchased seeds and fertilizer to cultivate hay crops for his business. The Board finds Taxpayer's testimony to be credible and undisputed. Taxpayer may deduct expenses for seeds and fertilizer used in hay farming. However, Taxpayer must submit documents substantiating the amount of expenses claimed for this category, as explained in the Board's decree below.

*Gas, fuel and oil*

Taxpayer introduced receipts for dyed diesel fuel and related service charges. The Board accepts Taxpayer's testimony that these purchases were for fuel used in his tractors. Taxpayer's tractors were essential to his hay farming business. The Board finds these expenses are deductible ordinary and necessary for the operation of Taxpayer's business.

*Repairs and maintenance*

Taxpayer introduced five pages of receipts for repairs to hay equipment. There is no reason to doubt Taxpayer's testimony that these receipts are for repairs and maintenance of hay farming equipment. The Board finds that expenses for repairs and maintenance were ordinary and necessary expenses of the Taxpayer's hay farming business.



### ***Dump Trailer***

For 2015, Taxpayer elected to expense the cost of a Dump Trailer under IRC 179 on his Schedule C in the amount of \$6,500.00. Based on the Taxpayer's testimony, the Board finds that the cost of the Dump Trailer was an ordinary and necessary business expense and the deduction should be allowed.

### ***Kubota Disc Mower***

For 2016, Taxpayer elected to expense the costs of a Kubota Disc Mower under IRC 179. Taxpayer testified that this equipment was used in his hay farming business. The Board finds Taxpayer's testimony to be credible and that expenses for Kubota Disc Mower were ordinary necessary for Taxpayer's hay farming business.

### ***McCormick tractor***

For 2016, Taxpayer made an election to expense the purported cost of a McCormick tractor under IRC 179. The Department's evidence showed that the Tractor was leased from McCormick. The Lease obligated Taxpayer to make an advance payment of \$8,000.00 plus \$958.40 for sales/use taxes, followed by 57 monthly payments of \$1,000.09.

Generally, a lessee may not depreciate leased property. *Weiss v. Wiener*, 279 U.S. 333 (1929). However, if the transaction is re-characterized as a conditional sale, then the lessee will be treated as the owner of property and may claim depreciation. *Holden v. Comm'r*, 110

T.C.M. (CCH) 53 (T.C. 2015); see, e.g., *McKinsey v. Comm'r*, T.C. Memo. 1984-514, 48 T.C.M. (CCH) 1225 (1984); *Bowen v. Comm'r*, 12 T.C. 446, 459, 1949 WL 177 (1949) (quoting *In re Rainey*, 31 F.2d 197, 199 (D.Md. 1929)). A conditional sale is one in which title remains with the seller until the buyer pays for the goods. *Swift Dodge v. Comm'r*, 692 F.2d 651, 653 (9th Cir. 1982). The indicia of a conditional sale are: (1) a lease term extending through the entire useful life of the property<sup>10</sup>; (2) the lease is an “open-end” lease<sup>11</sup>; (3) title automatically passes to the lessee at the end of the lease or if lessee’s payments equal the cost of the property<sup>12</sup>; (4) an option to purchase at a nominal price<sup>13</sup>; or (5) the lessor has an option to force the lessee to buy the property.<sup>14</sup>

Taxpayer did not assert that the McCormick Tractor lease qualifies as a conditional sale. Moreover, the above indicia are almost entirely absent from the lease of the McCormick Tractor. There is no evidence that the term of the lease extended beyond the useful life of the property. The Lease does not require the Taxpayer to guarantee the residual value of the Tractor at the end of the Lease’s term, as would be the case in an “open-end” lease. Nothing in the lease provides for automatic transfer of title. Although there is an option to purchase, it is not provided at a nominal price. Finally, the Lease does not give the lessor an option to force Taxpayer to buy the Tractor. Based on these facts, the Board finds

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<sup>10</sup> *Mt. Mansfield Television, Inc. v. United States*, 342 F.2d 994 (2d Cir. 1965).

<sup>11</sup> In an “open-end” lease, the lessee is obligated to pay a lump sum at the end of the lease based on projected resale value. *Leslie Leasing Co. v. Comm'r*, 80 T.C. 411, 413, 1983 WL 14798 n .3 (1983) (citing *M & M Leasing Corp. v. Seattle-First National Bank*, 391 F. Supp. 1290, 1294 (W.D. Wash. 1975), *affd. in part and revd. in part* 563 F.2d 1377 (9th Cir. 1977)).

<sup>12</sup> *Chicago Stoker Corp. v. Comm'r*, 14 T.C. 441, 1950 WL 148 (1950).

<sup>13</sup> *Boyce v. Comm'r*, 26288-08S, 2010 WL 2901754, at \*3 (T.C. July 26, 2010).

<sup>14</sup> *Aderholt Specialty Co. v. Comm'r*, 50 T.C.M. (CCH) 1101 (T.C. 1985).

that the transaction should not be re-characterized as a conditional sale. Therefore, Taxpayer may not expense the associated costs of leasing the Tractor under IRC 179.

However, IRC 162 (a)(3) allows a deduction for rental payments required for the continued use or possession, for purposes of the trade or business, of property to which the Taxpayer has not taken or is not taking title or in which he has no equity. This principle is also stated in 26 CFR 1.162-1(a), which explains that business expenses include rental payments for the use of business property. The Board accepts Taxpayer's undisputed testimony that the McCormick Tractor was used exclusively in his hay farming business. The McCormick Tractor is business property and Taxpayer can deduct his lease payments for it under IRC 162.

The Taxpayer may not deduct the entire amount of the lease in a single year. The general rule for the Taxpayer using the cash method accounting is that business expenses are deductible in the year in which they are paid. 26 CFR § 1.461-1(a). Thus, for 2016 Tax Year, Taxpayer may only deduct the lease payments that made during that year. The Taxpayer may deduct subsequent lease payments in their respective Tax Years at Issue.

### ***Lease Agreements***

Taxpayer claimed deductions for payments to lease land for hay farming. Taxpayer introduced four Lease Agreements to substantiate these deductions. The Lease Agreements recite that the land is leased for the purpose of cutting and baling hay. As explained above, IRC 162 (a)(3) allows a deduction for rental payments to lease property for use in the

Taxpayer's business. Taxpayer leased the land the purpose of hay farming. Taxpayer may accordingly deduct his payments for the leases in the year in which the payments were made.

***Cars and trucks, depreciation for listed property***

Taxpayer claimed depreciation and expense deductions for his trucks. Automobiles are treated as "listed property" under IRC 280F(d)(4)(A). In order to claim a deduction related to a passenger automobile, Taxpayer must meet strict substantiation requirements. I.R.C. § 274(d), 280F(d)(4)(A)(i). This means that Taxpayer must substantiate: (1) the amount of each separate expenditure, (2) the mileage for each business use and total mileage for all business use of the automobile, (3) the date of the expenditure or use, and (4) the business purpose for the expenditure or use. *McLauchlan v. Comm'r*, 558 Fed.Appx. 374, 380 (5th Cir. 2014); Temp. Treas. Reg. § 1.274-5T(b)(6). Taxpayer did not maintain a mileage log and was did not produce any documentation to satisfy the Code's strict substantiation requirements. Accordingly, the Board finds that the Department properly disallowed the deductions for Cars and Trucks.

**Order**

Considering the foregoing reasons and findings, including the finding that Taxpayer was operating a trade or business:

IT IS ORDERED that the Taxpayer submit all documentation to substantiate his hay farming business expense deductions to the Department.

IT IS FURTHER ORDERED that the Parties shall submit a Judgment to the Board reflecting the determination that the hay farming work Taxpayer performed is determined a trade or business, subject to the deduction of ordinary and necessary expenses incurred during the Tax Years at Issue.

IT IS FURTHER ORDERED that based on the Board's determination, the parties shall submit an agreed-upon Judgment calculating the tax due from Taxpayer, along with penalties, and interest as provided for by law within 60 days of the signing of this Order.

IT IS FURTHER ORDERED that if the Parties cannot agree on a Judgment, that the parties each submit a proposed Judgment with supporting documents in conformity with this Order with Written Reasons within 60 days of the signing of this Order.<sup>15</sup>

**Signed in Baton Rouge, Louisiana, on this day May 4, 2023.**

**FOR THE BOARD:**



**Judge Lisa Woodruff-White (Ret.)  
Louisiana Board of Tax Appeals**

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<sup>15</sup> This Order is subject to the following proviso: the record shall be held open for the Taxpayer to submit supporting documentation with his proposed Judgment and for the Department to submit contradictory documentation with its proposed Judgment and memoranda.