ARIZONA TAX COURT

TX 2004-000924 06/19/2006

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED:_____

D W JENKINS, et al.

D W JENKINS
13622 N REDWOOD DR
SUN CITY AZ 85351-2324

v.

ARIZONA STATE DEPARTMENT OF REVENUE, et al.

KIMBERLY J CYGAN

S J JENKINS
13622 N REDWOOD DR
SUN CITY AZ 85351-2324

UNDER ADVISEMENT RULING

This matter was taken advisement after Oral Argument on Cross-Motions for Summary Judgment held May 22, 2006. The Court has considered the papers and arguments of counsel.

For the tax year 1999, Plaintiffs filed an Arizona income tax return claiming a variety of itemized tax deductions as well as a credit for the purchase of an alternative fuel vehicle. Defendant administered an audit of the Plaintiffs' tax return and issued a proposed assessment for tax, interest, and penalty. In response, Plaintiffs protested Defendant's proposed assessment, which resulted in Defendant issuing a modified assessment and reversing the imposed penalty. The Department of Revenue's Hearing Office affirmed the modified assessment but Plaintiffs have appealed that action to this Court.

BACKGROUND

I. Plaintiffs' Credit for the Purchase of an Alternative Fuel Vehicle

Plaintiff's 1999 Arizona income tax return reflects a credit of $10,200.00 for the purchase of a 1999 Chevrolet alternative fuel vehicle ("the vehicle"). Defendant denied this credit on the grounds that Plaintiffs did not produce adequate proof of payment and that Plaintiffs failed to

take possession of the vehicle. Plaintiffs contend they have met all the requirements of A.R.S. § 43-1086 and are, therefore, entitled to the tax credit.

Pursuant to House Bill 2405 containing A.R.S. § 43-1086(A)(3):

> For taxable years beginning after December 31, 1998, a credit against taxes imposed by this title is allowed to each taxpayer who . . . [p]urchases one or more used alternative fuel vehicles for use in this state.

The statute continues to provide that "the amount of credit . . . for a used zero emission vehicle" is equal to "twenty-five per cent of the cost or five thousand dollars, whichever is more."

Defendant contends that on or about December 31, 1999, the vehicle was titled to Plaintiffs. At or about the same time, this same vehicle had many other title and registration applications on file. Subsequently, in January 2000, additional title and registration applications were filed on the vehicle. All of the applications listed Quantum Lenders Trust as the lender, the same purchase price, the same license plate, and the same vehicle identification number. The title and registration for Plaintiffs' vehicle states "David Jenkins by Auto Attorney Associates by AZ License & Title Services LLC by Penny Taylor agent POA." The other titles and registration applications contain similar language.

Defendant further contends that Plaintiff submitted a "Receipt and Acknowledgment" form from Legal Professional Services ("LPS") regarding their claim of a credit for the purchase of the vehicle. This form contained the following language:

> With regard to the vehicle purchased on my behalf, I have authorized others through powers of attorney to buy, operate and sell it on my behalf and understand that **I will not operate the vehicle myself**. I have paid only for legal research and information and the installation of a vehicle refueling apparatus and hereby affirm that I have not received legal opinions nor accounting advice to induce me to purchase said research, information and apparatus. [Emphasis added.]

In addition to this form, Plaintiffs executed an irrevocable power of attorney which gives Auto Attorney Associates ("AAA"), the power to sign any documents necessary to transfer registration of the vehicle as well as allowing AAA "to use said motor vehicle in Arizona and to access a vehicle fueling apparatus to provide an electric charge to sufficiently fuel and operate the vehicle."

Based on these two documents, Defendant claims that because LPS & AAA purchased, operated and sold the vehicle on behalf of the Plaintiffs as well as other individuals, Plaintiffs did not purchase and take possession of the vehicle. Therefore, Defendant contends that Plaintiffs' actions, by temporarily taking title of an alternative fuel vehicle for the purpose of receiving a tax credit, constitute an abusive tax scheme.

Defendant argues that Arizona case law has established that in determining the intent of the language contained in the Arizona Legislature, "[A] cardinal principle of statutory interpretation is to follow the plain and natural meaning of language to discover what the legislature intended to say. *Dearing v. Arizona Department of Economic Security*, 121 Ariz. 203, 204, 589 P.2d 446, 447 (App. 1978). In determining the meaning of "purchase" contained in the statute, *City of Enterprise v. Smith*, 62 Kan. 815, 62 P. 324, 325 (1900), provided that "'[P]urchase,' in the ordinary and popular acceptation, is the transmission of property from one person to another by their voluntary act and agreement, founded on a valuable consideration." Relying on this definition, Defendant asserts that since Plaintiffs did not take possession of the vehicle, Defendant was correct in denying the credit.

Similarly, Defendant asserts that when determining the meaning of language contained in a statute, "[T]he cardinal rule of statutory construction "is to ascertain the meaning of the statute and intent of the legislature." (Citation omitted.) *Walgreen Arizona Drug Co. v. Arizona Department of Revenue*, 209 Ariz. 71, 73, 97 P.3d 896, 898 (App. 2004). In applying the language contained in the statute, Defendant contends that the purpose of the credit statute was to decrease air pollution by encouraging the use of alternative fuel vehicles. Furthermore, Defendant believes that House Bill 2405 which enacted A.R.S. § 43-1086 demonstrates this purpose. House Bill 2405 "established incentives to promote the use of alternative fuel vehicles in Arizona." Additionally, A.R.S. § 43-1086(E) further expresses the intent for allowing the credit. This subsection states that:

> The taxpayer claiming a tax credit pursuant to this section shall use alternative fuel to operate the vehicle that qualifies the taxpayer for the credit and shall provide proof satisfactory to the department that the taxpayer uses alterative fuel to operate the vehicle that qualifies the taxpayer for the credit. The proof shall be purchase of at least one hundred gallons of alternative fuel or access to a vehicle refueling apparatus as defined in section 43-1086.01.

Additionally, *Baker v. Arizona Department of Revenue*, 209 Ariz. 561, 563, 105 P.3d 1180, 1182 (App. 2005), explained the intent of the tax incentives for purchasing an alternative fuel vehicle:

> Beginning in the early 1990s, the Arizona Legislature authorized a variety of tax and grant incentives designed to encourage the purchase of or conversion to alternative fuel vehicles (AFVs).

> These incentives were part of a broad tax and regulatory program to improve Arizona's air quality. The legislature has continuously modified the program, with significant changes occurring in 1994, 1996, 1998, and 1999.

Defendant contends that Plaintiffs' understanding of the statute, which would allow Plaintiff, as well as other individuals to obtain a tax credit for temporarily possessing title to an alternative fuel vehicle, is contrary to the legislative intent of the statute because no interest to improve Arizona's air quality is furthered.

Additionally, "courts will avoid statutory interpretations that lead to absurd results which could not have been contemplated by the legislature." *City of Phoenix v. Superior Court*, 144 Ariz. 172, 177, 696 P.2d 724, 729 (App. 1985). Defendant contends that it is absurd for Plaintiffs to believe that the Legislature would allow Plaintiffs to receive a $10,200.00 tax credit for having an agent temporarily place title in their name to an alternative fuel vehicle.

Furthermore, Courts attempt to construe statutes in a constitutional manner when possible. *Phoenix Newspapers, Inc. v. Superior Court*, 180 Ariz. 159, 163, 882 P.2d 1285, 1289 (App. 1993). Defendant asserts that Plaintiffs' understanding of the credit statute violates the Anti-Gift Clause of the Arizona Constitution. Article IX, § 7 states that the State shall not "give or loan its credit in aid of or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation." Defendant relies on *Wistuber v. Paradise Valley Unified School District*, 141 Ariz. 346, 349, 687 P.2d 354, 357 (1984), when applying the rationale of the gift clause. *Wistuber* found that the use of public money or property will not violate the gift clause if the court finds that (1) the use if for a public purpose, and (2) the value of the public money or property is not so much greater than the value of the benefit received by the public that the exchange of the one for the other is disproportionate. *Id*. Defendant claims that allowing a $10,200 tax credit for taking temporary title to an alternative fuel vehicle serves no public purpose and is therefore an unconstitutional gift.

Plaintiffs, on the other hand, allege that A.R.S. § 43-1086(A)(3), as it existed for 1999, allows an income tax credit for purchases of alternative fuel vehicles for use in this state. Following the language contained in this subsection of the statute, Plaintiffs contend that by purchasing the vehicle for use in Arizona, they qualify for the tax credit.

Plaintiffs acknowledge that they not only signed the title and registration to the vehicle as "David Jenkins by Auto Attorney Associates by AZ License and Title Services LLC by Penny Taylor agent POA," but also have signed an irrevocable power of attorney form giving AAA the power to sign any document necessary to transfer the registration of the vehicle. Plaintiffs contend that since the statute referenced above makes no mention of precluding the use of agents to purchase the vehicle, Plaintiffs have purchased the vehicle in compliance with the statute therefore they are entitled the tax credit.

With regard to payment for the vehicle, Plaintiffs contend that A.R.S. § 43-1086 does not include a requirement regarding payment. Therefore, Defendant's denial of the credit for the vehicle because Plaintiffs did not provide proof of payment was wrong. Regardless, Plaintiffs believe that they did provide proof of payment. Plaintiffs assert that the Motor Vehicle Division ("MVD") Certificate of Title reflects a lien in favor of Quantum Lenders Trust ("QLT"), for $40,800.00. In addition, Plaintiffs contend that the vehicle was titled and registered with the MVD in Plaintiffs' name and that the lien holder record reflects QLT as the lender financing the purchase price of the vehicle. By taking title subject to a lien, Plaintiffs contend this is adequate consideration to constitute payment for the vehicle.

Plaintiffs assert that in addition to the proof of payment, Defendant required that Plaintiffs provide proof of possession of the vehicle. Plaintiffs contend that since A.R.S. § 43-1086(A)(3) provides that "a credit against taxes imposed by this title is allowed to each taxpayer who . . . purchases one or more used alternative fuel vehicle for use in this state," possession of the vehicle is irrelevant. Additionally, Plaintiffs contend that since the vehicle was used in Arizona, was not polluting the air, and that all the statute required was the purchase of the vehicle to be used in the state of Arizona, the law allowing tax credits did not require any taxpayers to receive the alternative vehicle themselves.

Regarding the length of ownership, Plaintiffs contend that there is no requirement as to length of ownership contained in A.R.S. § 43-1086 and therefore, this is not adequate grounds to deny the tax credit. Plaintiffs rely on a letter dated February 2, 2000, from Vince Perez, Director's Executive Officer, to Honorable James Weiers, Speaker of the Arizona House of Representatives, which provided in pertinent part that "the Department's interpretation [of A.R.S. § 43-1086] is that there is no holding period for a taxpayer that purchases an alternative fuel vehicle."

Finally, Plaintiffs contend that they authorized LPS to purchase the vehicle on their behalf. Plaintiffs assert that they took possession of the vehicle, drove the vehicle, and because they were not satisfied with the vehicle, authorized LPS to sell the vehicle. Plaintiffs assert based on the circumstances that the tax credit is not an unconstitutional gift because the credit is a result of certain activities Plaintiffs performed pursuant to the law.

II. Plaintiffs' business loss deduction for the sale of property

Plaintiffs included a deduction on their 1999 tax return for a business loss on the sale of their Peoria property in the amount of $8,345.00. Plaintiffs purchased this property in 1976 and their son resided at the property after it was purchased.

The Internal Revenue Code ("IRC") § 165 provides a deduction for "any loss sustained during a taxable year which is not compensated for by insurance or otherwise." This section of the IRC continues to state that with regard to individuals, deductions are limited to "losses

incurred in a trade or business, incurred in connection with any transaction entered into for profit, or as a result of a casualty or theft." IRC § 165(c).

The standard used to determine if the loss was incurred in a trade or business or in a transaction entered into for profit is that a "taxpayer must have a bona fide intent and objective of realizing a profit." *Horn v. C.I.R.*, 90 T.C. 908, 932-933, Tax Ct. Rep. (CCH) 44, 767 (U.S. Tax Ct. 1988). When renting real property to family members, IRC § 280 A(d)(2)(C) states that "the taxpayer shall be deemed to have used a dwelling unit for personal purposes" if "the unit is used . . . by any individual . . . unless for such day the dwelling unit is rented for a rental which, under the facts and circumstances, is fair rental." In addition, IRC § 6001 requires taxpayers to keep records and statements in order to establish income and losses.

Defendant denied Plaintiffs' deduction on the sale of their property on grounds that Plaintiffs did not manage the property for profit. Because Plaintiffs failed to keep the required books and records, failed to report rental income on any of their tax returns, and never indicated a depreciation of the property, Defendant concluded the property was not held for profit. Further, Plaintiffs claimed the property taxes and mortgage interest paid on the property as deductions on Schedule A of their federal and state tax returns. Defendant asserts that if these deductions were allowed, Schedule A, which is used to deduct interest, taxes and casualty losses not related to business, is not applicable to Plaintiffs since they claim that the Peoria property to be a business property; therefore Schedule E should have been completed.

Defendant contends that it tried, through discovery, to obtain information regarding the fair rental value of the Peoria property but Plaintiffs rebutted by stating that this request exceeded the scope of discovery. Because Plaintiffs failed to provide evidence of what constitutes fair rental value, Defendant asserts that this supports their decision that Plaintiffs lacked profit motive. "[A] rental for less than fair market value will most likely not qualify as property being held for the production of income." *Bolaris v. C.I.R.*, 776 F.2d 1428, 1432 (9th Cir. 1985).

However, Plaintiffs contend the property was purchased with the purpose of making a profit. They state they purchased the property for the purpose of realizing appreciation in the real estate market. In the meantime, Plaintiffs leased the property to their son who used the home as his principal place of residence. Plaintiffs claim that an agreement (not a written agreement because none existed) between Plaintiffs and their son explained the rental terms and agreement. Such terms included maintaining and repairing the property a well as paying all of the utility expenses. Additionally, Plaintiffs assert they initially rented the property above fair market value due to high interest rates prevailing at that time. Plaintiffs contend that because they never lived on the property, stored anything on the property, and never removed anything from the property, the property was not used for personal purposes.

Plaintiffs also claim that this was their first time handling rental property and they were not informed by their CPA that a Schedule E form should have been filed, which was why they

claimed property taxes and mortgage interest paid as well as listed itemized deductions on Schedule A of their tax return. In addition to this lack of knowledge, Plaintiffs claim that they were unaware that taking depreciation on the rental property was required. Plaintiffs did not report any income on the property during the period they held the property as no income was ever generated from renting the property.

With regard to maintaining books and records, Plaintiffs rely on IRS Publication 552 "Kinds of Records to Keep" which provides that "the IRS does not require you to keep your records in a particular way. Keep them in a manner that allows you and the IRS to determine your correct tax. You can use your checkbook to keep a record of your income and expenses." Based on the language in this publication, Plaintiffs contend that their method of depositing the rent payment into their personal checking account and then writing a check to pay for the mortgage was legal and adequate under the law.

Plaintiffs claim that Defendant required Plaintiffs to produce documentation regarding the business loss of the Peoria property. Plaintiffs believe that this request was impossible to meet because business records were previously submitted, the lease agreement was verbal, and all bank records would cover a period of over two decades and had not been preserved for that length of time. Additionally, Plaintiffs claim that all of Defendant's requests had been satisfied at the first audit conference; therefore Plaintiffs believe that the Defendant is punishing them for using the wrong form to report rental activity.

III. Plaintiffs miscellaneous itemized deductions

Plaintiffs, on their 1999 tax return, included miscellaneous itemized deductions in the amount of $3,514.00. IRC § 67(a) provides that "[I]n the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income." After an assessment by Defendant, only $345.90 was valid. Since this amount is less than two percent of the Plaintiffs adjusted gross income, Defendant denied the entire amount of the miscellaneous itemized deductions.

A component of the Plaintiffs' itemized deductions was $2,747.00 paid to Wade Cook Financial Corporation ("Wade Cook"). This expense related to a three day seminar that Plaintiffs attended in 1999. In addition to the seminar Plaintiffs received other benefits including a six month subscription to the Wealth Information Network ("WIN"). Plaintiffs received a receipt from Wade Cook which shows $3,242.00 (minus a $495.00 discount) as tuition for the Business Entity Skills Training ("BEST") and then itemizes other aspects of the seminar including six months of WIN access. All itemized aspects of the seminar other than tuition, including WIN, have a price of zero next to their description.

Defendant denied this expense as an itemized deduction on the grounds that it was tuition to attend a seminar. IRS Publication 529 provides that "[y]ou cannot deduct any expenses for

attending a convention, seminar, or similar meeting for investment purposes." In analyzing the receipt from Wade Cook, Defendants determined that Plaintiffs' payment to Wade Cook was for attending an investment seminar and all other benefits received from the seminar including WIN were incidental and thus not deductible.

Plaintiffs challenge the denial of the deduction on the grounds that the $2,747.00 paid to Wade Cook was for access to WIN and not for the BEST seminar. In support of this position Plaintiffs provided portions of a consent decree against Wade Cook where the court described WIN as "a subscription based service." Plaintiffs further argue that their interest in WIN was to identify over or undervalued securities in order to earn income from the stock market. Therefore, Plaintiffs conclude the deduction should be allowed pursuant to IRC § 212 which allows for deduction expenses incurred "for the production or collection of income."

IV. Plaintiffs' medical expense deduction

Plaintiffs claimed a medical expense deduction in the amount of $4,767.00 on their 1999 Income Tax Return. Defendant denied $2,249.00, which included the following deductions:

- $1380.00 for health insurance premium payments deducted from Ms. Jenkins' pension from the Arizona State Retirement System ("ASRS");
- $458.00 for nutritional supplements; and
- $411.00 for unexplained expenses.

With regard to the health insurance premium payments, Defendant claims that it correctly denied this amount because these payments were pre-tax and not reported as income on the 1099-R issued to Ms. Jenkins by ASRS. Since this amount was already deducted from Ms. Jenkins' income, Defendant claims that the amount cannot be deducted a second time. Moreover, Defendant contends that Plaintiffs agree that Defendant correctly denied this deduction.

Plaintiffs also reported a $458.00 deduction for nutritional supplements. Defendant disallowed this deduction as not qualifying under IRS Publication 502 and for Plaintiffs' failure to substantiate the costs of the supplements.

IRS Publication 502 states:

> You cannot include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, "natural medicines," etc. unless they are recommended by a medical practitioner as treatment for a specific medical condition diagnosed by a physician. Otherwise, these items are taken to maintain your ordinary good health, and are not for medical care.

Defendant denied Plaintiffs' nutritional supplement deduction because Plaintiffs did not provide sufficient evidence to demonstrate that a medical practitioner recommended the nutritional supplements as treatment for a specific medical condition. Defendant contends that recommendations for nutritional supplements found in publications and on the internet do not fall under Publication 502 as a "recommendation from a medical practitioner." In addition, Defendant claims that Plaintiffs failed to substantiate the costs of the supplements.

Plaintiffs counter that they are entitled to the deduction because they purchased the nutritional supplements in response to the potential side effects of the statin drugs Plaintiffs were taking as treatment for heart disease. Plaintiffs argue that Publication 502 does not specify restrictions on what constitutes a medical practitioner's recommendation and therefore recommendations found in newsletters, books, e-mails, pamphlets, television, or radio shows are sufficient for obtaining a deduction under Publication 502. Plaintiffs provided information from periodicals and internet web-sites recommending the nutritional supplements and vitamins for individuals taking statin drugs. Plaintiffs therefore argue that they have provided a sufficient recommendation from a medical practitioner to qualify them for the deduction under Publication 502.

V. Plaintiffs' charitable contribution deduction

In 1996 and 1997, Plaintiffs claimed a $62,000.00 charitable contribution deduction, $10,115.00 of which was listed on Plaintiffs' 1999 income tax return. Plaintiffs claimed that they received food as a gift and then donated the food to a food bank. Defendant denied this deduction reasoning that Plaintiffs failed to prove that they had a basis in the donated items. Additionally, Defendant asserts that Plaintiffs failed to comply with Treasury Regulation § 1.170(A)-13(c)(2) because they did not acquire an appraisal of the food items. Further, Defendant contends that Plaintiffs failed to comply with Treasury Regulation § 1.170(A)-13(b)(2)(ii) because Plaintiffs did not maintain records required by the regulation. Finally, the Defendant found that Plaintiffs overstated the value of the donation by using a retail price for food, which could not be sold at retail.

According to IRC § 170(a)(1), "[t]here shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary." In turn, Treasury Regulation § 1.170(A)-13 requires maintaining records of charitable contributions for deduction purposes. Moreover, charitable contributions in excess of $5,000.00 require a donor to do all of the following:

> (A) Obtain a qualified appraisal . . . for such property contributed;
> (B) Attach a fully completed appraisal summary . . . to the tax return; and
> (C) Maintain records containing the information.

Treasury Regulation § 1.170(A)-13(b)(2)(ii).

Furthermore, the Treasury Regulation requires the following information to be listed on the taxpayer's income tax return:

> (A) the name and address of the donee organization to which the contribution was made;
>
> (B) the date and location of the contribution;
>
> (C) a description of the property in detail reasonable under the circumstances (including the value of the property); and
>
> (D) the fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

Treasury Regulation § 1.170(A)-13(b)(2)(ii).

Plaintiffs challenge the denial of the deduction by asserting that they have complied with the requirements of the IRC. Plaintiffs claim that because they received the food without any knowledge of the gift giver's business arrangements or the sources from whom he acquired the food products, the basis is the foods' fair market value pursuant to IRC § 1015. Furthermore, Plaintiffs claim that they obtained the fair market value of the food by conducting grocery surveys of the donated food items. Plaintiffs collected copies of advertisements of the food items and then used the average price per unit to establish the fair market value of the donation. If no advertisements were available Plaintiffs purchased sample packages of the donated items and obtained a receipt as proof of the fair market value. Plaintiffs claim they attempted but were unable to obtain an appraisal for the donated items; however, they assert an appraisal is not required under Treasury Regulations for their donations because food is a commonly valued item.

Additionally, Plaintiffs contend that they have complied with Defendant's request that Plaintiffs produce records for the deduction. Plaintiffs provided receipts from food banks itemizing the food donated as well as the information gathered during their grocery survey as evidence of the value of the food. Plaintiffs assert that they turned this documentation over during the first audit interview.

THE COURT'S FINDINGS AND CONCLUSIONS

I. Plaintiffs are not entitled to a credit for the purchase of an alternative fuel vehicle.

Pursuant to House Bill 2405 containing A.R.S. § 43-1086(A)(3):

> "For taxable years beginning after December 31, 1998, a credit against taxes imposed by this title is allowed to each taxpayer who . . . [p]urchases one or more used alternate fuel vehicles for use in this state.
>
> The statute continues to provide that "the amount of credit . . . for a used zero emission vehicle" is equal to "twenty-five per cent of the cost or five thousand dollars, whichever is more."

Therefore, in order for plaintiffs to be entitled to a tax credit under the statute the court must find that Plaintiffs entered into a valid transaction that resulted in the purchase of an alternative fuel vehicle for use in Arizona. When the primary motive behind a transaction is to avoid or minimize taxes the court will look to the economic substance of the transaction as opposed to its form. *Frank Lyon Co. v. United States*, 435 U.S. 561, 55 L. Ed. 2d 550, 98 S. Ct. 1291 (1978). When the transaction is found to be a mere subterfuge or sham the transaction is not recognized for income tax purposes. *Casebeer v. C.I.R.*, 909 F.2d 1360 (9th Cir. 1990). The determination of whether a transaction is a sham for income tax purposes ultimately turns on whether the transaction had any practical economic effects other than the creation of tax benefits. *Sochin v. C.I.R.*, 843 F.2d 351, 354 (9th Cir. 1988). In evaluating whether any practical economic effects are present the court considers the subjective purpose for entering into the transaction along with the objective economic substance of the transaction. *Casebeer*, 909 F.2d at 1363.

In *Casebeer*, the 9th Circuit ruled that a sale and leaseback transaction between a computer leasing company and an individual taxpayer that created income tax deductions was a sham for income tax purposes. *Casebeer*, 909 F.2d at 1370. The court considered several subjective factors in determining that no valid business purpose existed for the transaction including the taxpayer's lack of experience in computer leasing, the extent to which the taxpayer investigated the value of the computer equipment and the residual value of the equipment after the lease expired. *Id*. at 1364. The court also found no economic substance existed in the transaction other than the creation of tax losses. *Id*. at 1365. The court analyzed the transaction and compared the expected return to the taxpayer as compared to taypayer's investment and found that there was no potential profit and for that reason, no economic substance. *Id*. at 1366. Because the individual taxpayer lacked a valid subjective purpose for entering into the transaction and there was no economic substance to the transaction other than obtaining tax losses, the court held the transaction was a sham and, therefore, disallowed for income tax purposes. *Id*. at 1370.

The undisputed facts of this case demonstrate that Plaintiffs took temporary title to an alternative fuel vehicle solely for purposes of obtaining the tax credit associated with A.R.S. § 43-1086. Plaintiffs have provided no evidence why they entered into the transaction, why they used a power of attorney to take title to the vehicle and why they would enter into an agreement

not to operate a vehicle they acquired for over $40,000. Instead, the evidence demonstrates Plaintiffs' motivation behind acquiring the vehicle was solely for purposes of obtaining the tax credit.

Plaintiffs stated they attended a seminar about the requirements of § 1086 and also reviewed various legal opinions about complying with § 1086. After concluding there was no holding requirement Plaintiffs entered into a transaction with Auto Attorney Associates ("AAA") and Legal Professional Services ("LPS") to acquire title and register an alternative fuel vehicle that would meet all the minimum requirements of § 1086. Plaintiffs submitted a guarantee from LPS that stated the vehicle would meet all requirements of § 1086, that all payments to the lien holder would be timely paid by LPS, that the vehicle would not be operated by Plaintiffs while title was in their name and that the vehicle would be sold on Plaintiffs' behalf at no loss in purchase price. The guarantee also promised to reduce the price of LPS's fee dollar for dollar for any amount that exceeded the tax credit received by Plaintiffs for entering into the transaction. Based on the evidence submitted by both parties there is no genuine of material fact as to whether there was an alternative motivation to the transaction other than obtaining the tax credit associated with § 1086.

Additionally, the transaction had no economic substance other than obtaining the tax credit. Plaintiffs had no risk of loss in entering the transaction as the guarantee from LPS stated the vehicle would be sold on Plaintiffs' behalf at no loss in purchase price and that LPS would make all payments to the lien holder. Moreover, the Court can find no benefit to Plaintiffs other than the tax credit as the agreement stated Plaintiffs would not operate the vehicle and Plaintiffs have provided no evidence of any other reason for purchasing the vehicle. Finally, it appears the transaction was not a bona fide purchase of a vehicle but instead a scheme to qualify for § 1086. Plaintiffs were one of at least twenty people who used AAA or a different power of attorney to take title and register the same vehicle in the two day period before the calendar year end. Each new title holder reported five mile incremental increases on the odometer and the same $40,800.00 lien on the vehicle. Therefore, the Court finds there is no genuine issue of material fact as to the economic substance of the transaction other than the creation of tax benefits to the Plaintiffs.

Based on the undisputed facts, the Court has determined that the transaction was motivated solely for purposes of obtaining a tax credit and further had no valid economic substance. Thus, the transaction had no practical economic effects other than the creation of tax benefits and is therefore a sham which is not recognized for the purposes of obtaining a tax credit under § 1086.

II. Plaintiffs are not entitled to the business loss deduction for the sale of property.

Based on the undisputed facts of the case, the Court finds as a matter of law that Plaintiffs are not entitled to the business loss deduction on the sale of their Peoria property. Plaintiffs failed to establish that they had a bona fide intent and objective of realizing a profit in order to

classify the property as a business property for tax purposes. *Horn v. C.I.R.*, 90 T.C. 908, 932-933, Tax Ct. Rep. (CCH) 44, 767 (U.S. Tax Ct. 1988). "[T]he taxpayer bears the burden of showing that he or she meets every condition of a tax exemption or deduction." *Davis v. CIR*, 394 F.3d 1294, 1297 (9th Cir. 2005) citing *Deputy v. du Pont*, 308 U.S. 488, 493, 60 S.Ct. 363, 84 L.Ed. 416 (1940); *White v. United States*, 305 U.S. 281, 292, 59 S.Ct. 179, 83 L.Ed. 172 (1938).

This was the only property Plaintiffs have purchased "for profit," and Plaintiffs rented the property to a family member without a written lease or establishing what constituted the fair rental value of the property. When renting property to a family member "for profit," IRC § 280 requires property to be rented at fair rental value and Plaintiffs have not provided evidence of what constituted fair rental value of the property. Further, in over twenty years of owning the property, Plaintiffs claim the property never had a profitable year. Additionally, during the period Plaintiffs owned the property they reported the mortgage interest and property taxes on Schedule A of their tax return which is used for non-business property. Although Plaintiffs purchased the property with the hope of selling at a gain, the mere anticipation of realizing appreciation on the sale of a property is not sufficient, by itself, to establish profit motive. *Jasionowski v. Commissioner*, 66 T.C. 312, 322 (1976). Finally, the Defendant has made a determination that Plaintiffs do not have adequate business records to substantiate the loss they are claiming and Plaintiffs have failed to provide evidence they have submitted or maintained adequate business records to support the loss they claim on their return.

III. Plaintiffs are not entitled to the claimed miscellaneous itemized deductions.

IRS Publication 529 states that expenses related to attending investment seminars are not deductible as a miscellaneous itemized deduction. Based on the evidence submitted, the Court affirms the Defendant's denial of $2,747.00 paid to Wade Cook Financial Corporation ("Wade Cook") as an itemized deduction as Plaintiffs have not raised a genuine issue of material fact as to whether the expense is deductible. Once Defendant has made a determination that a deduction is not allowed there is a presumption of correctness on Defendant's position and Plaintiffs have the burden of establishing Defendant's determination was in error. *Welch v. Helvering*, 290 U.S. 111 (1933).

Here, the only conclusive evidence provided by the Plaintiffs is the receipt from Wade Cook which supports Defendant's determination that the payment was for tuition to attend the BEST seminar and not for the six months of access to WIN. While the Court does not doubt there may be some value associated with the WIN service, Plaintiffs have not provided evidence to support their position that the entire amount of the payment to Wade Cook was for WIN, or why the payment was not for the BEST seminar.

Based on the evidence submitted, Plaintiffs have not raised a genuine issue of material fact as to whether Defendant was in error in determining that the payment to Wade Cook was for the BEST seminar and therefore not deductible for income tax purposes.

IV. Plaintiffs are not entitled to the claimed medical expense deduction.

> You cannot include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, "natural medicines," etc. unless they are recommended by a medical practitioner as treatment for a specific medical condition diagnosed by a physician. Otherwise, these items are taken to maintain your ordinary good health, and are not for medical care.

IRS Publication 502

While Publication 502 does not define what constitutes a "recommendation by a medical practitioner," the Court agrees with Defendant that recommendations found on the internet and periodicals are beyond the scope and meaning of Publication 502. Given the vast amount of information published on the internet and in periodicals a taxpayer could find a recommendation for any type of vitamin or nutritional supplement given sufficient research. Publication 502 is attempting to limit deductible nutritional supplements to those specifically recommended by a medical practitioner for a diagnosed medical condition. By allowing any recommendation from any source to qualify as a sufficient recommendation, the limitation imposed by the publication would have no effect. Additionally, numerous unique and individual characteristics are relevant as to whether a person should take a nutritional supplement to treat a specific medical condition. An individual's medical history, other medications currently prescribed and the current health of the individual are all relevant factors to be considered when determining the safety and effectiveness of a nutritional supplement and ultimately whether a supplement should be recommended for an individual. Recommendations obtained from the internet or periodicals therefore do not qualify as recommendations under Publication 502.

Additionally, Defendant denied the deduction on grounds that Plaintiffs have failed to substantiate the cost of the supplements. Consequently Plaintiffs have the burden of establishing they can substantiate the cost and have not provided evidence that they do have sufficient documentation to substantiate the expense they are claiming.

V. Plaintiffs are not entitled to the claimed charitable contribution deduction.

According to the IRC, when a charitable contribution of property exceeds $5,000, Treasury Regulation §1.170A-13(c)(2) requires a donor to obtain a qualified appraisal of the property donated. Among other requirements for who qualifies as a qualified appraiser, §1.170A-13(c)(5)(iv) excludes the donor or taxpayer as being considered a qualified appraiser of donated property.

The undisputed facts in this case show that plaintiffs failed to obtain a qualified appraisal for their charitable contributions as required by §1.170A-13 (c)(2). Plaintiffs' claim that no

appraisers were willing to appraise their contribution is not sufficient to relieve Plaintiffs of the requirements of § 1.170A-13(c). Treasury Regulation §1.170A-13(c) makes no exception for difficulty in locating an appraiser or for items of commonly valued goods such as food. Furthermore, the fair market value analysis conducted by Plaintiffs is explicitly excluded by Treasury Regulation §1.170A-13(c)(5)(iv) as qualifying for an appraisal of their donated items.

Because Plaintiffs failed to meet the appraisal requirement, the Court does not need to reach the merits of the Defendant's other arguments relating to the basis of the donated food, the records submitted by Plaintiffs or the valuation method used by the Plaintiffs.

IT IS THEREFORE ORDERED granting Defendant's Motion for Summary Judgment and denying Plaintiffs' Cross-Motion for Summary Judgment.