To: Sara Carter

From: Examinee

Date: July 26, 2016

Re: Tax Appeal of Joseph and Ellen Nash

1. Under Franklin law, which mirrors the federal Internal Revenue Code, the Nashes’ are entitled to the full deductions they claimed because they ran their Christmas tree-farm operations for the years in question with a profit-making motive.

“26 C.F.R. § 1.183–2 outlines the activities that may be considered “for profit” in order to allow income tax deductions. The regulation requires an objective standard and delineates nine factors used to assess whether the taxpayer “entered into the activity, or continued the activity, with the objective of making a profit.” 26 C.F.R. § 1.183–2(a) & (b). These factors are not exclusive, nor is one factor or combination of factors determinative on the issue of profit motive. Morton v. Franklin Dep’t of Revenue (Franklin Sup. Ct. 1984).” Stone v. Franklin Dept of Revenue.

The Franklin Department of Revenue (FDR) erred in its determination that the Nashes lack a profit motive for running their Christmas tree operations, and FDR further erred in limiting the permissible deductions to the amount of income earned from the tree-farming activity.

1. Manner of carrying out

In contrast to the Stones’ incompetent efforts at running a business that failed to advertise to attract clientele or keep records of operations and expenses, the Nashes undertook their tree-farming enterprise with seriousness. The Nashes keep records of the activities engaged in to ensure a consistent supply of Christmas tree inventory from year to year, and they advertise to attract potential customers by soliciting clientele from closing operations and asking satisfied customers to spread the word. This factor supports finding a profit-making motive for the Nashes’s tree-farming activity.

1. Taxpayer expertise

In contrast to the Stones utter lack of expertise or consultation with profit-making experts for horse farms, Mr. Nash engaged in self-study to ensure an ongoing and sustainable supply of Christmas trees. First he read books, then he took classes on forest management. Finally, he sacrificed a vacation from his paying job to go learn from another Christmas tree farmer. This factor supports finding a profit-making motive for the Nashes’s tree-farming activity.

1. Time and effort invested

In contrast to the Stones unaccountable expenditure of time and effort, the Nashes can identify much of their time and effort and explain how it ties into turning their tree-farm into a profitable activity. As explained in Mr. Nashes’s testimony, it takes five years of lead time to get from seed to commercially viable Christmas tree. In order to make a sustainable cycle of growth and sale, the Nashes have had to fundamentally change the landscape of their property which required significant time and physical labor. So much so, that in a couple of years they’ve had to hire help. Thus, this factor supports finding a profit-making motive for the Nashes’s tree-farming activity.

1. Appreciation of assets

In contrast to the Stones failure to engage in activities that would result in appreciation of the business’s core assets, namely six horses, the Nashes undertook a serious and methodical effort to convert the naturally forested portion of their property into an ongoing source of future Christmas trees. This effort to ensure the appreciation of their core assets of land and growing trees supports finding that the Nashes had a profit-making motive for their tree-farming activity.

1. Success in similar activities

While it is true that like the Stones, this is the Nashes’s first attempt at running a profitable tree farm, that is not dispositive as to whether this factors supports a finding of profit-making motive. See 26 CFR §1.183-2(b)(5). On the record and evidence before the court, it is clear that the income generated by the tree-farm has been steadily increasing since the Nashes began treating the tree-farm as a potential profit-making activity. Thus, this factor could be neutral towards finding that the Nashes had a profit-making motive for their tree-farming activity, but it is also probative of the

1. History of income and losses

In contrast to the Stones, whose claimed expenses over a seven-year period were $132,751 offset by a mere $4,000 in one year, the Nashes have generated some income every year they have operated the tree-farm commercially, and the amount of income has steadily been increasing since the five-year lead time from planting to harvest has been weathered. Thus, this factor supports finding a profit-making motive for the Nashes’s tree-farming activity.

1. Amount of profits

While it is also true that the Nashes have yet to realize a profit for their tree-farm, they have undertaken reducing the expenses incurred so that as their income grows they may soon realize a profit. At worst, this factor could be neutral towards determining whether the Nashes have a profit-making motive or not in their tree-farming activity.

1. Financial status of taxpayer

In contrast to the Stones’ ongoing respective full-time employment while allegedly running a horse-farm for profit, the Nashes had one person devote full-time plus attention to the ongoing tasks of operating a tree-farm while the other spouse devoted significant spare time outside of his salaried work. This factor supports finding a profit-making motive for the Nashes’s tree-farming activity.

1. Recreational nature of activity

In contrast to the Stones’s purely recreational approach to using their six horses, the Nashes have a stated profit-motive in the expenses incurred in converting naturally forested land into an inventory producing Christmas tree farm. While the Nashes also purport to enjoy the work, the CFR does not require an enjoyment of work to be considered incompatible with profit-making motives. See 26 CFR §1.183-2(b)(9)

In conclusion, it is clear that the Franklin Department of Revenue erred when it determined that Joseph and Ellen Nash were not engaged in a tree-farming business for profit. We respectfully ask that This Court reverse FDR’s administrative review and reinstate the full deductions for the tax years 2011 through 2015.

1. The Nashes used their home office exclusively for managing the business and books of the Christmas tree farm and should have the home office deduction re-instated.

Per *Case*, . . . .