

CHANEL CHANDLER

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IN THE

\*

v.

MARYLAND TAX COURT

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COMPTROLLER OF MARYLAND

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No. 23-IN-OO-0701

## **MEMORANDUM AND ORDER**

This case arises from a dispute between the Comptroller of Maryland (“Comptroller”) and Chanel Chandler (“Chandler”) regarding Chandler’s claim of entitlement to the \$11,147.00 passive activity loss (“PAL”) sought in her 2020 Maryland income tax return. The Comptroller denied the claim and Chandler made a timely appeal to this Court.

The appeal was heard on February 29, 2024. Testimony was presented to justify the PAL sought on the 2020 Maryland and Federal returns by Chandler’s accountant, Micah Wainwright, who was well credentialed. The Comptroller presented its testimony through Desiree Harris, a Revenue Administrator in the Comptroller’s office, to whom the case was assigned.

At the conclusion of the testimony, the Court asked the Comptroller’s counsel to file a memorandum clarifying, among other things, the significance of the IRS’s failure to provide notice of the PAL’s denial, about which Chandler testified. That memorandum was filed with a timely response then filed by Chandler.

This Court finds the Comptroller's explanation for the IRS's failure to provide notice of the PAL's denial persuasive. The IRS's Record of Account<sup>1</sup> indicates a federal AGI of \$12,108. The difference between this AGI and the \$916 AGI reported on Chandler's federal return is \$11,147, which is the PAL Chandler claimed. Hence, the IRS denied the PAL deduction.

While the federal AGI was adjusted to reflect the denial of the PAL, this adjustment did not create any tax liability or affect the claimed refund. As with the \$12,400 standard deduction, Chandler's taxable income was zero. Hence, a denial notice would be superfluous.

Arguing against this conclusion, Mr. Wainwright argues that if the PAL was rejected, a CP12 notice would have been provided to Chandler by the IRS. This argument misconstrues the CP12 notice. Per the IRS website, a CP12 notice issues only when the IRS has "... corrected one or more mistakes on your tax return. As a result, you are now either *due a refund or your original refund amount has changed.*" [emphasis added], <https://www.irs.gov/individuals/understanding-your-cp12-notice>. As noted above, as Chandler's refund amount was not affected by the PAL rejection, a CP12 notice would not be issued.

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<sup>1</sup> Mr. Wainwright argues that while the Record of Account was generated from the IRS's Document Matching Program, that Program is "known to be unreliable." To support this argument, he cites an almost 45-year-old report from the General Accounting Office, which notes Program flaws, but observes, "... [s]ince 1974, IRS has made considerable progress." With this observation, the Court presumes progress continued during the almost 45 years since the report, as no further critique is identified.

As the federal AGI was \$12,108, this amount should have been reported at line 1 of the Maryland Form 502, which is the starting point for Maryland income tax calculations. See *NICH, Inc. v. Comptroller*, 439 Md. 668, 686 (2014) and Md. Code Ann., Tax-Gen (“TG”) §§ 10-101(e) & 13-409(a). But Chandler reported \$961, which improperly reflected the IRS’s rejected PAL. Thus, Chandler underreported her AGI, as the Comptroller asserts.

It is further clear that the PAL’s denial was justified. Chandler’s income was derived from her music entertainment business. Components of this business included performing at events, selling recordings, and training performers. For events, Chandler would periodically hire assistants. With her business operated from her home, she would take deductions for her home office and expenses for utilities. She worked most days and more than one-half the year. She also was pursuing education for her music business, but that was an adjunct to her business.

PALs are governed by IRC § 469. “Passive activity” is defined there as “. . . any activity . . . in which the taxpayer does not materially participate.” *Id.* at (c)(1)(B). “Material participation” is defined as activity that is “. . . regular . . . continuous . . . and substantial.” *Id.* at (h)(1)(A)-(C).

Reconciling the law with the facts as articulated above, this Court concludes Chandler was not entitled to the asserted PAL. Chandler did “materially participate” in her music entertainment business. And, that participation was “. . . regular . . . continuous . . . and substantial.”<sup>2</sup>

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<sup>2</sup> Mr. Wainwright asserted the PAL was justified as Chandler did not earn sufficient income from her entertainment business to support herself. This Court does not find authority to support this assertion.

In reaching its conclusion, this Court is mindful that the taxpayer has the burden of proof to justify entitlement to the PAL. *NICH Inc.*, *supra* at 686; *Frey v. Comptroller*, 422 Md. 111, 186 (2012); *See also* TG § 13-411. Chandler did not meet this burden.<sup>3</sup>

The Comptroller requests this Court to affirm its assessment of taxes, penalty, and continuing interest for tax year 2020. While this Court will affirm the assessment of taxes and continuing interest, it will waive the assessment of penalty as Chandler relied in good faith on her accountant's expertise in preparing her returns.

Accordingly, it is this THIRTEENTH day of May 2024, by the Maryland Tax Court **ORDERED** that the decision of the Comptroller is affirmed, except penalty is waived.<sup>4</sup>

**CERTIFIED TRUE COPY TEST:**

Andrew Berg, Clerk

**NOTICE:** You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

Cc: Chanel Chandler  
Robert Frey, Esq.

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<sup>3</sup> In the conclusion to his note, Mr. Wainwright suggests the Comptroller's audit was not timely. This suggestion is rejected, as the audit was timely. TG § 13-1101(a).

<sup>4</sup> Issues and requests raised, but not specifically addressed, were deemed redundant, *de minimus*, irrelevant, or without merit.