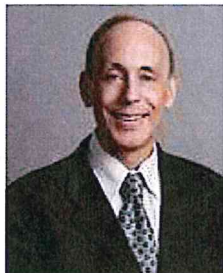


## IRS Loses Again Due to Taxpayer's Oral Testimony

AUGUST 12, 2013  
BY BRUCE GVNER



The IRS has lost several cases this year when taxpayers, who lacked good documents, or any documents, testified about the facts and were believed by the Tax Court.

Earlier this year, there was the case of *Heinbockel v. Commissioner*, T.C. Memo 2013-125 (see *IRS Loses to Yankee Doodle Dandy*). Now comes *Hessing v. Commissioner*, T.C. Memo 2013-179 (August 5, 2013).

Chad Hessing, age 22, after less than one year of college and the completion of a two year religious mission, came to work for his father, who had a construction business. Dad's credit was maxed out, so he used Chad's good credit rating to buy, build on and sell several pieces of property.

Although all of the paperwork related to the transactions reflected Chad as the owner, Chad did not receive any of the proceeds. The testimony of both Chad and his father showed that, despite the paperwork, Chad simply acted as a conduit for his dad's conduct of the business. All Chad received was a salary of \$2,500 per month on which they had agreed.

The case is interesting for four different reasons. First, the three-year statute of limitations had already expired as to Dad. Therefore, the IRS's attempt to collect from Chad was based on the argument that he had omitted more than 25 percent from gross income, which would allow the use of the six-year statute of limitations of §6501(e). However, once Judge Joel Gerber determined that Chad was nothing but his father's agent, the six-year statute disappeared.

Second, as indicated above, the court found the testimony of the witnesses to be credible. That illustrates that even if the auditor holds against the taxpayer, and the Appeals Officer fails to propose an attractive settlement to keep the case out of court, there is often a good reason to go to trial when you have credible witnesses.

Third, all hope is not lost even when the written record is against you. In this case Dad prepared Chad's 2003 income tax return to account for the Form 1098, Mortgage Interest Statement, and Form 1099-MISC, Miscellaneous Income, that were issued in Chad's name in connection with the three real estate transactions for which Chad acted as agent (conduit) for Dad. Chad had no background in business, accounting or tax and was unfamiliar with the source or financial consequences of the figures his dad reported on the return, and trusted his dad to present the facts properly to the government.

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So, despite that written record showing Chad as the owner of the income, Dad and Chad were able to show that Chad was merely an agent. Note: there is a U.S. Supreme Court case holding that even a corporation can be an agent for an individual taxpayer, *Commissioner v. Bollinger*, 485 U.S. 340 (1988).

Finally, normally it is the IRS which argues the assignment of income doctrine. But in this case the taxpayer argued that the assignment of income doctrine requires that the principal—Dad—must report the income that the IRS was trying to tax to the agent (Chad).

So, another day, another IRS loss, and another lesson that the testimony of good witnesses can still triumph in Tax Court.

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