

## Partnership Loss Disallowed – Couldn't Prove Basis

Mr. William Namen was a podiatrist in private practice. He was one of six owners of RMSC, LLC which was a surgery center that closed in 2009. The Schedule K-1 from RMSC, LLC for the year 2009 showed a loss of \$47,551 passed through to Mr. Namen.

In order to claim this loss, the partner (Mr. Namen) must be able to show his basis in the partnership. Loss are deductible only to the extent of a taxpayer's basis in the partnership. The case summary states Mr. Namen "attempted to establish his basis in his interest in RMSC by testifying regarding his alleged contributions to RMSC." He did not provide any evidence to help show this nor any evidence to show any prior adjustments that should have taken place over the years of his ownership.

Tax Court stated Mr. Namen's testimony was not supported by any evidence and the testimony by itself was insufficient to show basis, therefore the partnership loss was disallowed.

Side issue – The tax return in this case was one prepared by IRS as a substitute for return (SFR) based on information IRS received from third parties. Mr. Namen argued he had filed his 2009 return shortly after November 8, 2010. His accountant also testified that the return was filed shortly after November 8, 2010. However, their testimonies had conflicting information. The accountant stated he had prepared the return, delivered it to Mr. Namen for him and his wife to sign and file. Mr. Namen testified that he and his wife signed the return and gave it back to the accountant to file. Tax Court felt this conflicting testimony was unreliable and not credible. As such, Tax Court determined Mr. Neman did not file a 2009 return.

Mr. Namen also argued he should not be liable for the entire late filing penalty because a second copy of his return was filed in May 2011. Tax Court did not reduce the penalty since the penalty for late filing is 5% per month, up to a maximum of 25%. Since a return filed in either November 2010 or May 2011 is still more than five months late, the failure to file penalty would still be the maximum of 25%.

William Namen, TC Memo 2017-24. This case can be found by going to [www.ustaxcourt.gov](http://www.ustaxcourt.gov), clicking on Opinion Search, and entering Namen in the "Case Name Keyword" box.

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