

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

VHC, INC. AND SUBSIDIARIES, ET AL.,)		
)		
Petitioner(s),)		
)		
v.)	Docket No. 4756-15,	21583-15.
)		
COMMISSIONER OF INTERNAL REVENUE,)		
)		
Respondent)		

ORDER

These consolidated cases are calendared for a special session commencing on August 15, 2016, in Milwaukee, Wisconsin. Pursuant to a Court Order, the parties filed issues memoranda on May 27, 2016. On June 24, 2016, petitioners filed a motion in limine regarding new issues allegedly raised in respondent’s issues memorandum. On July 1, 2016, respondent filed a response to petitioners’ motion in limine. On August 3, 2016, the Court held a hearing in Washington, D.C., on so much of the motion in limine as regards the substantiation of the \$90 million in claimed loans. The parties appeared and were heard.

The primary issue in this case is respondent’s disallowance of deductions in taxable years 2004 through 2013, excluding taxable year 2005, for partially worthless debt. Petitioners contend that advances to the debtors were debt based on all the facts and circumstances. In the alternative, to the extent the Court finds that petitioners’ advances were not debt, petitioners argue the advances are deductible as ordinary expenses under section 162.¹

Petitioners contend that respondent’s issues memorandum raises the new issue that petitioners have not provided substantiating documents reflecting the \$90 million in loans petitioners claim were extended to Ronald H. Van Den Heuvel and/or his entities.

Deductions are a matter of legislative grace, and a taxpayer must prove its entitlement to a deduction. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934). To that end a taxpayer is required to substantiate each claimed deduction by maintaining records sufficient to establish the amount of the deduction and to enable the Commissioner to determine the correct tax liability. Sec. 6001; Higbee v. Commissioner, 116 T.C. 438, 440 (2001); sec. 1.6001-1(a), Income Tax Regs.

At this point, it cannot be determined whether petitioners have substantiated their position. Absent agreement between the parties on this point, the question remains to be decided by the Court after consideration of the evidence presented at trial, not before.

¹ All section references are to the Internal Revenue Code in effect for the years at issue.

Premises considered, it is

ORDERED that so much of the motion in limine as regards the substantiation of the \$90 million in claimed loans is denied.

**(Signed) Kathleen Kerrigan
Judge**

Dated: Washington, D.C.
August 4, 2016