

United States Tax Court

T.C. Memo. 2022-37

TODD KOHOUT AND LISA M. KOHOUT,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 11958-17.

Filed April 18, 2022.

Allen Buckley, for petitioners.

Daniel K. McClendon, John T. Arthur, and Christopher D. Bradley, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

JONES, *Judge*: During the 2013 taxable year, petitioners, Todd and Lisa Kohout, were engaged in medical funding and real estate business ventures through Mr. Kohout's wholly owned S corporation, Cornerstone Enterprises, Inc. (Cornerstone). The Internal Revenue Service (IRS) mailed the Kohouts a statutory notice of deficiency that determined a deficiency of \$923,280 and an accuracy-related penalty, under section 6662(a), of \$184,676 for the 2013 taxable year.¹ The Kohouts timely filed a Petition seeking review of the deficiency. The parties reached a resolution of all substantive tax issues raised by the Kohouts' Petition, as reflected in two Stipulations of Settled Issues. On January 30, 2020, the Kohouts filed an Amendment to Petition, alleging

¹ Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulatory references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. All monetary amounts are rounded to the nearest dollar.

[*2] that they overstated the gross receipts of Cornerstone for the 2013 taxable year by \$955,599.² The Kohouts also alleged that Cornerstone and Mr. Kohout had sufficient bases in Preferred Medical Funding, LLC (PMF), to deduct pro rata shares of PMF's loss for the 2013 taxable year. For the reasons detailed below, we resolve these issues in respondent's favor.

FINDINGS OF FACT

On November 18, 2020, this case was tried at our Atlanta, Georgia, remote trial session (via Zoomgov). Some of the facts are stipulated and are so found. The stipulation of facts and exhibits attached thereto are incorporated herein by this reference. The Kohouts resided in Georgia when they timely filed the Petition.³

I. *Cornerstone*

A. *Formation*

On August 18, 2004, Mr. Kohout organized Cornerstone, an S corporation during all relevant times, and made himself its sole shareholder.

B. *Subsidiaries*

During the taxable year 2013, Cornerstone operated multiple business ventures directly and indirectly through its subsidiaries.⁴ Ariel Dunes, TK Real Estate, 8 Property, and 4 Property were

² In their Amendment to Petition, the Kohouts alleged that they overstated Cornerstone's gross receipts by \$955,599. At the beginning of trial, the Kohouts' counsel agreed that at issue was whether Cornerstone overstated its gross receipts by \$955,599. During trial, the Kohouts' counsel alleged Cornerstone's gross income should have been reported as \$963,590 (therefore, Cornerstone overreported its gross income by \$955,600). Finally, on brief, they allege that Cornerstone overreported its gross income by \$865,932. As we rule in respondent's favor on this issue, we need not reconcile this potential discrepancy. We will refer to the alleged amount of Cornerstone's overstated gross receipts as \$955,599 throughout this opinion.

³ Absent written stipulation to the contrary, appeal of this case lies with the U.S. Court of Appeals for the Eleventh Circuit. See § 7482(b)(1)(A), (2).

⁴ Before 2013, Cornerstone formed wholly owned entities named CS Ariel Dunes, LLC (Ariel Dunes), and TK Real Estate Holdings, LLC (TK Real Estate). In 2009 TK Real Estate formed 8 Property Holdings, LLC (8 Property), and Cornerstone formed 4 Property Holdings, LLC (4 Property). In 2010, 4 Property formed Preferred Capital Group, LLC (Preferred Capital).

[*3] single-member limited liability companies (LLCs), wholly owned by Cornerstone and disregarded for tax purposes. Cornerstone also wholly owned Preferred Capital through its wholly owned subsidiary, 4 Property. During the 2013 taxable year, Preferred Capital was a single-member LLC and was disregarded for tax purposes. Cornerstone was thus required to report the income from these entities on its return. Cornerstone was also required to report the income from its interest in real property on its 2013 return.⁵

In 2012 Cornerstone and Mr. Kohout formed PMF, with Cornerstone and Mr. Kohout owning a 99% and a 1% interest, respectively. PMF was subject to the unified audit and litigation procedures of sections 6221–6234, enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 96 Stat. 324. PMF provided medical funding for plaintiffs in personal injury lawsuits. During the year at issue, PMF owned bank accounts ending in 4479 and 0130. PMF made distributions of \$345,003 to Cornerstone in 2013.

In 2013 Cornerstone owned a 50% interest in Turnkey Investments, LLC (Turnkey), a TEFRA partnership. On a document Mr. Kohout exchanged with respondent during discovery, he represented that Cornerstone also owned an entity named Southern Residential.

C. *Rental and Medical Funding Business*

Cornerstone was engaged in medical funding and commercial real estate operations during the year at issue. Cornerstone rented properties through Vacation Rentals by Owner (VRBO). Mr. Kohout stated that Cornerstone had an agreement with VRBO, but it is not in the record.

Cornerstone's subsidiary, TK Real Estate, owned property that it rented out. But its rental agreements are also not in the record. Southern Residential purchased properties, collected rents, and managed bank accounts in Atlanta. The record is devoid of any evidence

⁵ In the 2013 taxable year, Cornerstone owned real estate at the following addresses: The Retreat Columbia #1, 1929 Bluff Road, Columbia, South Carolina; The Retreat Columbia #2, 1929 Bluff Road, Columbia, South Carolina; The Retreat Athens #15, 161 Magnolia Bluff, Athens, Georgia; The Station #7, 100 Davis Street, Athens, Georgia; The Station #41, 100 Davis Street, Athens, Georgia; and Ariel Dunes, Unit 1302, 112 Seascape Blvd., Destin, Florida.

[*4] that reflects what income, if any, Cornerstone received from Southern Residential. Similarly, the record does not contain any written agreements regarding medical funding business activities, despite Mr. Kohout's admitting their existence.

The accounting records of Cornerstone and its subsidiaries for the 2013 taxable year were kept with QuickBooks software on Mr. Kohout's personal computer. He handled the day-to-day data entry into the QuickBooks computer files for these entities, including for PMF, with input and advice from Bryan Prewitt. Before the year at issue, Mr. Prewitt worked at PricewaterhouseCoopers and held a license as a certified public accountant (CPA).

Mr. Kohout altered the QuickBooks computer files on multiple occasions after Cornerstone's 2013 returns were prepared. At least one of the instances of him altering the QuickBooks computer files was during an audit of Cornerstone. When the Kohouts' computer crashed in January 2020, the QuickBooks computer files for Cornerstone and its subsidiaries were destroyed and the Kohouts were unable to recover them. The QuickBooks computer files are not in the record.

D. *Transfers*

Cornerstone made and received various money transfers to and from its subsidiaries, which are at issue in this case. The Kohouts argue that all transfers to and from the accounts ending in 1337 (Cornerstone), 1386 (TKR), and 0130 (PMF), and any capital contributions from Mr. Kohout, should be eliminated for purposes of calculating taxable income.

At issue are transactions from Cornerstone's account ending in 1337 to accounts ending in 9496, 1352, 0180, 2795, 1626, 4602, 4081, and one titled "Alexandria Savings." There is no evidence in the record of who owned these accounts. For example, Cornerstone's bank records reflect that it transferred money to a checking account ending in 0180 on March 7, 2013, July 5, 2013, and August 20, 2013. The description entry for July 5, 2013, is "transfer to [redacted]-0180 per TKohout." There is no evidence in the record as to who owned the account ending in 0180 at the time of the transfers. Furthermore, on March 27, 2013, Cornerstone transferred money to an account ending in 2795, but the Kohouts did not present any evidence regarding who owns that account.

Also at issue is a single transfer from Cornerstone to PMF. On December 9, 2013, Mr. Kohout transferred \$172,626 from his personal money market account ending in 1252 to Cornerstone's account ending

[*5] in 1337. On the same day, Cornerstone transferred the exact same amount to PMF's account ending in 0130. PMF then transferred \$172,626 to David Mimms on the same day. Also at issue is a transfer reflected in PMF's bank statements for \$2,015 on March 11, 2013, with the description of "Miscellaneous Credit Check #99999 Transfer per T. Kohout."

There are numerous payments from PMF's account 0130 labeled "withdrawal" to the credit card company American Express (AMEX). For example, on September 12, 2013, there was a \$55,830 withdrawal from PMF's account with the description, "AMEX EPayment ACH PMT." On December 5, 2013, there was a \$21,553 withdrawal from PMF's account with the same description. The Kohouts did not produce records of these accounts or explain what these payments were for.

E. *Federal Income Tax Returns for 2013*

Cornerstone timely filed its Form 1120S, U.S. Income Tax Return for an S Corporation, for the 2013 taxable year. On this return, Cornerstone reported gross receipts of \$1,829,524. Cornerstone was a cash method taxpayer.

The record is unclear as to who prepared Cornerstone's 2013 tax return. Initially, the parties stipulated that Mr. Kohout prepared it. Cornerstone's 2013 return indicates that it was "self-prepared." The parties then stipulated that Mr. Kohout prepared Cornerstone's return and the Kohouts' personal return, with the assistance of Mr. Prewitt. At trial Mr. Kohout represented that Mr. Prewitt alone prepared the returns. He also represented that he had provided Mr. Prewitt with Cornerstone's profit and loss statement but did not provide him with the electronic QuickBooks files.

Regardless, Mr. Kohout signed Cornerstone's return and the Kohouts' personal return for the 2013 taxable year. He was unaware of how Cornerstone's gross receipts were calculated as reported on its 2013 tax return. He likewise was unaware whether a basis calculation was prepared for PMF. Nonetheless, Mr. Kohout believed that Cornerstone's income was overstated when he signed and filed Cornerstone's and their personal returns.

F. *Tax Court Proceedings*

The IRS issued a statutory notice of deficiency to the Kohouts on February 27, 2017, determining that they had a deficiency of \$923,380

[*6] and an accuracy-related penalty under section 6662(a) of \$184,676 for the 2013 taxable year. The Kohouts timely filed their Petition on May 30, 2017.

In August 2019 the Kohouts hired Mr. William Fricke, a CPA with extensive experience, to reconstruct Cornerstone's books and records.⁶ As part of his services, Mr. Fricke prepared summaries of bank statements in Exhibits 66–P, 67–P, 68–P, and 69–P. Mr. Fricke characterized certain deposits as gross receipts, rental income, and loan proceeds, yet these characterizations were based on Mr. Kohout's instructions to Mr. Fricke. Mr. Fricke did not have access to the electronic QuickBooks files.

The parties filed two Stipulations of Settled Issues resolving all of the issues in the case. On January 30, 2020, the Kohouts amended their Petition and alleged that Cornerstone overstated its gross receipts by \$955,599 for the 2013 taxable year. The Kohouts also claimed that Cornerstone and Mr. Kohout had sufficient bases in PMF to respectively deduct pro rata shares of a PMF loss.

OPINION

I. *Evidentiary Issues*

As a preliminary matter, the Court must address the admissibility of documentary evidence introduced at trial by the Kohouts in Exhibits 48–P through 56–P, 58–P, 59–P, and 66–P through 70–P, which we reserved ruling on. On brief, the Kohouts claim only Exhibits 66–P through 69–P are relevant. Consequently, Exhibits 48–P through 56–P, 58–P, 59–P, and 70–P are not admitted into evidence.

This Court applies the Federal Rules of Evidence when deciding evidentiary issues. *See* § 7453. In relevant part Rule 1006 of the Federal Rules of Evidence states that “[t]he proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs *that cannot be conveniently examined in court.*” Fed. R. Evid. 1006 (emphasis added); *see also DuBay v. King*, 844 F. App'x 257, 262 (11th Cir. 2021). Although Rule 1006 of the Federal Rules of Evidence does not define the term “voluminous,” courts have found summaries helpful in various scenarios.

⁶ We note that August 2019 was one month before this case was previously set for trial.

[*7] For example, a government agent can present summary charts as “testimonial aids” during testimony, and counsel can use the charts during closing arguments to support computations in a bank deposits analysis. *See, e.g., United States v. Soulard*, 730 F.2d 1292, 1300 (9th Cir. 1984). Courts have also allowed charts that fairly summarize the evidence and are used as an aid in understanding testimony already introduced; the witness who prepared the charts is subject to cross-examination. *See United States v. King*, 616 F.2d 1034, 1041 (8th Cir. 1980). Rule 1006 of the Federal Rules of Evidence presumes that the summary document will not be offered as independent evidence by the proponent. *See Kapp v. Commissioner*, T.C. Memo. 2019-84, at *87. To comply with Rule 1006 of the Federal Rules of Evidence, a summary must be “an *accurate* compilation of the voluminous records sought to be summarized.” *United States v. Janati*, 374 F.3d 263, 272 (4th Cir. 2004); *see also United States v. Oloyede*, 933 F.3d 302, 310–11 (4th Cir. 2019) (holding that charts did not qualify under Federal Rule of Evidence 1006 because they improperly relied on selected transactions).

The Kohouts hired Mr. Fricke, a CPA with extensive experience, to reconstruct Cornerstone’s books and records during litigation. As part of Mr. Fricke’s services, he prepared summaries of bank statements in Exhibits 66–P through 69–P. Exhibit 66–P is a purported summary characterizing certain transactions on Cornerstone’s bank statement for the account ending in 1337. That bank statement is 58 pages long. Exhibit 67–P is a purported summary characterizing certain transactions on Preferred Capital’s bank statement for the account ending in 0122. That bank statement is 36 pages long. Exhibit 68–P is a purported summary characterizing certain transactions on TK Real Estate’s bank statement for the account ending in 1386. That bank statement is 38 pages long. Exhibit 69–P is a purported summary characterizing certain transactions on PMF’s bank statement for the account ending in 0130. That bank statement is 49 pages long. Respondent objects to the admission of these exhibits on the basis that they do not comply with Rule 1006 of the Federal Rules of Evidence.

After review of the record, we do not find that any of the bank statements that Exhibits 66–P through 69–P purport to summarize are so voluminous as to make their comprehension “difficult and inconvenient.” The largest statement is 58 pages long, which is not so voluminous as to necessitate a summary for our comprehension.

Moreover, it appears that Exhibits 66–P through 69–P contain more than mere summaries of the entities’ bank account statements.

[*8] Mr. Fricke characterized certain deposits as gross receipts, rental income, and loan proceeds, yet these characterizations appear to be based on Mr. Kohout's instructions to Mr. Fricke. Mr. Fricke did not have access to the electronic QuickBooks files, and the underlying documents in the record do not support these characterizations. The Kohouts were not using the summaries as surrogate evidence offered in lieu of underlying bank records, but rather were seeking to introduce characteristics of the transfers at issue. We are concerned that the exhibits the Kohouts seek to have admitted were not contemporaneously maintained, appeared to have been prepared in anticipation of trial, and go beyond the scope of the underlying documents they summarize. *See Thunstedt v. Commissioner*, T.C. Memo. 2013-280.

Accordingly, we sustain respondent's objections, and Exhibits 66–P through 69–P are not admitted into evidence.

II. *Burden of Proof*

Generally, the Commissioner's determinations in a notice of deficiency are generally presumed correct, and the taxpayer bears the burden of proving that the determinations are incorrect. *See* Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). Taxpayers are required to maintain records sufficient to establish the amounts of allowable deductions and to enable the Commissioner to determine the correct tax liability. *See* § 6001; *Hradesky v. Commissioner*, 65 T.C. 87 (1975), *aff'd per curiam*, 540 F.2d 821 (5th Cir. 1976). "A taxpayer's self-serving declaration is generally not a sufficient substitute for records." *Fine v. Commissioner*, T.C. Memo. 2013-248, at *4 (citing *Weiss v. Commissioner*, T.C. Memo. 1999-17).

Taxpayers bear the burden of proof on new issues raised in their amendments to petitions. *See* Rule 142(a); *Jabari v. Commissioner*, T.C. Memo. 2017-238. As the remaining issues for decision were raised in the Kohouts' amended petition, they bear the burden of proof with respect to these issues.

III. *Cornerstone's Gross Receipts*

On its 2013 return, Cornerstone reported gross receipts of \$1,829,524. Almost six years after they filed the returns at issue, the Kohouts amended their Petition to allege that they had overstated Cornerstone's gross receipts by \$955,599 on its return. They allege that this error caused them to overstate Cornerstone's gross income on its return, and consequently, their own return.

[*9] Gross receipts reported on a return are admissions that must be overcome by cogent evidence. *See Estate of Hall v. Commissioner*, 92 T.C. 312, 337–38 (1989); *Lare v. Commissioner*, 62 T.C. 739, 750 (1974), *aff'd without published opinion*, 521 F.2d 1399 (3d Cir. 1975); *see also Kim v. Commissioner*, T.C. Memo. 1994-561, 1994 WL 612418, at *4 (finding that the taxpayers failed to reconstruct the computation of gross income as reported on their return when the preparer of the tax return did not testify and there was no evidence presented as to how the reported amount of gross income was calculated).

The Kohouts' argument raises difficult questions that they neither address nor even acknowledge. They do not claim to meet the higher burden of overcoming the admissions on their tax return by "cogent evidence." Rather, Mr. Kohout attempted to reconstruct their 2013 return through testimony, disregarding the returns they filed. He characterized the tax treatment of numerous transactions as income or capital contributions on the record.

Mr. Fricke also testified and appeared to be a highly competent accountant with extensive experience at a large accounting firm. However, Mr. Fricke admitted that in creating Cornerstone's bank statement summaries, he relied on Mr. Kohout's characterizations of the transfers at issue. Mr. Fricke took "[Mr. Kohout's] word for it" when he would inform him of the nature of certain transactions. Some of these characterizations were contradicted on the record. For example, Mr. Fricke characterized ten transfers into PMF's bank account ending in 0130 as loan proceeds. However, at trial, Mr. Kohout testified that PMF did not have loans or lines of credit. No evidence was introduced, such as rental statements and invoices from the medical funding business, to corroborate the recalculation of Cornerstone's gross receipts. Mr. Kohout also did not provide the electronic QuickBooks files to Mr. Fricke.

Moreover, the record is unclear as to who prepared Cornerstone's 2013 tax return. Initially, the parties stipulated that Mr. Kohout prepared it, and the return indicates that it was self-prepared. The parties then stipulated that Mr. Kohout prepared Cornerstone's return and the Kohouts' personal return, with the assistance of Mr. Prewitt. At trial, Mr. Kohout testified that Mr. Prewitt alone prepared the returns. Mr. Kohout claimed that he had provided Mr. Prewitt with Cornerstone's profit and loss statement but not the electronic QuickBooks files. Mr. Prewitt did not testify, and the record did not contain evidence as to how the reported amount of gross receipts was

[*10] originally calculated. Mr. Kohout admitted to not knowing how gross receipts for 2013 were calculated as reported on the return. Without knowing what was included in Cornerstone's gross receipts as reported on its 2013 return, it is impossible to discern whether the items the Kohouts now seek to remove were part of the original calculation.

Furthermore, the Kohouts did not show that all relevant bank account records for Cornerstone and its subsidiaries are in the record. Rather, the record indicates that certain bank accounts relevant to determining Cornerstone's gross receipts are missing. For example, Cornerstone's statement for its account ending in 1337 showed transactions with eight distinct unexplained accounts.⁷

Aside from the unaccounted-for transfers occurring in Cornerstone's bank account, there is also evidence that the record is missing potential income generated through Cornerstone subsidiaries. Although Mr. Kohout testified that Cornerstone owned nine subsidiaries, during discovery he exchanged a document that represented that Cornerstone owned an entity named Southern Residential during the 2013 taxable year. Mr. Kohout testified that Southern Residential purchased properties, collected rents, and managed bank accounts, yet nothing in the record shows the income that Southern Residential received.

Even assuming that the selected four bank accounts the Kohouts presented accounted for the entirety of Cornerstone's gross receipts from all of its operations, these statements alone are insufficient to determine Cornerstone's gross receipts. The statements do not show whether the transactions represent gross receipts, nontaxable contributions of capital, or taxable or nontaxable distributions.

Not only were Cornerstone's QuickBooks records altered after the 2013 tax returns were filed, they were also destroyed when the Kohouts' computer crashed before trial. The Kohouts therefore, by their own admission, failed to keep adequate records. See § 6001. Mr. Kohout was left to rely on his own self-serving testimony to substantiate the gross receipts. "[W]e are not required to, and generally do not, rely on [the taxpayer's] testimony . . . to decide whether [the taxpayer's] gross receipts are less than the amounts reported on their tax returns." *Biazar v. Commissioner*, T.C. Memo. 2004-270, slip op. at 5. We find

⁷ The unexplained accounts ended in 9496, 1352, 0180, 2795, 1626, 4602, 4081, and one was titled "Alexandria Savings."

[*11] that Mr. Kohout's testimony was vague, conclusory, and contradictory in certain material respects.

In short, the evidence presented at trial was unpersuasive and insufficient to support reducing Cornerstone's gross receipts for the 2013 taxable year. Under these circumstances, we hold that the Kohouts have failed to present cogent evidence sufficient to overcome the admissions regarding Cornerstone's amount of gross receipts reported on their 2013 tax return.

IV. *Passthrough PMF Loss*

Generally, a partner can deduct his share of a partnership's loss for a taxable year only to the extent of the adjusted basis of his partnership interest at the end of the year. § 704(d). A partner's outside basis is increased in part by the partner's distributive share of income and the partner's contributions to the partnership. §§ 705(a)(1), 722. Any increase in a partner's share of liabilities or assumption of partnership liabilities also increases the partner's outside basis. § 752(a). A partner's basis is decreased by the partner's distributive share of partnership losses, nondeductible expenses, and distributions.⁸ §§ 705(a)(2), 733. If the partner cannot establish his adjusted basis in his interest, then he cannot deduct any partnership losses. *See* § 704(d); *Sennett v. Commissioner*, 80 T.C. 825, 829–30 (1983), *aff'd*, 752 F.2d 428 (9th Cir. 1985). “Proof of basis is a specific fact which the taxpayer has the burden of proving.” *O'Neill v. Commissioner*, 271 F.2d 44, 50 (9th Cir. 1959), *aff'g* T.C. Memo. 1957-193; *see also Powers v. Commissioner*, T.C. Memo. 2013-134, at *28–30.

The Kohouts contend that Cornerstone and Mr. Kohout are entitled to pro rata shares (99% and 1%, respectively) of a \$132,275 loss from PMF.

A. *Cornerstone*

The parties agree that Cornerstone started 2013 with zero basis in PMF. The Kohouts claim that Cornerstone's basis in PMF was increased by \$477,950 of contributions and decreased by \$345,003 of distributions. The Kohouts therefore contend that Cornerstone had a

⁸ Although PMF was subject to the unified audit and litigation procedures of TEFRA, the issues before us do not require adjustments to partnership items of PMF, and as a result, the TEFRA provisions are not implicated.

[*12] \$132,947 basis in PMF, thereby allowing it to claim 99% of PMF's loss, or \$130,952.

A single transfer from Cornerstone to PMF constitutes \$172,626 of Cornerstone's contributions. On December 9, 2013, Mr. Kohout transferred \$172,626 from his personal account ending in 1252 to Cornerstone's account ending in 1337. On the same day, Cornerstone transferred the exact same amount to PMF, and PMF transferred \$172,626 to David Mimms.

We generally respect the form of a transaction; however, we will apply the substance over form principles when warranted. *John Hancock Life Ins. Co. (U.S.A.) v. Commissioner*, 141 T.C. 1, 57 (2013) (citing *Gregory v. Helvering*, 293 U.S. 465 (1935); and *Blueberry Land Co. v. Commissioner*, 361 F.2d 93, 100–01 (5th Cir. 1966), *aff'd* 42 T.C. 1137 (1964)). Courts evaluating a transaction for economic substance and business purpose should exercise common sense, looking at the totality of evidence and focusing on “the specific transactions at issue, not the activities of the entity as a whole.” *Curtis Inv. Co., LLC v. Commissioner*, 909 F.3d 1339, 1347 (11th Cir. 2018) (quoting *Kearney Partners Fund, LLC, ex rel. Lincoln Partners Fund, LLC v. United States*, 803 F.3d 1280, 1295 (11th Cir. 2015)), *aff'd* T.C. Memo. 2017-150. When the form of the transaction has not actually altered any cognizable economic relationships, the substance of a transaction, rather than its form, will be given effect. *See Frank Lyon Co. v. United States*, 435 U.S. 561, 573 (1978); *Gregory v. Helvering*, 293 U.S. at 469–70; *Ocmulgee Fields, Inc. v. Commissioner*, 613 F.3d 1360, 1368–69 (11th Cir. 2010), *aff'd* 132 T.C. 105 (2009).

Mr. Mimms did not testify, and the record does not elucidate who he is or his relationship to the Kohouts, Cornerstone, and PMF. There is no reasonable inference to be drawn from the present facts other than the transfers of cash to Cornerstone, PMF, and finally, to Mr. Mimms, on the same day and in the exact same amount, were in substance a single integrated transaction.

As a result, even assuming that the Kohouts' other arguments are valid, removing the December 9, 2013, transfer from the calculation of Cornerstone's basis leaves Cornerstone with only \$305,324 of contributions to PMF. PMF made distributions of \$345,003 to Cornerstone in 2013. Accordingly, the amount of contributions does not leave adequate basis for Cornerstone to deduct the loss.

[*13] We find that the Kohouts have not introduced adequate evidence showing that Cornerstone had sufficient basis in PMF to claim its passthrough losses. Accordingly, we hold that the Kohouts failed to carry their burden of proof in this matter.

B. *Mr. Kohout*

Also at issue is whether Mr. Kohout had enough basis to deduct PMF's losses. Respondent contends that Mr. Kohout cannot show a sufficient basis in PMF to deduct the loss.

To establish Mr. Kohout's basis, the Kohouts claim that he contributed \$2,015 to PMF, constituting his basis in the entity. This singular transfer was dated March 11, 2013, and contained the following description: "Miscellaneous Credit Check #99999 Transfer per T. Kohout" on PMF's bank statement. The Kohouts did not present evidence regarding the source of these funds.

Basis fluctuates in part because of contributions, distributions, losses, and income. Even assuming that this transfer was a contribution, a contention respondent objects to, the Kohouts failed to show whether Mr. Kohout had any remaining basis in PMF. See § 705(a). There are numerous payments labeled "withdrawal" from PMF's account ending in 0130 that were to the credit cards company AMEX. As Mr. Kohout chose not to provide the AMEX records to the Court, we cannot determine whether these payments were disguised distributions to him. We thus lack sufficient evidence to evaluate his basis in PMF.

Accordingly, we hold that Mr. Kohout did not adequately substantiate his basis in PMF, and therefore, the Kohouts did not carry their burden of proving Mr. Kohout's entitlement to claim passthrough losses from PMF for the 2013 taxable year.

V. *Conclusion*

For the reasons set out above, we hold that the Kohouts failed to carry their burden of providing cogent evidence that Cornerstone's gross receipts were overstated for the 2013 taxable year. We further hold that the Kohouts failed to show that Cornerstone and Mr. Kohout had sufficient bases to claim passthrough losses from PMF.

[*14] We have considered all of the arguments made by the parties and, to the extent they are not addressed herein, we deem them to be moot, irrelevant, or without merit.

To reflect the foregoing,

Decision will be entered under Rule 155.