

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions
of
SEANA L. WATTS AND RODNEY WATTS, JR.
for Redetermination of Deficiencies or for Refund of New York
State Personal Income Tax under Article 22 of the Tax Law for
the Years 2018 and 2019.

: DETERMINATION
: DTA NOS. 830374 AND
: 830375

Petitioners, Seana L. Watts and Rodney Watts, Jr., filed petitions for redetermination of deficiencies or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2018 and 2019.

A formal hearing by videoconference was held before Barbara J. Russo, Administrative Law Judge, on May 2, 2023, at 10:30 a.m., with the final brief to be submitted by August 10, 2023, which date began the six-month period for the issuance of this determination. Petitioners appeared pro se by Rodney Watts, Jr. The Division of Taxation appeared by Amanda Hiller, Esq. (Robert J. Tompkins, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly disallowed petitioners' claimed business losses for the years 2018 and 2019.

FINDINGS OF FACT

1. Petitioners, Seana L. Watts and Rodney Watts, Jr., jointly filed a New York State resident income tax return for the year (2018 return). Petitioners reported wage income in the

amount of \$237,072.00,¹ taxable interest income of \$205.00, business losses of \$128,818.00, losses from rental real estate in the amount of \$7,208.00, and federal adjustments of \$1,567.00, resulting in total federal adjusted gross income of \$99,684.00.

2. Attached to petitioners' 2018 return were three federal schedules C, profit or loss from business. The first schedule C listed Seana L. Watts as proprietor, principal business as "General Services – Laundry," business name of "ValuePoint Advisors LLC" (ValuePoint), reported gross receipts of \$87,416.00, expenses of \$238,407.00, and losses in the amount of \$150,991.00. The claimed business expenses were as follows:

| Expense Description | Amount |
|---|--------------|
| Advertising | \$574.00 |
| Car and Truck Expenses | \$9,879.00 |
| Contract Labor | \$49,936.00 |
| Depreciation | \$46,367.00 |
| Insurance | \$1,479.00 |
| Interest | \$6,869.00 |
| Office Expense | \$609.00 |
| Rent or Lease (other business property) | \$64,932.00 |
| Repairs and Maintenance | \$14,555.00 |
| Supplies | \$6,232.00 |
| Taxes and Licenses | \$820.00 |
| Travel | \$2,141.00 |
| Meals and Entertainment | \$521.00 |
| Utilities | \$26,994.00 |
| Other Expenses: Miscellaneous | \$2,654.00 |
| Amortization | \$3,845.00 |
| Total Expenses | \$238,407.00 |

¹ Attached to petitioners' 2018 return was a form W-2, wage and tax statement, for Seana L. Watts from

The second schedule C listed a sole proprietorship for Rodney Watts, Jr., stated that the principal business was “General Services – Laundry/Dry Cleaning,” listed the business name as “New York Soap & Laundry Co LLC” (NY Soap & Laundry), reported gross receipts of \$19,473.00, and reported expenses in the amount of \$16,541.00, as follows:

| Expense Description | Amount |
|---|-------------|
| Advertising | \$6,855.00 |
| Travel | \$3,227.00 |
| Meals and Entertainment | \$377.00 |
| Other Expenses: Credit Card Processing Fees | \$742.00 |
| Wholesale Services | \$4,731.00 |
| Office Expense | \$609.00 |
| Total Expenses | \$16,541.00 |

Petitioners reported a net profit for NY Soap & Laundry of \$2,932.00.

The third schedule C listed a sole proprietorship for Rodney Watts, Jr., stated that the principal business was “Rideshare Driver,” did not list a business name, reported gross receipts of \$41,736.00, and reported expenses in the amount of \$22,495.00, as follows:

| Expense Description | Amount |
|--|-------------|
| Car and Truck Expenses | \$9,463.00 |
| Depreciation | \$642.00 |
| Insurance | \$5,108.00 |
| Rent or Lease (vehicles, machinery, and equipment) | \$3,615.00 |
| Taxes and Licenses | \$488.00 |
| Utilities | \$3,179.00 |
| Total Expenses | \$22,495.00 |

Petitioners reported a net profit for “Rideshare Driver” in the amount of \$19,241.00.

Petitioners offset the net profits reported for “Rideshare Driver” and NY Soap & Laundry

with the losses reported for ValuePoint in the amount of \$150,991.00, resulting in total business losses of \$128,818.00.

3. The Division of Taxation (Division) selected petitioners' 2018 return for review, and by letter dated April 17, 2019, requested that petitioners provide, in part, information about their business income and loss, including their schedule C, profit or loss from business, from their federal return, as well as the following:

“- Detailed documentation, such as sales slips, invoices, bank statements, or receipts, supporting your business income and expenses. Use the actual documents from the time you earned the money or incurred the expenses – **estimates are not good enough.**

- Copies of the summary documents that you used to calculate the income and expenses that you reported on your tax return. **These documents must cover the entire year.**

- Copies of any license, registration, or certification that you need for your business (taxicab, cosmetology, health or food service, etc.)

- the enclosed **questionnaire** (be sure to complete all questions).”

4. On August 23, 2019, the Division issued a statement of proposed audit change for tax year 2018 (2018 statement). The 2018 statement states, in part:

“Since you did not respond to our audit inquiry letter regarding your business loss, itemized deductions and the credits claimed for the 2018 tax year, we have recalculated your return without the business loss and credits. You have been allowed the appropriate standard deduction.”

The Division recalculated petitioners' tax to be \$13,245.25, resulting in a balance due of \$9,080.25 plus interest and penalty, less a payment/credit of \$7.95.

5. On November 8, 2019, the Division issued a notice of deficiency (notice) to petitioners for the year 2018. The notice assessed tax in the amount of \$9,080.25 plus interest and penalty, less a payment/credit of \$7.95, for a total due of \$9,803.71.

6. Petitioners filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) protesting the notice for tax year 2018. By order dated January 8, 2021 (CMS No. 000318441), the conciliation conferee recomputed the amount of tax

due to \$5,182.09, plus interest and penalty.

7. On June 11, 2021, the Division issued to petitioners a notice of adjusted assessment for the year 2018, reflecting the recomputed amount of tax pursuant to the BCMS order. The notice of adjusted assessment asserts tax due of \$5,182.04, plus interest and penalty, less a payment/credit of \$7.95.

8. Petitioners jointly filed a New York State resident income tax return for the year (2019 return). Petitioners reported wage income in the amount of \$268,940.00,² taxable interest income of \$75.00, business losses of \$85,445.00, other losses in the amount of \$5,982.00, and federal adjustments of \$3,467.00, resulting in total federal adjusted gross income of \$174,121.00. Petitioners claimed an overpayment and requested a refund for 2019 in the amount of \$11,810.00.

9. Attached to petitioners' 2019 return were three federal schedules C, profit or loss from business. The first schedule C listed Seana L. Watts as proprietor, principal business as "General Services – Laundry," business name of "ValuePoint Advisors LLC," reported gross receipts of \$106,902.00, expenses of \$237,877.00, and losses in the amount of \$130,975.00. The claimed business expenses were as follows:

| Expense Description | Amount |
|------------------------|-------------|
| Advertising | \$384.00 |
| Car and Truck Expenses | \$10,475.00 |
| Contract Labor | \$46,490.00 |
| Depreciation | \$34,868.00 |
| Insurance | \$5,034.00 |
| Interest | \$13,542.00 |
| Office Expense | \$599.00 |

² Attached to petitioners' 2019 return were forms W-2, wage and tax statements, for Seana Watts from Xerox Corporation and SalesforceCom Inc. reporting wages in the amount of \$171,696.00 and \$97,244.00, respectively.

| | |
|--|--------------|
| Rent or Lease (vehicles, machinery, and equipment) | \$25,600.00 |
| Rent or Lease (other business property) | \$65,688.00 |
| Repairs and Maintenance | \$1,844.00 |
| Supplies | \$3,975.00 |
| Taxes and Licenses | \$820.00 |
| Travel | \$285.00 |
| Meals and Entertainment | \$553.00 |
| Utilities | \$23,366.00 |
| Other Expenses: Dry Cleaning Services | \$408.00 |
| Postage | \$101.00 |
| Amortization | \$3,845.00 |
| Total Expenses | \$237,877.00 |

The second schedule C listed a sole proprietorship for Rodney Watts, Jr., stated that the principal business was “General Services – Laundry/Dry Cleaning,” listed the business name as “New York Soap & Laundry Co LLC,” reported gross receipts of \$16,223.00, gross income of \$16,042.00, and reported expenses in the amount of \$9,593.00, as follows:

| Expense Description | Amount |
|------------------------------------|------------|
| Advertising | \$2,256.00 |
| Travel | \$327.00 |
| Other Expenses: Wholesale Services | \$6,000.00 |
| Square Processing Fees | \$688.00 |
| Square Capital-Interest Expense | \$322.00 |
| Total Expenses | \$9,593.00 |

Petitioners reported a net profit for NY Soap & Laundry of \$6,449.00.

The third schedule C listed a sole proprietorship for Rodney Watts, Jr., stated that the principal business was “Rideshare Driver,” reported gross receipts of \$89,900.00, and reported expenses in the amount of \$50,819.00, as follows:

| Expense Description | Amount |
|--|-------------|
| Rent or Lease (vehicles, machinery, and equipment) | \$20,926.00 |
| Other Expenses | \$29,893.00 |
| Total Expenses | \$50,819.00 |

Petitioners reported a net profit for “Rideshare Driver” of \$39,081.00.

Petitioners offset the net profits reported for “Rideshare Driver” and NY Soap & Laundry with the losses reported for ValuePoint in the amount of \$130,975.00, resulting in total business losses of \$85,445.00.

10. The Division selected petitioners’ 2019 return for review and, by letter dated July 10, 2020, requested that petitioners provide information regarding the claimed business losses, including, in part, the following:

“Schedule C

From your federal income tax return, please provide a copy of the 2019 Schedule C, Profit or Loss from Business. Please provide the following information to support the income, cost of goods sold, and expenses claimed on your Schedule C.

To verify the gross receipts or sales, please provide the following:

- Tax statements such as 1099-MISC or 1099-K.
- Your entire year s [sic] business checking account showing deposits of business income.
- Your records such as general ledgers or logs documenting when each item was sold or when services were provided, this should cover the entire year.
- Copies of any license, registration, or certification that you need for your business.

For Cost of Goods Sold and each expense claimed on your Schedule C, please provide detailed documentation and proof of payment.

- Examples of detailed documentation are receipts, sales slips, invoices, billing statements, depreciation schedule with original bill of sale, rental or lease agreements, and contracts.
- Examples of proof of payment are copies (front and back) of canceled checks or money orders; bank and/or credit card statements showing the transaction. Payment should match the date and amount shown on the detailed documentation. Related expense transactions should be marked for an accurate and expeditious review.

In addition to the above, please provide a description of your business activities and explain how each expense claimed is related to your business. Please organize your response by categorizing each expense.

Complete all the questions below about amounts you claimed on federal Schedule C, Profit or loss from business, for the tax year in question to help us determine if your business is a for-profit endeavor.

1. What year did you start your business?
2. Describe the business and the tasks and responsibilities that you have within the business.
3. Approximately how much time do you put into this business in an average week?
4. How do you market your business?
5. What specific changes have you made over the years to improve profitability?
6. Were there any circumstances beyond your control that contributed to the losses you are claiming? If Yes, please explain.
7. Have you ever reported a net profit for your business? Which years if so?
8. Are you employed outside of this business? If yes, list the number of hours.”

11. On February 2, 2021, the Division issued a refund disallowance notice to petitioners for the year 2019, stating, in part:

“Business Loss

Based on your return, you had reported three separate activities on Form Schedule C. The Schedule C filed for Value Point Advisors LLC is under question for purposes of this audit.

Your response did not include documentation to support the income and most expenses claimed. Nor did you include an explanation of your business and related expenses, or answer our questionnaire included on our inquiry letter.

You cannot claim a loss against other income from an activity that is not carried on for-profit. The IRS presumes an activity is a for-profit endeavor if it makes profit in three of the last five years. Since 2011 you have reported \$1,068,973 in losses related to this activity. Without a complete response this activity appears to serve as a vehicle to offset other taxable income, rather than developed into a sustainable business that serves to produce gainful and taxable income.

The business loss related to this endeavor has been denied. Your refund had been disallowed.”

12. ValuePoint was organized by petitioners in September 2011 and operates two laundromats, one located at 74 Main Street, Tuckahoe, New York, and one at 552 E. 3rd Street,

Mount Vernon, New York.

13. Prior to the years at issue, from 2012 through 2017, petitioners reported losses from ValuePoint on their New York State resident income tax returns as follows: loss of \$196,892.00 in 2012; loss of \$167,205.00 in 2013; loss of \$94,890.00 in 2014; loss of \$116,473.00 in 2015; loss of \$88,450.00 in 2016; and loss of \$107,903.00 in 2017. Additionally, subsequent to the years at issue, petitioners reported losses from ValuePoint in the amount of \$151,253.00 in 2020 and \$96,117.00 in 2021.

14. NY Soap & Laundry was organized by petitioners in August 2016. Mr. Watts described it as a “virtual business” focused on online interactions where customers arrange with the business for pick-up and delivery services for laundry and dry cleaning. Petitioners previously had two websites for NY Soap & Laundry that are no longer functional. The record is unclear as to when the websites were discontinued. Currently, customers find the business through word of mouth and text Mr. Watts directly to schedule service.

15. Mr. Watts testified that there is sometimes overlap between ValuePoint and NY Soap & Laundry and that his “analysis that led to the exhibits [entered into the record] are very hard to make clear what company is responsible for what expense or income items.”

16. Petitioners sometimes, but not exclusively, use ValuePoint laundromats to service laundry orders for NY Soap & Laundry. They do not use ValuePoint for dry cleaning orders because it does not have dry cleaning equipment.

17. Petitioners entered into the record forms 1099-MISC, miscellaneous income, for the years 2018 and 2019, reporting income to ValuePoint in the amount of \$37,220.23 and \$41,763.75, respectively, from Bronxville Field Club, Inc. (Bronxville FC). Mr. Watts testified that Bronxville FC, a tennis and racket club in Mount Vernon, is their largest customer. ValuePoint provides laundry services for the towels used by Bronxville FC guests.

Other than the revenue from Bronxville FC, the remainder of the in-store revenue for ValuePoint is in cash. Petitioners introduced a one-page summary into the record stating that “In-Store Revenue – 74 Main Street” was \$50,195.77 in 2018 and \$65,138.25 in 2019. The total revenue reported on petitioners’ schedule C for ValuePoint for the years at issue includes only the amount shown on the forms 1099-MISC from Bronxville FC and the amounts described by petitioners as “In-Store Revenue – 74 Main Street.” Petitioners did not provide any information regarding in-store cash revenue for the laundromat located at 552 E. 3rd Street, Mount Vernon, New York, or provide any explanation for the omission.

18. The in-store cash revenue is from quarters paid by customers to use machines at the laundromats. Mr. Watts testified that to determine the amount of revenue from the laundromat machines, he deducts the amount of quarters his business puts into the machines for their wash and fold service from the amount of quarters they pull out of the machines. He then looks at his Con Edison and water bill, three or four times a year, to compare “what I think the revenue should be to what it was last year, given the water and the energy usage to make sure that I’m close” In calculating the amount of cash revenue, Mr. Watts testified that, “I can give you a pretty good number” by comparing what he believes to be the true cash revenue to the amount of total utilities used in the previous period.

19. Petitioners did not provide any books or records showing the amount of coins they collected from the laundromat machines during the years at issue or the amounts they deducted from the cash revenue of the machines for the amounts claimed to have been deposited into the machines for petitioners’ wash and fold service.

20. Petitioners do not deposit the money from the washing machines into the bank. Instead, the quarters go into the quarter machines at the laundromats. Petitioners also use the cash revenue to pay expenses.

21. When calculating cash receipts, petitioners do not count dollars from the quarter machines at the laundromats because not all the change from the machines is used in the washers and dryers. Petitioners do not make bank deposits every time they take cash out of the machines.

22. During the hearing, petitioners provided documents and/or testimony regarding some of the expenses claimed, as follows:

a) **Advertising expense:** The amount claimed on the 2018 schedule C was \$574.00 for ValuePoint and \$6,855.00 for NY Soap & Laundry. Petitioners introduced into the hearing record invoices from Alter Ego Studios for 2018 totaling \$6,524.70, together with a one-page “advertising expense analysis” allocating \$574.00 to ValuePoint and \$6,855.00 to NY Soap & Laundry. The analysis states “[t]his expense was primarily paid for the creation of a website and development of marketing collateral. Because both would inure somewhat [sic] to the benefit of ValuePoint Advisors AND New York Soap & Laundry, the Expense was allocated to both companies. However, NYSL is the pickup/delivery concept ... expected to benefit the most from the website as it is a virtual business solely; therefore, the allocation was primarily to NYSL” and shows “Total expense over-claimed” of “\$453.30.” Mr. Watts testified that Alter Ego Studios was the company engaged to build the website and handle some of the marketing and petitioners allocated the expense between ValuePoint and NY Soap & Laundry because both companies benefited.

For 2019, petitioners reported advertising expenses of \$384.00 for ValuePoint and \$2,256.00 for NY Soap & Laundry. Petitioners introduced into the record two invoices from AlterEgoLLC for 2019 totaling \$902.20 and TDBank statement for ValuePoint, on which petitioners highlighted debit card purchases, dated November 18, 2019 and December 20, 2019, each in the amount of \$451.10. The bank statement does not indicate the purpose of the debit

card purchases. Included with petitioners' exhibit was a one-page "advertising expense analysis" stating "Total expense over-claimed" of \$451.60 for 2019.

b) **Car and Truck Expense:** Petitioners claimed car and truck expenses for ValuePoint in the amount of \$9,879.00 for 2018. During the hearing, petitioners provided a trip log showing mileage of 24,887.5, together with a summary analysis listing fuel expense of \$8,276.00 and "other" expense of \$2,022.00, together with various copies of receipts. The mileage log lists the date, "customer name," addresses "from" and "to" and mileage, but does not list the beginning and ending odometer reading or the business purpose for each trip.

For 2019, petitioners claimed car and truck expenses for ValuePoint in the amount of \$10,475.00. Petitioners introduced into the hearing record a trip log showing mileage of 26,620, together with various copies of receipts. The mileage log lists the date, "customer name," addresses "from" and "to" and mileage, but does not list the beginning and ending odometer reading or the business purpose for each trip.

c) **Contract Labor:** Mr. Watts testified that these expenses are for payments to individuals or companies that provide contractors to do washing, drying, folding and packing of laundry. Mr. Watts characterized the laborers as independent contractors. ValuePoint did not issue forms 1099-MISC to the laborers. Mr. Watts testified that for 2018 "it's difficult to show the actual payments because we used a payment app that no longer exists." Mr. Watts further testified that sometime in February or March 2019, ValuePoint transitioned from the old payment method to Dash Out and PayPal.

Petitioners claimed contract labor expenses for ValuePoint in the amount of \$49,936.00 for 2018. Petitioners did not provide any books or records to support the claimed 2018 labor expenses.

For 2019, petitioners reported contract labor expenses of \$46,490.00 for ValuePoint.

Petitioners introduced into the record a chart of payments from February 18, 2019 through December 30, 2019. The chart shows a transaction ID number, date, transaction type of “Sent P2P,” currency, amount, fee, net amount, status (i.e. “payment sent”), name of sender/receiver, and account. Petitioners also introduced bank statements from February 1, 2019 through November 30, 2019, on which they highlighted various amount for “debit card purchase.”

d) **Depreciation:** Petitioners reported depreciation expenses for ValuePoint in the amount of \$46,367.00 in 2018 and \$34,868.00 in 2019. Mr. Watts testified that his:

“calculation of this figure is a little tricky because I used Total Tech software and the software gives me a number. And so my analysis in both years endeavors to reconcile what’s on form 4562 with what’s on form schedule C. But, you know, to - - I - - I can - - I cannot - - and so I believe that I’ve done that but I cannot say that the calculations are all my own. They are observations as to what the software did based on the elements of this exhibit that were introduced into the software which is specifically the amount of - - the amounts paid for the equipment that gives rise to the expense.”

For 2018, petitioners introduced into the record form 4562, depreciation and amortization, listing a section 179 expense deduction in the amount of \$32,882.00 for commercial washing machines, MACRS deduction in the amount of \$11,738.00, depreciation deduction for a 2006 GMC Yukon in the amount of \$1,541.00, and depreciation deduction for a Toyota Sienna in the amount of \$206.00. For 2019, petitioners introduced into the record form 4562, depreciation and amortization, listing a MACRS deduction in the amount of \$11,335.00, special depreciation deduction on line 25 in the amount of \$16,000.00, depreciation deduction for a 2006 GMC Yukon in the amount of \$1,651.00, and depreciation deduction for a Toyota Sienna in the amount of \$5,882.00. Petitioners also introduced a secured promissory note and agreement, dated January 24, 2019, between ValuePoint and Laundry Nation showing a financed amount of \$84,190.88. According to Mr. Watts, Laundry Nation financed the acquisition of washing machines that were purchased and put into service in stages in 2018 and 2019.

e) **Insurance:** Petitioners reported insurance expenses for ValuePoint in the amount of \$1,479.00 in 2018 and \$5,034.00 in 2019. For 2018, petitioners introduced into the record a copy of an invoice from Liberty Mutual Insurance, dated February 8, 2018, for the account of ValuePoint d/b/a Bubble Mania³ showing an amount due of \$1,450.18 and payment confirmations from Liberty Mutual Insurance totaling \$2,524.05. The payment confirmations do not reference a policy number but indicate the same account number as that referenced on the Liberty Mutual invoice for ValuePoint d/b/a Bubble Mania. For 2019, petitioners introduced into the record a “special multi-peril result of audit-annual” from Liberty Mutual Insurance for ValuePoint, dated September 6, 2019, and payment confirmations from Liberty Mutual totaling \$1,915.72. Petitioners also introduced payment confirmations from Progressive Insurance for auto policy payments in 2019 totaling \$2,955.62.

f) **Interest:** Petitioners claimed interest expense for ValuePoint in the amount of \$6,869.00 for 2018 and \$13,542.00 for 2019. Petitioners introduced into the record credit card statements showing interest for both personal and business charges combined.

g) **Office Expenses:** Petitioners claimed office expenses for ValuePoint of \$609.00 in 2018 and \$599.00 in 2019. The Division is not disputing these amounts.

h) **Rent or Lease:** Petitioners claimed rent or lease expenses for other business property for ValuePoint of \$64,932.00 in 2018. In 2019, petitioners claimed \$25,600.00 for rent or lease expenses of vehicles, machinery, and equipment, and \$65,688.00 for other business property. Mr. Watts testified that the amounts claimed were for rent payments for the laundromats located in Mount Vernon and Tuckahoe.

For 2018, petitioners introduced copies of the fronts of checks made out to New Grange

³ Bubble Mania is the name of the laundromat in Tuckahoe.

Realty, totaling \$30,249.87.⁴ Petitioners also included bank statements indicating payments to Parkfield Properties totaling \$15,300.00. For 2019, petitioners introduced copies of the front of checks made out to New Grange Realty, totaling \$48,207.15 and TDBank online bill pay printouts showing payments to Parkfield Properties totaling \$14,600.00.

i) **Repairs and Maintenance:** Petitioners claimed repairs and maintenance expenses for ValuePoint of \$14,555.00 in 2018 and \$1,844.00 in 2019. Mr. Watts testified that these expenses were for the installation and service of machines at the laundromats in Mount Vernon and Tuckahoe.

For 2018 petitioners introduced copies of invoices and payment receipts from STN Laundry Systems, LLC, for machine repairs totaling \$3,286.79. Petitioners also introduced a copy of a work estimate in the amount of \$10,887.50 from Gdd LLC, dated September 2, 2018, showing “work to be completed” of removing old machines, repairing and adding concrete base, delivering and installing new machines. Petitioners did not submit any proof of payment or that the work was performed and a review of the bank records submitted by petitioner do not show any payments to Gdd LLC in 2018.

For 2019, petitioners introduced copies of invoices from L.A. Laundry Tech totaling \$480.00, a copy of TDBank online payment printout showing a payment on June 13, 2019 in the amount of \$100.00 to Xavier Johnson for “backflow protector,” an invoice and copy of a check to Advance Electrical Corp. in the amount of \$905.00 for electrical work at the Tuckahoe laundromat, a receipt from Home Depot in the amount of \$48.61 for drill unit drain cleaner, and an illegible receipt.

j) **Supplies:** Petitioners claimed supply expenses for ValuePoint of \$6,232.00 in 2018 and \$3,975.00 in 2019. Mr. Watts testified that these expenses are for items used to service

⁴ Petitioners included duplicates of some checks in their documents. The duplicates have not been

customers, such as soap, laundry bags, fabric softener and recycling bags. Petitioners provided a schedule of expenses together with copies of disorganized receipts that appear to have both business and personal charges. Several of the receipts are not legible, do not show a date, or do not list the items purchased. For example, petitioners schedule of expenses included charges from Costco on February 24, 2018, in the amount of \$433.39. The attached receipt from Costco for this date is not itemized and does not show what the charges are for.

k) **Taxes and Licenses:** Petitioners claimed expenses for taxes and licenses of \$820.00 in 2018 and \$820.00 in 2019. The Division does not dispute these amounts.

l) **Travel, Meals, and Entertainment:** Petitioners claimed travel expenses of \$2,141.00 and \$285.00 in 2018 and 2019, respectively, and claimed meals and entertainment expenses of \$521.00 and \$553.00 in 2018 and 2019, respectively.

For 2018, Mr. Watts testified that with regard to these expenses he was “working from memory” and that there were instances where he “couldn’t reconcile the number on Schedule C to the documentation I had.” Petitioners claimed several hotel, restaurant, and other charges without providing corresponding receipts or an explanation of the business purpose.

For 2019, Mr. Watts testified that the claimed expenses were for parking expenses of NY Soap & Laundry, but were reported on ValuePoint’s schedule C. ValuePoint’s 2019 schedule C reports \$285.00 for this expense and NY Soap & Laundry’s schedule C reports \$327.00 for this expense. Petitioners introduced a parking transaction summary stating a total of \$495.35. Petitioners did not provide any explanation or documentation for the claimed meals and entertainment expenses for 2019.

m) **Utilities:** Petitioners claimed utility expenses of \$26,994.00 in 2018 and \$23,366.00 in 2019. Mr. Watts testified that these expenses consist of gas and electric charges from Con

Edison, and water charges for Suez.

Petitioners submitted payment confirmations from Suez for 2018 totaling \$5,715.83. Petitioners also included a payment confirmation from Suez to Damien Brown. There is no reference to ValuePoint on Mr. Brown's payment confirmation and it does not list the address where the water service was provided. There is no explanation in the record of who Mr. Brown is or if he has any connection to ValuePoint. Petitioners also introduced payment confirmations from Con Edison for 2018. The Con Edison payment confirmations do not list the address where the services were provided and several of them do not reference ValuePoint or list the payer. The payment confirmations presented from Con Edison that refer to ValuePoint total \$2,422.78.

For 2019, petitioners introduced payment confirmations from Suez totaling \$3,918.50. Petitioners also introduced payment confirmations from Con Edison for 2019. The Con Edison payment confirmations do not list the address where the services were provided or the payer and make no reference to ValuePoint.

n) **Other Expenses:** For 2018, petitioners reported as other expenses on ValuePoint's schedule C "miscellaneous expense" of \$2,654.00 and amortization of \$3,845.00. For 2019, petitioners reported as other expenses on ValuePoint's schedule C "miscellaneous expense – dry cleaning services" of \$408.00, "miscellaneous expense – postage" of \$101.00 and amortization of \$3,845.00.

Mr. Watts testified that the miscellaneous expenses for 2018 included cable and internet services for the laundromats for a high speed modem that allows security cameras to transmit video and still images over the internet, and allows the alarm to arm automatically. He further testified that these expenses also include parking and tolls. Regarding the amortization expenses claimed, Mr. Watts testified, "I cannot tell you what is the . . . specifically of that

number. It has a number calculated by Turbo Tax. I'm sure [it] has to do with the equipment.” Petitioners provided no records regarding the amortization expenses claimed.

Petitioners introduced Spectrum cable records for the Mount Vernon laundromat showing payments totaling \$1,030.67 for 2018. Petitioners introduced Verizon payment confirmations totaling \$961.15 for 2018. The Verizon records do not reference ValuePoint or list the address for service or payer's name. Regarding parking and tolls, petitioners introduced a schedule listing the date, name (i.e., NYC DOT, EZ Pass, Parkmobile) and amount, and copies of parking and toll receipts. The schedule does not list a business purpose for each of the charges.

For 2019, petitioners introduced copies of receipts that appear to be from the Bronxville, New York, post office. It is unclear what these receipts are for or who made the purchases.

23. Petitioners introduced into the record a business questionnaire on which they stated, in part, that they paid independent contractors more than \$600.00 in 2018 but did not file forms 1099-MISC, all business receipts were not deposited, that it was “impossible to say for certain” how much was not deposited and “expenses were often paid in cash,” and that gross receipts were estimated.

CONCLUSIONS OF LAW

A. It is initially noted that determinations made in a notice of deficiency or refund denial are presumed correct, and the burden of proof is upon petitioners to establish, by clear and convincing evidence, that those determinations are erroneous (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also* Tax Law § 689 [e]). The burden does not rest with the Division to demonstrate the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842, 843 [3d Dept 1986]). A taxpayer who fails to present clear and convincing evidence to show that the notice is incorrect surrenders to this presumption (*id.*).

B. The adjusted gross income of a New York resident is federal adjusted gross income, with certain modifications not applicable in this case (Tax Law § 612 [a]). Because the starting point for determining New York personal income tax liability is the taxpayer's federal adjusted gross income (*see* Tax Law § 612 [a]), it is appropriate to refer to federal law in addressing the substantive questions presented in this matter (*see Matter of Rizzo*, Tax Appeals Tribunal, June 3, 1993, *confirmed* 10 AD2d 748 [3d Dept 1994]). Section 62 (a) (1) of the Internal Revenue Code (IRC) (26 USC) defines adjusted gross income as an individual's gross income minus certain deductions (IRC [26 USC] § 62 [a] [1]). Among the deductions permitted are expenses that are "ordinary and necessary" for the production of income in carrying on a trade or business (IRC [26 USC] § 162 [a]). An ordinary expense is one that is common and acceptable (*Welch v Helvering*, 290 US 111, 114 [1933]). A necessary expense is considered to be one that is appropriate and helpful in conducting a trade or business (*Heineman v Commr.*, 82 TC 538, 543 [1984]). Deductions are also allowed pursuant to IRC (26 USC) § 212 for expenses incurred "for the management, conservation, or maintenance of property held for the production of income." The test as to whether property is held for the "production of income" within the meaning of IRC (26 USC) § 212 is whether the taxpayer's primary, good faith purpose and intention in engaging in the activity was to make a profit (*Zell v Commr.*, 763 F2d 1139, 1142 n2 [10th Cir 1985]; *Snyder v United States*, 674 F2d 1359, 1364 [10th Cir 1982]; *Lowry v United States*, 384 F Supp 257, 261 [1974]).

Petitioners reported losses from the schedule C business described as ValuePoint and deducted those losses from their gross income. Petitioners used the losses reported for ValuePoint to offset the profits reported for NY Soap & Laundry, "Rideshare Driver" and wage income. As gross income is the starting point for determining an individual's adjusted gross income (*see* IRC [26 USC] § 62 [a] [1]), petitioners have the initial burden of proving the

amount of gross income from the schedule C business. After petitioners have established the amount of gross receipts from the business, in order to maintain the claimed deductions for the business expenses, petitioners then have the double burden of: (1) demonstrating entitlement to the deductions and (2) substantiating the amounts of the deductions (*see* Tax Law §§ 658 [a]; 689 [e]; 20 NYCRR 158.1; *Matter of Macaluso*, Tax Appeals Tribunal, September 22, 1997, *confirmed* 259 AD2d 795 [3d Dept 1999]).

C. Petitioners have the burden of proving entitlement to the claimed deductions in excess of revenue and substantiation of the business losses, including the business purpose and amount of each of the claimed expenses. The starting point for determining a profit or loss from a schedule C business is gross receipts. From that amount, allowable expenses are subtracted to determine the net profit or loss.

Here, petitioners reported gross receipts in the amount of \$87,416.00 in 2018 and \$106,902.00 in 2019 for ValuePoint. Mr. Watts testified that other than the revenue from Bronxville FC, as reported on the forms 1099-MISC, the remainder of the in-store revenue for ValuePoint was in cash, by way of coins customers put into the laundry machines. While Mr. Watts testified that he calculated the cash revenue by deducting the amount of quarters his business put into the machines for their wash and fold service from the amount of quarters they pulled out of the machines, he provided no books or records showing the amount of quarters collected from the machines or the amount of coins purportedly deposited into the machines by his business for the wash and fold service. Indeed, petitioners provided no ledgers, balance sheets, or any other form of accounting records showing a tally of the coins collected from the machines or the amount derived from the wash and fold service. Furthermore, while Mr. Watts testified that he compares his estimates with his Con Edison and water bills three or four times a year, he presented no such comparison into the record. Additionally, the one-page summary

introduced by petitioners for ValuePoint revenue shows only “In-Store Revenue – 74 Main Street.” Petitioners failed to report in-store revenue for the laundromat located at 552 E. 3rd Street, Mount Vernon, New York, and provided no information regarding in-store cash revenue for this laundromat or an explanation for the omission.

Petitioners are required to maintain books and records sufficient to establish the amount of gross income and deductions as reported on their New York income tax returns (*see* Tax Law § 658 [a]; 20 NYCRR 158.1). In this case, petitioners have failed to maintain books and records establishing the amount of gross income reported on ValuePoint’s schedule C. Petitioners failed to provide any records to support their calculation of gross income as reported for ValuePoint on the schedule C. Therefore, it is impossible to determine the actual amount of gross income earned by ValuePoint and, thus, impossible to determine if the expenses outweigh the revenue. Petitioners have thus failed to meet their burden of proving the net profit or loss for ValuePoint and the Division properly disallowed the claimed business losses in their entirety.

D. While it is determined that the Division properly disallowed all of petitioners’ claimed business losses because petitioners failed to meet their burden of proving gross receipts for ValuePoint, it is further noted that petitioners also failed to meet their burden of proving the business purpose and amount of the majority of the claimed expenses, as discussed below.

Specifically, with regard to the advertising expenses claimed, petitioners admitted that these expenses were incurred for both ValuePoint and NY Soap & Laundry, but provided no explanation as to how they determined the amount allocated to each business. They admitted in their paperwork that they overclaimed \$453.30 for 2018 and \$451.60 for 2019. Further, the invoices introduced into the record are less than the amount reported for advertising expenses reported on the schedule C for each of the businesses. As such, petitioners have failed to establish both the business purpose and amount of these expenses.

Regarding car and truck expenses, in order to deduct expenses for mileage, the taxpayer must substantiate by adequate records or evidence sufficient to corroborate the taxpayer's own testimony: (1) the amount of the expenditure or use, which includes mileage in the case of automobiles; (2) the time and place of the travel; (3) its business purpose; and (4) the business relationship to the taxpayer of each expenditure or use (*see* IRC [26 USC] §274 [d] [3]).

Petitioners have failed to meet this heavy burden. The trip log petitioners introduced does not include beginning or ending odometer readings or a description of a business purpose for each trip. Additionally, it is impossible to decipher whether the copies of the receipts provided were from purchases for business or personal purposes. While petitioners' vehicles were used for both personal and business purposes, petitioners did not substantiate the percentage the vehicles were used for each purpose. As such, petitioners have failed to meet their burden of proof for the claimed car and truck expenses.

Petitioners have likewise failed to prove the amount of expenses claimed for contract labor. Petitioners did not provide any work schedules, timesheets or payment records for 2018. For 2019, petitioners did not provide any work schedules or timesheets, and the payment chart and bank records provided do not establish a business purpose for the payments. The bank records merely show "debit card purchase" and the chart shows payments to individuals without a stated business purpose. Additionally, petitioners admit that they did not issue forms 1099-MISC to the laborers, despite meeting the threshold requirement for issuing such forms (*see* IRS Instructions for Form 1099-MISC [2019], stating that taxpayers must file form 1099-MISC if they paid \$600.00 or more for services performed by someone who is not an employee). For example, the 2019 chart shows multiple payments to "SRodad," "Telem," "Dsalem," and others, the total of which each exceeds the \$600.00 threshold, but petitioners did not file a 1099-MISC for any of these individuals. As such, the payment chart and overall claim

of labor expenses lacks credibility.

Petitioners have also failed to meet their burden of proving depreciation expenses. Mr. Watts testified that his calculation of this expense was “a little tricky” because of the software he used and the calculations are “observations as to what the software did based on the elements of this exhibit that were introduced into the software” However, petitioners did not provide any information showing how they determined the amounts entered into the software, how the depreciation was calculated, or proof of the original cost basis and the year of acquisition of each asset. While Mr. Watts testified that washing machines were purchased and put into service in stages in 2018 and 2019, he provided no proof of purchase for the equipment and the finance agreement with Laundry Nation, which Mr. Watts purports was for the equipment put in service beginning in 2018, is dated January 24, 2019. There was no explanation for the discrepancy. Similarly, petitioners failed to provide sufficient evidence to support the depreciation claimed for vehicles. While the forms 4562 state the date the claimed vehicles were placed into service and the cost basis, petitioners did not provide any proof of purchase to substantiate these items. Additionally, petitioners did not provide odometer readings to support the business use percentage of the vehicles as claimed on form 4562. The IRS instructions provide that to determine the business use percentage, the number of miles the vehicle is driven for the business purpose during the year is divided by the total number of miles the vehicle is driven for all purposes (*see* IRS 2018 Instructions to Form 4562). Petitioners did not provide any information as to how they calculated the claimed business percentage entered on their forms 4562 for the years at issue, and without odometer readings, such amount cannot be verified.

For the insurance expenses, petitioners introduced sufficient evidence to support the amount claimed of \$1,479.00 for 2018, as they provided evidence supporting both the business purposes and amount via the invoice from Liberty Mutual Insurance for

ValuePoint d/b/a Bubble Mania and proof of payments. Petitioners have also provided evidence to establish the business purposes and amount of \$1,915.72 for insurance expenses for 2019. Petitioners did not meet their burden of proving the business purpose for the Progressive auto insurance expenses because they have not substantiated the percentage of business use of the vehicles.

Regarding petitioners' claimed expenses for interest, such interest accrued on both personal and business charges and petitioners did not provide clear and convincing evidence of the amount of interest specifically attributable to business charges. Petitioners have likewise failed to establish the amount and business purpose of the supply expense claimed. The receipts provided have both business and personal charges, several of the receipts are not legible, do not show a date, or do not list the items purchased. As such, there is no way to discern the business purpose for each of the amounts claimed.

With regard to the rent expenses, petitioners did not provide leases for the laundromat properties showing the amount of rent due for the years at issue and the records that were provided show a lower amount of payments to New Grange Realty and Parkfield Properties than the amount of rent reported on ValuePoint's schedule C for the years at issue. As such, petitioners failed to meet their burden of proving the amount of rent expense claimed.

Regarding the expenses claimed for repairs and maintenance, petitioners provided evidence to substantiate \$3,286.79 for 2018 and \$1,533.61 for 2019. Petitioners did not provide proof that the estimate from Gdd LLC was paid and failed to provide clear and convincing evidence for the remaining amounts claimed.

Regarding expenses claimed for travel, meals and entertainment, pursuant to IRC (26 USC) § 274, no deduction shall be allowed for any traveling expense (including meals and lodging while away from home):

“unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of the person receiving the benefit” (IRC [26 USC] § 274 [d] [3]).

Petitioners have failed to meet this burden and as such are not entitled to a deduction for the claimed travel expenses (*see Obayagbona v Commr.*, 14856-13S, 2016 WL 6520220, at *6 [TC Nov. 3, 2016]). For 2018, petitioners claimed several hotel, restaurant, and other charges without providing corresponding receipts or explanation of the business purpose. For 2019, petitioners provided no testimony or documents to support the claimed meals and entertainment expenses. Furthermore, while Mr. Watts testified that for 2019, the claimed travel expenses were for parking attributable to NY Soap & Laundry but were reported on ValuePoint's schedule C, a review of the schedules C show that both businesses reported this expense. Indeed, the combined total for the travel expense on the schedule C of ValuePoint and NY Soap & Laundry exceeds the amount of parking expenses petitioners showed on their parking transaction summary. Petitioners provided no explanation for the discrepancy. Additionally, as the two businesses are reported on separate schedules C, it was inappropriate for petitioners to claim NY Soap & Laundry expenses on ValuePoint's schedule C.

Regarding the utilities expense claimed, petitioners provided evidence to substantiate \$7,653.42 in 2018, by way of payment confirmations from Suez for 2018 water bills totaling \$5,715.83 and payment confirmations from Con Edison that refer to ValuePoint, totaling \$2,422.78. Petitioners have failed to provide clear and convincing evidence to support the remaining amount claimed for 2018. The payment confirmation from Suez to Damien Brown holds no weight, as petitioners provided no explanation of who he is or if he has any connection to ValuePoint. Similarly, the Con Edison payment confirmations that do not refer to ValuePoint or do not list the payer hold no weight as they do not list the address where the services were

provided and there is no way to determine if they are for utility services at the laundromats. For 2019, petitioners provided sufficient evidence to substantiate payments to Suez totaling \$3,918.50. Petitioners have failed to provide clear and convincing evidence to support the remaining amount claimed for 2019. The Con Edison payment confirmations for 2019 do not list the address where the services were provided or the payer and make no reference to ValuePoint. As such, they are accorded no weight.

For other expenses, petitioners provided evidence to support the business purpose and amount of \$1,030.67 for Spectrum cable charges. Petitioners have not provided clear and convincing evidence to support the remaining amount claimed for other expenses. The Verizon payment confirmations do not reference ValuePoint or list the address for service or payer's name and, as such, do not support a business purpose. Similarly, the parking schedule and post office receipts provided by petitioners do not evidence a business purposes related to ValuePoint. Regarding the claimed other expenses for amortization, Mr. Watts's testimony that he's "sure [the amortization expense] has to do with equipment" was mere speculation and he admitted that "I cannot tell you what is the . . . specifically of that number." Petitioners provided no documentary evidence to support the amortization expenses claimed. As such, they have failed to meet their burden of proof for this expense.

Based on the foregoing, even if petitioners had established the amount of gross receipts for ValuePoint for the years at issue, they have failed to meet their burden of proving that the expenses exceeded the gross income. As such, the Division properly disallowed petitioners' business losses on this basis as well.

E. The Division also argues that petitioners have failed to show that they engaged in the business activities for ValuePoint with an actual and honest objective of making a profit (*see Annuzzi v Commr.*, TC Memo 2014-233 [2014]). If an activity is "not engaged in for profit,"

deductions are allowable only to the extent of income from such activity (IRC [26 USC] § 183 [b] [2]; *Matter of Temple*, Tax Appeals Tribunal, July 8, 2004). As it has been determined that petitioners have failed to meet their burden of proving the amount of income and expenses for ValuePoint for the years 2018 and 2019, the issue of whether petitioners were engaged in the business for profit is moot.

F. The petitions of Seana L. Watts and Rodney Watts, Jr., are denied, and the notice of adjusted assessment, dated June 11, 2021, and the refund denial, dated February 2, 2021, are sustained.

DATED: Albany, New York
February 8, 2024

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE