

**UNITED STATES TAX COURT**

WASHINGTON, DC 20217

Chung Yung Chong & Anita Chong,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 8551-20
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the of the trial of the above case before Judge Mark V. Holmes at San Francisco, California on October 29, 2021, containing his oral findings of fact and opinion rendered after the conclusion of trial.

In accordance with the oral findings of fact and opinion, a decision will be entered under Rule 155.

**(Signed) Mark V. Holmes**  
**Judge**

**Served 12/15/21**

1 Bench Opinion by Judge Mark V. Holmes  
2 October 29, 2021  
3 Chung Young Chong & Anita Chong v. Commissioner  
4 Docket No. 8551-20

5 THE COURT: In the case of Chung Young Chong and  
6 Anita Chong v. Commissioner, docket number 8551-20 the  
7 Court had decided to render oral findings of fact and  
8 opinion, and the following represents the Court's oral  
9 findings of fact and opinion. This bench opinion is made  
10 pursuant to the authority granted by section 7459(b) of  
11 the Internal Revenue Code of 1986, as amended and Rule 152  
12 of the Tax Court Rules of Practice and Procedure.

13 Mr. and Mrs. Chong were residents of California  
14 when they filed their petition. Mr. Chong was the only  
15 witness. He seems to be in some kind of wholesale  
16 business, according to his testimony, but he also has a  
17 variety of other business interests that gave rise to the  
18 deficiency in this case. He and his wife were audited for  
19 the 2017 and 2018 tax year<sup>S</sup>. M #

20 After concessions by both sides the four issues  
21 that I had to resolve were the question of net operating  
22 loss or NOL carryforwards, long-term capital losses in  
23 excess of \$3,000 for each of the years at issue, and  
24 claimed loss on IRA trades in the Chongs' IRA and travel  
25 expenses claimed on a Schedule C.

1 I'll take them again in order. The first and  
2 largest category of expense were the net operating loss  
3 carryforwards, which wholly wiped out the taxable income  
4 of the Chongs for 2017 and 2018. They claimed a net  
5 operating loss carryforward of \$218,026 for 2017 and  
6 \$90,137 in 2018. Code section 172(a) authorizes a net  
7 operating loss deduction. Essentially a net operating  
8 loss is the excess of deductions over gross income with  
9 some modifications, see section 172(c)(d).

10 A net operating loss determined under those  
11 sections may be carried back to preceding taxable years  
12 and carried forward to 20 or later years until it's  
13 absorbed by taxable income. However, a taxpayer bears the  
14 burden of establishing both the actual existence of net  
15 operating losses in the earlier years and the amount of  
16 such losses that it can carry to the years at issue. See  
17 Keith v. Commissioner, 115 T.C. 605, 621 (2000).

18 The Chongs alleged that they had \$308,163 in  
19 cumulative net operating losses carried forward from tax  
20 years 2006 and 2007. <sup>TC</sup> And later years to tax year 2017. <sup>TH</sup>  
21 <sup>TH</sup> With \$90,137 in operating losses remaining thereafter to  
22 carry forward to tax year 2018. This doesn't seem to be  
23 true, however. The Chongs <sup>↓</sup> tax years 2006 and 2007 were  
24 examined in 2010 and 2011 and they were found to have had  
25 positive income. They never contested that successfully



1 in Tax Court. They did have, according to IRS records,  
2 net operating losses in tax years 2013 and 2014, but those  
3 they used in 2015.

4 When challenged Mr. Chong failed to provide any  
5 documentation substantiating any other losses and they  
6 were not claimed in the tax year<sup>s</sup> prior to tax year 2017. <sup>MT</sup>  
7 Mr. Chong, based on his live testimony, didn't seem to  
8 understand the specific factors going into the net  
9 operating loss computations and pointed to no flaw in the  
10 respondent's net operating loss worksheets that I allowed  
11 into evidence. On this one I sustained the commissioner's <sup>MT</sup>  
12 determination that no NOL carryforward was in fact  
13 available to the Chongs for either of the years at issue.

14 The second subject I need to discuss <sup>is</sup> ~~are~~ whether  
15 the Chongs are entitled to long-term capital losses of  
16 more than \$3,000 for the years at issue. This was a  
17 particularly difficult topic to understand in the context  
18 of this case. We didn't have a Form 1040. We had an  
19 electronically filed form, and it was not at all clear  
20 what the source of these alleged long-term capital losses  
21 were.

22 The commissioner put in his pre-trial memo, and <sup>MT</sup>  
23 Mr. Chong talked about, two stock investments in particular  
24 that seemed to have generated these losses. One was in  
25 Imperial Petroleum, a company that was delisted from the



1 New York Stock Exchange in 2015 with its CEO convicted of  
2 fraud in 2016. The second was a privately held company  
3 called New Colombia Resources, which allegedly did  
4 business in the form of looking for a mine to get coal  
5 from in Colombia as well as other numerous business  
6 opportunities.

7 As I said, it's unclear exactly what's going on  
8 with these things. With ~~the case of~~ Imperial Petroleum at  
9 least it <sup>is a</sup> listed company, so there are NYSE records are on  
10 it. It seems, however, ~~though~~ that it was much more M+  
11 likely than not to <sup>have</sup> become worthless and thus the loss  
12 realized some time in the years before 2017 and 2018.  
13 There was a statement of worthlessness and indeed  
14 disposition of Mr. Chong's Imperial Petroleum stock in  
15 2011, but he never provided to either the IRS or to the  
16 Court any evidence of his basis in that stock all those  
17 years before 2017 and 2018. The ~~New Co.~~ <sup>5</sup> New Columbia,  
18 stock is a restricted over the counter securities ~~that~~ <sup>x</sup>  
19 engaged in what <sup>one</sup> can say are very very speculative  
20 investments and whose promoters, according to Mr. Chong's  
21 testimony <sup>and</sup> he's entirely credible on this point, <sup>keep</sup>  
22 contacting him and succeed in getting him into new  
23 investment opportunities using his ownership position in  
24 the seemingly not very highly valued company.

25 He continues to negotiate with them, meet with

1    them, engage in new ventures with them exchanging stock  
2    ownership in New Colombia with stock ownership in other  
3    companies or warrants or various other ways of getting  
4    tens of thousands of dollars from him from to the  
5    promoters who are in charge of New Colombia.

6           It is an unlikely to be valuable stock, but  
7    that's just my opinion. I certainly found that it did not  
8    become worthless, as hard as it is to ~~gage~~<sup>u</sup> worthlessness <sup>MH</sup>  
9    in a restricted security that has no ongoing business,  
10   because Mr. Chong never actually abandoned it. He never  
11   declared it worthless. He continues to negotiate to this  
12   day some things that he can do with the promoters <sup>e</sup> in <sup>MH</sup>  
13   exchange for his ownership shares of stock of New  
14   Colombia. So again, I have to sustain the commissioner on  
15   this one.

16           The Chongs did not provide any evidence that New  
17   Colombia was no longer viable in 2018 specifically, or in  
18   fact that it was ever viable operating at any time aside  
19   from their demands on the owners or promoters of this  
20   scheme for remuneration. However, they did keep in  
21   conversation with these executives to receive  
22   compensation, so it is more likely than not that it had  
23   some value in those years. In any event, the Chongs will  
24   not be allowed to deduct any more than \$3,000 of long-term  
25   capital losses. This was not a trade or business from



1 their perspective. It was just a bad stock investment,  
2 which they haven't fully closed out of.

3 And the third issue is whether the Chongs can  
4 take losses from their IRA. Again, it's not entirely  
5 clear from the paperwork in front of me how they claimed  
6 this on their return, but both parties seemed to think  
7 that it was an issue. The problem here for the Chongs is  
8 that they can't take losses on their returns from the  
9 investments in the IRA until the IRA is entirely  
10 liquidated and all the basis totaled up and found to be  
11 greater than the sale price of the liquidation of the  
12 account, while transactions occurring within the IRA do  
13 not result in tax <sup>losses on</sup> ~~(audio interference)~~ reportable on an  
14 IRA owner's individual income tax return. An IRA is a  
15 tax-exempt entity, not a pass-through entity. See section  
16 408(e)(1). A taxpayer may recognize a loss from IRA  
17 investments only when all the amounts from all the IRA  
18 accounts have been distributed and the total distributions  
19 are less than any unrecovered bases in the account. See  
20 Fish v. Commissioner, 110 T.C.M. 260(2015), aff'd 699 F.  
21 App'x 655 (9th Circuit 2017).

22 This is an easy win for the commissioner. The  
23 Chongs stipulated that they had not liquidated their IRA  
24 in either of the tax years before me. They're not  
25 entitled to these deductions, either.



1           The last thing that I have to look at are  
2   Schedule C travel expenses of \$11,524 for 2017 and \$4,198  
3   in 2018. It is extremely unclear what these expenses were  
4   used for. We're not even sure what Schedule C business  
5   Mr. Chong claimed to be working at, but through his  
6   testimony it became clear that his travel expenses related  
7   to the promotion or his desire to invest in ~~charities~~ <sup>securities</sup> <sup>MB</sup> that  
8   he was buying as a passive investor. He seemed to have  
9   been traveling to meet with other potential investors and  
10   clients with promot<sup>e</sup>ors of these companies and their  
11   securities. He provided no evidence that he ever provided  
12   any service to these companies, which in fact may or may  
13   not exist or be operating. He certainly didn't provide  
14   any evidence that he incurred travel expenditures much  
15   less the detailed evidence required by section 274.  
16   Again, I have to sustain the commissioner on this one.

17           And this concludes the Court's oral findings of  
18   fact and opinion in this case.

19           Decision will be entered because of concession<sup>MB</sup>  
20   under Rule 155.

21           (Whereupon, at 11:19 a.m., the above-entitled  
22   matter was concluded.)

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