

**BEFORE THE TAX APPEAL BOARD  
OF THE STATE OF DELAWARE**

CYRUS DANIEL ARMANI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 1840
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

**DECISION AND ORDER**

Petitioner Cyrus Daniel Armani has appealed respondent Director of Revenue’s April 4, 2024 notice of determination, which upheld a notice of assessment that disallowed deductions for certain claimed business expenses because the “[d]ocumentation provided” by petitioner related to two organizations, Paperscore, LLC and DAC1, LLC, did not demonstrate that these organizations were engaged in an “active trade or business in 2022.” Petition Exs. A and B. The notice of determination further noted that petitioner had been asked to send proof to the auditor substantiating the amount of his claimed deductions, but that petitioner did not do so. Petition Ex. B.

There are two fundamental issues before the Board: (i) were Paperscore and DAC1 start-up enterprises in 2022 or were they carrying on an active trade or business at that time; and (ii) if they were carrying on an active trade or business,

has petitioner proven that he incurred the business expenses he seeks to use as deductions on his 2022 Delaware income tax return.

After examining the totality of the evidence presented, the Tax Appeal Board determines that petitioner has not submitted evidence proving that Paperscore and DAC1 were engaged in an active trade or business in 2022 and, as a result, the claimed 2022 business expenses are not deductible. In light of this finding, the Board need not and does not address whether petitioner has submitted adequate evidence to substantiate the amount of his claimed business expenses.

### **STATUTORY FRAMEWORK AND BURDEN OF PROOF**

Delaware looks to federal law to determine whether an individual may claim an itemized business expense as a deduction on a personal income tax return. *See* 30 *Del. C.* § 1109 (“a resident individual may elect to deduct the sum of the itemized deductions claimed on the federal income tax return as shall be permitted under the laws of the United States”); *Cluett, Peabody, & Co. v. Dir. of Revenue*, 1985 Del. Super. LEXIS 1089, at \*7 (Del. Super. Ct. Jan. 22, 1985) (“Delaware law grants only those deductions which are allowable in computing a corporation’s Federal taxable income for the particular year.”).

Section 195(a) of the Internal Revenue Code of 1986, as amended, states that “Except as otherwise provided in this section, no deduction shall be allowed for start up expenditures.” 26 U.S.C. §195(a). “Start up expenditures” include “any amount

... paid or incurred in connection with ... any activity ... before the day on which the active trade or business begins ....” 26 U.S.C. §195(c)(1). Neither party has pointed to any Section 195(a) exception that applies here, so the general rule -- no deduction shall be allowed for start-up expenditures -- applies.

Conversely, Section 162(a) of the Internal Revenue Code of 1986, as amended, states that “There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business ....” 26 U.S.C. §162(a).

Taken together, Sections 162(a) and 195(a) prohibit a taxpayer from deducting as a business expense any expenses incurred “before the day on which [an entity’s] active trade or business begins.” *Estate of Morgan v. Comm’r of Internal Rev.*, 2021 WL 3722224, at \*6, T.C. Memo. 2021-104, at \*15 (2021). Expenses incurred before an entity begins carrying on a trade or business are not “ordinary and necessary” expenses currently deductible under Section 162 but, rather, are classified as “start-up” or “pre-opening” expenses subject to Section 195. *Antonyan v. Comm’r of Internal Rev.*, 2021 WL 5878998, at \*3, T.C. Memo 2021-138, at \*8 (2021). “‘Carrying on a trade or business’ requires a showing of more than initial research or investigation of business potential, and the business operations must have actually begun” and there is no trade or business “until such time as the business

has begun to function as a going concern and performed those activities for which it was organized.” *Id.*

When an entity begins functioning as a going concern/actively engaging in a trade or business is a factual question. *Comm’r of Internal Rev. v. Groetzinger*, 480 U.S. 23, 36 (1987) (determining the existence of a trade or business “requires an examination of the facts in each case”). Petitioner bears the burden of proving when Paperscore and DAC1 began carrying on an active trade or business. TAB Rule XVIII.

## **FACTS AND ANALYSIS**

The facts set forth herein are taken from the stipulation of facts submitted by the parties, the exhibits to the stipulation of facts, petitioner’s petition and the exhibits attached thereto. *See* Sept. 11, 2024 transcript of Tax Appeal Board meeting at 4:6 to 5:7 (parties agreeing these materials are the entire factual record).

These materials principally address the substantiation issue, *i.e.*, did the petitioner incur the expenses he claimed. These materials are largely silent on the predicate question: were Paperscore and DAC1 start-ups or were they carrying on an active trade or business in 2022.<sup>1</sup> For example, the record does not include a

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<sup>1</sup> Petitioner contends that the Notice of Determination issued by the respondent “did not challenge the active status of either” Paperscore and DAC1. Petitioner’s Reply Brief at 2. This is incorrect. The Notice of Determination denied petitioner’s protest and “agree[d] with the auditor’s decision” in the notice of assessment, which expressly stated that the documentation petitioner provided “does not indicate

factual narrative explaining: (i) what activities Paperscore and DAC1 engaged in in 2021, when petitioner concedes these entities were in start-up mode, Petitioner's Reply Brief at 5 ("The Petitioner acknowledges that expenses incurred before January 1, 2022 ... were startup costs.") and at 9 ("Expenses incurred prior to [January 1, 2022] were appropriately classified as startup costs ..."); (ii) what activities Paperscore and DAC1 engaged in in 2022; (iii) how the 2022 activities were different than the 2021 activities; (iv) how the 2022 activities resulted in Paperscore and DAC1 functioning as going concerns/operating as businesses; (v) how the 2022 activities were the activities for which Paperscore and DAC1 were organized; or (vi) the business purpose of any of petitioner's claimed 2022 expenses. In sum, there is effectively no evidence addressing whether Paperscore and DAC1 were functioning as going concerns in 2022 or performing the activities for which they were organized.

The record contains bills reflecting expenses that Paperscore and DAC1 incurred in 2022, but the fact these entities incurred expenses does not prove they are carrying on an active trade or business. Start-up enterprises incur expenses. *See*

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activities were active trade or business in 2022." Petition Exs. A and B. In a May 2, 2024 letter (the "May 2024 Letter") to the Board that was attached to his petition, petitioner asserted that the Notice of Determination was erroneous because respondent had incorrectly concluded that "my businesses were not active trades or business in 2022 ..." The May 2024 Letter states, "[t]he determination letter no longer contests or questions this," but that is incorrect. *See* Petition Exs. A and B.

26 U.S.C. §195(c)(1) (start-up expenses include “any amount ... paid or incurred in connection with ... any activity ... before the day on which the active trade or business begins ....”). The bills petitioner submitted need to be placed in context -- what are the bills for and is that a start-up expenses or related to an operating activity -- and that context needs to be submitted as part of the factual record to the Board. Petitioner has not done that here. The record also contains an undated “Elevator Pitch” related to Paperscore. SOF Ex. R at A370-A384. But this document notes the need for continued design and development of Paperscore’s website, *id.* at A382, the apparent core of Paperscore’s business activities, and does not establish when (if ever) Paperscore began carrying on an active trade or business. *Antonyan*, 2021 WL 5878998, at \*3 (carrying on a trade or business requires a showing of when the business operations began).<sup>2</sup>

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<sup>2</sup> Petitioner’s Reply Brief makes numerous assertions about Paperscore and DAC1’s 2022 “active operations,” “fully functional websites,” “functional web applications,” “functional platforms,” “active pursuit of user acquisition,” “Maintenance of business records and accounts,” “deliberate and reasonable progression in business operations,” “strategy to control costs and achieve profitability,” “adherence to industry norms,” “substantial marketing efforts,” “analysis of marketing effectiveness,” “investments aimed at acquiring paying customers,” and use of their “significant efforts ... to generate profit, including marketing and client acquisition.” Yet, the record before the Board -- the Stipulation of Facts, the exhibits to that stipulation, the petition and the exhibits attached thereto -- does not include facts that support the (mostly conclusory) statements in the Reply Brief. The petitioner bears the burden of providing the Board with facts supporting his contention that Paperscore and DAC1 were carrying on an active trade or business in 2022. He has failed to supply those facts and, as a result, failed to meet his burden.

What information can be gleaned from the factual record about Paperscore and DAC1's 2022 operations strongly suggests that they were start-ups that were not functioning as going concerns in 2022. On August 26, 2023, over 20 months after petitioner claims Paperscore and DAC1 began carrying on an active trade or business, he sent the respondent an email stating "both companies are startups launched on January 1, 2022. Neither of them has had any revenue yet .... we still do not have the capacity to charge the users or receive the money." SOF Ex. D at A24. The concession that Paperscore and DAC1 "are startups" as of August 26, 2023, directly contradicts petitioner's contention that Paperscore and DAC1 ceased being start-ups on January 1, 2022. Petitioner's further admission that neither Paperscore nor DAC1 had "the capacity to charge ... users or receive ... money" in August 2023 indicates their business operations had not actually begun even as of that date.

In addition, petitioner did not obtain a business license for either entity in 2022, SOF ¶33, and petitioner did not mark "yes" to Line H of the Schedule Cs he filed with his 2022 federal return, which asked him if he "started or acquired" Paperscore or DAC1 "during 2022." SOF Ex. A at A5 and A7. The evidence also demonstrates petitioner had no checking account for DAC1, SOF Ex. D at A24, and he did not prepare and maintain distinct business records for each entity, but rather commingled activities on behalf of Paperscore or DAC1 with his personal finances

and/or the finances of other entities he owned. SOF Ex. E at A53-A82, Ex. H at A163-A166; Ex. H at A178-A179.

### CONCLUSION

For the reasons set forth above, the Board concludes that: (i) petitioner has failed to meet his burden of proving that Paperscore and DAC1 began carrying on an active trade or business in 2022; (ii) the respondent's notice of determination must be upheld; and (iii) petitioner's request for relief must be denied.

SO ORDERED this 22<sup>nd</sup> day of July, 2025.

Paul C. Self

Stephen Director / YCS

Joan M. Winters

Robert Slavin / YCS

M. Lynn Fuller