***Rock Bordelon and Torie Bordelon v. Commissioner of Internal Revenue, T. C. Memo. 2020-26*** (United States Tax Court, 2020)

In a significant tax ruling, the U. S. Tax Court held that personal guarantees can establish sufficient at-risk amounts to allow deductions for losses from business activities. The decision affirmed that Rock Bordelon's guarantees for loans to his business entities, Many LLC and Kilgore LLC, made him personally liable, thus enabling him to claim over $1. 5 million in previously disallowed losses. This ruling clarifies the application of the at-risk rules under I. R. C. § 465 and the impact of personal guarantees on a taxpayer's basis in partnerships under I. R. C. § 704(d), offering guidance for taxpayers and tax professionals on the deductibility of business losses.

**Parties**

Rock Bordelon and Torie Bordelon, as petitioners, against the Commissioner of Internal Revenue, as respondent. The Bordelons were the taxpayers seeking redetermination of tax deficiencies determined by the Commissioner.

**Facts**

Rock Bordelon was engaged in the healthcare business, owning Allegiance Health Management, Inc. (AHM), a medical services company, and Allegiance Hospital of Many, LLC (Many LLC), which he formed to purchase and own a hospital in Louisiana. In 2008, Many LLC and AHM borrowed a $9. 9 million loan (Many Loan) from Union Bank, secured by the hospital and its equipment, with Bordelon executing a personal guarantee as required by the USDA. Many LLC was treated as a disregarded entity for federal tax purposes, with its income and expenses reported on Bordelon's Schedule C. Bordelon also owned a 90% interest in Allegiance Specialty Hospital of Kilgore, LLC (Kilgore LLC), a partnership, which borrowed $550,000 in 2011 (Kilgore Loan) from Home Federal Bank, with Bordelon as the sole guarantor. The IRS challenged Bordelon's claimed loss deductions for 2008 related to Many LLC and Kilgore LLC, asserting he was not at risk under I. R. C. § 465 and lacked sufficient basis in Kilgore LLC under I. R. C. § 704(d).

**Procedural History**

The IRS issued notices of deficiency for the tax years 2008-2011, disallowing loss deductions related to Many LLC and Kilgore LLC on the grounds that Bordelon was not at risk under I. R. C. § 465 and lacked sufficient basis in Kilgore LLC under I. R. C. § 704(d). The Bordelons timely filed petitions with the U. S. Tax Court seeking redetermination of the deficiencies. The Commissioner raised the at-risk issue regarding the Kilgore Loan at trial. The court held that Bordelon's personal guarantees established sufficient amounts at risk and increased his basis in Kilgore LLC, allowing him to deduct the previously disallowed losses.

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**Issue(s)**

Whether Rock Bordelon's personal guarantees for the Many Loan and the Kilgore Loan established sufficient amounts at risk under I. R. C. § 465 and increased his basis in Kilgore LLC under I. R. C. § 704(d) to allow him to deduct the losses related to Many LLC for 2008 and Kilgore LLC for 2011?

**Rule(s) of Law**

Under I. R. C. § 465, a taxpayer's loss deductions are limited to the amount for which the taxpayer is considered "at risk," which includes amounts borrowed with respect to the activity, to the extent the taxpayer is personally liable for repayment or has pledged non-activity property as security. I. R. C. § 465(b)(2)(A), (B). A taxpayer is not considered at risk for amounts protected against loss through nonrecourse financing or guarantees. I. R. C. § 465(b)(4). Under I. R. C. § 704(d), a partner's loss deduction is limited to his adjusted basis in the partnership, which is increased by the partner's share of partnership liabilities to the extent the partner bears the economic risk of loss for the liability. 26 C. F. R. § 1. 752-1(a)(1), Income Tax Regs.

**Holding**

The Tax Court held that Bordelon's personal guarantee of the Many Loan established sufficient amounts at risk under I. R. C. § 465, entitling him to deduct the losses related to Many LLC for 2008. Furthermore, Bordelon's personal guarantee of the Kilgore Loan increased his basis in Kilgore LLC under I. R. C. § 704(d) and established amounts at risk under I. R. C. § 465, entitling him to deduct for 2011 his share of suspended losses disallowed for 2008.

**Reasoning**

The court applied the "worst-case scenario" analysis to determine whether Bordelon was personally liable for the Many Loan and the Kilgore Loan under I. R. C. § 465(b)(2)(A). The court found that Bordelon was the "obligor of last resort" for both loans, as he had no right to meaningful reimbursement from the primary obligors (Many LLC and AHM for the Many Loan, and Kilgore LLC for the Kilgore Loan) in the event of default. The court also considered the "realistic possibility" of economic loss under I. R. C. § 465(b)(4) and found that Bordelon was not protected against loss, as there were no other guarantors or recourse obligations for the loans. For the Kilgore Loan, the court applied the "constructive liquidation" test under 26 C. F. R. § 1. 752-2(b), Income Tax Regs. , and found that Bordelon's guarantee made the loan recourse to him, increasing his basis in Kilgore LLC under I. R. C. § 704(d). The court's reasoning relied on prior case law, including *Brand v. Commissioner*, 81 T. C. 821 (1983), *Abramson v. Commissioner*, 86 T. C. 360 (1986), and *Melvin v. Commissioner*, 88 T. C. 63 (1987), which established the principles for determining personal liability and protection against loss under the at-risk rules.

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## Disposition

The Tax Court ruled in favor of the Bordelons, allowing them to deduct the disallowed 2008 Many LLC loss deductions and the 2011 Kilgore LLC loss deductions. Decisions were to be entered under Rule 155.

## Significance/Impact

This decision clarifies the application of the at-risk rules under I. R. C. § 465 and the impact of personal guarantees on a taxpayer's basis in partnerships under I. R. C. § 704(d). It provides guidance for taxpayers and tax professionals on the deductibility of business losses, particularly in cases involving personal guarantees of business loans. The ruling emphasizes the importance of the "worst-case scenario" and "realistic possibility of economic loss" analyses in determining whether a taxpayer is at risk for borrowed amounts. The decision also highlights the significance of the "constructive liquidation" test in determining whether a partnership liability is recourse to a partner, affecting the partner's basis in the partnership. This case may influence future tax planning and litigation involving personal guarantees and the at-risk rules.

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