

Income Tax - Stock Investor Versus Trader

NOVEMBER 11, 2008

BE IN A POSITION OF STRENGTH

A new case examines whether a taxpayer's losses from the purchase and sale of securities were ordinary or capital losses, and whether the expenses related to those transactions were business expenses or were subject to the limitations applicable to itemized deductions. Although taxpayer executed 289 trades in various accounts in 2001 and 372 trades in 2002, the Tax Court held that he was an investor rather than a trader, so his losses were capital losses and his expenses were miscellaneous itemized deductions. In 2001, taxpayer traded on 63 days, which represented less than 40% of the available trading days. In 2002, he traded on 110 days, which represented less than 45% of the trading days. Therefore, it was "doubtful" [that his] trades were conducted with the frequency, continuity, and regularity indicative of a business." *William Holsinger*, TC Memo 2008-191 (Tax Ct.).

UPDATE OF STOCK TRANSFER VS. TRADER

Questions or comments?
E-mail us at taxbriefs@withum.com

If you have any questions, please contact the WS+B tax department. #271



WithumSmith+Brown, PC
Certified Public Accountants and Consultants
New Jersey, New York, Pennsylvania, Maryland, Florida, Colorado