How You Can Deduct Your S Corporation Board Meeting with Your Spouse

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When it comes time to deduct business expenses on a tax return, most corporation include expenses for board meetings. After all, that’s undeniably a business expense, right? Well, sometimes it’s not so clear, like when the only two board members are a wife and husband. If you and your spouse jointly hold stock in your S corporation, how do you prove your right to a deduction? Can you go to a restaurant or take a business trip and still deduct the meeting?

Proving Your Business Purpose

When your board meeting consists of just your spouse and yourself, you have to be careful that the IRS has sufficient evidence documenting the business activities of the meeting. How do they know the event was a board meeting, and not just a pleasant lunch date? Husbands and wives have been conducting business together since before the birth of US tax law. You can study precedent cases to find out how the IRS is likely to view your situation.

Unfortunately, not many cases exist regarding this particular scenario, so you have to look at similar situations regarding deductible business expenses. In the case of Ben Heineman, the IRS questioned him for building an office at his vacation property, costing $1.4 million in today’s dollars (the office was built in 1969). Heineman stated that he could perform certain work (such as making business plans) better with his family and away from the distractions of the Chicago offices. Not exactly the same situation as a board meeting, but the same requirements for determining whether an expense is business or personal.

Heineman was the president and CEO of Northwest Industries, Inc., which had its principal offices in Chicago, IL. Not wanting to spend his summers in Chicago, he built the office at his vacation home in a resort area, Sister Bay, Wisconsin. During the period of the year when Mr. Heineman used this office (from about August until Labor Day), he worked at least 5 hours per day, six to seven days per week. He used this time to perform duties essential to the Chicago offices, including long-term business planning.

In the end, the courts ruled in favor of Mr. Heineman, stating it didn’t matter if it would have been less expensive for him to get a second office in Chicago. He had a necessary and ordinary business reason for the trip—he could concentrate better on his work at that location. Therefore, he was entitled to his deduction.

What the Heineman Case Means for You

Why is this case important for your board meeting scenario? The only deductions that Mr. Heineman claimed were depreciation on his office building and maintenance expenses for it. He did not claim traveling expenses for the trip between Chicago and Wisconsin. However, he did travel—to his vacation property. According to tax law travel regulations, you are able to deduct business expenses incurred on a trip that is otherwise personal, and that is why Mr. Heineman was able to deduct his second office expenses.

The same travel regulations would apply to you if you take your spouses-only board meeting to an out-of-town location. So, what you need to show the IRS (with accepted documentation) is:

1. Business was the primary purpose of the trip, and
2. Business actually took place during the trip.

All you have to do to establish business as the trip’s primary purpose is to ensure that you conduct business on more days than you partake in personal activities. Fulfilling the requirement that the trip was necessary for business is tougher. How do you show that it was necessary to go out of town? Again, look at Heineman. You could have some very good reasons for going out of town to conduct business: get away from ringing phones, find peace and quiet to concentrate, or not to be distracted by email or employees.

As for proving that you conducted business, you simply keep records of evidence that you did work. These could include:

- Documents generated on this trip (such as a business plan)
- A recording of business conversations that took place
- Evidence that you were in a business setting
- A print log showing you physically printed business documents to be discussed and reviewed

The out-of-town board meeting can be a bit of hassle to document, so if you’re banking on the deductions making the cost of the trip worthwhile, you’d better make sure you plan efficiently and can back up your claim to the business purpose of the trip. The funny thing, however, is that an in-town board of directors meeting for a wife and husband is *even more difficult* to prove.

You see, tax law specifies that you cannot deduct personal, family, or living expenses. That means deducting a meal at a restaurant as a business expense is going to be awfully difficult to justify to the IRS, particularly when no one else is participating other than you and your spouse. You’ll see why with an example of a couple who was not allowed to deduct their board meeting expenses.

Mr. and Mrs. Duquette were the sole board members of Norman E. Duquette, Inc. and attempted to deduct expensive meals at two separate restaurants on January 1 and February 1. At the meals, they discussed items such as approval of payment for trips and determining whether to move the business to Naples, Florida. Unfortunately for the Duquettes, the court decided that the couple had no evidence that the issues required significant discussion.

The Duquettes had no employees, and the couple both lived and worked together. The court found no proof that could justify a husband and wife having an expensive dinner in this situation, when they could have just as easily had the discussions elsewhere without the expense. Here is the IRS’s standard stance on the matter (from the Internal Revenue Manual): “Board meetings between husband and wife are not ordinary and necessary business expenses, but personal entertainment expenses, and are therefore not deductible” (Treas. Reg. Section 1.162).[1]

The takeaway from this is that fine dining expenses are not deductible as a wife-and-husband board meeting under official IRS policy. That does not necessarily mean you *cannot* deduct such expenses, but you’d better be prepared to have a rock-solid justification for it (i.e. a well-documented business reason). Unlike the Heineman case, the Duquette case does not set a precedent (and neither does the IRS audit manual).

Applying the Cases to Your Situation

If your spouse-only board meeting needs to be away from home, either in-town or out, you need to be able to answer the question “Why?” Heineman had something concrete to show the IRS and the court—a business plan that he developed *because* he was able to concentrate and focus better at the second office. The Duquettes, in contrast, failed to produce any evidence of work effort during the meetings.

To take advantage of deductions for a spouses-only board meeting for your S corporation, you should be confident that you have at least a 50-50 shot at your reasons being accepted, ***and*** whoever prepares your taxes has to back up that assertion. Your tax preparer is at risk of severe penalties for filing a return that doesn’t have a justifiable 50-50 chance. When using this strategy, show the Heineman case to whoever prepares your taxes. But, remember that you are highly unlikely to be able to deduct the in-town, husband-and-wife meeting at a restaurant.

Still want to conduct a meeting during a meal? If it’s an issue that requires a third party, such as your attorney, then go ahead! It’s only when spouses dine together exclusively that the deduction becomes difficult. But, when the two of you are meeting to discuss business matters with someone else who is necessary to the discussion, it makes sense that you must find a location to meet (just be sure to document the business purpose!).

1. Internal Revenue Manual 4.10.10, Paragraph 9707. ^