

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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|-----------------------------------|---|----------------------|
| BILL SHU CHAN, |) | |
| |) | |
| Petitioner(s), |) | |
| |) | |
| v. |) | Docket No. 28863-14. |
| |) | |
| 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 Court shall transmit herewith to petitioner and respondent a copy of the pages of the transcript of trial in the above case before Judge Kathleen Kerrigan at San Francisco, California, on December 9, 2015, containing her oral findings of fact and opinion rendered at the conclusion of the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, a decision will be entered for respondent.

**(Signed) Kathleen Kerrigan
Judge**

Dated: Washington, D.C.
January 13, 2016

SERVED Jan 15 2016

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1 Bench Opinion by Judge Kathleen Kerrigan
2 December 9, 2015
3 Bill Shu Chan v. Commissioner
4 Docket No. 28863-14

5 THE COURT: The Court has decided to render
6 in this case the following as its oral findings of
7 fact and opinion, which shall not be relied upon as
8 precedent in any other case.

9 This bench opinion is made pursuant to the
10 authority granted by section 7459(b) of the Internal
11 Revenue Code and Rule 152 of the Tax Court Rules of
12 Practice & Procedure. Unless otherwise indicated,
13 all section references are to the Internal Revenue
14 Code in effect for the years in issue, *and all Rule references*
are to the Tax Court Rules
of Practice & Procedure.

15 By notice of deficiency dated September
16 10th, 2014, the Internal Revenue Service determined a
17 deficiency in the federal income tax of Petitioner
18 for tax years 2011 and ²⁰¹²'12. Respondent disallowed
19 1290 of office expenses Petitioner claimed on
20 Schedule C, profit or loss from business for tax year
21 2011. Petitioner has conceded this issue. Respondent
22 disallowed Petitioner's deductions for attorneys'
23 fees of 135,471 for tax year 2011 and 164,427 for tax
24 year 2012.

25 The issue for our decision is whether

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1 Petitioner is entitled to deductions for attorneys'
2 fees.

3 Trial of this case was conducted on
4 December 7th ²⁰¹² in San Francisco, California. kk

5 Petitioner represented himself; Nicholas R. Rosado
6 represented Respondent. The parties' stipulation of
7 facts and exhibits were admitted into evidence along
8 with the attached exhibits. Only Petitioner
9 testified. We find the following facts:

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FINDINGS OF FACT

12 Petitioner resided in California when he filed
13 the petition.

14 Before the years at issue, Petitioner commenced
15 a lawsuit against the neighbors of his residence in
16 California. The lawsuit was for actual and treble
17 damages and attorneys' fees for trespass, negligence,
18 and hiring of unlicensed contractors to perform
19 licensed services. This case was settled as a result
20 of mediation on August 4th, 2008. The dispute was
21 about the pruning of trees. Petitioner contended
22 that these trees were on his property. As part of
23 the settlement, Petitioner will not replant trees
24 within a 10-foot front setback.

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Petitioner was not content with the

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1 settlement and hired counsel to have the settlement
2 agreement withdrawn. On August 19th, 2009, counsel
3 filed a complaint on behalf of Petitioner against the
4 law firms which represented Petitioner during his
5 dispute with his neighbor.

6 During 2011 and 2012, Petitioner was
7 represented by three different law firms. The
8 invoices for the three law firms describe activities
9 related to the legal malpractice claim in the dispute
10 with his neighbor. The invoices do not mention
11 Petitioner's business.

12 Petitioner operated a business out of his home.
13 He made equipment that was sold to the defense
14 industry.

OPINION

16 Generally, the Commissioner's determinations in
17 a notice of deficiency are presumed correct, and a
18 taxpayer bears the burden of proving those
19 determinations are incorrect. Rule 142(a); Welch v.
20 Helvering, 290 US 111, 115 (1933). Petitioner does
21 not contend that the burden of proof should be
22 shifted to Respondent under section 7491(a), and the
23 record does not suggest any basis for a shift.

Attorneys' Fees Deductions

25 Deductions are a matter of legislative grace,

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1 and a taxpayer must prove his or her entitlement to a
2 deduction. INDOPCO, Inc. v. Commissioner, 503 US 79,
3 84 (1992); New Colonial Ice Co. v. Helvering, 292 US
4 435, 440 (1934). Sections 162 and 212 allow a
5 deduction for all ordinary and necessary expenses
6 paid or incurred during a taxable year in carrying on
7 a trade or business, or for the production or
8 collection of income. See sections 162(a) and 212.

9 Section 162(a) allows a deduction for all
10 ordinary and necessary expenses paid or incurred
11 during the year in carrying on a trade or a business.
12 Section 212 allows an individual to deduct all the
13 ordinary and necessary expenses paid or incurred in
14 producing income; managing, conserving, or
15 maintaining property held for the production of
16 income; or determining, collecting, or refunding a
17 tax. Ordinary and necessary expenses incurred in
18 connection with the management, conservation, or
19 maintenance of property held for use as a residence
20 by the taxpayers are not deductible. Section 1.212-
21 1(h), Income Tax Regs.

22 Section 262(a) disallows a deduction for
23 personal expenses. To determine whether an expense
24 is deductible as a trade or business expense or as a
25 non-business, profit-seeking expense, as opposed to a

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1 nondeductible personal expense, we look to the origin
2 and character of the expense. Woodward v.
3 Commissioner, 397 US 572, 577 (1970); United States
4 v. Gilmore, 372 US 39, 48 (1963); American Stores Co.
5 & Subs. v. Commissioner, 114 TC 458, 470 (2000). If
6 Petitioner's personal lawsuit against his neighbor is
7 proximately related to his trade or business, then
8 the legal expenses associated with the lawsuit are
9 deductible. See Kornhauser v. United States, 276 US
10 145, 153 (1928); Dowd v. Commissioner, 68 TC 294,
11 303-304 (1977).

12 The ascertainment of a claim's origin is a
13 factual determination that must be made on the basis
14 of the facts and circumstances of the litigation.
15 United States v. Gilmore, supra at 47-49. The most
16 important factor to consider is the circumstances out
17 of which the litigation arose. See Boagni v.
18 Commissioner, 59 TC 708 (1973).

19 Petitioner contends that the legal claims
20 were related to his business. Petitioner operates
21 his business from his residence. He testified that
22 he needs to keep his equipment cool and that the
23 trees provided shade that kept his property cool.

24 Petitioner filed the claim against his
25 neighbors. The complaint was silent regarding his

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1 business. Petitioner contends that he did not want
2 to make it public that he operated a business from
3 his residence because of the value of the equipment.
4 Petitioner testified that trees help lower
5 temperatures, and heat could impact the equipment
6 that he manufactures.

7 The origin of Petitioner's legal claims
8 were personal in nature. Petitioner failed to
9 provide evidence that the civil lawsuit against his
10 neighbor proximately related to his trade or
11 business. Petitioner's lawsuit did not arise
12 directly out of his business affairs. The
13 circumstances out of which the litigation arose were
14 the result of Petitioner's use of the property as his
15 primary residence.

16 Petitioner's legal claims were also not
17 related to a non-business, profit-seeking motive.
18 The record is devoid of evidence establishing that
19 Petitioner's legal expenses were incurred for the
20 production of income; the management, conservation,
21 or maintenance of property held for the production of
22 income; or determining, collecting, or refunding a
23 tax. Instead, the record establishes that
24 Petitioner's legal expenses were incurred for the
25 management, conservation, or maintenance of property

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1 held for use as a residence by Petitioner.

2 As such, Petitioner is not entitled to
3 deduct his legal expenses, under either 162(a) or
4 section 212.

5 Conclusion

6 Accordingly, we sustain the deficiency
7 determined by Respondent, and a decision will be
8 entered for Respondent.

9 This concludes the Court's oral findings of
10 the facts and opinion in this case.

11 (Whereupon, at 2:46 p.m., the above-
12 entitled matter was concluded.)

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