

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

RENEE SUNYOUNG LIM,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 15130-15.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

Pursuant Rule 152(b) of the Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioners and to respondent a copy of the pages of the transcript of the proceedings in the above case before the undersigned judge at Los Angeles, California, on December 7, 2016, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

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

**(Signed) David Gustafson  
Judge**

Dated: Washington, D.C.  
December 19, 2016

**SERVED Dec 20 2016**

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1 Bench Opinion by Judge David Gustafson  
2 December 7, 2016  
3 Renee Sunyoung Lim v. Commissioner  
4 Docket No. 15130-15

5 The Court has decided to render the following as  
6 its oral Findings of Fact and Opinion in this case.  
7 This Bench Opinion is made pursuant to the authority  
8 granted by section 7459(b) of the Internal Revenue  
9 Code (26 U.S.C.), and Rule 152 of the Tax Court Rules  
10 of Practice and Procedure; and it shall not be relied  
11 on as precedent in any other case.

12 By notice of deficiency ("NOD") dated March 10,  
13 2015 (Ex. 1-J), the Internal Revenue Service ("IRS")  
14 determined a deficiency of \$82,301 in the Federal  
15 income tax of petitioner Renee Sunyoung Lim for the  
16 year 2011, along with an addition to tax under  
17 section 6651(a)(1) for failure to timely file a  
18 return and an accuracy-related penalty under section  
19 6662(a). There were two adjustments in the NOD: (1)  
20 additional income from an S Corporation, which Dr.  
21 Lim has conceded, and (2) disallowance of a claimed  
22 loss of \$205,053 on the sale of real estate, which is  
23 the principal issue for decision here. For the  
24 reasons explained hereafter, we sustain the IRS's  
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1 disallowance of the claimed loss, as well as the  
2 addition to tax and the penalty.

3 Trial of this case was conducted on December 6,  
4 2015, in Los Angeles, California. Dr. Lim was  
5 represented by Howard Rosenblatt; and the respondent,  
6 the Commissioner, was represented by Steven Roth.  
7 Employing the burden-of-proof principles set out  
8 below, we find the following facts:

### 9 FINDINGS OF FACT

10 Dr. Lim is a dentist who owns and practices in  
11 multiple offices.

#### 12 Purchase and sale of condominium

13 In 2000 Dr. Lim purchased a condominium in  
14 Malibu for approximately \$368,000. In 2007 she  
15 began using it as rental property. Sometime during  
16 the time she owned the condo, she twice refinanced  
17 it, borrowing against her equity in the condo and  
18 drawing out first \$705,000 and later \$113,000.

19 Dr. Lim alleges that, during the time she owned  
20 the condo, she made improvements--which she described  
21 in some detail--at an estimated cost of between  
22 \$230,000 and \$250,000. (Her testimony was equivocal,  
23 but she sometimes seemed to say that she made these  
24 expenditures using some of the proceeds of the  
25 refinancing. However, she also testified that she

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1 used those proceeds (or some of them) for  
2 improvements on another piece of property, so we  
3 cannot tell whether any of the proceeds were spent on  
4 the condo, or in what amounts.) Dr. Lim offered no  
5 documentary evidence to support the fact or amount of  
6 any expenditures for any improvements, so we are  
7 unable to find that any improvements on the condo  
8 were made at any cost.

9 In 2011 she sold the condo for \$490,000. She  
10 characterized the transaction as a "short sale",  
11 which we take to mean that the proceeds were not  
12 sufficient to pay off the mortgage debt.

### 13 The initial non-filing of the 2011 tax return

14 Dr. Lim's long-time return preparer was Mr. An.  
15 In 2011 he went through a divorce and for that reason  
16 failed to timely file returns of Dr. Lim and several  
17 other customers. He mitigated his fault to Dr. Lim  
18 and minimized the value of filing returns on time,  
19 explaining to her that if you file your return late,  
20 the IRS is less likely to audit you--a rumor she said  
21 she had also heard from some of her acquaintances.  
22 When Mr. An's failures became known, some of Dr.  
23 Lim's acquaintances fired Mr. An and did not use him  
24 thereafter.

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1           Nonetheless, sometime soon after the end of  
2 2011, Dr. Lim took her 2011 financial information to  
3 Mr. An and once again asked him to prepare her  
4 return. He told her he would file it electronically.  
5 Mr. An did not file a 2011 return for Dr. Lim, and  
6 Dr. Lim then began to get letters from the IRS  
7 inquiring about her 2011 return.

8           Dr. Lim testified that she asked Mr. An what was  
9 going on. We accept that she did contact Mr. An, but  
10 her testimony as to the details of their  
11 conversation--i.e., that he assured her that the  
12 return had been filed, that he told her that the IRS  
13 often loses returns, and that when she asked him for  
14 a copy of her return, he said he could not give it to  
15 her because it had been filed electronically--are not  
16 credible to us, and we are unable to find the precise  
17 facts of that conversation. In any event, Dr. Lim  
18 did not initiate any communication with the IRS about  
19 her 2011 return.

### 20 The late filing of the 2011 return

21           In May 21, 2014--25 months after the 2011 return  
22 had been due--a tax return was filed on Dr. Lim's  
23 behalf--filed on paper and not electronically. The  
24 return bears her name and address and reflects a  
25 detailed knowledge about her financial affairs, and

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1 she does not contend that the information reflected  
2 on it is incorrect. On the contrary, she resists the  
3 correction to the loss item at issue here. The return  
4 bears a paid preparer's name and signature of David  
5 A. Shin, a colleague of Mr. An. The return also  
6 bears a purported signature of Dr. Lim as taxpayer,  
7 dated "5-20-14", but it is unclear whether Dr. Lim  
8 actually signed it. However, we do find that the  
9 return was based on the information that Dr. Lim gave  
10 to Mr. An and was prepared and submitted in belated  
11 response to her authorization to file a return.  
12 Moreover, Dr. Kim has not disavowed the return.

### 13 Deficiency notice and petition

14 The IRS evidently examined Dr. Lim's return,  
15 proposed adjustments to it, and issued the NOD on  
16 March 10, 2015, which determined a deficiency of  
17 income tax and a penalty. When she received the NOD  
18 (the starting point of which was the filed return),  
19 Dr. Lim responded by timely mailing her petition to  
20 this Court on June 8, 2015.

21 Dr. Lim settled the first issue by a  
22 "Stipulation of Settled Issues" filed in this case on  
23 May 25, 2016, and she did not suggest in any fashion  
24 that the return was not validly hers.

25 June 2016 calendar call

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1           When this case was first scheduled for trial,  
2 Dr. Lim appeared with Mr. An at the calendar call on  
3 June 13, 2016. The Court permitted Mr. An to speak  
4 (with Dr. Lim present), and his comments included a  
5 reference to the "expenses that were deducted on the  
6 Schedule E ... when we prepared the return". (Tr.  
7 at 4.) Dr. Lim made no objection or correction to  
8 the statement that Mr. An's firm had prepared "the  
9 return".

10           Respondent's counsel described multiple  
11 unavailing efforts to obtain information and  
12 cooperation from Dr. Lim and Mr. An (Tr. 6-7), which  
13 Dr. Lim deflected by explaining that she was "busy  
14 practicing as a dentist" and had simply passed  
15 counsel's mail along to Mr. An (Tr. 8). After Dr.  
16 Lim requested a continuance, the Court granted it but  
17 warned Dr. Lim that a future judge "might not look  
18 favorably upon a continuance request", admonished  
19 her to "be diligent about getting those documents to  
20 the Respondent", and stated, "I don't know who you're  
21 going to choose to work with you, Mr. An or his  
22 associate, or somebody else, but you should be  
23 diligent in working on this case."

24   Pretrial developments

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1           Despite the admonition at the June 2016 calendar  
2 call, Dr. Lim thereafter evidently remained "busy  
3 practicing as a dentist" and continued to relegate  
4 the work on this case entirely to Mr. An. However,  
5 Mr. An continued to fail to provide documents to  
6 respondent. (See respondent's pretrial memorandum  
7 filed November 18, 2016, at 1.)

8           On July 5, 2016, we served on the parties our  
9 standing pretrial order ("SPTO") and a notice that  
10 trial was set for the session beginning December 5,  
11 2016. A reminder of the trial date was served  
12 October 21, 2016. After the Court received  
13 respondent's pretrial memorandum filed November 18,  
14 2016, complaining of petitioner's non-cooperation,  
15 the Court attempted to initiate a telephone  
16 conference with the parties but was unable to reach  
17 Dr. Lim. We therefore issued an order on November  
18 23, 2016, that stated, "Pursuant to notice issued on  
19 July 5, 2016, this case will be tried at the Court's  
20 session in Los Angeles, California, beginning at  
21 10:00 a.m. on Monday, December 5, 2016", and that  
22 ordered Dr. Lim to telephone chambers.

23           Dr. Lim did so, and on November 28, 2016, we  
24 held a telephone conference with the parties during  
25 which Dr. Lim stated that she had appointments with

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1 dental patients on December 5 and could not attend.  
2 We responded that she had been on notice of the trial  
3 schedule since we issued our notice and SPTO on July  
4 5, 2016, that it had been her responsibility to order  
5 her affairs in such a way that she could comply with  
6 that schedule, and that we would not grant any  
7 further continuance.

8           When the case was called from the calendar on  
9 December 5, 2016, Dr. Lim again requested a  
10 continuance, explaining that she hoped to hire a  
11 lawyer to help her, but we denied the request, citing  
12 Rule 133 (re "employment of new counsel"). We set  
13 her trial for 9:00 a.m. on December 6, 2016, and  
14 urged her to accept her opponent's offer to receive  
15 documents from her that day and include them in the  
16 parties' Rule 91(a) stipulation--despite their being  
17 14 days overdue under the terms of the SPTO.

18 Sometime after the calendar call, Dr. Lim telephoned  
19 the trial clerk and requested that her trial be  
20 delayed to the afternoon, because her new lawyer was  
21 available in the afternoon but not the morning. We  
22 granted that request and postponed the trial until  
23 3:00 p.m.

24           The case was called at that time. Dr. Lim was  
25 the only witness; and the only exhibits offered into

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1 evidence were Dr. Lim's 2011 tax return (Ex. 2-J) and  
2 the NOD (Ex. 1-J), which were offered by the parties  
3 jointly.

### 4 OPINION

#### 5 I. Burden of proof

6 The IRS's determination is presumed correct, and  
7 the taxpayer generally bears the burden to prove his  
8 entitlement to any deductions he claims. Rule  
9 142(a). Taxpayers must satisfy the specific  
10 requirements for any deduction claimed. See INDOPCO,  
11 Inc. v. Commissioner, 503 U.S. 79, 84 (1992).

12 Furthermore, taxpayers are required to maintain  
13 records sufficient to substantiate their claimed  
14 deductions. See sec. 6001; 26 C.F.R. sec.  
15 1.6001-1(a); see also id. sec. -1(e) ("The books or  
16 records \* \* \* shall be retained so long as the  
17 contents thereof may become material in the  
18 administration of any internal revenue law").

19 Dr. Lim presented only her own testimony, and  
20 that testimony was problematic. She seemed to evade  
21 giving precise answers to questions, even those of  
22 her own attorney. We found her testimony  
23 unconvincing.

24 It is true that we denied Dr. Lim a continuance  
25 that she requested in order to obtain additional

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1 evidence, including evidence from Mr. An who, she  
2 professed to have learned only recently, is  
3 unreliable and unethical. However, her continuing to  
4 rely on Mr. An--despite his failures beginning as  
5 early as 2011 and despite learning at the June 2016  
6 calendar call that he had failed to cooperate in the  
7 pretrial business that she had left to him--was her  
8 own decision. It was indeed most unwise to refuse to  
9 read her opponent's mail and the Court's orders and  
10 instead pass them along to him, but one cannot shield  
11 oneself from responsibility by choosing to incur the  
12 obvious and known risks of relying on someone who has  
13 been manifestly unreliable.

14 It is also true that we denied petitioner's  
15 counsel's motion during closing argument to reopen  
16 the record to admit additional evidence. However,  
17 the additional evidence was not in the courtroom but  
18 was anticipated testimony of Mr. An. This motion was  
19 in effect simply another request for a continuance.  
20 We denied that motion. (However, we did so without  
21 prejudice to a timely motion (see Rule 161) to  
22 reconsider this opinion, reopen the record, and allow  
23 into evidence actual documents proffered with the  
24 motion. We do not say we would grant such a motion;  
25 instead, we would consider its merits at the time;

1 but if Dr. Lim's position is that with a little more  
2 time she could have carried her burden of proof, then  
3 she has one last chance to demonstrate that with a  
4 presentation of the actual proof.)

5 II. Real estate losses

6 Taxpayers are allowed deductions for certain  
7 business and investment expenses under sections 162  
8 and 212. However, a taxpayer must substantiate her  
9 entitlement to the deductions and any resulting  
10 losses. Here the parties seem to agree that  
11 petitioner acquired her condo for about \$368,000 and  
12 that she sold it for \$490,000. Without more, those  
13 figures yield not a loss of \$205,053 (as Dr. Lim's  
14 return reported) but a gain of at least \$122,000. Of  
15 course, that result could be affected by proving that  
16 one could add, to the cost of initially acquiring the  
17 condo, subsequent capital costs for improvements.  
18 But Dr. Lim failed to so prove. Respondent did not  
19 plead the greater deficiency that would result from  
20 determining gain on the sale, but rather simply  
21 defended the NOD's disallowance of the loss. We  
22 sustain that disallowance.

23 III. Late-filing addition to tax

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1 Section 6651(a)(1) imposes an addition to tax  
2 for failure to file a timely return. We have found  
3 that Dr. Lim filed no tax return for 2011 until May  
4 2014. The addition is therefore warranted, in the  
5 manner computed in the NOD (Ex. 1-J at 13), "unless  
6 it is shown that such failure is due to reasonable  
7 cause and not due to willful neglect". Sec.  
8 6651(a)(1). Dr. Lim argued, in effect, that Mr.  
9 An's failure to timely file her return was his fault;  
10 but she had already heard him excuse his late filing  
11 of returns, and she should have known he was  
12 unreliable. When she received notices from the IRS  
13 and accepted his statements that the IRS loses  
14 returns, her failure to remedy the situation then was  
15 further evidence that she was not just delegating but  
16 abdicating her duties as a taxpayer. She has not  
17 shown reasonable cause.

#### 18 IV. Accuracy-related penalty

19 Section 6662 imposes an "accuracy-related  
20 penalty" of 20 percent of the portion of the  
21 underpayment of tax that is attributable to the  
22 taxpayer's negligence or disregard of rules or  
23 regulations or that is attributable to any  
24 substantial understatement of income tax. The amount  
25 of the 2011 understatement that results from the

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1 adjustments that we have sustained (i.e., \$82,301) is  
2 "substantial" under section 6662(d)--i.e., it exceeds  
3 both \$5,000 and 10 percent of the tax that should  
4 have been reported (i.e., 10% of \$85,817, or \$8,582).  
5 We therefore need not reach the issue of negligence.

6 Dr. Lim cannot successfully invoke any of the  
7 defenses that a taxpayer might assert against an  
8 accuracy-related penalty: She had no "substantial  
9 authority" for her position, and she did not disclose  
10 on her return that she was unable to substantiate her  
11 entitlement to the disputed items (see sec.  
12 6662(d)(2)(B)); and she did not show reasonable cause  
13 and good faith for her erroneous reporting (see sec.  
14 6664(c)(1)). This third potential defense might be  
15 available if the evidence showed, for example, that  
16 she had relied on the advice of a tax professional in  
17 taking the positions she took; but in this case she  
18 gave the return preparer the information that he used  
19 to prepare the return. If there were errors in that  
20 information, then the fault is hers and not his. She  
21 did not make any showing that the return as filed  
22 reflected information other than what she had  
23 provided. She has not shown "reasonable cause and  
24 good faith".

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1           During closing argument after trial, we raised  
2 with respondent the question whether, if Dr. Lim did  
3 not sign the return, then perhaps it might not have  
4 been her return; and section 6664(b) provides that  
5 the accuracy-related penalty applies "only in cases  
6 where a return of tax is filed". However, neither  
7 Dr. Lim nor her counsel initiated argument on that  
8 issue nor took it up after the Court raised it.  
9 Moreover, while it is true that a return not signed  
10 by the taxpayer is not valid, see Mohamed v.  
11 Commissioner, T.C. Memo. 2013-255, it is also true  
12 that in some circumstances (such as a joint return) a  
13 taxpayer may file a return by "tacit consent", see  
14 Reifler v. Commissioner, T.C. Memo. 2015-199, part  
15 II.C, or may ratify an unsigned return, see Harris v.  
16 Commissioner, T.C. Memo. 2009-26, n.3; and it is also  
17 true that a taxpayer like Dr. Lim might be equitably  
18 estopped from making a contention, see Reifler v.  
19 Commissioner, T.C. Memo. 2013-258, that contradicted  
20 her prior behavior and the positions she took. In  
21 any event, respondent was genuinely surprised by the  
22 Court's raising this issue; and if after trial  
23 petitioner had moved for leave to amend her petition  
24 to state as a defense to penalty that she had not  
25 signed the return, then the motion would have been

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1 denied as unfairly prejudicial to respondent. We  
2 therefore do not consider that issue now.

3 This concludes the Court's oral Findings of Fact  
4 and Opinion in this case.

5 (Whereupon, at 4:49 p.m., the above-  
6 entitled matter was concluded.)

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