

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOHN M. MAJCHER,)
)
) **SR**
)
) Petitioner,)
)
)
) v.) Docket No. 1903-16S
)
)
) 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 the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before Special Trial Judge Lewis R. Carluzzo at Chicago, Illinois, 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 with respect to the deficiency and the section 6651(a)(1) addition to tax, and for petitioner with respect to the section 6662(a) accuracy-related penalty.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
February 24, 2017

SERVED Feb 27 2017

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1 Bench Opinion by Special Trial Judge Lewis R.
2 Carluzzo
3 February 9, 2017
4 John M. Majcher v. Commissioner
5 Docket No. 1903-16S

6 THE COURT: The Court has decided to render
7 Oral Findings of Fact and Opinion in this case and
8 the following represents the Court's Oral Findings of
9 Fact and Opinion (bench opinion). Unless other
10 noted, section references made in this bench opinion
11 are to the Internal Revenue Code of 1986, as amended,
12 in effect for the relevant period and Rule references
13 are to the Tax Court Rules of Practice and Procedure.
14 This bench opinion is made pursuant to the authority
15 granted by section 7459(b) and Rule 152.

16 This proceeding for the redetermination of
17 a deficiency is a small tax case subject to the
18 provisions of section 7463 and Rules 170 through 175.
19 Pursuant to section 7463(b) the decision entered in
20 this case shall not be treated as precedent for any
21 other case.

22 John M. Majcher appeared on his own behalf.
23 Frederic J. Fernandez appeared on behalf of
24 Respondent.

25 In a Notice of Deficiency dated October 29,

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1 2016 (notice), Respondent determined a deficiency in
2 Petitioner's 2011 Federal income tax, and imposed a
3 section 6651(a)(1) addition to tax and a section
4 6662(~~f~~)^{ayll} penalty.

5 After a concession by Respondent, the
6 issues for decision are: (1) whether Petitioner is
7 entitled for a deduction for legal expenses incurred
8 and paid in connection with a domestic dispute, and
9 (2) whether Petitioner had reasonable cause for
10 failing to file a timely 2011 Federal income tax
11 return (return).

12 Some of the facts have been stipulated and
13 are so found. At the time the petition was filed
14 Petitioner lived in Illinois.

15 Before making specific references to those
16 facts, and in order to place the facts in context, we
17 find it helpful to summarize the principles of law
18 that will inform our analysis. We begin by reciting
19 some that are very familiar. That is, the
20 Commissioner's determinations in a Notice of
21 Deficiency are presumed correct, and the taxpayer
22 bears the burden of proving that those determinations
23 are erroneous. Rule 142(a); Welch v. Helvering, 290
24 U.S. 111, 115 (1933). Moreover, deductions are a
25 matter of legislative grace, and the taxpayer bears

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1 the burden of proving that he or she is entitled to
2 any deduction claimed. Rule 142(a); New Colonial Ice
3 Co. V. Helvering, 292 U.S. 435, 440 (1934); Welch v.
4 Helvering, supra.

5 As relevant here, we think it appropriate
6 to note that section 162(a) allows a taxpayer to
7 deduct all ordinary and necessary expenses paid or
8 incurred in connection with the taxpayer's trade or
9 business, including a taxpayer's trade or business as
10 an employee. Lucas v. Commissioner, 79 T.C. 1
11 (1982). On the other hand, expenses paid or incurred
12 by a taxpayer for family, living or other personal
13 reasons are only deductible as specifically provided
14 in the Internal Revenue Code. See section 262(a).
15 With respect to a deduction for legal fees, we look
16 to the origin of the claim giving rise to those legal
17 fees. See Gilmore v. Commissioner, 372 U.S. 39
18 (1963). If the legal fees relate to a taxpayer's
19 trade or business, or other types of activities that
20 specifically allow for deductions, then the legal
21 fees might be deductible. If the legal fees relate
22 to a family or a personal matter, then the fees are
23 not deductible.

24 With these fundamental principles in mind,
25 we turn to the facts in this case, which for the most

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1 part are not in dispute and easily summarized.

2 Petitioner and his former spouse married in
3 2008. They have one child together. Prior to the
4 year in issue all members of the family lived in
5 Illinois, where both Petitioner and his former spouse
6 were employed. Petitioner and his former spouse
7 separated and were divorced not long after they were
8 married. Following their separation their child
9 lived with Petitioner's former spouse, but Petitioner
10 enjoyed, and took advantage of, liberal visitation
11 rights with his child. At some point before the year
12 in issue, Petitioner's former spouse became
13 unemployed, and due to economic conditions had to
14 move in with her mother in Arizona. Petitioner's
15 child moved to Arizona with Petitioner's former
16 spouse at some point in 2011, initially on a
17 temporary basis. Concerned that his child's
18 temporary living arrangements in Arizona might become
19 permanent, and if that happened, what impact that
20 might have on his visitation rights, child support
21 obligations and his relationship with his child,
22 Petitioner hired a lawyer to protect and/or enforce
23 his parental rights. During 2011 he paid more than
24 \$24,000 in legal fees in this regard, which amount
25 represents a substantial portion of his entire income

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1 for that year. He deducted those legal fees on a
2 Schedule A, Itemized deductions, included with his
3 return, which he prepared and filed late.

4 That deduction is disallowed in the notice
5 and that deduction is here in dispute. As noted,
6 Respondent also imposed a section 6651(a) addition to
7 tax and a section 6662(a) accuracy-related penalty
8 (now conceded) in the notice. Other adjustments made
9 in the notice are computational and need not be
10 addressed in this bench opinion.

11 According to Petitioner, the legal expenses
12 are deductible because they were incurred so that he
13 would not have to move to Arizona to ensure or
14 enforce his parental rights. Petitioner goes on to
15 argue that if he had to move to Arizona, he would
16 have had to give up his employment in Illinois and
17 probably could not have secured similar employment in
18 Arizona. So, as he views the matter, the legal
19 expenses were incurred and paid, in effect, to
20 maintain his employment. According to Petitioner the
21 fees should be deductible as unreimbursed employee
22 business expenses.

23 Respondent sees it differently, and so do
24 we. Maintaining his relationship with his child in
25 Arizona, while at the same time continuing his

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1 employment in Illinois, obviously are, and were at
2 all times relevant, important to Petitioner. Like
3 Respondent, however, we connect the legal expenses
4 here in dispute to petitioner's relationship with his
5 child, not to his employment in Illinois. That being
6 so, we find that Petitioner's personal, family and
7 living circumstances are the origin of the claim for
8 legal fees, the deduction of which is precluded by
9 section 262, and reject Petitioner's claim that the
10 legal fees represent ordinary and necessary employee
11 business expenses otherwise deductible under section
12 162. It follows that Petitioner is not entitled to
13 the deduction here in dispute and we so hold.

14 At trial Petitioner was asked why his
15 return was not timely filed. In general terms he
16 explained the difficult time he was going through as
17 a result of his domestic dispute, but he did not
18 provide a specific reason for the delay in filing.
19 Although we sympathize with ^{himself} ~~his~~ for the personal
20 difficulties he was experiencing at the time, his
21 explanation does not excuse the late filing of his
22 2011 return. Respondent's imposition of the section
23 6651(a) late filing addition to tax is sustained.

24 To reflect the foregoing and Respondent's
25 concession, decision will be entered for Respondent

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1 with respect to the deficiency and the section
2 6651(a) addition to tax, and for Petitioner with
3 respect to the section 6662(a) accuracy-related
4 penalty.

5 This concludes the Court's bench opinion in
6 this matter.

7 (Whereupon, at 1:44 p.m., the above-
8 entitled matter was concluded.)

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