

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

JOSZEPH HJALMER EOTVOS & KELLY)
MAE EOTVOS,)
)
Petitioners,)
)
v.) Docket No. 21450-16S.
)
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 with this order to petitioner and respondent a copy of the pages of the transcript of the trial in this case before Judge Ronald L. Buch at St. Paul, Minnesota, 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 under Rule 155.

**(Signed) Ronald L. Buch
Judge**

Dated: Washington, D.C.
November 9, 2017

SERVED Nov 09 2017

1 Bench Opinion by Judge Ronald L. Buch
2 October 2, 2017
3 Jozseph Hjalmer Eotvos & Kelly Mae Eotvos
4 Docket No. 21450-16S

5 THE COURT: The following represents the Court's
6 oral findings of fact and opinion. The oral findings of
7 fact and opinion may not be relied upon as precedent in
8 any other case. This opinion is in conformity with
9 Internal Revenue Code section 7459(b) and Rule 152(a) of
10 the Tax Court Rules of Practice and Procedure. Any
11 section references refer to the Internal Revenue Code or
12 the Treasury regulations in effect during the years at
13 issue, and any Rule references are to the Tax Court Rules
14 of Practice and Procedure.

15 This case was heard pursuant to section 7463.
16 Under section 7463(b), any decision to be entered in this
17 case is not reviewable by any other court, and this
18 opinion may not be treated as precedent for any other
19 case.

20 The question before the Court is the extent to
21 which Mr. and Mrs. Eotvos are entitled to deductions
22 stemming from their home-based childcare business beyond
23 those already allowed by the Commissioner. For 2014, an
24 accuracy-related penalty is also at issue.

25

BACKGROUND



1 Beginning in 2012, Mrs. Eotvos operated a
2 childcare business out of her home. On their returns for
3 2012 through 2014, the Eotvoses claimed depreciation
4 expenses for the use of their home and their personal
5 assets. When called upon to substantiate those expenses,
6 the Eotvoses did not directly substantiate what was
7 claimed. Instead, they reconstructed those expenses by
8 photographing a wide array of household assets and
9 estimating their value. Those assets included swords and
10 battle axes, which Mr. Eotvos collects, and Mrs. Eotvos's
11 jewelry. In 2014, the Eotvoses claimed substantial
12 repairs and maintenance expenses for improvements made to
13 their garage, driveway, and sidewalk.

14 DISCUSSION

15 Taxpayers are allowed a deduction for ordinary
16 and necessary business expenses -- section 162 -- and for
17 depreciation, section 167. The allowance of such
18 deductions, however, is not absolute. The property for
19 which the Eotvoses claimed deductions fall into the
20 categories of personal property and real property (use of
21 the home). We take them in turn.

22 PERSONAL PROPERTY

23 Section 262 disallows deductions for personal
24 living expenses. There's a specific rule in section 262
25 that's instructive for how the disallowance rule applies.

1 With respect to telephone expenses, a first line is not
2 deductible because it is a personal expense; section
3 262(b). The reason is easy to see: the first line, even
4 if used for business purposes, exists primarily as a
5 personal expense. Thus, it is nondeductible. As we
6 stated in Deihl v. Commissioner, T.C. Memo 2005-287:

7 "When applying sections 162 and 167 in the
8 context of particular items of property, the following
9 general framework has emerged through the case law. Under
10 either section, the initial question is whether ownership
11 and maintenance of the property is related primarily to
12 the business or to personal purposes. International
13 Artists, Ltd. v. Commissioner, 55 T.C. 94, 104 (1970) (and
14 cases cited thereat); see also, for example, Richardson v.
15 Commissioner, T.C. Memo. 1996-368; Griffith v.
16 Commissioner, T.C. Memo. 1988-445. The answer to this
17 question determines which of the three approaches is
18 appropriate: (1) If acquisition and maintenance of the
19 property is primarily associated with profit-motivated
20 purposes and any personal use is distinctly secondary and
21 incidental, expenses and depreciation are deductible; (2)
22 if acquisition and maintenance is motivated primarily by
23 personal considerations, deductions are disallowed; and
24 (3) if substantial business and personal motives exist,
25 allocation becomes necessary. International Trading

1 Company v. Commissioner, 275 F.2d 578, 584-587¹, affirming ^{12/3}
2 T.C. Memo. 1958-104; International Artists, Ltd. v.
3 Commissioner, supra at 104-105; Richardson v.
4 Commissioner, supra; Griffith v. Commissioner, supra;
5 Kenerly v. Commissioner, T.C. Memo. 1984-117."

6 The Eotvoses provided inadequate evidence to
7 substantiate the business use of what appear, on their
8 face, to be personal assets. Battle axes were not used as
9 children's playthings, and their acquisition and
10 maintenance was not in furtherance of the day care
11 business. Nor do we believe that the acquisition or
12 maintenance of Mrs. Eotvos's jewelry was for the day care.
13 The assets that might plausibly have been used in the day
14 care were acquired for the Eotvoses's children and it is
15 unclear the extent to which they were actually used in the
16 day care. In that regard, we give little credibility to
17 Mr. Eotvos's testimony. He clearly sought out to make
18 even the most tenuous of claims that property was used in
19 the day care. He made no effort to distinguish those
20 items that are used regularly for the day care business.
21 For example, he claimed that household tools were used for
22 the day care because they might have been used to repair a
23 toy that might have been used in the day care. Even if we
24 accepted this testimony, the causal nexus is too tenuous
25 to lead to deductibility. And a witness who can testify

1 with a straight face about the nexus between a battle axe
2 and a day care business earns no credibility.

3 USE OF THE HOME

4 As for a taxpayer's residence, section 280A
5 disallows expenses relating to the use of a dwelling that
6 is also used by the taxpayer as a residence. There is an
7 exception to that general rule for day care services
8 provided out of the home. See section 280A(c)(4). Under
9 that exception, a person may deduct the business use of
10 their home in providing day care services using a specific
11 allocation formula. The portion of the home for which a
12 deduction is permitted is limited to that portion used on
13 a regular basis with a special allocation used for areas
14 used less regularly; section 280A(c)(4)(A) and (c)(4)(C).

15 Mr. Eotvos's testimony was, in effect, that the
16 day care uses the whole home. This blanket assertion,
17 like the battle axe, strains credulity. We have no doubt
18 that a portion of the home was used for the day care on a
19 regular basis. But we do not find credible Mr. Eotvos's
20 testimony that the entire home was used regularly, and Mr.
21 Eotvos made no attempt to allocate the use of any portions
22 of the home.

23 We note that the Commissioner allowed deductions
24 for partial use of the home. Mr. and Mrs. Eotvos did not
25 establish that they are entitled to deductions beyond the

1 amount allowed by the Commissioner.

2 ACCURACY-RELATED PENALTY

3 The Commissioner asserted an accuracy-related
4 penalty under section 6662 for negligence. The deductions
5 for personal property lacked any reasonable basis and the
6 Eotvoses lacked substantiation. The Commissioner
7 satisfied his burden. Mr. and Mrs. Eotvos offered no
8 evidence in the form of a defense. They apparently
9 relied, at least in part, on a program sold to them to
10 assist with claiming deductions relating to day care
11 expenses. The details of this program are not in the
12 record, nor is the nature of any advice that the Eotvoses
13 might have received before they filed their 2014 return.
14 Accordingly, the accuracy-related penalty is sustained.

15 Because of concessions by both sides, decision
16 will be entered under Rule 155.

17 (Whereupon, at 9:09 a.m., the above-entitled
18 matter was concluded.)

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