

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

RICHARD A. FORDE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 1280-16.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

Pursuant to 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 petitioner and to respondent a copy of the pages of the transcript of the proceedings in the above case before the undersigned judge at Washington, D.C., 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) David Gustafson**  
**Judge**

Dated: Washington, D.C.  
November 15, 2017

1 Bench Opinion by Judge David Gustafson  
2 October 20, 2017  
3 Forde v. Commissioner  
4 Docket No. 1280-16

5 THE COURT: The Court has decided to render the  
6 following as its oral Findings of Fact and Opinion in this  
7 case. This opinion shall not be relied on as precedent in  
8 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 and Procedure.

13 By notice of deficiency dated October 28, 2015,  
14 (Ex. 9-R), the Internal Revenue Service ("IRS") determined  
15 a deficiency in the Federal income tax of petitioner  
16 Richard A. Forde for the year 2002, plus an addition to  
17 tax for late filing and an accuracy-related penalty.  
18 Trial of this case was conducted on October 17-18, 2017,  
19 in Washington, D.C. Mr. Forde represented himself, and  
20 respondent was represented by William J. Gregg.

21 After Mr. Forde's concession that his filing  
22 status should be married filing separately, the principal  
23 issue for decision is whether and to what extent Mr. Forde  
24 understated his capital gain on the sale of a house.

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FINDINGS

1

2 Leigh Mill House

3           In 1998, Mr. Forde and his wife acquired a house  
4 on Leigh Mill Road in Great Falls, Virginia (Stip. 3; Ex.  
5 1-P), for a purchase price of \$835,000 (Stip. 23, Ex. 41-  
6 P.) Mr. Forde then undertook to demolish the main house,  
7 live in the guesthouse, build on the property a 16,000-  
8 square-foot house with two swimming pools, and then  
9 renovate the guesthouse.

10           The demolition of the main house took place, and  
11 construction on the new house began. Mr. Forde and his  
12 wife moved into the guesthouse. Substantial progress was  
13 made on the new house, but we are unable to tell when or  
14 even whether it was fully completed.

15           Invoking the burden-of-proof principles  
16 discussed below, we find that Mr. Forde paid, toward the  
17 demolition and construction costs, a total of \$300,575 to  
18 various contractors in 2001 (Exs. 32-P, 33-P, 40-P, 42-C),  
19 and through a closing described below, \$383,273 to Oxford  
20 Construction in 2002 (Ex. 34-P), which amounts increase  
21 his basis in the Leigh Mill property.

22 Bankruptcy and Fraud

23           In 2001, Mr. Forde was facing substantial  
24 financial problems. He tried unsuccessfully to refinance  
25 his mortgage on the Leigh Mill house and filed a Chapter

1 11 bankruptcy petition on May 25, 2011.

2 In the fall of 2001, he was on the verge of  
3 losing the Leigh Mill house. He then entered into a  
4 conspiracy to commit bankruptcy fraud and bank fraud. He  
5 engineered a sale transaction in which an unwitting lender  
6 was induced to lend \$3,896,750 to a buyer who was a friend  
7 of Mr. Forde. The lender was told (among other erroneous  
8 facts) that the sale price would be almost \$6 million,  
9 that there would be a large down payment (which would not  
10 in fact be made), that the buyer would execute in favor of  
11 Mr. Forde a note for the balance of the purchase price  
12 (which neither Mr. Forde nor the buyer actually intended  
13 to be paid), and that at settlement, some of the purchase  
14 price would pay off a mortgage that did not actually  
15 exist.

16 Using this scheme, loan proceeds would be  
17 surreptitiously paid over to Mr. Forde, who would use the  
18 borrowed funds to pay the mortgage of the lender from whom  
19 they had been borrowed. The bankruptcy court's approval  
20 of the sale was obtained by telling the court (falsely)  
21 that the (nonexistent) down payment and the buyer's  
22 payments on the note (which payments would never be made)  
23 would be available to Mr. Forde's creditors (Ex. 27-R at  
24 2-4.)  
25 \\\

1     Sale in June 2002

2                     The transaction that Mr. Forde had arranged took  
3     place in June 2002 (Stip. 5.) The lender paid \$3,896,750  
4     into the closing. The parties have agreed that this  
5     amount constituted Mr. Forde's proceeds for his sale of  
6     the Leigh Mill house (Stip. 22), and we accept their  
7     stipulation. Respondent also concedes that there were  
8     paid out of the closing (a) a sales commission of \$359,700  
9     and (b) legal fees of \$24,000, and that these amounts  
10    constituted additional basis in the property for Mr. Forde  
11    (i.e., a reduction of his gain), and we accept those  
12    concessions.

13                    Mr. Forde's lawyer (and co-conspirator) prepared  
14    a HUD-1 statement for the settlement of the sale (Ex.  
15    16-P), and it reflected (among other things) the  
16    fictitious down payment and the payoff of a false mortgage  
17    (Ex. 27-R at 4-5.) It also reflected a supposed \$400,000  
18    as a payoff to Oxford Construction, but as is noted above,  
19    we find instead that \$383,273 was paid to Oxford  
20    Construction (Ex. 34-P.)

21    The Unraveling

22                    Mr. Forde remained in the house after the sale.  
23    The buyer never took possession. The buyer did not make  
24    payments on his note to Mr. Forde, and Mr. Forde did not  
25    pay rent for his retained possession after the sale.

1 Payments toward the new lender's mortgage loan were made  
2 for some time (from the borrowed funds), but eventually  
3 the mortgage went into default, the bankruptcy proceedings  
4 were converted to Chapter 7, and civil and criminal  
5 actions were brought against Mr. Forde. He and his co-  
6 conspirators were convicted. Mr. Forde was sentenced to  
7 42 months imprisonment (Ex. 27-R at 5-7.)

8 Tax Return, SNOD, and Petition

9 Mr. Forde filed his 2002 tax return nine years  
10 late in April 2012 (Stip. 24.) On that return (Ex. 7-P),  
11 he did not report any gain from the sale of the Leigh Mill  
12 house. (He defends this reporting position by contending  
13 that his basis in the property exceeded his amount  
14 realized from the sale transaction. See Ex. 41-P.)

15 The IRS examined Mr. Forde's 2002 return and  
16 determined that he realized capital gain on the sale in  
17 the amount of \$2,422,055, taking into account the  
18 stipulated sale price (\$3,896,750) minus (a) Mr. Forde's  
19 1998 acquisition cost of \$835,000, (b) closing costs of  
20 \$389,695 (apparently consisting of the commission, the  
21 attorney fees, and an unspecified additional amount), and  
22 (c) the Section 121 exclusion of \$250,000 (Stip. 23.) On  
23 October 28, 2015, the IRS issued to Mr. Forde the SNOD  
24 determining the resulting tax deficiency (Ex. 9-R).

25 On January 19, 2016, Mr. Forde timely filed his

1 petition in this Court. At that time he resided in  
2 Virginia (Stip. 1.)

3 OPINION

4 I. Burden of Proof

5 The IRS's determination is presumed correct, and  
6 the taxpayer generally bears the burden to prove his  
7 entitlement to any deduction he claims; Rule 142(a).  
8 Deductions are a matter of legislative grace, and  
9 taxpayers must satisfy the specific requirements for any  
10 deduction claimed. See INDOPCO, Inc. v. Commissioner, 503  
11 U.S. 79, 84 (1992.) Furthermore, taxpayers are required  
12 to maintain records sufficient to substantiate their  
13 claimed deductions. See Section 6001; 26 C.F.R. Sec.  
14 1.6001-1(a).

15 II. Gain on the Sale of the Leigh Mill House

16 A. Computing Gain

17 Under Section 1001(a), gain consists of the  
18 excess of the "amount realized" (here, the stipulated  
19 purchase price) over the seller's basis in the property  
20 sold. Under Section 1012, the seller's adjusted basis  
21 consists of "the cost of such property", which the parties  
22 agree would consist of (a) the \$835,000 that Mr. Forde  
23 paid to acquire the house in 1998 and (b) any subsequent  
24 amounts he paid for construction costs (i.e., to demolish  
25 the old house and build the new house.)

1                   However, on the factual issue of what  
2                   construction costs have been substantiated, the parties  
3                   disagree. Mr. Forde contends that they total \$2,355,700  
4                   (see Ex. 41-P), but the Commissioner contends that they  
5                   are zero, i.e., that none have been substantiated. That  
6                   disagreement is the crux of this case.

7                   B.     Construction costs

8                   1.     The Fact of Demolition and Construction

9                   Mr. Forde put on a convincing case that the old  
10                  house on the Leigh Mill property was demolished, that a  
11                  new and very large house was constructed (see, e.g., Ex.  
12                  28-P), and that very substantial cost would have to be  
13                  incurred to make that happen. However, assuming that to  
14                  be true, what Mr. Forde needed to prove was that he paid  
15                  that very substantial cost. He did not produce any  
16                  cancelled checks, bank records showing transfers, nor any  
17                  other equivalent proof of payment. He did not even  
18                  provide receipts from contractors showing amounts paid.  
19                  Instead, he relied on certificates of satisfaction of  
20                  lien, certificates of release of mechanics liens filed in  
21                  the county land records, and amounts stated in the HUD-1.

22                  2.     Certificates of Release of Mechanics Liens

23                  The certificates of release of mechanics liens  
24                  state an amount claimed by the contractor, assert that the  
25                  lien is released, are signed by the contractor, and are



1 notarized. Ordinarily, this should mean that the  
2 contractor releases his lien because he has been paid the  
3 amount he claims, and we think such certificates do have  
4 some probative value of payment. On the other hand  
5 however, the certificate does not literally confirm  
6 payment of the stated amount. A certificate of release of  
7 a lien might be signed simply as an accommodation to the  
8 debtor in order to facilitate a sale of property where,  
9 for example, the contractor has not yet been paid but  
10 hopes to be paid from the sale proceeds (and is willing to  
11 risk nonpayment.) Or it might be signed by a contractor  
12 willing to take immediate payment of a substantially  
13 discounted amount. Or it might be signed by a colluding  
14 party with a bogus lien who participated in a fraudulent  
15 closing.

16           However, we do find that Mr. Forde probably did  
17 pay to nine contractors the amounts listed on Exhibit 42-C  
18 (whose certificates appear in Exhibits 32-P, 33-P, and 40-  
19 P.) Their certificates were for relatively small amounts,  
20 were signed in 2001 (most of them before his bankruptcy  
21 petition), were signed for construction companies, and  
22 show no signs of collusion with Mr. Forde. These amounts,  
23 totaling \$300,575, should increase Mr. Forde's basis.

24           3.    Certificates of Satisfaction

25           On the "Certificates of Satisfaction", a lender



1 "certif[ies] that the [stated amount of a loan] has been  
2 paid in full". This should constitute actual evidence of  
3 payment. Such certificates for \$100,000 and \$1,300,000  
4 were signed for "Instant Money, Inc." on July 3, 2002  
5 (Exs. 35-P, 39-P), and they correspond to a payoff of  
6 \$1,553,114 indicated as a "first mortgage loan" by Instant  
7 Money on the HUD-1, presumably reporting the payoff of a  
8 mortgage loan secured by the Leigh Mill property. However,  
9 Mr. Forde offered no evidence that he had used the loan  
10 proceeds he obtained from Instant Money to pay for  
11 construction costs, rather than for living expenses or  
12 anything else. Similarly, such certificates signed by  
13 Alfonzo Smith for \$151,500 and \$72,500 on July 7, 2002  
14 (Exs. 37-P, 38-P), may correspond to payoffs of larger  
15 amounts (\$252,000 and \$75,000) on the HUD-1 (Ex. 16-P);  
16 and if we assume that they do reflect the actual payoff of  
17 bona fide loan debt, nonetheless, Mr. Forde did not show  
18 that he spent the loan proceeds he obtained from Alfonzo  
19 Smith on construction costs. Proving loans and payoffs --  
20 without more -- does not increase Mr. Forde's basis in the  
21 Leigh Mill property.

22 We view differently the certificate of  
23 satisfaction signed for Oxford Construction on July 2,  
24 2002, which reflects the satisfaction of a note dated in  
25 June 2000 with an amount of \$383,273 (Ex. 34-P.) A



1 principal of Oxford Construction testified at trial,  
2 credibly and in detail, about work done on the Leigh Mill  
3 property and about Oxford's cost-plus-20-percent  
4 arrangement with Mr. Forde. The witness was candid about  
5 his nonrecall of the dollar amounts, but he confirmed the  
6 reasonableness of the ballpark amount of \$400,000. (The  
7 HUD-1 does include a payoff amount of \$400,000 to Oxford,  
8 but we adopt the slightly smaller amount on the  
9 certificate of satisfaction, since we cannot eliminate the  
10 possibility that -- in the otherwise fraudulent closing --  
11 Mr. Forde and his attorney might have retained the  
12 difference rather than actually paying it over to Oxford.)  
13 We conclude that Oxford probably did receive \$383,273 for  
14 work done on the Leigh Mill property, and this should  
15 increase Mr. Forde's basis.

16 4. Other Expenses

17 Mr. Forde has also asserted that his gain should  
18 be reduced by selling expenses of \$332,995 and mortgage  
19 points of \$172,534 (see Ex. 41-P.) However, he put on no  
20 supporting evidence, testimonial or documentary, for the  
21 selling expenses, and for the mortgage points, his only  
22 documentary evidence is the HUD-1 statement (Ex. 16-P),  
23 which is unreliable for the reasons we have already  
24 stated. We therefore do not reduce his gain by these  
25 amounts.

1     III. Addition to Tax

2             The Commissioner has the burden of production,  
3     see Section 7491(c), to show that Mr. Forde is liable for  
4     the addition to tax determined against him in the SNOD for  
5     failure to timely file his return, under Section  
6     6651(a)(1). The Commissioner fulfilled that burden by the  
7     stipulated fact that Mr. Forde filed his return nine years  
8     late, and Mr. Forde made no argument as to reasonable  
9     cause for the untimeliness. The addition to tax is,  
10    therefore, sustained.

11    IV. Accuracy-Related Penalty

12            The Commissioner determined that Mr. Forde is  
13    liable for a 20 percent accuracy-related penalty under  
14    Section 6662(a) because the deficiency he determined  
15    (i.e., \$429,169; see Ex. 9-R) is great enough that the  
16    resulting underpayment is "substantial" for purposes of  
17    Section 6662(b)(2) and (d)(1)(A), i.e., it exceeds \$5,000  
18    and it exceeds by more than 10 percent the tax liability  
19    that Mr. Forde reported (i.e., zero; see Ex. 7-P.) The  
20    Commissioner showed compliance with Section 6751(b); (see  
21    Ex. 10-R.) Although we do not sustain in full the  
22    Commissioner's determination on the principal issue in  
23    this case, we sustain it in large part, and it is clear  
24    that the actual deficiency, yet to be recomputed under  
25    Rule 155, will be "substantial". The Commissioner has

1 carried his burden. Mr. Forde made no showing of  
2 reasonable cause for his underpayment, and he will  
3 therefore be liable for the accuracy-related penalty on  
4 the recomputed amount.

5 The IRS's notice of deficiency is upheld in  
6 part, to the extent shown above. So that the liability can  
7 be recalculated, decision will be entered pursuant to Rule  
8 155.

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

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

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Exhibit 42-C

<u>Exhibit(s)</u>	<u>Lienholder</u>	<u>Amount</u>
32-P, 40-P	Owen Companies, LLC	\$8,930.00
33-P	Bell Pump & Well, Inc.	1,509.77
40-P	A&N Mechanical Contractors	26,850.00
40-P	A&S Construction	95,010.00
40-P	D.J. Bittner Construction	8,180.00
40-P	Carpet Gallery	33,657.00
40-P	Dolphin Plumbing	23,600.00
40-P	Escobar Inc.	65,038.44
40-P	Hammer Corporation	<u>37,800.00</u>
Total		300,575.21