

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

CHARLES ASONG-MORFAW,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 10629-14.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
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)	

ORDER

This case was tried during the Court’s September 18, 2017 trial calendar for St. Paul, Minnesota. The Court gave an oral opinion after trial. It is therefore

ORDERED that under Tax Court Rule 152(b), the Clerk of the Court will send a copy of the transcript pages that contain that oral opinion to all the parties in this case.

In accordance with the opinion, decision will be entered for respondent.

**(Signed) Mark V. Holmes
Judge**

Dated: Washington, D.C.
November 21, 2017

1 Bench Option by Judge Mark V. Holmes

2 September 21, 2017

3 Charles Asong-Morfaw v. Commissioner of Internal Revenue;

4 Docket Nos. 10629-14

5 THE COURT: In the case of Charles Asong-Morfaw,
6 docket number 10629-14 and 13601-14, the Court has decided
7 to render oral findings of fact and opinion, and the
8 following represents the Court's oral findings and fact
9 and opinion.

10 This bench opinion is made pursuant to the
11 authority granted by section 7459(b) of the Internal
12 Revenue Code of 1986 as amended and Rule 152 of the Tax
13 Court's Rules of Practice and Procedure.

14 There were two cases, as I said. They were
15 consolidated, but one settled before trial. The one that
16 was still not settled was docket number 10629-14; the
17 parties were able to reach a stipulation which, together
18 with the exhibits and testimony in the case, constitutes
19 the record. Mr. Asong-Morfaw was a Minnesota resident
20 when he filed his petition and remains one today.

21 The tax year involved is 2010. In 2010,
22 Mr. Asong-Morfaw earned a living as a translator, a tax
23 preparer, and a part-time employee at a center in Anoka
24 for the mentally ill. The issue that was involved, after
25 concessions and settlements of other issues, ~~were the~~ ^{MF}

1 ~~concessions and settlements of other issues~~ were the
2 deductions for the use of cars in 2010. On his original
3 return, Mr. Asong-Morfaw claimed 16,251 dollars in car
4 expenses for his translation business, AJ & A. He said on
5 that return that his vehicle had been placed in service on
6 January 1st, 2009, and that he had accumulated 3,485
7 business miles during the 2010 tax year. At trial, he
8 produced a mileage log showing only 1,416 miles. This was
9 local travel in the Twin Cities area from his home in
10 Champlin for his business.

11 It's also important to note that he testified,
12 and on this point I find him credible, that he had three
13 cars at the beginning of the 2010 year that he used,
14 together with members of his family, for mixed business
15 and personal use. At trial, he also introduced an invoice
16 for the purchase of a Toyota RAV for 7,600 dollars in
17 April 2010.

18 He claimed that he used this only for his
19 business, and thus he wanted to deduct \$1,390.45 for the
20 repair of its transmission and \$419.56 for the replacement
21 of a serpentine belt on that Toyota.

22 It's important to note that in the notice of
23 deficiency, the auditor disallowed all but 1,743 dollars
24 of this over 16,000 dollars in claimed car expenses for
25 2010.

1 Mr. Asong-Morfaw also submitted an amended
2 return, which I generously allowed into evidence, but it
3 showed no change to the car expenses, and so it's really
4 quite irrelevant. He also orally asked for bonus
5 depreciation on this car that he bought in 2010.

6 Now, how do we figure this out? The sections on
7 depreciation and car and truck expenses are actually
8 fairly complicated. But we'll begin by noting that
9 Mr. Asong-Morfaw's cars, both the three that he shared
10 with members of his family and the Toyota, are what are
11 called "listed property" under section 280F(d)(4)(A)(i)
12 and if the RAV being an SUV is not regarded as an
13 automobile, it's still a vehicle used for personal
14 transportation, which would make it listed property under
15 280F(d)(4)(A)(ii).

16 To further analyze this, we have to look at two
17 parts of the 2010 tax year. One is before April 17th,
18 2010, when he bought his RAV. He used other cars, and
19 those are reflected in the mileage log, and he shared them
20 with his family, as I said. But he made no allocation
21 between personal and business use of those three cars, so
22 he gets, at most, mileage for any proven business expenses
23 for those use of those three cars.

24 But of course, he argues that things changed on
25 April 17th, 2010, when he bought the Toyota and began



1 using it, he says, one hundred percent on business use.

2 However, remember that Mr. Asong-Morfaw also had
3 a job which he said was roughly half-time at this hospital
4 in Anoka, Minnesota. And he said that he sometimes used
5 his Toyota RAV to go back and forth to that job as well.
6 That makes those trips personal commuting expenses, which
7 are not deductible, and it also triggers an obligation, if
8 he wants to take other than mileage as a deduction, an
9 obligation to segregate and figure out the percentage of
10 the qualifying business use for his RAV because he was
11 using it, and it was available for, personal use. He needed *ml*
12 to show some allocation between personal and business use,
13 which he didn't say.

14 This is also especially true in his case because
15 there were some things on his return that were simply not
16 accurate at all: the date the vehicle was placed in
17 service, for instance, and his failure to reveal that
18 there were three, maybe four vehicles available for him to
19 use in his business in 2010.

20 So I find, therefore, that it's impossible to
21 figure out, on the basis of the record, what percentage of
22 use was personal and what percentage of use was business,
23 even for the Toyota that he initially claimed was one
24 hundred percent for business.

25 This, then, triggers a problem for his oral

1 claim for bonus depreciation that he made at trial.
2 Section 168(k) typically allows bonus depreciation of
3 fifty percent of adjusted basis in the first year that
4 "qualified property" is placed in service. See section
5 168 of (k)(1)(A).

6 As relevant here, Congress increased this
7 deductible amount to one hundred percent for "qualified
8 property" that was acquired between September 8, 2010, and
9 January 1st, 2012 and placed in service before January
10 1st, 2012. See section 168(k)(5). So Mr. Asong-Morfaw's
11 claim to bonus depreciation of a hundred percent has to
12 fail here because he placed his Toyota in service on April
13 17th, 2010.

14 But bonus depreciation is also used to refer to
15 this fifty percent of adjusted basis in the first year.
16 So I have to continue on in my analysis and can't simply
17 rely on the effective date of this extra bonus
18 depreciation created for a couple of years earlier in this
19 decade.

20 The key question here, of course, under section
21 168(k) is that Mr. Asong-Morfaw has to show that his 2002
22 Toyota RAV was "qualified property". What is "qualified
23 property"? Well, section 168(k)(2)(A)-(C) tells us what
24 is "qualified property". It also tells us what's not
25 "qualified property", and the section says that

1 "'qualified property' shall not include any property to
2 which the alternative depreciation system under subsection
3 (g) applies, determined... *after application of section*
4 *280F(b).*" So we have to turn to section 280F(b) to answer
5 the question. We turn there.

6 Under section 280F(b)(1), "If any listed
7 property is not predominantly used in a qualified business
8 use for any taxable year, the deduction allowed under
9 section 168 with respect to such property. . .shall be
10 determined under section 168(g). In other words, if you
11 have listed property that is not predominantly used in a
12 qualified business use for any taxable year, it would be
13 subject to that alternative depreciation system under
14 section 168(g) and it would not be considered "qualified
15 property" under section 168(k). If it isn't "qualified
16 property", it is not eligible for bonus depreciation.

17 I've already determined that Mr. Asong-Morfaw's
18 2002 Toyota that he bought in 2010 is listed property, but
19 because he had the burden of proof to show that he used
20 this Toyota predominantly for business purposes, and he
21 did not, I cannot grant him bonus depreciation. All he
22 gets, in other words, is mileage.

23 But turning back to the notice of deficiency, we
24 find that the auditor allowed 1,743 dollars of his claimed
25 over 16,000 dollars in car and truck expenses. Oddly

1 enough, when one checks the IRS records, \$0.50 a mile was
2 the business deduction for mileage back in 2010. So the
3 1,743 is the equivalent of the 3,485 miles that Mr. Asong-
4 Morfaw claimed on his Schedule C, and not, by the way, on
5 his mileage log produced at trial. So the government was
6 being generous to Mr. Asong-Morfaw in its drafting of the
7 notice of deficiency. But he got exactly what he claimed
8 and all that he is entitled to.

9 The decision will be entered in favor of the
10 respondent on that issue. I'll check to see whether a
11 decision needs to be entered under Rule 155 because of
12 other settlements and concessions.

13 That concludes the bench opinion in this case,
14 and we're done until 1 p.m.

15 (Whereupon, at 9:22 AM, the above-entitled
16 matter was concluded.)

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