UNITED STATES TAX COURT
WASHINGTON, DC 20217

ERIKA DENISE EDWARDS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 17386-16S
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

O R D E R

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 Los Angeles, California, 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 pursuant to Rule 155.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
December 11, 2017

Bench Opinion by Special Trial Judge Lewis R. Carluzzo
November 30, 2017
Erika Denise Edwards v. Commissioner of Internal Revenue
Docket No. 17386-16S

THE COURT: The Court has decided to render oral findings of fact and opinion in this case and the following represents the Court's oral findings of fact and opinion (bench opinion). Unless otherwise noted, section references made in this bench opinion are to the Internal Revenue Code of 1986, as amended, in effect for the relevant period, and Rule references are to the Tax Court Rules of Practice and Procedure. This bench opinion is made pursuant to the authority granted by section 7459(b) and Rule 152.

This proceeding for the redetermination of a deficiency is a small tax case subject to the provisions of section 7463 and Rules 170 through 175. Except as provided in Rule 152(c), this bench opinion shall not be cited as authority, and pursuant to section 7463(b) the decision entered in this case shall not be treated as precedent for any other case.

Albert B. Brewster, II, appeared on behalf of respondent. Erika Denise Edwards appeared on her own behalf.

Some of the facts have been stipulated and are

so found. At the time the petition was filed petitioner lived in California.

In a notice of deficiency dated May 17, 2016 (notice), respondent determined a $5,602 deficiency in petitioner's 2013 Federal income tax and imposed a $974.20 section 6662(a) penalty upon the ground that the underpayment of tax required to have been shown on petitioner's 2013 Federal income tax return (return) is a substantial understatement of income tax.

During 2013 petitioner was employed as an attorney and self-employed in the entertainment industry. Because the issues relating to omitted income both from her employment as an attorney and another source are no longer in dispute, we focus our attention on her self-employment as an entertainer.

The income and expenses attributable to her self-employment are reported on Schedule C, Profit or Loss from Business, included with her return. Following concessions, and as relevant here on that Schedule C petitioner claimed an $11,300 deduction for "car and truck" expenses and a $6,708 deduction for "car rental" payments. Both deductions relate to the use of the same rented automobile that petitioner used for self-employment, commuting, and personal purposes. Neither deduction, although of a type allowable as a trade or

business expense deduction under section 162 if properly substantiated, has been supported by the contemporaneous records required for deduction pursuant to section 274(d). Consequently both deductions were disallowed in the notice.

Petitioner readily admits that she did not keep any contemporaneous records regarding the use of the rental car for business purposes. Other than a generalized comment as to how much the rental car was used for commuting or other personal purposes, she has given us no basis to allocate such usage for personal or business purposes. That being so, although she has established and we are satisfied that she incurred rental expense for the rental car as claimed on her return, she is not entitled to deduct any of the actual expenses because we cannot determine what portion of the expenses is related to her self-employment. Respondent's disallowance of the $6,708 "car rental" expense deduction is sustained.

Although petitioner did not keep a contemporaneous record of the use of the rental car for business purposes, through a recently prepared mileage log (mileage log) she did corroborate her testimony regarding the use of the rental car to travel to various entertainment venues during 2013. According to her return, she drove 20,000 miles for business purposes.

According to petitioner's mileage log, she drove approximately 2,000 miles in order to perform at various locations in the Los Angeles area. Her mileage log is more or less consistent with respondent's regulation that allows it to be used for the purpose of section 274(d), see section 1.247-5T(c)(3), Temporary Income Tax Regs., 50 Fed. Reg. 46020 (Nov. 6, 1985), but the "less" part does not show where each trip originated. Only mileage between her place of employment as an attorney and the entertainment venues would qualify for deduction. Mileage driven between her residence and the entertainment venues would constitute nondeductible commuting expenses. Having no better basis to make that distinction, we'll allow her half of the mileage shown on the mileage log. The standard mileage rate applicable to 2013 can be used to compute ~~computer~~ her allowable deduction. To the extent that petitioner is not getting a deduction for business mileage to the extent she would otherwise qualify, the shortfall is due to her own lack of records. See Cohan v. Commissioner, 39 F.2d 540, 543-544 (2d Cir. 1930). We are not unsympathetic to petitioner's situation, however, as the modest amount of income reported on the Schedule C compared to the many performances conducted during 2013 as shown on the mileage log suggests that her self-employment is a tough way to make a living.

As for the section 6662(a) penalty, we begin by noting that respondent bears the burden of production with respect to the imposition of that penalty. In this case that burden requires respondent to show: (1) that the imposition of the penalty was approved in writing by the supervisor of the Internal Revenue Service employee who first "determined" it, and (2) that the underpayment of tax required to be shown on the petitioner's return exceeds $5,000. (In this case, the underpayment of tax and deficiency are computed in the same manner.) Respondent's burden has been met with respect to the former requirement, but taking into account the concessions and the amount of the deduction for car and truck expenses that results from our findings, it remains to be seen whether the second requirement has been met. If the deficiency, and therefore the underpayment of tax exceeds $5,000, then petitioner is liable for the penalty. If not, then she is not.

To reflect the foregoing, decision will be entered pursuant to Rule 155.

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

(Whereupon, at 11:54 a.m., the above-entitled matter was concluded.)