

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

ERIKA DENISE EDWARDS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 17386-16S
)	
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 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

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

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

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

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

25 Some of the facts have been stipulated and are



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

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

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

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

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

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

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

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

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

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

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

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

25

