

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PETER CHANGCHING LAI & KAITING SU,)	
)	
Petitioners,)	
)	
v.)	Docket No. 5699-17S.
)	
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 petitioners and respondent a copy of the pages of the transcript of the trial in this case before Judge Ronald L. Buch 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 under Rule 155.

(Signed) Ronald L. Buch
Judge

Dated: Washington, D.C.
February 15, 2018

SERVED Feb 15 2018

1 Bench Opinion by Judge Ronald L. Buch
2 January 24, 2018
3 Peter Changching Lai and Kaiting Su v. Commissioner of
4 Internal Revenue
5 Docket No. 5699-17S

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

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

21 As a general matter, the Commissioner's
22 determinations in the notice of deficiency are presumed
23 correct, and the taxpayer bears the burden of proving an
24 error. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115
25 (1933). In limited situations, the burden can shift to

1 the Commissioner under section 7491(a), but the record
2 does not establish that the criteria under section 7491
3 have been met, therefore, the burden of proof remains on
4 the Mr. Lai.

5 Background

6 Mr. Lai is a rocket scientist. We mean that
7 literally. He is an aerospace engineer who principally
8 worked in southern California. The items remaining for
9 the Court to decide center around two life events for Mr.
10 Lai. He was laid off from his job in southern California
11 and took a job in northern California. Around that same
12 time, he wed, and his wife remained in southern
13 California. After concessions by both sides, some by
14 written stipulation and some orally on the record, the
15 items remaining for the Court to decide are as follows:

16 Whether Mr. Lai may deduct \$8,234 of expenses
17 for working away from home in 2012.

18 Whether Mr. Lai may deduct \$12,962 of expenses
19 for working away from home in 2013.

20 Whether Mr. Lai may deduct \$4,409 of charitable
21 contributions for 2012.

22 Whether Mr. Lai may deduct \$1,110 of charitable
23 contributions for 2013.

24 A little more background may be helpful. Mr.
25 Lai has spent his career working in southern California.

1 In 2012, he was laid off twice. He looked for various
2 jobs and ended up working in a related field for an
3 employer in northern California. He incurred travel and
4 other expenses related to his job search, and the
5 deductibility of those expenses has been resolved by
6 agreement.

7 In late 2012, Mr. Lai relocated to northern
8 California to take up his new job. It was not his dream
9 job, but it was related to his area of expertise. He
10 hoped to land something back in southern California that
11 would be more in line with his work history. Mr. Lai
12 continued to work for his northern California employer for
13 more than three years. Mr. Lai claims \$8,234 of expenses
14 for working temporarily away from home in 2012.

15 By 2013, Mr. Lai claims that he made northern
16 California his new tax home. But then his employer
17 assigned him to work on a project in southern California
18 for most of the year. He again claims \$12,962 of expenses
19 for working temporarily away from his new tax home.

20 In addition to the issue of expenses while
21 working temporarily away from home, there is a
22 tangentially related issue as to charitable contribution
23 deductions. Mr. Lai wed in late 2012, around the same
24 time he was laid off. At the same time that he and his
25 new wife were consolidating households, Mr. Lai's former

1 employer shipped all of his belongings from his office to
2 his home. This consolidation of two households and an
3 office resulted in Mr. Lai and his wife making
4 considerable donations to charity. Many of those
5 donations are supported by contemporaneous records; some
6 are not. One item is a piece of self-created art that he
7 donated to a church and for which Mr. Lai claims the cost
8 of materials.

9 Discussions

10 Taxpayers generally bear the burden of proving
11 entitlement to any deduction claimed. Rule 142(a);
12 INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992). A
13 taxpayer must substantiate deductions by keeping and
14 producing adequate records that enable the Commissioner to
15 determine the taxpayer's correct tax liability. Sec.
16 6001. A taxpayer claiming a deduction on a Federal income
17 tax return must demonstrate that the deduction is
18 allowable under the law and must further substantiate that
19 the expense to which the deduction relates has been paid
20 or incurred. Sec. 6001; Hradesky v. Commissioner, 65 T.C.
21 87, 89-90 (1975).

22 Under section 162(a), a deduction is allowed for
23 ordinary and necessary expenses paid or incurred during
24 the taxable year in carrying on any trade or business.
25 The term "trade or business" includes performing services

1 as an employee. Primuth v. Commissioner, 54 T.C. 374,
2 377-378 (1970). However, an employee business expense is
3 not ordinary and necessary if the employee is entitled to
4 reimbursement from his or her employer. See Podems v.
5 Commissioner, 24 T.C. 21, 22-23 (1955); Noz v.
6 Commissioner, T.C. Memo. 2012-272. In addition, a
7 deduction normally is not available for personal, living,
8 or family expenses. Sec. 262(a).

9 Section 162(a)(2) allows a taxpayer to deduct
10 travel expenses, including expenditures for meals and
11 lodging, if the expenses are reasonable and necessary,
12 incurred "while away from home", and made in pursuit of a
13 trade or business. Commissioner v. Flowers, 326 U.S. 465,
14 470 (1946). The term "home" (or "tax home") in section
15 162(a)(2) normally means a taxpayer's principal place of
16 employment (and not the taxpayer's personal residence).
17 See Mitchell v. Commissioner, 74 T.C. 578, 581 (1980). An
18 exception to this rule arises when a taxpayer accepts
19 employment away from his or her personal residence and the
20 employment is temporary rather than indefinite. See
21 Peurifoy v. Commissioner, 358 U.S. 59, 60 (1958); Deamer
22 v. Commissioner, T.C. Memo. 1984-63, aff'd, 752 F.2d 337
23 (8th Cir. 1985). The purpose underlying this exception is
24 to relieve the taxpayer of the burden of duplicate living
25 expenses while at a temporary employment location, since

1 it would be unreasonable to expect him to move his
2 residence under such circumstances. Tucker v.
3 Commissioner, 55 T.C. 783, 786 (1971).

4 Section 162(a) provides that "the taxpayer shall
5 not be treated as being temporarily away from home during
6 any period of employment if such period exceeds 1 year."
7 Employment is considered temporary if the engagement is
8 expected to last for only a short period. Norwood v.
9 Commissioner, 66 T.C. 467, 469 (1976). Temporary
10 employment may become indefinite, however, if it is
11 expected to last for a substantial, indefinite, or
12 indeterminate duration or due to changed circumstances or
13 the passage of time. Id. at 469-470; Kroll v.
14 Commissioner, 49 T.C. 557, 562 (1968). Whether an
15 employment opportunity is temporary or indefinite normally
16 depends on the facts and circumstances of each case, and
17 the burden of proving that employment was temporary rests
18 on the taxpayer. Rule 142(a); Peurifoy v. Commissioner,
19 358 U.S. at 60-61; Welch v. Helvering, 290 U.S. at 111.

20 Applying these rules to Mr. Lai, it is apparent
21 that his employment in northern California was indefinite.
22 Mr. Lai, in essence, takes the position that his northern
23 California job was not permanent, but that is not the
24 question. The issue is whether it was temporary or
25 indefinite. By his own testimony, and as events

1 transpired, it was indefinite. He may not deduct the
2 expenses for living away from home, because northern
3 California became his work home, even if his heart lie
4 elsewhere.

5 We must also disallow the business travel
6 expenses for 2013, but for a different reason. We
7 previously stated that an employee business expense is not
8 ordinary and necessary if the employee is entitled to
9 reimbursement from his or her employer. Mr. Lai has not
10 established that he was not entitled to reimbursement from
11 his northern California employer during the time he spent
12 working in southern California. Indeed, according to his
13 own testimony, it appears that Mr. Lai was entitled to
14 reimbursement even if it was not in fact received.

15 Charitable Contributions

16 Section 170(a)(1) allows a deduction for any
17 charitable contribution, as defined in section 170(c), as
18 long as the contribution can be verified under regulations
19 prescribed by the Secretary. A deduction for a
20 contribution over \$250 must be substantiated by a
21 contemporaneous written acknowledgment of the contribution
22 by the donee organization. The acknowledgment must
23 contain: (1) the amount of cash or a description of any
24 property contributed, (2) whether the donee organization
25 provided any goods or services in consideration for any

1 property contributed, and (3) a description and good-faith
2 estimate of the value of any provided goods or services or
3 if such goods or services consist of intangible benefits,
4 a statement to that effect. See sec. 170(f)(8).

5 In 2012, Mr. Lai made many donations to charity,
6 and with one exception no single item or group of items
7 exceeded \$250. Two items, however, exceeded that amount,
8 and Mr. Lai did not provide a written acknowledgment that
9 satisfies section 170(f)(8) for either of those items.

10 Those contribution deductions we will limit to \$250. One
11 item, Mr. Lai's self-created art, we estimate the cost of
12 materials (particularly, the frame) to be in excess of
13 \$250, and we will likewise limit that item to \$250. Of
14 the remaining items, some of Mr. Lai's other donations are
15 supported by his contemporaneous and reasonable estimates
16 of the value of the property. His donations of books,
17 however, are not supported by contemporaneous records, and
18 we will not allow those.

19 For 2012, Mr. Lai substantiated \$3,958 of
20 charitable contribution deductions. The Commissioner
21 allowed \$2,000 of charitable contribution deductions
22 during the examination, thus Mr. Lai established that he
23 may deduct \$1,958 more than what was previously allowed
24 for 2012.

25 For 2013, Mr. Lai substantiated \$991 of

1 charitable contribution deductions. The Commissioner
2 allowed \$376 of charitable contribution deductions during
3 the examination, thus Mr. Lai established that he may
4 deduct \$615 more than what was previously allowed for
5 2013.

6 Because of concessions by the parties and the
7 split decision by the Court, decision must be entered
8 under Rule 155.

9 (Whereupon, at 9:53 a.m., the above-entitled
10 matter was concluded.)
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