

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

STEPHANIE ELIZABETH GENTRY,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 15580-17S.
	)	
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 Stephanie Elizabeth Gentry and to the Commissioner a copy of the pages of the transcript of the proceedings in the above case before the undersigned judge at Columbia, South Carolina, 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, an appropriate decision will be entered for the Commissioner.

**(Signed) David Gustafson  
Judge**

Dated: Washington, D.C.  
May 14, 2018

**SERVED May 14 2018**

1 Bench Opinion by Judge David Gustafson

2 May 1, 2018

3 Stephanie Elizabeth Gentry v. Commissioner of Internal  
4 Revenue

5 Docket No. 15580-17S

6 This proceeding was heard as a Small Tax Case  
7 pursuant to the provisions of section 7463 of the Internal  
8 Revenue Code of 1986, as amended, and Rules 170 through  
9 174 of the Tax Court Rules of Practice and Procedure.

10 The Court has decided to render the following as  
11 its oral Findings of Fact and Opinion in this case. This  
12 Bench Opinion is made pursuant to the authority granted by  
13 section 7459(b) of the Internal Revenue Code, and Rule 152  
14 of the Tax Court Rules of Practice and Procedure; and it  
15 shall not be relied on as precedent in any other case.

16 By notice of deficiency dated June 12, 2017 (Ex.  
17 3-J), the Internal Revenue Service ("IRS") determined a  
18 deficiency in the Federal income tax of petitioner  
19 Stephanie Elizabeth Gentry, for the year 2014. The issue  
20 for decision is whether Ms. Gentry substantiated her  
21 entitlement to deductions for unreimbursed employee  
22 business expenses and a tax preparation fee, which  
23 deductions the IRS disallowed.

24 This case was tried in Columbia, South Carolina,  
25 on April 30, 2018. Ms. Gentry represented herself, and

1 Ashley Bender represented the Commissioner.

2 On the evidence before us, we find the following  
3 facts:

4 FINDINGS OF FACT

5 Ms. Gentry's background

6 At some time before the year at issue (2014),  
7 Ms. Gentry had experience as a real estate agent in Texas  
8 and in boat chartering in the Florida Keys. At some point  
9 she opened a bank account that she intended to serve as  
10 her business account.

11 Employment as art consultant

12 Beginning in June 2013 and ending in June 2014,  
13 Ms. Gentry worked as an art consultant for photographer  
14 Peter Lik (Stip. 5; Ex. 4-J), who had galleries in Key  
15 West, Miami, and Las Vegas. During that time she lived in  
16 a small studio apartment. Ms. Gentry was an employee of  
17 Peter Lik Retail USA, Inc., and she worked to earn  
18 commissions from sales of framed photographs from the  
19 photographer's portfolio. She was headquartered in Key  
20 West, but from time to time -- to an extent we cannot  
21 quantify -- she drove to Miami to meet with customers who  
22 did not want to travel to Key West.

23 While she was working as an art consultant, she  
24 intended to use her business bank account for expenses she  
25 incurred in that employment. However, in addition to any

1 employment-related expenses she may have paid from that  
2 account, she used it to pay her student loans, car  
3 payments and repairs, apartment rent and utilities, salon  
4 expenses, and bills for clothing (including a pair of  
5 shoes that she wore the day of her Tax Court trial). (See  
6 Ex. 6-J.)

7 Boat chartering business

8 Ms. Gentry left her employment as an art  
9 consultant in June 2014 (the middle of the year at issue),  
10 and she began working with her boyfriend in a boat  
11 chartering business, called Blue Sky Charter Company, LLC  
12 ("Blue Sky"), that he had started in 2012 (Stip. 6; Ex. 5-  
13 J). Her boyfriend promised her a stake in the company,  
14 and therefore she considered herself to be part owner of  
15 the business, and to be the business partner of her  
16 boyfriend. To an extent we cannot quantify, she spent  
17 money from her business account for the charter boat  
18 business, and she considered those expenditures to be an  
19 investment in the business.

20 In about September 2014, Ms. Gentry moved out of  
21 her studio apartment and began living in one of the boats  
22 that Blue Sky was renovating. She took some of her  
23 personal effects (including clothing) to her parents'  
24 house in Greenville, South Carolina, to store there.

25 In October 2015 (i.e., after the year at issue),

1 Ms. Gentry suffered serious burns from a mishap in the  
2 boat involving boiling water. She testified -- and we  
3 assume -- that in order to evade liability for her  
4 injuries, her boyfriend made false accusations against  
5 her, had her evicted from the marina, and obtained a  
6 protective order barring her from the boat on which she  
7 had been living. At that time she realized that her  
8 boyfriend had tricked her into paying expenses for and  
9 working in the business and that she did not really own  
10 any stake in it.

11 2014 tax return

12 In April 2015 (i.e., while she was still  
13 involved in Blue Sky), Ms. Gentry filed her 2014 Federal  
14 income tax return (Ex. 1-J). To prepare her return, Ms.  
15 Gentry obtained the help and advice of a friend who was an  
16 experienced art consultant and who she thought knew what  
17 deductions could be claimed in her line of work. (Ms.  
18 Gentry does not allege that this friend was an accountant,  
19 lawyer, or professional return preparer, and we do not  
20 assume that he was.)

21 Ms. Gentry reported on her return (Ex. 1-J) the  
22 employment income she had received from Peter Lik Retail  
23 in the amount of \$45,672, as reported by the employer on  
24 Form W-2 (Ex. 2-J). She included with her return a  
25 Schedule A ("Itemized Deductions") on which she claimed a

1 deduction of \$35 for "Tax preparation fees", and a  
 2 deduction for "Unreimbursed employee expenses" totaling  
 3 \$24,724 (i.e., more than half of her wages). To itemize  
 4 the latter deduction, she included a Form 2106-EZ  
 5 ("Unreimbursed Employee Business Expenses") on which she  
 6 reported amounts for vehicle mileage expenses of \$1,941,  
 7 non-overnight transportation expenses of \$6,430, overnight  
 8 travel expenses of \$7,436, "Business expenses" of \$4,419,  
 9 and meals and entertainment expenses of \$8,995, of which  
 10 50%, i.e., \$4,498, was included in her deduction.

11 According to her return, she incurred gross  
 12 unreimbursed expenditures totaling \$29,221 -- i.e., 64% of  
 13 her art consultant wages.

14 Notice of deficiency and petition

15 After examining Ms. Gentry's return, the IRS  
 16 disallowed the deductions at issue here. The IRS issued  
 17 its notice of deficiency on June 12, 2017 (Stip. 4; Ex. 3-  
 18 J). Ms. Gentry timely filed her petition in this Court on  
 19 July 20, 2017. At the time she filed her petition, Ms.  
 20 Gentry resided in South Carolina. (Stip. 1.)

21 OPINION

22 I. Burden of proof

23 A. General principles

24 The IRS's determination is presumed correct, and  
 25 taxpayers generally bear the burden to prove their



1 entitlement to any deductions they claim. Rule 142(a).

2 Taxpayers must satisfy the specific requirements  
3 for any deduction claimed. See INDOPCO, Inc. v.  
4 Commissioner, 503 U.S. 79, 84 (1992). Furthermore,  
5 taxpayers are required to maintain records sufficient to  
6 substantiate their claimed deductions. See sec. 6001; 26  
7 C.F.R. sec. 1.6001-1(a), Income Tax Regs.

8 B. The Cohan rule and section 274

9 When a taxpayer establishes that she paid or  
10 incurred a deductible expense but fails to establish the  
11 amount of deduction, the Court may estimate the amount  
12 allowable as a deduction. The seminal case so holding is  
13 Cohan v. Commissioner, 39 F.2d 540, 543-544 (2d Cir.  
14 1930), and we therefore call this principle "the Cohan  
15 rule." See also Vanicek v. Commissioner, 85 T.C. 731,  
16 742-743 (1985). A taxpayer may substantiate deductions  
17 through secondary evidence only where the underlying  
18 documents have not been intentionally lost or destroyed,  
19 see Boyd v. Commissioner, 122 T.C. 305, 320-321 (2004),  
20 and there must be sufficient evidence in the record to  
21 permit the Court to conclude that a deductible expense was  
22 paid or incurred in at least the amount allowed. Williams  
23 v. United States, 245 F.2d 559, 560 (5th Cir. 1957).

24 Moreover, section 274(d) establishes higher  
25 substantiation requirements for expenses related to

1 travel, meals and entertainment, and "listed property",  
2 defined in section 280F(d)(4) to include passenger  
3 automobiles -- i.e., the great majority of the claimed  
4 expenses at issue here. For these expenses, a taxpayer  
5 must prove: (1) The amount of each separate expenditure  
6 with respect to such property; (2) the amount of each  
7 business use; and (3) the business purpose for an  
8 expenditure or use with respect to such property. Sec.  
9 1.274-5T(b)(6), Temporary Income Tax Regs., 50 Fed. Reg.  
10 46016 (Nov. 6, 1985).

11 These special substantiation provisions of  
12 section 274(d) thus override the Cohan rule, and the Court  
13 may not estimate these expenses. See Sanford v.  
14 Commissioner, 50 T.C. 823, 827-828 (1968), aff'd, 412 F.2d  
15 201 (2d Cir. 1969).

16 C. Small tax cases

17 This proceeding was heard as a Small Tax Case  
18 (called an "S case") pursuant to section 7463 and Rules  
19 170 through 174. In S cases, the normal procedural and  
20 evidentiary rules are relaxed. See Rule 174(b). This  
21 relaxed evidentiary standard, however, does not overrule  
22 section 274(d). Deductions that fall within section  
23 274(d) are disallowed unless the taxpayer adequately  
24 substantiates the amount of the expense; the time and  
25 place of business use of the vehicle; and the business



1 purpose of the travel. These rules were adopted to  
2 preclude estimates based solely on a finding that some  
3 deductible business expenses were incurred, as allowed in  
4 other contexts. See Sanford, supra. The Congressionally  
5 enacted standard of adequacy of evidence is not modifiable  
6 by a court rule regarding admissibility of evidence, such  
7 as Rule 174(b).

## 8 II. Tax preparation fees

9 Ms. Gentry alleges that she incurred a cost of  
10 \$35 to purchase TurboTax software to prepare her 2014  
11 return, but she offers no documentation whatsoever.

12 We hold that she did not carry her burden of  
13 proof on this point.

## 14 III. Employee business expense

15 A taxpayer may claim an unreimbursed employee  
16 business expense as a miscellaneous deduction on Schedule  
17 A, pursuant to the provision in section 162(a) that one  
18 may deduct expenses of a business; and an employee is  
19 considered to be in the business of being an employee.  
20 However, the employee business expenses that Ms. Gentry  
21 claimed must be disallowed, because she did not  
22 substantiate them.

23 We begin by noting the surprisingly large amount  
24 of expenses in relation to the level of income. It is not  
25 impossible that someone who was paid about \$46,000 for six

1 months of work would be willing to spend 64% of it for  
2 unreimbursed expenses for her job, but Ms. Gentry's  
3 allegation to this effect provokes questions. Ms. Gentry  
4 is unable to answer those questions because, she says, her  
5 records -- paper receipts and digital scans and images --  
6 were moved to the boat and were lost there. And again,  
7 her account is not impossible, but we think it unusual  
8 that, when she moved from her studio apartment, she took  
9 her records with her onto a boat, not the most stable and  
10 secure storage situation -- and a boat that she did not  
11 even own -- rather than including those records with the  
12 personal effects that she stored at her parents' house.  
13 Moreover, her first explanation for her lack of records,  
14 given on a questionnaire (Form 13825) that the IRS asked  
15 her to complete during its audit, was: "All financial  
16 records, originals and electronic copies of 2014 tax  
17 records were lost on a sailboat accident ...." (Ex. 6-J  
18 at 2.) To us, this "sailboat accident" explanation seems  
19 to suggest perhaps a capsized boat, or perhaps at least  
20 waves washing over the deck in a storm and flooding the  
21 hull. But now Ms. Gentry explains that the "sailboat  
22 accident" was her (well-documented and truly painful)  
23 injury that precipitated her estrangement from her  
24 boyfriend and caused her to be forced off the boat and, if  
25 we understand her account, to lose access to her records

1 stored on the boat. The best that can be said for her  
2 answer on the questionnaire is that it was ambiguous, and  
3 we cannot dismiss the possibility that it was deliberately  
4 so.

5 Ms. Gentry attempted to reconstruct her expenses  
6 from her bank statements, which she annotated during the  
7 audit with handwritten notations explaining the supposed  
8 business character of the entries (Ex. 6-J). However,  
9 even if we assume that her notations were made in good  
10 faith, the bank records fail to substantiate any employee  
11 business expenses, for multiple reasons:

12 1. Ms. Gentry asks us to presume with her that  
13 expenses made from her business account were probably  
14 business expenses because that is how she used the  
15 account. But it is clear that she did not so use the  
16 account. Her school loans, her rent expense, and utility  
17 bills -- expenses for which she claims no business  
18 purpose -- were made from the account. It was not really  
19 a business account.

20 2. Ms. Gentry was unable to say which, if any,  
21 of the expenditures she annotated were in fact expenses  
22 that she had deducted at the suggestion of her more  
23 experienced friend. It was therefore not possible at  
24 trial to establish any correlation between her return and  
25 the entries on the bank statements.

1           3. The Commissioner tallied all the expenses  
2 that Ms. Gentry annotated on the statements as business  
3 expenses, and found that they total not \$29,221 as her  
4 return would require but less than half that amount --  
5 only \$14,101. (See the Commissioner's pretrial memorandum  
6 at 7.) Thus, for half the expenses she claims she has no  
7 documentation at all.

8           4. The deductions include expenses for  
9 clothing. Ms. Gentry testified that there was no uniform  
10 required for her job, but explained that the employees  
11 were required to dress very well. However, the clothes  
12 that she bought were evidently not specialized but were  
13 suitable for use outside of her work environment --  
14 illustrated by the fact that she wore to her trial a pair  
15 of shoes for which she had deducted the expense for 2014.  
16 We can say here, as we said in Bernardo v. Commissioner,  
17 T.C. Memo. 2004-199, "Although petitioner testified that  
18 she purchased the clothing for work, she never stated (and  
19 there is no evidence) that it was unsuitable, in terms of  
20 price, quality, or style, for her personal wear." The  
21 cost of the clothing is therefore not deductible.

22           5. Ms. Gentry apparently deducted vehicle  
23 expense both by mileage (at 56 cents per mile) and by  
24 specific expenses she had incurred for her car -- i.e.,  
25 repairs and purchase payments. Such duplication is not

1 permitted, and the capital expense of purchasing the car  
2 (a depreciable asset) would not be deductible.

3 6. Ms. Gentry did not undertake to show, as  
4 section 274 requires, the specific business purpose and  
5 nature of her vehicle expense, her travel expense, or her  
6 meals and entertainment expense. She admitted that she  
7 was unable to recall details of events in 2014, and her  
8 understandable lack of such recall seems an argument for  
9 the wisdom of the regime Congress enacted in section 274.

10 IV. Blue Sky expenses

11 At trial Ms. Gentry seemed to suggest that  
12 expenses she had incurred in 2014 for Blue Sky should  
13 augment whatever deductions we might allow for her  
14 unreimbursed employee business expenses for her art  
15 consultant employment.

16 However, it appears that if she did make any  
17 expenditures for Blue Sky (which we cannot tell, for the  
18 same reasons we cannot tell whether she made expenditures  
19 for her art consultant job), then those would either have  
20 been start-up expenditures not deductible pursuant to  
21 section 195(a), or else an investment in the company, or  
22 else, if her boyfriend tricked her into making  
23 expenditures for his benefit, then perhaps theft loss  
24 expense deductible not in 2014 but in 2015 when she  
25 discovered the theft. See sec. 165(e). Ms. Gentry is not

1 entitled to any deductions in 2014 for Blue Sky  
2 expenditures.

3 Because we sustain all the disallowances in the  
4 IRS's notice of deficiency, decision will be entered for  
5 the Commissioner.

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

8 (Whereupon, at 9:40 a.m., the above-entitled  
9 matter was concluded.)

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