

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ROBIN ELAINE FULLER,)	
)	
Petitioner,)	
)	CT
v.)	Docket No. 14627-17S
)	
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 herewith to petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before Chief Special Trial Judge Lewis R. Carluzzo at Washington, D.C., 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 for respondent.

**(Signed) Lewis R. Carluzzo
Special Trial Judge**

Dated: Washington, D.C.
May 21, 2018

SERVED May 21 2018

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 May 4, 2018
3 Robin Elaine Fuller v. Commissioner of Internal Revenue
4 Docket No. 14627-17S

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

14 This proceeding for the redetermination of a
15 deficiency is a small tax case subject to the provisions
16 of section 7463 and Rules 170 through 174. Except as
17 provided in Rule 152(c), this bench opinion shall not be
18 cited as authority, and pursuant to section 7463(b) the
19 decision entered in this case shall not be treated as
20 precedent for any other case.

21 Robin Elaine Fuller appeared on her own behalf.
22 Stephen C. Welker appeared on behalf of respondent.

23 In a notice of deficiency dated June 12, 2017
24 (notice), respondent determined an \$11,503 deficiency in
25 petitioner's 2014 Federal income tax and imposed a

1 \$2,300.60 section 6662(a) penalty. The issues for
2 decision are whether petitioner is: (1) entitled to
3 certain deductions claimed on the Schedule A, Itemized
4 Deductions, included with her 2014 Federal income tax
5 return; and (2) liable for a section 6662(a) accuracy-
6 related penalty.

7 Some of the facts have been stipulated and are
8 so found. At the time the petition was filed, petitioner
9 resided in Maryland.

10 During 2014 petitioner was employed as a grant
11 specialist for the U.S. Department of Health and Human
12 Services (HHS) where she has been employed since 1984. In
13 accordance with a voluntary HHS policy, petitioner was
14 entitled to, and did, work from home a couple days a week.
15 She performed her work-related functions using a computer
16 setup on her dining room table.

17 Petitioner prepared her 2014 income tax return
18 using a commercially available return preparation software
19 program. She claimed various deductions on the Schedule A
20 included with that return, including, as relevant here,
21 \$41,628 for medical and dental expenses, \$24,237 for
22 charitable contributions, \$850 for tax preparation fees,
23 and \$12,567 for unreimbursed employee business expenses,
24 attributable to "Work from home" expenses. These four
25 deductions are disallowed in the notice and are in dispute

1 here (disputed deductions).

2 According to the notice, petitioner is not
3 entitled to the disputed deductions because, among other
4 reasons, she failed to establish that the expenses were
5 "paid". Furthermore, according to the notice, petitioner
6 is not entitled to the unreimbursed employee business
7 expenses and the tax preparation fees because she failed
8 to establish that the expenses were "ordinary and
9 necessary" to her "business". Other adjustments made in
10 the notice are computational and need not be addressed in
11 this bench opinion.

12 As we have observed in opinions too numerous to
13 count, deductions are a matter of legislative grace, and
14 the taxpayer bears the burden of proof to establish
15 entitlement to any claimed deduction. Rule 142(a);
16 INDOPCO Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New
17 Colonial Ice Co. v. Commissioner, 292 U.S. 435, 440
18 (1934). (Nothing in the record suggests that the
19 provisions of section 7491(a) are applicable, and we
20 proceed as though they are not.) This burden requires the
21 taxpayer to substantiate deductions claimed by keeping and
22 producing adequate records that enable the Commissioner to
23 determine the taxpayer's correct tax liability. Section
24 6001; Hradesky v. Commissioner, 65 T.C. 87, 90 (1975),
25 aff'd per curiam, 540 F.2d 821 (5th Cir. 1976); Meneguzzo

1 v. Commissioner, 43 T.C. 824, 831-832 (1965). A taxpayer
2 claiming a deduction on a Federal income tax return must
3 demonstrate that the deduction is allowable pursuant to
4 some statutory provision and must further substantiate
5 that the expense to which the deduction relates has been
6 paid or incurred. See section 6001; Hradesky v.
7 Commissioner, 65 T.C. at 90; section 1.6001-1(a), Income
8 Tax Regs. In general, section 213(a) allows a deduction
9 for expenses paid during the taxable year for medical care
10 that are not compensated for by insurance or otherwise and
11 to the extent that such expenses exceed 7.5% of adjusted
12 gross income.

13 Generally, section 170(a) allows a deduction for
14 any charitable contribution made by the taxpayer.
15 Charitable contribution deductions are subject to the
16 record keeping requirements of section 1.170A-13(a),
17 Income Tax Regs., for contributions of money, or section
18 1.170A-13(b), Income Tax Regs., for contributions of
19 property other than money. Any contribution of \$250 or
20 more must also satisfy the requirement of section 1.170A-
21 13(f)(1), Income Tax Regs., which provides that to be
22 allowed a charitable contribution deduction of \$250 or
23 more, the taxpayer must substantiate the contribution with
24 a contemporaneous written acknowledgment from the donee
25 organization. If a taxpayer makes a charitable

1 contribution of property other than money in excess of
2 \$500, the taxpayer must maintain written records showing
3 the manner of acquisition of the item and the approximate
4 date of the acquisition. See sec. 1.170A-13(b)(3), Income
5 Tax Regs. Petitioner has submitted no such documentation.

6 Section 212(3) allows a deduction for costs
7 incurred in the preparation of a tax return. See Hughes
8 v. Commissioner, T.C. Memo. 2008-249. Petitioner claims
9 to have spent \$850 for a computer-based tax return
10 preparation system, but submitted nothing showing that the
11 expenditure was paid or incurred.

12 At trial petitioner failed to provide any
13 substantiating documents with respect to any of the
14 disputed deductions. According to petitioner, any records
15 that she might have kept to document her expenses have
16 been lost in one or the other household floods she claims
17 to have occurred in October 2014 and October 2016. The
18 exact nature of the records petitioner claims to have been
19 destroyed cannot be determined from her testimony.

20 Although petitioner testified that she made attempts to
21 reconstruct her records, it remains unclear why she could
22 not have reconstructed her records by obtaining bank and
23 credit card statements, or records maintained by third-
24 party payees. We are particularly concerned about the
25 absence of certain third-party records as it would seem

1 that records from medical service providers and the
2 charitable organizations would be readily available.
3 Accordingly, respondent's disallowances of the deductions
4 for medical and dental expenses, charitable contributions,
5 and tax preparation fees are sustained.

6 We now turn to petitioner's claimed unreimbursed
7 employee business expenses of \$12,567, which relate to
8 "working from home" at her dining room table.

9 It is generally well-known that a taxpayer may
10 deduct ordinary and necessary expenses paid in connection
11 with operating a trade or business. See section 162(a);
12 Boyd v. Commissioner, 122 T.C. 305, 313 (2004).

13 Generally, for purposes of section 162, the phrase "trade
14 or business" includes performance of services as an
15 employee. Primuth v. Commissioner, 54 T.C. 374, 377
16 (1970).

17 In general a taxpayer is not entitled to deduct
18 any expenses related to the use of a dwelling unit used by
19 the taxpayer as a residence during the taxable year. See
20 sec. 280A. Expenses attributable to a home office are
21 excepted from this general rule, however, if the expenses
22 are allocable to a portion of the dwelling unit which is
23 exclusively used on a regular basis as the principal place
24 of business for the taxpayer's trade or business. See
25 sec. 280A(c)(1); Lofstrom v. Commissioner, 125 T.C. 271,

1 278 (2005). If the taxpayer is an employee, the exception
2 under section 280A(c)(1) applies only if the home office
3 is maintained for the convenience of the employer. See
4 Hamacher v. Commissioner, 94 T.C. 348, 353-354 (1990).

5 At trial, petitioner acknowledged that her
6 dining room table was not used exclusively for her HHS
7 work. Moreover, petitioner has not established that the
8 dining room was used on a regular basis as the principal
9 place of business for her employment with HHS or that the
10 dining room was maintained for the convenience of HHS.
11 The fact that petitioner used the dining room for business
12 purposes as she claims is insufficient to allow any
13 deduction attributable to that use. See Lofstrom v.
14 Commissioner, 94 T.C. at 278. To the extent that the
15 unreimbursed employee business expenses relate to supplies
16 petitioner claims to have purchased, including printing
17 paper, she failed to provide any substantiating documents
18 with respect to those expenses nor has she established
19 that they are ordinary and necessary business expenses.
20 Accordingly, petitioner is not entitled to a deduction for
21 unreimbursed employee business expenses, and respondent's
22 determination in this regard is sustained.

23 Lastly, we consider whether petitioner should be
24 held liable for a section 6662(a) penalty. Section
25 6662(a) imposes a 20% accuracy-related penalty on the

1 portion of "an underpayment of tax required to be shown on
2 a return" if, among other reasons, the underpayment is due
3 to a substantial understatement of income tax. See sec.
4 6662(b)(2), (d).

5 With respect to a taxpayer's liability for a
6 section 6652(a) penalty, section 7491(c) places the burden
7 of production on the Commissioner, requiring the
8 Commissioner to produce sufficient evidence indicating
9 that it is appropriate to impose the penalty. Higbee v.
10 Commissioner, 116 T.C. 438, 446-447 (2001). If the
11 Commissioner satisfies the burden of production, then the
12 taxpayer must produce persuasive evidence that the
13 Commissioner's determination is incorrect. See Rule
14 142(a), Welch v. Helvering, 290 U.S. 111, 115 (1933);
15 Higbee v. Commissioner, 116 T.C. at 447.

16 In this case, respondent has satisfied his
17 burden of production because: (1) the underpayment of
18 tax, as defined in section 6664(a) is equal to and
19 computed in the same manner as the deficiency, see sec.
20 6211, and is a substantial understatement of income tax
21 because it exceeds the greater of \$5,000 or 10% of the
22 amount of tax required to have been shown on petitioner's
23 2014 return, see sec. 6662(d)(1)(A); and (2) the parties
24 stipulated that the accuracy-related penalty was approved
25 by the examining officer's manager on April 27, 2017. See

1 sec. 6751(b)(1); Chai v. Commissioner, 851 F.3d 190, 221
2 (2d Cir. 2017), aff'g in part and rev'g in part T.C. Memo.
3 2015-42; Graev v. Commissioner, 149 T.C. __, __ (slip op. at
4 14) (Dec. 20, 2017), supplementing 147 T.C. __ (Nov. 30,
5 2016).

6 The accuracy-related penalty does not apply to
7 any part of an underpayment of tax if it is shown that the
8 taxpayer acted with reasonable cause and in good faith
9 with respect to that portion. Sec. 6664(c)(1).

10 Petitioner has failed to produce sufficient evidence to
11 substantiate the deductions here in dispute or otherwise
12 establish that she had reasonable cause and acted in good
13 faith. Accordingly, petitioner is liable for the section
14 6662(a) accuracy-related penalty.

15 To reflect the foregoing, decision will be
16 entered for respondent. This concludes the Court's bench
17 opinion in this case.

18 (Whereupon, at 2:17 p.m., the above-entitled
19 matter was concluded.)
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