

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

EL ALAOUI AHMED OULD EL HADRAMI,)	
)	
Petitioner,)	CT
)	
v.)	Docket No. 11377-17S
)	
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 El Alaoui Ahmed Ould El Hadrami v. Commissioner of
4 Internal Revenue
5 Docket No. 11377-17S

6 The Court has decided to render oral findings of
7 fact and opinion in this case and the following represents
8 the Court's oral findings of fact and opinion (bench
9 opinion). Unless otherwise noted, section references made
10 in this bench opinion are to the Internal Revenue Code of
11 1986, as amended, in effect for the relevant period, and
12 Rule references are to the Tax Court Rules of Practice and
13 Procedure. This bench opinion is made pursuant to the
14 authority granted by section 7459(b) 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 174. 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 El Alaoui Ahmed Ould El Hadrami appeared on his
23 own behalf. Stephen C. Welker appeared on behalf of
24 respondent.

25 In a notice of deficiency dated February 17,

1 2017 (notice), respondent determined a \$3,962 deficiency
2 in petitioner's 2013 Federal income tax. The issue for
3 decision is whether petitioner is entitled to certain
4 deductions claimed on a Schedule C, Profit or Loss From
5 Business, included with his 2013 Federal income tax
6 return.

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

10 In addition to petitioner's full-time job as a
11 restaurant manager, in or around February of 2013, he
12 started working as a limousine driver for Rim Limo, Inc.
13 (Rim), as an independent contractor rather than an
14 employee. That being so, petitioner reported the income
15 and expenses attributable to that activity on the above-
16 referenced Schedule C. There is no business name shown
17 for the activity on the Schedule C, but the document shows
18 its "principal business" as "Limo driver". For
19 convenience we'll refer to that activity as petitioner's
20 limo driver business.

21 The car that petitioner drove in connection with
22 his limo driver business was a 2003 Lincoln Town Car
23 (Lincoln). The parties dispute who owned that car during
24 2013. The certificate of title for that vehicle, issued
25 by the Virginia Department of Motor Vehicles, on April 19,

1 2012 (Virginia title), shows Rim as the owner. At that
2 time its odometer showed 291,380 miles. Handwritten notes
3 on the portion of the Virginia title designated
4 "Assignment of Title by Owner" suggest that petitioner
5 bought the car from Rim on March 12, 2013, and at that
6 time its odometer showed 320,673 miles. A transcript of
7 vehicle record dated February 21, 2018, also issued by the
8 Virginia Department of Motor Vehicles (DMV transcript),
9 however, shows that petitioner purchased the Lincoln
10 exactly one year later on March 12, 2014. As of that
11 date, the odometer read 320,673 miles, which, according to
12 the handwritten notations on the Virginia title, is the
13 same odometer reading shown for the Lincoln a year
14 earlier. Something is obviously amiss, and we are more
15 persuaded by the official records of the Virginia
16 Department of Motor Vehicles than we are by the
17 handwritten notations on the Virginia title. We are not
18 convinced that petitioner owned the Lincoln during 2013
19 and proceed accordingly.

20 Rim maintained a daily mileage log for
21 petitioner's driving assignments during 2013. The entries
22 on the mileage log show dates, beginning and ending
23 odometer readings, addresses of the starting point,
24 assignment destinations, and addresses where the car was
25 parked at the conclusion of the assignment.

1 According to Rim, petitioner was required to
2 park the car at the end of the assignment and "return
3 home" in his own car. This, of course, implies that
4 petitioner owned a car other than the Lincoln during 2013.
5 The log raises more questions than it answers. For
6 example, the mileage shown on the log is entirely
7 inconsistent with the mileage shown on the Virginia title
8 or the DMV transcript, which makes us wonder whether it
9 relates to a car other than the Lincoln. Furthermore, the
10 various addresses shown on the log hardly support the
11 implication of Rim's statement that petitioner was
12 required to pick up, and drop the Lincoln off at Rim's
13 location and drive home in his own car.

14 Petitioner did not otherwise maintain any books
15 or records with respect to the receipts or expenses
16 relating to his limo driver business. He did maintain a
17 personal checking account with Wells Fargo in 2013.

18 Petitioner prepared his timely filed 2013
19 Federal income tax return with help from a professional
20 return preparer. As noted, the return includes a Schedule
21 C, on which income and expenses attributable to his limo
22 driver business are shown. Taking into account \$8,019 of
23 gross receipts and \$29,017 of expenses, the Schedule C
24 shows a \$22,253 net loss, which is taken into account in
25 the computation of the adjusted gross income reported on

1 petitioner's return. In addition to other deductions not
2 in dispute, that loss includes car and truck expenses of
3 \$19,369, computed by applying the applicable standard
4 mileage rate to 34,281 miles petitioner reported as
5 business miles on his Schedule C, meals and entertainment
6 expenses of \$1,004, and "Other expenses" of \$2,115,
7 attributable to car washing expenses.

8 In the notice, the deductions for car and truck
9 expenses, meals and entertainment expenses, and "Other
10 expenses" are disallowed. According to the notice,
11 petitioner is not entitled to the deductions because he
12 failed to establish that the expenses were "paid or
13 incurred" and were "ordinary and necessary" to the limo
14 driver business. Other adjustments made in the notice are
15 computational and need not be addressed in this bench
16 opinion.

17 As we have observed in opinions too numerous to
18 count, deductions are a matter of legislative grace, and
19 the taxpayer bears the burden of proof to establish
20 entitlement to any claimed deduction. Rule 142(a);
21 INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New
22 Colonial Ice Co. v. Commissioner, 292 U.S. 435, 440
23 (1934). (Nothing in the record suggests that the
24 provisions of section 7491(a) are applicable, and we
25 proceed as though they are not.) This burden requires the

1 taxpayer to substantiate deductions claimed by keeping and
2 producing adequate records that enable the Commissioner to
3 determine the taxpayer's correct tax liability. Section
4 6001; Hradesky v. Commissioner, 65 T.C. 87, 90 (1975),
5 aff'd per curiam, 540 F.2d 821 (5th Cir. 1976); Meneguzzo
6 v. Commissioner, 43 T.C. 824, 831-832 (1965). A taxpayer
7 claiming a deduction on a Federal income tax return must
8 demonstrate that the deduction is allowable pursuant to
9 some statutory provision and must further substantiate
10 that the expense to which the deduction relates has been
11 paid or incurred. See section 6001; Hradesky v.
12 Commissioner, 65 T.C. at 90; section 1.6001-1(a), Income
13 Tax Regs.

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

18 If a taxpayer establishes that he or she paid or
19 incurred a deductible business expense but does not
20 establish the amount of the expense, we may approximate
21 the amount of the allowable deduction, bearing heavily
22 against the taxpayer whose inexactitude is of his or her
23 own making. Cohan v. Commissioner, 39 F.2d 540, 543-544
24 (2d Cir. 1930). We sometimes refer to this as the Cohan
25 rule. However, for the Cohan rule to apply, there must be

1 sufficient evidence in the record to provide a basis for
2 the estimate. Vanicek v. Commissioner, 85 T.C. 731, 743
3 (1985). Certain expenses may not be estimated because of
4 the strict substantiation requirements of section 274(d).
5 See sec. 280F(d)(4)(A); Sanford v. Commissioner, 50 T.C.
6 823, 827 (1968), aff'd per curiam, 412 F.2d 201 (2d Cir.
7 1969).

8 With these fundamental principles of Federal
9 income taxation in mind, we consider petitioner's claims
10 to the various deductions here in dispute.

11 Meals and Entertainment

12 Petitioner claimed a \$1,004 deduction for meals
13 and entertainment on his Schedule C attached to his 2013
14 return. According to petitioner, the deduction relates to
15 expenses for providing food and beverages to his limo
16 driver business clients. Although he provided bank
17 account statements from his Wells Fargo personal checking
18 account, those statements do not identify which
19 transactions, if any, relate to business as opposed to
20 nondeductible personal expenses. See secs. 162; 262(a).
21 He did not otherwise provide documents, such as receipts,
22 substantiating the meals and entertainment expenses.
23 Because petitioner has failed properly to substantiate the
24 deduction for meals and entertainment, and because strict
25 substantiation is required, respondent's disallowance of

1 that deduction is sustained.

2 Other Expenses

3 Petitioner claimed a \$2,115 deduction for "Other
4 expenses", on the Schedule C attached to his 2013 return.
5 According to petitioner, that is the amount he spent to
6 have the Lincoln washed during 2013.

7 A passenger vehicle such as the Lincoln normally
8 is treated as listed property under section 280F(d)(4)
9 subject to strict substantiation under section 274(d).
10 The rule in Cohan does not apply to expenses relating to
11 listed property, which generally includes any passenger
12 automobile. Secs. 274(d)(4), 280F(d)(4)(A)(i); Sanford v.
13 Commissioner, 50 T.C. 823, 827 (1968), aff'd per curiam,
14 412 F.2d 201 (2d Cir. 1969); Seidel v. Commissioner, T.C.
15 Memo. 2005-67. However, the term "passenger automobile"
16 does not include any vehicle used by the taxpayer directly
17 in the trade or business of transporting persons for
18 compensation or hire. Sec. 280F(d)(5)(B)(ii); sec.
19 1.280F-6(c)(3)(ii), Income Tax Regs. Therefore the
20 Lincoln that petitioner used in his limo driver business
21 is not listed property, and the expenses related thereto
22 could be estimated as allowed by the Cohan rule.

23 Be that as it may, neither petitioner's
24 testimony nor other evidence in the record provides any
25 basis for us to estimate how much he might have spent on

1 car washes in connection with his limo driver business.
2 Our review of his Wells Fargo bank accounts shows no
3 expenditures for car washes, and petitioner has not
4 pointed to any specific entry on those records that
5 support his deduction. Similarly, Rim's letter confirming
6 that petitioner was not reimbursed for any expenses he
7 incurred in his limo driver business does not describe
8 what expenses he might have incurred, much less give us
9 any idea how much petitioner might have spent on such
10 expenses. Respondent's disallowance of the deduction for
11 car washes is sustained.

12 Car and Truck

13 Petitioner claimed a \$19,369 deduction for car
14 and truck expenses on his Schedule C attached to his 2013
15 return, computed by applying the applicable standard
16 mileage rate to 34,281 miles petitioner reported as
17 business miles on his Schedule C.

18 According to petitioner, he purchased the
19 Lincoln on March 12, 2013 and the mileage claimed is shown
20 on the mileage log prepared by Rim. As noted above, the
21 evidence he offers in support of his claim is not
22 persuasive. Because he did not establish that he owned or
23 leased the vehicle that he used for business purposes in
24 2013, he is not entitled to a deduction for car and truck
25 expenses computed using the standard mileage rate then in

1 effect in lieu of actual expenditures. See Rev. Proc.
2 2010-51, sec. 3.01(1), 2010-51 I.R.B. 883; see also
3 Kozlowski v. Commissioner, T.C. Memo. 1977-81.

4 Moreover, the discrepancy between the starting
5 mileage reported on the mileage log on the date petitioner
6 claims to have purchased the Lincoln and the two documents
7 issued by the Virginia Department of Motor Vehicles, calls
8 into question the credibility of the mileage log.
9 According to petitioner, that discrepancy is explained by
10 a mistake in the initial starting mileage recorded on the
11 mileage log, which he claims should have been increased by
12 100,000 miles. Assuming without finding that the initial
13 starting mileage was incorrectly recorded, as petitioner
14 suggests, on the date petitioner claimed to have purchased
15 the Lincoln, that is March 12, 2013, there still would
16 remaining a more than 21,684 mile discrepancy.
17 Furthermore, it would seem that the mistake would have
18 been notice and corrected at some point during the year.
19 No such correction is found on the log. Petitioner's
20 explanation does not eliminate our concerns as to the
21 accuracy of the log.

22 Otherwise, we find nothing in the petitioner's
23 Wells Fargo bank records that would allow us to estimate
24 his actual expenses for the operation the Lincoln in his
25 limo driver business. Accordingly, petitioner is not

1 entitled to a deduction for car and truck expenses.

2 To reflect the foregoing, decision will be
3 entered for respondent. This concludes the Court's bench
4 opinion in this case.

5 (Whereupon, at 1:58 p.m., the above-entitled
6 matter was concluded.)

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