

UNITED STATES TAX COURT  
WASHINGTON, DC 20217 PA

XIANGCUN SHI, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 6852-17S.  
 )  
 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 Special Trial Judge Daniel A. Guy, Jr., at Los Angeles, Cal, 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) Daniel A. Guy, Jr.  
Special Trial Judge**

Dated: Washington, D.C.  
October 18, 2018

SERVED Oct 18 2018

Bench Opinion by Special Trial Judge Daniel A. Guy, Jr.

October 3, 2018

Xiangcun Shi v. Commissioner of Internal Revenue

Docket No. 6852-17S

THE COURT: The Court has decided to render oral findings of fact and opinion in this case, and the following represents the Court's oral findings of fact and opinion. The oral findings of fact and opinion shall not be relied upon as precedent in any other case.

This proceeding for the redetermination of a deficiency is a small tax case conducted pursuant to the provisions of section 7463 of the Internal Revenue Code of 1986, as amended, and Rules 170 through 174 of the Tax Court Rules of Practice and Procedure.

This bench opinion is made pursuant to the authority granted by section 7459(b) of the Internal Revenue Code of 1986, as amended, and Rule 152 of the Tax Court Rules of Practice and Procedure. Hereinafter in this bench opinion, section references are to the Internal Revenue Code of 1986, as amended, in effect for 2014, and Rule references are to the Tax Court Rules of Practice and Procedure.

#### Background

Petitioner resided in California at the time the petition was filed and he appeared at trial pro se.

1 Daniel C. Chavez appeared on behalf of respondent. The  
2 parties filed with the Court a stipulation of facts, with  
3 accompanying exhibits.

4 The record shows that the Internal Revenue  
5 Service (IRS) received and processed an electronically  
6 filed Form 1040, U.S. Individual Income Tax Return, for  
7 the taxable year 2014, bearing petitioner's name, as well  
8 as his California address, phone number, and social  
9 security number. The tax return was very detailed and  
10 included as attachments a Form 4562, Depreciation and  
11 Amortization, a Form 8829, Expenses for Business Use of  
12 Your Home, and a Schedule C, Profit and Loss from  
13 Business.

14 The Schedule C reported gross receipts of  
15 \$181,100 attributable to an "International Sales"  
16 activity. The Schedule C reported numerous itemized  
17 expenses totaling \$134,888 and expenses for business use  
18 of home of \$29,151, leaving net business income of  
19 \$17,061, an amount that was carried over to line 12 of the  
20 tax return. The tax return included a standard deduction,  
21 a single personal exemption deduction, and reported tax  
22 due of \$2,794, comprising income tax of \$383 and self-  
23 employment tax of \$2,411.

24 There is no clear indication on the tax return  
25 whether it was prepared and filed by petitioner or someone

1 else. The tax due, however, was paid by way of a charge  
2 applied against petitioner's credit card.

3 The IRS examined the tax return and issued a  
4 notice of deficiency to petitioner determining a Federal  
5 income tax deficiency of \$32,077 and an accuracy-related  
6 penalty under section 6662(a) of \$6,415 for the taxable  
7 year 2014. The deficiency is attributable to the  
8 disallowance of deductions for certain expenses reported  
9 on Schedule C, namely travel expenses of \$15,731, legal  
10 and professional expenses of \$54,058, and contract labor  
11 expenses of \$25,381.

12 Petitioner invoked the Court's jurisdiction by  
13 filing a timely petition for redetermination pursuant to  
14 section 6213(a). Petitioner alleged in the petition and  
15 asserted at trial that the tax return in question was  
16 totally fabricated, that he did not work or otherwise  
17 conduct any trade or business in 2014, and that the tax  
18 return was filed without his knowledge to "trap" him.

19 At trial, petitioner stated that he graduated  
20 from a university in China, moved to the U.S. in 1995, and  
21 he conducted a travel business for about 10 years before  
22 he purportedly retired in 2005. During that period of  
23 time, petitioner maintains he filed Federal income tax  
24 returns.

25 Petitioner testified that in 2014 he was

1 supported by his affluent daughter, who lived and worked  
2 in China, and that he made several trips between the U.S.  
3 and China that year to help take care of his aging  
4 parents. Petitioner also testified that he spent a  
5 considerable amount of his time in China attending  
6 educational seminars and health improvement programs all  
7 of which were paid for by his daughter. Attached to the  
8 parties' stipulation of facts are receipts that appear to  
9 relate to the above-mentioned seminars that petitioner  
10 offered "to substantiate alleged legal and professional  
11 services expenses".

12 Petitioner testified that on one of his trips to  
13 China in 2014, his girlfriend had suggested that he meet  
14 with an individual in Beijing who might assist him in  
15 obtaining U.S. citizenship. Petitioner says he met with  
16 the unnamed individual who told him that he should file a  
17 Federal income tax return to enhance his chances of  
18 gaining U.S. citizenship. Petitioner further testified  
19 that he provided this individual with personal  
20 information, including his social security number and  
21 credit card information. Finally, petitioner testified  
22 that the individual later became unhappy with him after he  
23 rejected the individual's request for a loan. Petitioner  
24 failed to identify the individual in question.

25 The 2014 tax return includes a reference to the

1 Hexi Hotel in Gansu Province, China, in connection with  
2 the application of capitalization rules for real or  
3 personal property under section 263 and related  
4 regulations. Petitioner acknowledged that he was  
5 acquainted with the owners of the property.

6 Discussion

7 The Commissioner's determination of a taxpayer's  
8 liability in a notice of deficiency normally is presumed  
9 correct, and the taxpayer bears the burden of proving that  
10 the determination is incorrect. Rule 142(a); Welch v.  
11 Helvering, 290 U.S. 111, 115 (1933). Petitioner does not  
12 contend, and the record does not suggest, that the burden  
13 of proof should shift to respondent pursuant to section  
14 7491(a).

15 Although petitioner maintains that the tax  
16 return for 2014 was fabricated and filed without his  
17 consent, the Court is not obliged to accept a taxpayer's  
18 testimony that is self-serving and uncorroborated by  
19 objective evidence. See, e.g., Cluck v. Commissioner, 105  
20 T.C. 324, 338 (1995). Petitioner offered no objective  
21 evidence, or the testimony of a credible witness, to  
22 corroborate his version of the events that unfolded in  
23 2014. His testimony was vague, lacked important details,  
24 was at times inconsistent, and on the whole unconvincing.  
25 Considering all the facts and circumstances, the Court

1 finds that petitioner either filed the tax return himself  
2 or consented to having the return filed on his behalf.

3 Deductions are a matter of legislative grace,  
4 and the taxpayer generally bears the burden of proving  
5 entitlement to any deduction claimed. Rule 142(a);  
6 INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New  
7 Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934).

8 A taxpayer must substantiate deductions claimed by keeping  
9 and producing adequate records that enable the  
10 Commissioner to determine the taxpayer's correct tax  
11 liability. Sec. 6001; Hradesky v. Commissioner, 65 T.C.  
12 87, 89-90 (1975), aff'd per curiam, 540 F.2d 821 (5th Cir.  
13 1976).

14 Although petitioner asserts that the tax return  
15 was a fabrication, he nevertheless offered a few receipts  
16 in an attempt to substantiate some of the expenses claimed  
17 on Schedule C. The Court finds that petitioner did not  
18 present any objective evidence to corroborate his  
19 testimony that the tax return was a complete fabrication.  
20 There would seem to have been a number of avenues  
21 available to petitioner to provide his case, but he  
22 offered the Court nothing but his own self-serving  
23 testimony. Nor did he provide any receipts or similar  
24 business records that would serve to substantiate the  
25 Schedule C expenses that respondent disallowed in the

1 notice of deficiency. The receipts attached to the  
2 stipulation of facts bear no discernable relationship to  
3 the professional and legal expenses in dispute. On this  
4 record, respondent's determination that petitioner is  
5 liable for a Federal income tax deficiency is sustained.

6 Section 6662(a) and (b) (1) and (2) imposes a  
7 penalty equal to 20% of the amount of any underpayment of  
8 tax that is attributable to (1) negligence or disregard of  
9 rules or regulations or (2) any substantial understatement  
10 of income tax. The term "negligence" includes any failure  
11 to make a reasonable attempt to comply with the provisions  
12 of the Code, and the term "disregard" includes any  
13 careless, reckless, or intentional disregard of rules and  
14 regulations. Sec. 6662(c). An understatement means the  
15 excess of the amount of the tax required to be shown on  
16 the return over the amount of the tax imposed which is  
17 shown on the return, reduced by any rebate. Sec.  
18 6662(d) (2) (A). An understatement is substantial in the  
19 case of an individual if the amount of the understatement  
20 for the taxable year exceeds the greater of 10% of the tax  
21 required to be shown on the return or \$5,000. Sec.  
22 6662(d) (1) (A).

23 Section 6664(c) (1) provides an exception to the  
24 imposition of the accuracy-related penalty if the taxpayer  
25 establishes that there was reasonable <sup>cause</sup> for, and the DG

1 taxpayer acted in good faith with respect to, the  
2 underpayment. Sec. 1.6664-4(a), Income Tax Regs. The  
3 determination of whether the taxpayer acted in reasonable  
4 cause and in good faith is made on a case-by-case basis,  
5 taking into account the pertinent facts and circumstances.  
6 Sec. 1.6664-4(b)(1), Income Tax Regs.

7 With respect to an individual taxpayer's  
8 liability for any penalty, section 7491(c) places on the  
9 Commissioner the burden of production, thereby requiring  
10 the Commissioner to come forward with sufficient evidence  
11 indicating that it is appropriate to impose the penalty.  
12 Higbee v. Commissioner, 116 T.C. 438, 446-447 (2001).

13 Once the Commissioner meets his burden of production, the  
14 taxpayer must come forward with persuasive evidence that  
15 the Commissioner's determination is incorrect. Id. at  
16 447; see Rule 142(a); Welch v. Helvering, 290 U.S. at 115.

17 Respondent has discharged his burden of  
18 production under section 7491(c). We have sustained  
19 respondent's deficiency determination, and the resulting  
20 underpayment exceeds both 10% of the tax required to be  
21 shown on petitioner's tax return and \$5,000. Sec.  
22 6662(d)(1)(A). The record also includes a civil penalty  
23 approval form executed by the IRS tax examiner's group  
24 manager approving the section 6662(a) penalty asserted in  
25 the notice of deficiency. See sec. 6751(b).

1                   Petitioner offered no defense to the imposition  
2 of an accuracy-related penalty for the year in issue.  
3 Given his educational background and past experience  
4 filing Federal income tax returns, the Court concludes  
5 that petitioner did not make sufficient efforts to  
6 determine his proper tax liability. In short, he failed  
7 to show reasonable cause for the tax underpayment at  
8 issue. Considering all the facts and circumstances, we  
9 sustain respondent's determination that petitioner is  
10 liable for an accuracy-related penalty for the year in  
11 issue.

12                   Decision will be entered for respondent. This  
13 concludes the Court's oral findings of fact and opinion in  
14 this case.

15                   (Whereupon, at 10:40 a.m., the above-entitled  
16 matter was concluded.)  
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