

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

DAVID MCCALLUM & ANNIE M.)	
MCCALLUM,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 16833-17.
)	
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 petitioners and to respondent a copy of the pages of the transcript of the trial in the above case before Judge Kathleen Kerrigan at Houston, Texas, containing her 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, a decision will be entered under Rule 155.

**(Signed) Kathleen Kerrigan
Judge**

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

SERVED Nov 14 2018

1 Bench Opinion by Judge Kathleen Kerrigan
2 October 30, 2018
3 David McCallum & Annie M. McCallum v. Commissioner of
4 Internal Revenue
5 Docket No. 16833-17

6 THE COURT: The Court has decided to render in
7 this case the following as its oral Findings of Fact
8 and Opinion, which shall not be relied upon as
9 precedent in any other case. This Bench Opinion is
10 made pursuant to the authority granted by section
11 7459(b) of the Internal Revenue Code and Rule 152 of
12 the Tax Court Rules of Practice and Procedure.

13 All section references are to the Internal
14 Revenue Code in effect for the year in issue, and all
15 Rule references are to the Tax Court Rules of Practice
16 and Procedure.

17 By Notice of Deficiency dated August 8, 2017,
18 the Internal Revenue Service determined a deficiency in
19 the Federal income tax of petitioners for tax year 2014
20 and an accuracy-related penalty pursuant to section
21 6662(a). After concession, the issues for
22 consideration are whether petitioners are entitled to
23 claim any of the disallowed unreimbursed employee
24 expenses for tax year 2014 and whether they are liable
25 for the section 6662(a) penalty.

1 Trial of this case was conducted on October
2 29, 2018, in San Francisco, California. The
3 petitioners represented themselves, and Caitlin A.
4 Homewood represented respondent. The parties'
5 stipulation of facts and attached exhibits were
6 admitted into evidence. Petitioner husband was the only
7 witness. We find the following facts:

8 FINDINGS OF FACT

9 Petitioners resided in California when the
10 petition was timely filed. They filed a joint Federal
11 income tax return for tax year 2014.

12 Petitioner husband worked as an airplane
13 mechanic. He used his own airplane, which was kept at
14 the Napa County Airport, to fly to various jobs.
15 Petitioner husband would contact different companies to
16 see if they needed their aircrafts serviced.

17 During 2014, he performed services for three
18 different companies. He received wages of \$58,823 from
19 L-3 Communications Vertex Aerospace (L-3 Vertex),
20 \$12,224 from L-3 Communications Integrated Systems (L-3
21 Integrated), and \$461 from Napa Jet Center, Inc. (Napa
22 Jet Center). The majority of the work for Napa Jet
23 Center was performed at the Napa County Airport. Some
24 of the repair jobs would take petitioner husband less
25 than six minutes to complete.

1 taxpayer bears the burden of proving those
2 determinations are incorrect. Rule 142(a); Welch v.
3 Helvering, 290 U.S. 111, 115 (1933). Section 6001 and
4 the regulations promulgated thereunder require
5 taxpayers to maintain records sufficient to permit
6 verification of income and expenses. See sec. 1.6001-
7 1(a) and (e), Income Tax Regs.

8 Unreimbursed Employee Expenses

9 Section 162(a) allows a taxpayer to deduct all
10 ordinary and necessary expenses paid or incurred in
11 carrying on a trade or business. An ordinary expense
12 is one that commonly or frequently occurs in the
13 taxpayer's business. Deputy v. DuPont. 308 U.S. 488,
14 485 (1940), and a necessary expense is one that is
15 appropriate and helpful in carrying on the taxpayer's
16 business, Welch v. Helvering. 290 U.S. at 113. The
17 expense must directly connect with or pertain to the
18 taxpayer's business. Sec. 1.162-1(a), Income Tax Regs.
19 A taxpayer may not deduct a personal, living, or family
20 expense unless the Code expressly provides otherwise.
21 Sec. 262(a).

22 Whether an expenditure is ordinary and
23 necessary is generally a question of fact.
24 Commissioner v. Heininger, 320 U.S. 467, 475 (1943). A
25 taxpayer must show a bona fide purpose for the

1 expenditure; there must also be a proximate
2 relationship between the expenditure and his or her
3 business. Challenge Mfg. Co. v. Commissioner, 37 T.C.
4 650 (1962). Pursuant to section 162(a) a taxpayer may
5 deduct unreimbursed employee expenses as an ordinary
6 and necessary business expense. Lucas v. Commissioner,
7 79 T.C. 1, 7 (1982). Such deductions are allowed only
8 to the extent that the total deduction exceeds 2% of
9 adjusted gross income. Sec. 67(a).

10 Section 262(a) provides that personal, living,
11 or family expenses are not deductible. Section
12 162(a)(2) allows traveling expenses to be deducted if
13 they are ordinary and necessary expenses and have been
14 incurred while the taxpayer is away from home in the
15 pursuit of a trade or business. Barone v.
16 Commissioner, 85 T.C. 462,465 (1985), aff'd without
17 published opinion, 807 F. 2d 177 (9th Cir. 1986). Except
18 for taxpayers on temporary work assignments, costs of
19 traveling to and from a place of business are considered
20 personal expenses and are not deductible. Commissioner v.
21 Flowers, 326 U.S. 465, 473-474 (1946). Petitioner husband
22 was not on a temporary work assignment. He chose to fly
23 his plane instead of taking transportation provided by L-3
24 Vertex and L-3 Integrated. His unreimbursed travel
25 expenses are considered personal expenses and are not

1 deductible as ordinary and necessary business expenses or
2 as unreimbursed employee expenses.

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4 Accuracy-Related Penalty

5 The Commissioner bears the burden of production
6 with respect to a section 6662(a) penalty. Sec. 7491(c).
7 Once the Commissioner meets this burden, the taxpayer must
8 come forward with a persuasive evidence that the
9 Commissioner's determination is incorrect. See Rule
10 142(a); Higbee v. Commissioner, 116 T.C. 438, 446-447
11 (2001). Section 6751(b)(1) provides that "[n]o penalty
12 under this title shall be assessed unless the initial
13 determination of such assessment is ^{personally} ~~generally~~ ^{KK} approved (in
14 writing) by the immediate supervisor of the individual
15 making such determination or such higher level official as
16 the Secretary may designate." In Graev v. Commissioner,
17 149 T.C. (Dec. 20, 2017), supplementing and overruling in
18 part 147 T.C. 460 (2016), we held that the Commissioner's
19 burden of production under section 7491(c) includes
20 establishing compliance with the supervisory approval
21 requirement of section 6751(b).

22 Respondent provided a Civil Penalty Approval
23 Form meeting the requirements of section 6751(b).
24 Respondent also satisfied the burden of production with
25 respect to the section 6662(a) penalty by producing
evidence that the understatement of income tax is

1 substantial as defined in section 6662(d)(1)(A). The
2 deficiency in this case is both greater than \$5,000 and in
3 excess of 10% of the tax required to be reported, and is
4 thus substantial pursuant to section 6662(d)(1)(A).

5 However, the accuracy-related penalty will not
6 apply with respect to any portion of an underpayment
7 for which it is shown that the taxpayer had reasonable
8 cause and acted in good faith. See sec. 6664(c)(1).
9 Petitioner husband kept records pertaining to all of
10 his flights for his travel to and from jobs. He
11 provided credible testimony on how he calculated the
12 miles he traveled and the amount of reimbursement he
13 received. We find that petitioner husband acted in
14 good faith. Petitioners are not liable for the section
15 6662(a) penalty.

16 A decision will be entered under Rule 155.
17 This concludes the Court's oral Finding of Fact and
18 Opinion in this case.

19 (Whereupon, at 9:11 a.m., the above-entitled
20 matter was concluded.)

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