

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

MARK C. HASSON & SUZANNE M.)
PAGANO, ET AL.,)
)
Petitioners,)
)
v.) Docket No. 15265-17S, 25142-17S
)
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 petitioners and to respondent a copy of the pages of the transcript of the trial in the above cases before Chief Special Trial Judge Lewis R. Carluzzo at Los Angeles, California, 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 order will be issued, and decision will be entered under Rule 155.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
February 4, 2019

SERVED Feb 05 2019

Bench Opinion by Special Trial Judge Lewis R. Carluzzo

December 6, 2018

Mark C. Hasson & Suzanne M. Pagano v. Commissioner of

Internal Revenue

Docket Nos. 15265-17S and 25142-17S

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

Each case for the redetermination of a deficiency consolidated in this proceeding is a small tax case subject to the provisions of section 7643 and Rules 170 through 175. Except as provided in Rule 152(c), this bench opinion shall not be cited as authority, and pursuant to section 7463(b) the decision entered in this case shall not be treated as precedent for any other case.

There was no appearance by or on behalf of petitioners. Albert B. Brewster appeared on behalf of respondent.



1 In a notice of deficiency dated April 20, 2017,
2 respondent determined a deficiency in petitioners' 2014
3 Federal income tax (2014 notice). In the 2014 notice
4 respondent also imposed a section 6651(a) addition to tax
5 and a section 6662(a) penalty. In a notice of deficiency
6 dated August 29, 2017, respondent determined a deficiency
7 in petitioners' 2015 Federal income tax (2015 notice). In
8 the 2015 notice, respondent imposed a section 6651(a)
9 addition to tax and a section 6662(a) penalty. At the
10 trial, conducted in Los Angeles, California, on December
11 4, 2018, respondent made a claim for an increased
12 deficiency for 2015, see sec. 6214(a), and made an oral
13 motion to conform the pleadings to the proofs. See Rule
14 41(b).

15 The issues for decision for 2014 are: (1)
16 whether petitioners overstated expense deductions claimed
17 on a Schedule C, Profit or Loss from Business, included
18 with their 2014 joint Federal income tax return (2014
19 return); (2) whether petitioners are liable for a section
20 6651(a) addition to tax; and (3) whether petitioners are
21 liable for a section 6662(a) accuracy related penalty.

22 The issues for decision for 2015 are: (1)
23 whether petitioners understated gross receipts shown on a
24 Schedule C included with their 2015 joint Federal income
25 tax return (2015 return); (2) whether petitioners

1 overstated expense deductions claimed on that Schedule C;
2 (3) whether petitioners are liable for a section 6651(a)
3 addition to tax; (4) whether petitioners are liable for a
4 section 6662(a) penalty; and (5) whether petitioners are
5 liable for an increased deficiency as claimed by
6 respondent at the trial.

7 All of the facts recited in respondent's Rule
8 91(f) motions are found pursuant to procedures
9 contemplated by that Rule. Some of those facts will be
10 summarized in the following portions of this bench
11 opinion. When the petition was filed in this case,
12 petitioners lived in California. References to
13 petitioner, are to Mark Hasson.

14 According to the Schedule C attached to
15 petitioners' 2014 and 2015 returns, during each year
16 petitioner was in the trade or business of income tax
17 return preparation. He conducted that business as a sole
18 proprietor and reported the income and deductions
19 attributable to that business on those Schedules C.

20 For each year ^{year}, respondent disallowed all, or
21 portions of, some of the deductions claimed on the
22 Schedule C. For 2015, after conducting a bank deposit
23 analysis of the four bank accounts maintained by
24 petitioners during that year, respondent determined that
25 petitioners' Schedule D income was understated by

1 \$38,333.03. Of that amount, \$23,011, is shown as an
2 adjustment in the 2015 notice, and the balance is
3 supported by evidence respondent introduced at trial.
4 Several computational adjustments are made in both the
5 2014 notice and the 2015 notice, but those adjustments
6 will not be addressed in this bench opinion.

7 Schedule C Deductions - 2014 and 2015

8 As we observed in opinions too numerous to
9 count, deductions are a matter of legislative grace, and
10 the taxpayer bears the burden of proof to establish
11 entitlement to any claimed deduction. Rule 142(a);
12 INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New
13 Colonial Ice Co. v Commissioner, 292 U.S. 435, 440 (1934).
14 (Nothing in the record suggests that the provisions of
15 section 7491(a) are applicable, and we proceed as though
16 they are not.) This burden requires the taxpayer to
17 substantiate deductions claimed by keeping and producing
18 adequate records that enable the Commissioner to determine
19 the taxpayer's correct tax liability. Section 6001;
20 Hradesky v. Commissioner, 65 T.C. 87, 90 (1975), aff'd per
21 curiam, 540 F.2d 821 (5th Cir. 1976); Meneguzzo v.
22 Commissioner, 43 T.C. 824, 831-832 (1965). A taxpayer
23 claiming a deduction on a Federal income tax return must
24 demonstrate that the deduction is allowable pursuant to
25 some statutory provision and must further substantiate

1 that the expense to which the deduction relates has been
2 paid or incurred. See section 6001; Hradesky v.
3 Commissioner, 65 T.C. at 90; section 1.6001-1(a), Income
4 Tax Regs.

5 If petitioners kept adequate records to
6 substantiate their entitlement to the deductions here in
7 dispute, then they have not provided them to respondent or
8 to the Court. Furthermore, they did not appear at trial
9 and they did not submit any evidence by stipulation or
10 otherwise to support their claim to the deductions here in
11 dispute. That being so, petitioners have failed to
12 establish that they are entitled to the deductions
13 disallowed in whole or in part in each notice.
14 Respondent's disallowances of those deductions, or
15 portions of those deductions, are sustained.

16 2015 Understatement of Income

17 According to the 2015 notice, petitioners
18 understated their 2015 income by \$23,011. According to a
19 bank deposit analysis of petitioners' four banks accounts
20 conducted by respondent's agent, the understatement
21 totaled \$38,333.03. See DiLeo v. Commissioner, 96 T.C.
22 858 (1991); Tokarski v. Commissioner, 87 T.C. 74 (1986).
23 Respondent's evidence is sufficient to connect petitioners
24 to an income generating activity, namely, petitioner's
25 income tax return preparation business. See sec. 61(a)(1)



1 and (2); Weimerskirch v. Commissioner, 596 F.2d 358 (9th
2 Cir. 1979). Because respondent has linked petitioners to
3 an income generating activity, the burden of proof is on
4 them to establish that respondent's adjustment increasing
5 petitioner's Schedule C income as shown in the 2015 notice
6 is erroneous. This they have failed to do.

7 Otherwise, the burden of proof is on respondent
8 to establish an understatement of income greater than
9 shown in the 2015 notice because that additional
10 understatement presumably would result in an increased
11 deficiency. See Rule 142(a). The 2015 bank deposit
12 analysis offered into evidence by respondent, supported by
13 the testimony of the agent that conducted the analysis
14 satisfies respondent's burden. From what has been
15 submitted, we find that petitioners understated their 2015
16 income by \$38,033.03. To allow our finding to be given
17 effect, respondent's oral motion to conform the pleadings
18 to the proofs made at trial will be granted. As noted at
19 trial, however, because of petitioners' section 7463
20 election and the intended informality of proceedings
21 subject to that election, respondent need not submit an
22 amendment to his answer.

23 Section 6651 additions to tax

24 Respondent has imposed a section 6651(a)
25 addition to tax for each year in issue. That addition to



1 tax is sometimes referred to as a "late filing penalty".
2 Respondent bears the burden of production with respect to
3 the imposition of the section 6651(a) additions to tax
4 here in dispute. See sec. 7491(c). Petitioners' 2014
5 return was not filed when due. Neither was petitioners'
6 2015 return. Nothing in the record suggests that
7 petitioners had reasonable cause for failing to file
8 either return when due, and respondent bears no burden to
9 demonstrate that there was none. See Higbee v.
10 Commissioner, 116 T.C. 438 (2001). It follows that
11 petitioners are liable for a section 6651(a) addition to
12 tax for each year in issue, and we so find.

13 Section 6662(a) Penalty

14 The underpayment of tax, understatement of
15 income tax, and deficiency (or increased deficiency as
16 appropriate) are all computed in the same manner. See
17 secs. 6211, 6662(d)(2)(A) and 6664(a). For each year the
18 amount of the understatement of income tax exceeds \$5,000,
19 which means that the understatement of income tax is a
20 substantial understatement of income within the meaning of
21 section 6662(b)(2) and (d). That in turn means that
22 petitioners are liable for the penalty for each year if
23 respondent has otherwise met his burden of production to
24 establish that the penalty is supported by the requisite
25 supervisory approval. See secs. 6751 and 7491(c); Chai v.

Commissioner, 851 F.3d 190 (2d Cir. 2017); Graev v.

1
2 Commissioner, 149 T.C. ____ (Dec. 20, 2017). The record
3 contains a civil penalty approval form for each year.
4 Respondent's burden of production has been met, and
5 petitioners are liable for a section 6662(a) penalty for
6 each year in issue.

7 To reflect the foregoing, an appropriate order
8 will be issued, and decision will be entered under Rule
9 155. This concludes the Court's bench opinion in this
10 case.

11 (Whereupon, at 11:36 a.m., the above-entitled
12 matter was concluded.)