

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

DRC

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|-----------------------------------|---|----------------------|
| MICHAEL HANNA & CHRISTINA HANNA, |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Docket No. 13675-18S |
| |) | |
| 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 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, a decision will be entered for respondent with respect to the deficiency and for petitioners with respect to the §6662(a) penalty.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
June 7, 2019

SERVED Jun 10 2019

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo

2 May 23, 2019

3 Michael Hanna & Christina Hanna v. Commissioner of

4 Internal Revenue

5 Docket No. 13675-18S

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

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

23 Michael Hanna (petitioner) appeared on his own
24 behalf. There was no appearance by or on behalf of
25 Christina Hanna. Justine Coleman appeared on behalf of



1 respondent.

2 In a notice of deficiency dated April 23, 2018
3 (notice), respondent determined a deficiency in
4 petitioners' 2015 Federal income tax and imposed a section
5 6662(a) penalty. The issues for decision are: (1) whether
6 petitioners are entitled to various itemized deductions^X ₁₁₅
7 and (2) whether petitioners are liable for a section
8 6662(a) penalty.

9 Some of the facts have been stipulated and are
10 so found. At the time the petition was filed petitioners
11 lived in California.

12 Petitioner was employed as a field service
13 manager for Dish Network (Dish) during 2015. As part of
14 his employment responsibilities he was required to (1) be
15 present at least once a week at his regular place of
16 employment located in one of Dish's offices (office), and
17 (2) travel to various installation sites in the Southern
18 California area on a regular basis. Dish maintained a
19 fleet of vehicles at the office, and although petitioner
20 was not assigned a specific vehicle, he could have used
21 one of the fleet vehicles to travel from the office to the
22 various locations he was required to visit. Instead, he
23 used a truck that he owned. He preferred to use his own
24 truck because on the days he was not required to be in the
25 office, it was more convenient for him to do so.

1 Petitioners' 2015 Federal income tax return
2 (return) was prepared by a certified public accountant.
3 As relevant here, on the return petitioner claimed
4 deductions for medical expenses and employee business
5 expenses. The employee business expense deduction
6 consists of (1) vehicle expenses computed with respect to
7 mileage driven and the standard mileage rate applicable
8 for 2015 and (2) the cost of supplies and tools. These
9 deductions are completely disallowed in the notice.

10 Petitioner explained that the medical expense
11 deduction relates to various doctor and prescription fees,
12 but no substantiation for the expenses was presented.
13 Petitioner's vague testimony on the point is not
14 sufficient to support a finding that petitioners incurred
15 ^{PA} X medical expenses that exceed 10 percent of the adjusted
16 gross income shown on the return. Respondent's adjustment
17 disallowing the deduction is sustained.

18 For the following reasons, respondent's
19 disallowance of the vehicle expense deduction is also
20 sustained. Vehicle expense deductions must be supported
21 by strict written substantiation. See section 274(d).
22 Petitioner explained that he was not aware of the
23 requirement to keep the contemporaneous record of the
24 mileage driven and explained that the mileage shown as
25 driven on the return was computed simply by comparing the

1 mileage shown on the truck's odometer at the beginning and
2 end of the year. Petitioner's failure to support the
3 deduction in the manner required by the statute and its
4 underlying regulation in and of itself operates to deny
5 him the deduction. We need not address respondent's other
6 grounds for disallowing the deduction.

7 The record does not show exactly how petitioners
8 computed the portion of the employee business expense
9 deduction attributable to expenses for tools and supplies.
10 Petitioner explained that he was required to purchase
11 tools that were necessary for the job, and that he was
12 reimbursed only for some of ^{the} tool purchases, but
13 petitioners have failed to show the unreimbursed expenses
14 for tools and other supplies exceeded 2 percent of their
15 adjusted gross income. Consequently, respondent's
16 disallowance of the portion of the employee business
17 expense deduction attributable to supplies and tools
18 expenses is sustained.

19 As for the section 6662(a) penalty, we begin by
20 noting that respondent bears the burden of production with
21 respect to the imposition of that penalty. See secs.
22 6751(b) and 7491(c). The evidence shows that a supervisor
23 approved the imposition of the penalty on October 23,
24 2017, which date precedes the issuance of the notice. See
25 Graev v. Commissioner, 149 T.C. 485, 492-493 (2017),

1 supplementing and overruling in part Graev v.
2 Commissioner, 147 T.C. 460 (2016). But petitioners were
3 first formally advised of the imposition of the penalty on
4 August 31, 2017, which precedes the date of the
5 supervisory approval. Consequently, respondent's
6 imposition of the section 6662(a) penalty must be
7 rejected. See Clay v. Commissioner, 152 T.C. __ (April 24,
8 2019).

9 To reflect the foregoing, decision will be
10 entered for respondent with respect to the deficiency and
11 for petitioners with respect to the section 6662(a)
12 penalty.

13 This concludes the Court's bench opinion in this
14 case.

15 (Whereupon, at 1:02 p.m., the above-entitled
16 matter was concluded.)

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