

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

JOSZEPH HJALMER EOTVOS & KELLY	)	
MAE EOTVOS,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 21450-16S.
	)	
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 with this order to petitioner and respondent a copy of the pages of the transcript of the trial in this case before Judge Ronald L. Buch at St. Paul, Minnesota, 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 under Rule 155.

**(Signed) Ronald L. Buch  
Judge**

Dated: Washington, D.C.  
November 9, 2017

1 Bench Opinion by Judge Ronald L. Buch  
2 October 2, 2017  
3 Jozseph Hjalmer Eotvos & Kelly Mae Eotvos  
4 Docket No. 21450-16S

5 THE COURT: The following represents the Court's  
6 oral findings of fact and opinion. The oral findings of  
7 fact and opinion may not be relied upon as precedent in  
8 any other case. This opinion is in conformity with  
9 Internal Revenue Code section 7459(b) and Rule 152(a) of  
10 the Tax Court Rules of Practice and Procedure. Any  
11 section references refer to the Internal Revenue Code or  
12 the Treasury regulations in effect during the years at  
13 issue, and any Rule references are to the Tax Court Rules  
14 of Practice and Procedure.

15 This case was heard pursuant to section 7463.  
16 Under section 7463(b), any decision to be entered in this  
17 case is not reviewable by any other court, and this  
18 opinion may not be treated as precedent for any other  
19 case.

20 The question before the Court is the extent to  
21 which Mr. and Mrs. Eotvos are entitled to deductions  
22 stemming from their home-based childcare business beyond  
23 those already allowed by the Commissioner. For 2014, an  
24 accuracy-related penalty is also at issue.

25

BACKGROUND





1 With respect to telephone expenses, a first line is not  
2 deductible because it is a personal expense; section  
3 262(b). The reason is easy to see: the first line, even  
4 if used for business purposes, exists primarily as a  
5 personal expense. Thus, it is nondeductible. As we  
6 stated in Deihl v. Commissioner, T.C. Memo 2005-287:

7 "When applying sections 162 and 167 in the  
8 context of particular items of property, the following  
9 general framework has emerged through the case law. Under  
10 either section, the initial question is whether ownership  
11 and maintenance of the property is related primarily to  
12 the business or to personal purposes. International  
13 Artists, Ltd. v. Commissioner, 55 T.C. 94, 104 (1970) (and  
14 cases cited thereat); see also, for example, Richardson v.  
15 Commissioner, T.C. Memo. 1996-368; Griffith v.  
16 Commissioner, T.C. Memo. 1988-445. The answer to this  
17 question determines which of the three approaches is  
18 appropriate: (1) If acquisition and maintenance of the  
19 property is primarily associated with profit-motivated  
20 purposes and any personal use is distinctly secondary and  
21 incidental, expenses and depreciation are deductible; (2)  
22 if acquisition and maintenance is motivated primarily by  
23 personal considerations, deductions are disallowed; and  
24 (3) if substantial business and personal motives exist,  
25 allocation becomes necessary. International Trading

1 Company v. Commissioner, 275 F.2d 578, 584-587<sup>1</sup>, affirming <sup>12/3</sup>  
2 T.C. Memo. 1958-104; International Artists, Ltd. v.  
3 Commissioner, supra at 104-105; Richardson v.  
4 Commissioner, supra; Griffith v. Commissioner, supra;  
5 Kenerly v. Commissioner, T.C. Memo. 1984-117."

6           The Eotvoses provided inadequate evidence to  
7 substantiate the business use of what appear, on their  
8 face, to be personal assets. Battle axes were not used as  
9 children's playthings, and their acquisition and  
10 maintenance was not in furtherance of the day care  
11 business. Nor do we believe that the acquisition or  
12 maintenance of Mrs. Eotvos's jewelry was for the day care.  
13 The assets that might plausibly have been used in the day  
14 care were acquired for the Eotvoses's children and it is  
15 unclear the extent to which they were actually used in the  
16 day care. In that regard, we give little credibility to  
17 Mr. Eotvos's testimony. He clearly sought out to make  
18 even the most tenuous of claims that property was used in  
19 the day care. He made no effort to distinguish those  
20 items that are used regularly for the day care business.  
21 For example, he claimed that household tools were used for  
22 the day care because they might have been used to repair a  
23 toy that might have been used in the day care. Even if we  
24 accepted this testimony, the causal nexus is too tenuous  
25 to lead to deductibility. And a witness who can testify

1 with a straight face about the nexus between a battle axe  
2 and a day care business earns no credibility.

3 USE OF THE HOME

4 As for a taxpayer's residence, section 280A  
5 disallows expenses relating to the use of a dwelling that  
6 is also used by the taxpayer as a residence. There is an  
7 exception to that general rule for day care services  
8 provided out of the home. See section 280A(c)(4). Under  
9 that exception, a person may deduct the business use of  
10 their home in providing day care services using a specific  
11 allocation formula. The portion of the home for which a  
12 deduction is permitted is limited to that portion used on  
13 a regular basis with a special allocation used for areas  
14 used less regularly; section 280A(c)(4)(A) and (c)(4)(C).

15 Mr. Eotvos's testimony was, in effect, that the  
16 day care uses the whole home. This blanket assertion,  
17 like the battle axe, strains credulity. We have no doubt  
18 that a portion of the home was used for the day care on a  
19 regular basis. But we do not find credible Mr. Eotvos's  
20 testimony that the entire home was used regularly, and Mr.  
21 Eotvos made no attempt to allocate the use of any portions  
22 of the home.

23 We note that the Commissioner allowed deductions  
24 for partial use of the home. Mr. and Mrs. Eotvos did not  
25 establish that they are entitled to deductions beyond the

1 amount allowed by the Commissioner.

2 ACCURACY-RELATED PENALTY

3 The Commissioner asserted an accuracy-related  
4 penalty under section 6662 for negligence. The deductions  
5 for personal property lacked any reasonable basis and the  
6 Eotvoses lacked substantiation. The Commissioner  
7 satisfied his burden. Mr. and Mrs. Eotvos offered no  
8 evidence in the form of a defense. They apparently  
9 relied, at least in part, on a program sold to them to  
10 assist with claiming deductions relating to day care  
11 expenses. The details of this program are not in the  
12 record, nor is the nature of any advice that the Eotvoses  
13 might have received before they filed their 2014 return.  
14 Accordingly, the accuracy-related penalty is sustained.

15 Because of concessions by both sides, decision  
16 will be entered under Rule 155.

17 (Whereupon, at 9:09 a.m., the above-entitled  
18 matter was concluded.)

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