

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

FLOYD X. PROCTOR,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 13072-18.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER OF SERVICE OF TRANSCRIPT**

Pursuant to Rule 152(b) of the 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 proceedings in the above case before the undersigned judge at Washington, D.C., 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) David Gustafson  
Judge**

Dated: Washington, D.C.  
January 23, 2020

**SERVED Jan 23 2020**

1 Bench Opinion by Judge David Gustafson

2 January 15, 2020

3 Floyd X. Proctor v. Commissioner

4 Docket No. 13072-18

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

11 By statutory notice of deficiency ("SNOD") dated  
12 April 4, 2018 (Ex. 1-J), the Internal Revenue Service  
13 ("IRS") determined, as to petitioner Floyd X. Proctor,  
14 deficiencies in his Federal income tax for 2014 and 2015  
15 (in both years arising from adjustments to income and  
16 deductions reported on Schedule C), additions to tax for  
17 failure to timely file his returns, and accuracy-related  
18 penalties. The parties have settled the issues underlying  
19 the income tax deficiencies; and the issue for decision is  
20 whether Mr. Proctor is liable for the additions to tax and  
21 the accuracy-related penalties. We hold that he is liable  
22 for the addition to tax but not for the penalty.

23 Trial of this case was conducted on January 14,  
24 2020, in Washington, D.C. Mr. Proctor represented  
25 himself; and Stephen C. Welker represented the

1 Commissioner. We find the following facts:

2 FINDINGS

3 Petitioner's background

4 Mr. Proctor has a high school education. After  
5 he graduated in 1985, he worked at a Safeway grocery  
6 store. Since about 1987 he has worked as an explosive  
7 operator for the Department of Defense ("DOD"), as a  
8 civilian employee.

9 Trucking activity

10 Mr. Proctor formed a limited liability company  
11 ("LLC") in 2011 (Stip. 6) and bought a dump truck. In  
12 2014 and 2015 he operated a trucking business in addition  
13 to his DOD employment. In those years he received income  
14 and incurred expenses in that activity. (See "Stipulation  
15 of Certain Settled Issues" ("SCSI"), para. 1-3.)

16 Timing of tax returns

17 Mr. Proctor's 2014 return was due in April 2015,  
18 but he did not file it until January 2016 (Stip. 4; Ex. 3-  
19 J)--about 9 months late. His 2015 return was due in April  
20 2016, but he did not file it until March 2017 (Stip. 5;  
21 Ex. 4-J)--about 11 months late. By his admission, the  
22 reason for this untimeliness was his own "not paying  
23 attention", his "negligence". "I'm not trying to get out  
24 of" being at fault for the delay; "I could have done it";  
25 "I take responsibility."

1 Content of tax returns

2 Mr. Proctor was uncertain how to report his  
3 trucking activity on his return. A friend referred him to  
4 a supposedly knowledgeable man named Mr. Charles, who (Mr.  
5 Proctor believed) owned a truck and used it in an income-  
6 producing activity similar to Mr. Proctor's. Mr. Proctor  
7 obtained tax preparation software called "Tax Act", and  
8 when he prepared his 2014 and 2015 returns, Mr. Charles  
9 came over to Mr. Proctor's house and stood over his  
10 shoulder, helping him respond to the software prompts and  
11 fill in the information that was reported on Schedule C.

12 When Mr. Proctor prepared his tax returns in  
13 this manner, he showed Mr. Charles the Forms 1099 that he  
14 had received and that he had issued to workers, as well as  
15 cancelled checks, invoices, and receipts for his trucking  
16 expenses. Mr. Proctor used the Forms 1099 that he had  
17 received from customers to tally and report income from  
18 his trucking activity. However, he did not realize that  
19 he had not received Forms 1099 from all of his trucking  
20 activity income (probably missing Forms 1099 for income  
21 from snow-plowing jobs in both years), so he under-  
22 reported his income on his returns. He reported trucking  
23 activity expenses on the returns that, he eventually  
24 agreed by stipulation, should be reduced; but we conclude  
25 the deductions he claimed were not deliberately faked.

1 (SCSI, paras. 1-3.) We are persuaded that, when Mr.  
2 Proctor was preparing his returns for 2014 and 2015, he  
3 believed that he prepared correct returns. His efforts in  
4 this regard were serious and forthright. Given the level  
5 of his education and sophistication, and in light of his  
6 candor in his subsequent dealings with the IRS and his  
7 demeanor as a witness, we think he did his reasonable best  
8 to prepare a correct tax return.

9 IRS examination

10 The IRS examined Mr. Proctor's returns; and at  
11 the request of IRS personnel, he provided them his bank  
12 records and other financial information. In the course of  
13 that exam, those personnel informed Mr. Proctor that his  
14 returns were in error. He then hired an accountant to do  
15 a thorough review of his financial records. The  
16 accountant--using the records that Mr. Proctor supplied to  
17 him--prepared profit and loss statements for Mr. Proctor's  
18 trucking business that Mr. Proctor gave to the IRS; and  
19 that information became the basis of the SNOD.

20 IRS examination personnel came to the conclusion  
21 that Mr. Proctor was liable for tax deficiencies and for  
22 penalties. Before communicating the penalty determination  
23 to Mr. Proctor, the individual who made that determination  
24 obtained written approval of the penalties from his  
25 immediate supervisor. (Stip. 3; Ex. 2-J.)



1 neglect". Mr. Proctor's admission that his lateness was  
2 his due to his neglect defeats any claim of reasonable  
3 cause for this addition to tax. We hold that he is liable  
4 under section 6651(a) (1).

5 III. Accuracy-related penalty

6 A. Applicability of the penalty

7 Section 6662(a) imposes an "accuracy-related  
8 penalty" of 20 percent of the portion of the underpayment  
9 of tax that is attributable to the taxpayer's negligence  
10 or disregard of rules or regulations, sec. 6662(b) (1), or  
11 to a "substantial understatement of income tax", sec.  
12 6662(b) (2).

13 1. Substantial understatement

14 Although Mr. Proctor's liabilities are to be  
15 redetermined pursuant to Rule 155, it seems clear that in  
16 each year his understatement will be "substantial" for  
17 purposes of section 6662(b) (2) and (d) (1) (A)--i.e., it  
18 exceeds \$5,000 and it exceeds by more than 10% the tax  
19 liability that Mr. Proctor should have reported on his  
20 return.

21 2. Negligence

22 "The term negligence includes any failure to  
23 make a reasonable attempt to comply with the provisions of  
24 the internal revenue laws or to exercise ordinary and  
25 reasonable care in the preparation of a tax return." 26

1 C.F.R. sec. 1.6662-3(b)(1). Because Mr. Proctor's  
2 understatement was evidently substantial (and because of  
3 our decision below as to reasonable cause), we need not  
4 discuss negligence further.

5 3. Burden of production

6 The Commissioner has the burden of production to  
7 show liability as to penalties. See sec. 7491(c). The  
8 Commissioner meets that burden because the understatements  
9 were substantial, and because the Commissioner showed  
10 compliance with the supervisory approval requirement of  
11 section 6751(b). (See Stip. 3, Ex. 2-J.)

12 B. "Reasonable cause" and "good faith"

13 Section 6664(c)(1) provides: "No penalty shall  
14 be imposed under section 6662 or 6663 with respect to any  
15 portion of an underpayment if it is shown that there was a  
16 reasonable cause for such portion and that the taxpayer  
17 acted in good faith with respect to such portion."

18 Whether the taxpayer acted with reasonable cause and in  
19 good faith depends on the pertinent facts and  
20 circumstances, including "the experience, knowledge, and  
21 education of the taxpayer", 26 C.F.R. sec. 1.6664-4(b)(1).  
22 As to experience, we observe that Mr. Proctor--a wage  
23 earner in previous years--had no experience in keeping the  
24 books or filing a return for a business. As to knowledge,  
25 he had little to help him in his return preparation. And



1 as to education, his was modest.

2 For determining reasonable cause, "the most  
3 important factor is the extent of the taxpayer's effort to  
4 assess the taxpayer's proper tax liability", id. We hold  
5 that, given his personal resources, he made a serious and  
6 good-faith effort to comply with his filing requirement  
7 and report his correct liability.

8 We hold that Mr. Proctor had reasonable cause  
9 and good faith and is therefore not liable for the section  
10 6662(a) penalty.

11 Decision will be entered under Rule 155.

12 This concludes the Court's oral Findings of Fact  
13 and Opinion in this case.

14 (Whereupon, at 2:39 p.m., the above-entitled  
15 matter was concluded.)

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