

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

PAUL D. RICE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 6344-18.
	)	
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 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, decision will be entered for respondent.

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

Dated: Washington, D.C.  
April 6, 2020

**SERVED Apr 07 2020**

1 Bench Opinion by Judge Ronald L. Buch

2 March 11, 2020

3 Paul D. Rice v. Commissioner

4 Docket No. 6344-18

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 on as precedent in any  
8 other case. This opinion is in conformity with Internal  
9 Revenue Code section 7459(b) and Rule 152(a) of the Tax  
10 Court Rules of Practice and Procedure. Any section  
11 references refer to the Internal Revenue Code or the  
12 Treasury regulations in effect during the year at issue,  
13 and Rule references are to the Tax Court Rules of Practice  
14 and Procedure.

15 The Commissioner issued a notice of deficiency  
16 to Mr. Rice for 2015 disallowing his itemized deductions  
17 and allowing a standard deduction. In particular, the  
18 Commissioner disallowed the miscellaneous itemized  
19 deductions relating to return preparation fees,  
20 unreimbursed employee expenses, and business use of a home  
21 office. Mr. Rice filed a petition challenging the  
22 deficiency. We must decide whether Mr. Rice may take  
23 deductions for return preparation fees, employee business  
24 expenses, and home office expenses.

25 I. Background



1           During the times at issue, Mr. Rice was employed  
2 as an outside salesman by Bassett Salon Solutions, Inc., a  
3 distributor of both commercial and retail hair products.  
4 He worked a regular route whereby, over a two-week period,  
5 he would follow a pattern of visiting salons to provide  
6 products and consult with salons and their workers. On  
7 Sunday, he would prepare the next week's calendar of all  
8 of the salons he intended to visit in the coming week. If  
9 his plans changed, he would note the change in the  
10 calendar. In a typical day, he would depart from his home  
11 in Fountain Valley and visit perhaps as many as 20 salons  
12 in a particular geographic area before returning home.

13           Mr. Rice kept track of his mileage with an  
14 online program used by his employer to track mileage. He  
15 would enter his stops, taken from his calendar, into the  
16 program, which would compute the mileage. At some point,  
17 the employer began to use this program to reimburse  
18 mileage, but the extent to which mileage may have been  
19 reimbursed in 2015 is unclear.

20           In the course of this business, Mr. Rice  
21 incurred other expenses. He would sometimes plan events,  
22 such as courses, for salon workers or salon owners. He  
23 might need to rent chairs or buy supplies for these  
24 courses. On occasion, he would incur expenses to  
25 entertain his clients. He purchased clothes specifically

1 for work, because the clothes he wore in his personal life  
2 were more casual than what he would wear for work.

3 Mr. Rice's office was in his home, which he  
4 rented for \$2,820 per month. He also incurred (and  
5 substantiated) \$481 of utilities. He used one room in the  
6 home as his office and another room as a workspace to  
7 store and repackage items for delivery to salons. The two  
8 rooms were 120 and 110 square feet, respectively. The  
9 home was 1870 square feet total. Although Mr. Rice was  
10 renting the home, he made improvements in the hopes of  
11 purchasing the home in the future.

12 The record does not establish the Bassett Salon  
13 Solutions expense reimbursement policy. The record  
14 includes an expense reimbursement policy that indicates  
15 that employees' travel expenses will be reimbursed, but  
16 Mr. Rice does not believe that policy was in place in  
17 2015. No other policy was provided for the record.

18 The record also does not establish any payment  
19 for return preparation.

20 The Commissioner disallowed Mr. Rice's  
21 miscellaneous itemized deductions of \$28,993 (before  
22 reduction for the 2% of AGI limitation). That  
23 disallowance included \$27,493 of unreimbursed employee  
24 expenses and \$1,500 of return preparation fees. The  
25 \$27,493 deduction reported on Mr. Rice's return consists

1 of mileage for business use of Mr. Rice's personal  
2 vehicle, other travel and entertainment expenses, and  
3 other miscellaneous expenses including the business use of  
4 his home. In lieu of itemized deductions, the  
5 Commissioner allowed a standard deduction of \$6,300, which  
6 exceeded the itemized deductions remaining after the  
7 Commissioner's disallowance of the miscellaneous itemized  
8 deductions.

9 II. Burden of Proof

10 As a general matter, the Commissioner's  
11 determinations in the notice of deficiency are presumed  
12 correct, and the taxpayer bears the burden of establishing  
13 an error. Rule 142(a); Welch v. Helvering, 290 U.S. 111,  
14 115 (1933). In limited situations, the burden can shift  
15 to the Commissioner under section 7491(a), but the record  
16 does not establish that the criteria under section 7491  
17 have been established, therefore, the burden of proof  
18 remains on Mr. Rice.

19 III. Employee Business Expenses

20 Taxpayers can deduct "ordinary and necessary  
21 expenses paid or incurred during the taxable year in  
22 carrying on any trade or business." Sec. 162(a). An  
23 "ordinary" expense is one that commonly or frequently  
24 occurs in the type of business at issue. Deputy v. du  
25 Pont, 308 U.S. 488, 495 (1940). A "necessary" expense is

1 an expense that is "appropriate and helpful" to the  
2 business. Heinbockel v. Commissioner, T.C. Memo. 2013-  
3 125, at \*17.

4 A "trade or business" includes the "trade or  
5 business" of being an employee. O'Malley v. Commissioner,  
6 91 T.C. 352, 363-364 (1988). When an employee has a right  
7 to reimbursement for expenditures related to his status as  
8 an employee but fails to claim reimbursement, the expenses  
9 are not necessary and are not deductible. Orvis v.  
10 Commissioner, 788 F.2d 1406, 1408 (9th Cir. 1986), aff'g  
11 T.C. Memo. 1984-533. An employee cannot fail to seek  
12 reimbursement and convert the employer's expenses into the  
13 employee's. Kennelly v. Commissioner, 56 T.C. 936, 943  
14 (1971), aff'd without published opinion, 456 F.2d 1335 (2d  
15 Cir. 1972). The taxpayer bears the burden of establishing  
16 that his employer would not have reimbursed him for such  
17 expenses. Humphrey v. Commissioner, T.C. Memo 2017-78 at  
18 \*7.

19 The prohibition of a deduction for reimbursable  
20 expenses is a "bright-line rule" and applies even when the  
21 employee is unaware that the expenses are reimbursable.  
22 Richards v. Commissioner, T.C. Memo. 2014-88, at \*10.  
23 Such a rule "avoids the difficult inquiry into the  
24 taxpayer's knowledge, and gives the taxpayer an incentive  
25 to determine which expenses are reimbursable." Orvis v.

1 Commissioner, 788 F.2d at 1408.

2 Mr. Rice has not met his burden of showing that  
3 he was not entitled to reimbursement for the expenses he  
4 incurred. To the extent the Court has evidence of any  
5 reimbursement policy, it shows that Mr. <sup>Rice</sup>~~Rise~~ was entitled  
6 to reimbursement for travel expenses and is silent as to  
7 other expenses. Moreover, the record does not establish  
8 for which years that reimbursement policy was in effect.  
9 Because he failed to establish that he was not entitled to  
10 reimbursement for any of these expenses, we need not  
11 address the deductibility of any particular expense.

12 IV. Home Office Expenses

13 Generally, taxpayers may not deduct expenses  
14 related to their residence. Sec. 280A(a). An exception  
15 exists when a taxpayer uses a portion of the home as the  
16 principal place of business. Sec. 280A(c)(1)(A). The  
17 portion of the dwelling must be used exclusively and  
18 regularly for business purposes. Hamacher v.  
19 Commissioner, 94 T.C. 348, 353 (1990). Another exception  
20 exists when a portion of the dwelling is used for storage.  
21 Section 280A(c)(2).

22 We have frequently declined to allow a deduction  
23 for home office expenses when we have not found a  
24 taxpayer's testimony on the issue credible. For example,  
25 in Johnson v. Commissioner, T.C. Memo. 2013-90, at \*13 the

1 taxpayer claimed that half of an 1,144 square foot home  
2 was used exclusively for business, while also housing a  
3 married couple and as many as five children. We  
4 explained:

5 If Johnson had been a credible witness on other  
6 issues, and if on this issue he had testified in  
7 detail about the family's living arrangements  
8 and explained their circumstances, or provided  
9 some corroborating evidence such as photos or a  
10 floor plan, we might have believed him. As it  
11 is, we do not.

12 Unlike the taxpayer in Johnson, Mr. Rice's  
13 description of the business use of his home is credible.  
14 He provided the sizes of the two rooms used for his  
15 business. Those rooms comprise a mere 12.3% of the total  
16 area of the home. Applying that 12.3% to his total annual  
17 rent of \$33,840 and \$481 of utilities would yield a home  
18 office deduction of \$4,221.

19 Even after allowing for Mr. Rice's home office  
20 deduction, we must sustain the Commissioner's  
21 determination. The standard deduction allowed by the  
22 Commissioner exceeds Mr. Rice's itemized deductions, even  
23 after we allow for the home office deduction.

24 As a result decision will be entered for the  
25 Commissioner.



1 (Whereupon, at 9:31 a.m., the above-entitled  
2 matter was concluded.)

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CERTIFICATE OF TRANSCRIBER AND PROOFREADER

CASE NAME: Paul D. Rice v. Commissioner

DOCKET NO.: 6344-18

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 11 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Jacqueline Denlinger on March 11, 2020 before the United States Tax Court at its session in Los Angeles, CA, in accordance with the applicable provisions of the current verbatim reporting contract of the Court and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.



\_\_\_\_\_  
Meribeth Ashley, CET-507 3/18/20  
Transcriber Date



\_\_\_\_\_  
Lori Rahtes, CDLT-108 3/18/20  
Proofreader Date

