

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JANICE K. GORE & BRUCE G. GORE,)	
)	
Petitioners,)	
)	
v.)	Docket No. 21499-16.
)	
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 Columbus, Ohio, 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.
February 9, 2018

SERVED Feb 09 2018

1 Bench Opinion by Judge Ronald L. Buch
2 January 10, 2018
3 Janice K. Gore and Bruce G. Gore v. Commissioner of
4 Internal Revenue
5 Docket No. 21499-16

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

16 The Commissioner issued a notice of deficiency
17 for 2013 to Mr. and Mrs. Gore. The Gores filed a petition
18 challenging the deficiency. After concessions, the items
19 remaining for us to decide are whether the Gores may
20 deduct medical expenses beyond those already allowed,
21 whether the Gores may deduct charitable contributions
22 beyond those already allowed, whether the Gores may deduct
23 unreimbursed business expenses beyond what has been
24 allowed, and whether the Gores may deduct tax preparation
25 fees beyond what has been allowed.

1 I. Background

2 The record in this case is sparse. In 2013,
3 Mrs. Gore's son had significant health issues, and she
4 paid for her son's medical expenses. Some of those
5 expenses she paid directly. Mrs. Gore testified that she
6 also wrote checks to her son so that he could pay for his
7 own medical expenses. Those checks were generally made
8 out to "cash." Before trial, the Commissioner allowed the
9 expenses for which Mrs. Gore provided substantiation.
10 Some of those were substantiated through health insurance
11 records; others were substantiated through bank and credit
12 card statements. But the Commissioner did not allow
13 amounts that could not be traced to a medical service.

14 In 2013, the Gores claimed nearly \$20,000 of
15 charitable contribution deductions. Mrs. Gore claims that
16 she donated clothing and household items to four separate
17 charities. The only documentary evidence of the donations
18 is a door hanger "receipt" left behind by one of the
19 charities. It has no record of what was given. Mrs. Gore
20 thinks she might have an itemized list at home, but if
21 there is such a list, it is not in the record of this
22 case.

23 In 2013, the Gores incurred expenses in relation
24 to their employment. Mrs. Gore worked for a bank and with
25 a retail store. Mrs. Gore did not provide documentation

1 concerning the reimbursement policy of either employer.
2 Mr. Gore worked as an independent contractor driver. The
3 Gores provided bank statements and cancelled checks, but
4 nothing to tie any particular expense to any particular
5 work.

6 The Gores claimed tax preparation fees, most of
7 which the Commissioner allowed. The Gores were unable to
8 substantiate any fees beyond those that were allowed by
9 the Commissioner.

10 II. Burden of proof

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

20 III. Itemized Deductions

21 Income tax deductions are considered "a matter
22 of legislative grace," and the taxpayers bear the burden
23 of proving that they are entitled to any deductions. Rule
24 142(a); INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84
25 (1992). The Gores did not prove that they were entitled

1 to claim expenses beyond those allowed.

2 The Commissioner allowed all substantiated
3 expenses. To be allowed any further deduction, the Gores
4 would need to prove that they incurred expenses above and
5 beyond what the Commissioner allowed. They did not.

6 Regarding medical expenses, there is no
7 documentary evidence to tie checks written to "cash" to a
8 deductible medical expense. And while some portion of the
9 checks written to cash may have been used to pay medical
10 expenses, we have no way to determine or even estimate the
11 amount.

12 Regarding charitable contributions, section
13 170(a)(1) allows a deduction for any charitable
14 contribution, as defined in section 170(c), as long as the
15 contribution can be verified under regulations prescribed
16 by the Secretary. In order to substantiate charitable
17 contributions, the taxpayer must maintain one of the
18 following: (1) a cancelled check; (2) a receipt from the
19 donee charitable organization showing the name of the
20 donee, the date of the contribution, and the amount of the
21 contribution; or (3) other reliable written records
22 showing the name of the donee, the date of the
23 contribution, and the amount of the contribution. Van
24 Dusen v. Commissioner, 136 T.C. 515, 533 (2011); sec.
25 1.170A-13(a)(1), Income Tax Regs. Mrs. Gore has no such

1 records and her testimony was not credible. While we are
2 convinced that she gave something to one or more
3 charities, the amount and value of clothing and household
4 goods that she claims is not credible. And her statements
5 about how she valued items were contradictory. While she
6 claims to have an itemized listing of donated items from
7 which we might be able to estimate a value, if such a list
8 exists, it is not in the record.

9 Regarding unreimbursed employee business
10 expenses, we have held that "an individual may be in the
11 trade or business of being an employee." Deely v.
12 Commissioner, 73 T.C. 1081, 1101 (1980). In order for
13 unreimbursed employee business expenses to be deductible,
14 the employee must show that she was not entitled to
15 reimbursement from her employer for the expenses. She
16 must also show that the expenses were "ordinary and
17 necessary" and have proper substantiation. Sec.
18 274(e)(3). Mrs. Gore did not substantiate her employee
19 business expenses. Beyond that, however, she testified
20 that she was entitled to reimbursement from her employer.
21 That makes the expenses nondeductible.

22 IV. Schedule C Business Expenses

23 Taxpayers can deduct "ordinary and necessary
24 business expenses paid or incurred during the taxable year
25 in carrying on any trade or business." Sec. 162(a).

1 However, they are not allowed a deduction for personal,
2 living, or family expenses except where specifically
3 allowed in the Code. Sec. 262(a). Taxpayers are required
4 to maintain sufficient records to "show whether or not
5 such person is liable to tax". Sec. 6001. These records
6 must be retained for as long as the contents may become
7 material and must be kept available for inspection. Sec.
8 280F(d)(4).

9 Certain expenses require strict substantiation
10 under section 274(d). Such expenses include those related
11 to travel, meals and entertainment, gifts, and listed
12 property under section 280F(d)(4). For the years at
13 issue, listed property included, among other things,
14 passenger automobiles and other property used as a means
15 of transportation. Sec. 280F(d)(4). Under the strict
16 substantiation rules the taxpayer must have adequate
17 records or sufficient evidence to corroborate (1) the
18 amount of the expense, (2) the time and place the expense
19 was incurred, (3) the business purpose of the expense, and
20 (4) the business relationship of the taxpayer to any
21 others benefitted by the expense. Sec. 274(d). To
22 substantiate by adequate records, the taxpayer must
23 maintain an account book, a log, a diary, or a similar
24 record and documentary evidence to establish each element
25 of an expense. Sec. 1.274-5T(c)(2)(I), Temporary Income

1 Tax Regs., 50 Fed. Reg. 46017 (Nov. 6, 1985).

2 In some instances the Court may approximate the
3 amount if the taxpayer can establish a deductible expense
4 but cannot substantiate the precise amount. Cohan v.
5 Commissioner, 39 F.2d 540, 543-544 (2d. Cir. 1930).
6 However, the taxpayer must provide some basis for that
7 estimate. Vanicek v. Commissioner, 85 T.C. 731, 742-743
8 (1985). And, the Court is precluded from making estimates
9 of expenses that are subject to section 274(d) strict
10 substantiation rules. Deely v. Commissioner, 73 T.C.
11 1081, 1101 (1980); sec. 1.274-5T(a), Temporary Income Tax
12 Regs., 50 Fed. Reg. 46014 (Nov. 6, 1985).

13 From the testimony in the record, the nature of
14 Mr. Gore's employment is unclear. The parties stipulated
15 that he was an independent contractor, and from Mrs.
16 Gore's testimony, he appears to be a driver. The expenses
17 claimed for Mr. Gore's work are not sufficiently
18 substantiated; but moreover, they appear to be items that
19 require strict substantiation, which was not provided.

20 On the subject of Mr. Gore, he is a party to
21 this case. He did not appear at trial and he did not sign
22 the stipulation of facts. Because the stipulation
23 included concessions by the Commissioner, we will give Mr.
24 Gore the benefit of that stipulation. And because of
25 those concessions by the Commissioner, decision will be

1 entered under Rule 155.

2 (Whereupon, at 10:18 a.m., the above-entitled
3 matter was concluded.)
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