

UNITED STATES TAX COURT
WASHINGTON, DC 20217

| | | |
|-----------------------------------|---|----------------------|
| GEORGE MUNCHUS & CAROLYN |) | |
| MUNCHUS, |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Docket No. 13698-16. |
| |) | |
| 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 petitioners and respondent a copy of the pages of the transcript of the trial in this case before Judge Ronald L. Buch at Birmingham, Alabama, 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.
February 15, 2018

SERVED Feb 15 2018

1 Bench Opinion by Judge Ronald L. Buch
2 January 10, 2018
3 George Munchus and Carolyn Munchus v. Commissioner of
4 Internal Revenue
5 Docket No. 13698-16

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 to Mr. and Mrs. Munchus for tax year 2013. The notice of
18 deficiency contained two adjustments. The Commissioner
19 disallowed schedule C business expenses and determined an
20 accuracy-related penalty. We sustain the Commissioner's
21 determinations.

22 I. Background

23 Mr. Munchus is the founder of "Project Results."
24 Even after trial it remains unclear to the Court whether
25 this is a business. Indeed, Mr. Munchus seemed unclear

1 himself. At times he described it in the terms of a
2 charitable organization. But he claimed it as a business
3 and reported it on a Schedule C, Profit or Loss From
4 Business. Mr. Munchus sometimes described Project Results
5 as a consulting organization. The concept is to provide
6 business consulting services to low income people in
7 housing projects to enable them to start or work in a
8 business and become more independent. The concept and
9 goal are laudable, but however laudable the goal, business
10 expenses must be substantiated to be deductible.

11 The Commissioner challenged three business
12 expenses in particular: legal and professional services,
13 travel expenses, and other expenses. Mr. Munchus concedes
14 that he has no documentation of legal or other
15 professional services. Mr. Munchus provided vague and
16 unconvincing testimony about his business purpose for the
17 three trips that he documented.

18 For his other expenses, Mr. Munchus provided a
19 hodgepodge of carbon copies of check^s he purports to have *ACB*
20 written. Some of those receipts make little sense to the
21 Court and Mr. Munchus struggled to explain them. For
22 example, for several months, he purports to have written
23 three checks to AT&T on the same date. He claimed club
24 memberships, including the Automobile Club of America,
25 without any meaningful explanation of the business purpose

1 of the membership. He claimed numerous magazine and
2 newspaper subscriptions, including a zoo magazine and "TV
3 Weekly", as business expenses, also without any
4 explanation of how they tie to his business. He claimed
5 checks written to clothing stores as "subscription"
6 expenses.

7 Likewise, Mr. Munchus claimed a payment to "Tru
8 Green" was a business expense. Much of Mr. Munchus's
9 testimony lacked credibility, but his attempt to shovel
10 lawn care expenses into the pile of business expenses
11 demonstrated exactly how deep he was willing to dig. Mr.
12 Munchus listed Tru Green as a "subscription." When
13 pressed about this, he stated that sometimes you need to
14 do business with an organization for it to do business
15 with you. Pressed further, he stated that Tru Green would
16 train people to work in lawn care. Deep into the Court's
17 questioning about what Tru Green was doing to receive the
18 payment, Mr. Munchus mentioned in passing that Tru Green
19 might do work on his property.

20 Overall, Mr. Munchus was neither candid nor
21 credible in his testimony.

22 II. Burden of proof

23 As a general matter, the Commissioner's
24 determinations in the notice of deficiency are presumed
25 correct, and the taxpayer bears the burden of proving an

1 error. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115
2 (1933). In limited situations, the burden can shift to
3 the Commissioner under section 7491(a), but the record
4 does not establish that the criteria under section 7491
5 have been established, therefore, the burden of proof
6 remains on Mr. Munchus.

7 III. Schedule C Business Expenses

8 Taxpayers can deduct "ordinary and necessary
9 business expenses paid or incurred during the taxable year
10 in carrying on any trade or business." Sec. 162(a).
11 However, they are not allowed a deduction for personal,
12 living, or family expenses except where specifically
13 allowed in the Code. Sec. 262(a). Taxpayers are required
14 to maintain sufficient records to "show whether or not
15 such person is liable to tax". Sec. 6001. These records
16 must be retained for as long as the contents may become
17 material and must be kept available for inspection. Sec.
18 280F(d)(4).

19 Certain expenses require strict substantiation
20 under section 274(d). Such expenses include those related
21 to travel, meals and entertainment, gifts, and listed
22 property under section 280F(d)(4). To substantiate by
23 adequate records, the taxpayer must maintain an account
24 book, a log, a diary, or a similar record and documentary
25 evidence to establish each element of an expense. Sec.

1 1.274-5T(c)(2)(I), Temporary Income Tax Regs., 50 Fed.
2 Reg. 46017 (Nov. 6, 1985).

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

14 Here, we need not delve into the specifics of
15 the particular deductions. The Court is not convinced
16 that any of the expenses claimed by Mr. Munchus are
17 deductible. Many appear on their face to be
18 nondeductible. Those that might plausibly be deductible
19 did not have sufficient documentary evidence to establish
20 their deductibility. And while testimony alone may be
21 sufficient in some instances, Mr. Munchus's testimony was
22 not credible.

23 IV. Penalties

24 Neither party introduced any evidence as to
25 penalties. During closing argument, the Court inquired

1 about the effect of Graev v. Commissioner, 149 T.C. No. 23
2 (Dec. 20, 2017), on this case. In Graev, we held that the
3 Commissioner's burden of production under section 7491(c)
4 includes establishing supervisory approval of the initial
5 penalty determination under section 6751(b). The
6 Commissioner moved to reopen the record to introduce a
7 document that purports to be the penalty approval required
8 by section 6751(b). We will deny the motion.

9 In Wheeler v. Commissioner, 127 T.C. 200,
10 (2006), we stated:

11 "In a proceeding before this Court, the
12 Commissioner's obligation under section 7491(c)
13 initially to come forward with evidence that it
14 is appropriate to apply a particular penalty to
15 a taxpayer is conditioned upon the taxpayer's
16 assigning error to the Commissioner's penalty
17 determination."

18 Upon review of the record, Mr. Munchus did not
19 challenge the penalty in his petition or at any other time
20 in this case up to and including his closing argument.
21 Because he never assigned error to the penalty, the
22 Commissioner's burden never attached. Accordingly,
23 decision will be entered for the Commissioner.

24 (Whereupon, at 10:09 a.m., the above-entitled
25 matter was concluded.)