

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

COLLIN S. PULSIPHER & MARCELLA P.	)	
PULSIPHER,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 5409-17S.
	)	
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 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 under Rule 155.

**(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 24, 2018  
 3 Collin S. Pulsipher and Marcella P. Pulsipher v.  
 4 Commissioner of Internal Revenue  
 5 Docket No. 5409-17S

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

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

21 As a general matter, the Commissioner's  
 22 determinations in the notice of deficiency are presumed  
 23 correct, and the taxpayer bears the burden of proving an  
 24 error. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115  
 25 (1933). In limited situations, the burden can shift to



1 the Commissioner under section 7491(a), but the record  
2 does not establish that the criteria under section 7491  
3 have been established, therefore, the burden of proof  
4 remains on the Pulsiphers.

5 Background

6 Mr. Pulsipher considers himself to be a  
7 professional artist. What he means by that is that he is  
8 a man of many talents and interests, all of which broadly  
9 fall into the arts. He has worked in fashion. He has  
10 worked as a musician. He has worked on set design. As  
11 relevant to 2015, the year in issue, he was employed on  
12 production sets. He was also winding down his involvement  
13 in a band. And he was taking the initial steps toward  
14 pitching a reality TV show.

15 His concept for a reality TV show is to focus on  
16 motorcycle touring. To that end, he bought equipment and  
17 took motorcycle camping trips with cameras mounted to  
18 motorcycles. It is clear that this is an activity Mr.  
19 Pulsipher enjoyed; it is unclear the extent to which this  
20 was a bona fide business venture. We need not answer that  
21 question, but we also note that, to date, nothing has come  
22 of that venture.

23 When it came time to prepare Mr. Pulsipher and  
24 his wife's return, the couple hired and paid a return  
25 preparer. Mr. Pulsipher described his businesses to the



1 return preparer and provided the totals of his business  
2 expenses based on his discussion with the return preparer.  
3 The result of these discussions, as relevant here, was a  
4 Schedule C, Profit or Loss from Business, prepared for Mr.  
5 Pulsipher.

6 The Schedule C for Mr. Pulsipher lists his  
7 profession as "Artist: singer/writer/designer". The  
8 Schedule C shows a few hundred dollars of income and  
9 several thousand dollars of expenses; \$26,907 to be exact.  
10 Those expenses largely consist of travel-related expenses  
11 (car and truck, travel, meals) and "other expenses" that  
12 are broken out on an attached schedule. Many of the  
13 expenses that are broken out appear to be personal. But  
14 some appear to be related to his business as a musician.  
15 Specifically, \$1,120 are related to musical equipment,  
16 lyric books, or studio rental.

17 The Commissioner disallowed all of the Schedule  
18 C expenses and asserted an accuracy-related penalty for  
19 negligence and substantial understatement. The  
20 Commissioner provided supervisory approval of both  
21 penalties.

22 At trial, Mr. Pulsipher provided handwritten  
23 lists that he prepared for trial showing his expenses.  
24 While we give little weight to the handwritten lists,  
25 those lists were accompanied by either bank records or

1 receipts. Most of the expenses are related to travel for  
2 the reality show he was developing. And the deductibility  
3 of those travel expenses is questionable. All of the  
4 travel appears more likely to have been for personal  
5 pleasure than for business purposes, but we need not  
6 decide that question.

7 Discussion

8 Taxpayers can deduct "ordinary and necessary  
9 expenses paid or incurred during the taxable year in  
10 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 such  
15 person is liable for tax. Sec. 6001. These records must  
16 be retained for as long as the contents may become  
17 material and must be kept available for inspection.

18 Certain expenses require strict substantiation  
19 under section 274(d). Such expenses include those related  
20 to travel, meals and entertainment, gifts, and listed  
21 property under section 280F(d)(4). For the years at  
22 issue, listed property included, among other things,  
23 passenger automobiles and other property used as a means  
24 of transportation. Sec. 280F(d)(4). Under the strict  
25 substantiation rules the taxpayer must have adequate

1 records or sufficient evidence to corroborate (1) the  
2 amount of the expense, (2) the time and place the expense  
3 was incurred, (3) the business purpose of the expense, and  
4 (4) the business relationship of the taxpayer to any  
5 others benefitted by the expense. Sec. 274(d). To  
6 substantiate by adequate records, the taxpayer must  
7 maintain an account book, a log, a diary, or a similar  
8 record and documentary evidence to establish each element  
9 of an expense.

10 The bulk of Mr. Pulsipher's expenses are related  
11 to the preliminary steps he took to develop a reality  
12 show. Generally, expenses under section 162 are  
13 deductible to the extent that they relate to a functioning  
14 business at the time the expenses were incurred. Hardy v.  
15 Commissioner, 93 T.C. 684, 686 (1989), aff'd. in part,  
16 remanded in part, 1990 U.S. App. Lexis 19670 (10th Cir.  
17 Oct. 29th, 1990); Glotov v. Commissioner, T.C. Memo. 2007-  
18 147. A functioning business is one that is performing the  
19 activities for which it is organized. Id. The bulk of  
20 Mr. Pulsipher's expenses are related to the preliminary  
21 steps he took in developing a reality show, and not his  
22 income as a musician. Because those expenses are not  
23 related to a functioning business, they cannot properly be  
24 offset against his income as a musician.

25 To the extent his expenses relate to a new

1 business, section 195 disallows business expenses for  
2 start-up expenditures. A start-up expenditure is any  
3 amount paid or incurred in connection with: (1)  
4 investigating the creation or acquisition of an active  
5 trade or business, (2) creating an active trade or  
6 business, or (3) any activity engaged in for profit and  
7 for the production of income before the day on which the  
8 active trade or business begins in anticipation of such  
9 activity becoming an active trade or business. Sec.  
10 195(c)(1). In all instances, the amount in question must  
11 be allowable as a deduction in the case of an existing  
12 active trade or business. Id. Because the reality show  
13 was a new venture and not an active business, Mr.  
14 Pulsipher's expenses are not deductible under section 195.

15 Certain of the expenses reported by Mr.  
16 Pulsipher appear to be directly related to his work as a  
17 musician, which was the source of the income shown on his  
18 Schedule C, in particular, the expenses related to  
19 drumming (drum sticks, etc.), lyric books, and studio  
20 rental. Those expenses total \$1,120. Those expenses do  
21 not require strict substantiation, and we are satisfied  
22 that those expenses were related to his business as a  
23 musician and in fact incurred.

24 In addition to the tax, the Commissioner has  
25 asserted an accuracy-related penalty for either negligence

1 or a substantial understatement. In a case involving an  
2 individual taxpayer, the Commissioner bears the burden of  
3 production. One element of that burden is establishing  
4 that the initial determination of the penalty was approved  
5 in writing by the immediate supervisor of the official who  
6 determined the penalty. See sec. 7491(c). The  
7 Commissioner satisfied that burden by putting into  
8 evidence the signed approval of the initial penalty  
9 determination. As for establishing a substantial  
10 understatement, the amount of the deficiency will need to  
11 be recomputed based on this opinion. If the amount of the  
12 deficiency exceeds the greater of 10% of the tax required  
13 to be shown on the return or \$5000, the Commissioner's  
14 burden will have been satisfied.

15 We now turn to negligence. In the event that  
16 the threshold for a substantial understatement has not  
17 been met, the Commissioner argues that a penalty should  
18 apply for negligence. Specifically, the Commissioner  
19 argues that Mr. Pulsipher's lack of substantiation  
20 justifies such a penalty. But the expenses that have been  
21 disallowed were not disallowed for lack of substantiation.  
22 The expenses were disallowed because start-up expenses for  
23 a reality show were improperly aggregated with the income  
24 from being a musician. Mr. Pulsipher credibly testified  
25 that he discussed these expenses with his return preparer.

1 We understand from Mr. Pulsipher's testimony that it was  
2 the return preparer who aggregated those expenses. On  
3 this record, we cannot say that Mr. Pulsipher was  
4 negligent. We need not reach the issue of the quality of  
5 his substantiation.

6 Because we have found that some of Mr.  
7 Pulsipher's schedule C expenses were deductible, decision  
8 will be entered under Rule 155.

9 (Whereupon, at 9:41 a.m., the above-entitled  
10 matter was concluded.)