

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLIFTON D. GIBBS & JUDITH A. GIBBS,)	SR
)	
Petitioners,)	
)	
v.)	Docket No. 6413-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

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 Winston-Salem, North Carolina, 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 the Commissioner.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
June 6, 2018

SERVED Jun 06 2018

1 Bench Opinion by Judge David Gustafson
2 May 22, 2018
3 Clifton C. Gibbs & Judith A. Gibbs v. Commissioner of
4 Internal Revenue

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

12 By notice of deficiency dated December 14, 2016
13 (Ex. 6-J), the Internal Revenue Service ("IRS") determined
14 a deficiency in the Federal income tax of petitioners
15 Clifton D. and Judith A. Gibbs for the years 2013, 2014,
16 and 2015, based on numerous adjustments to the returns.
17 At trial petitioners conceded their receipt of small
18 amounts of qualified dividends in all three years and a
19 2015 deduction of \$148,014 for depreciation or section 179
20 expense claimed on the Schedule C. The issues for
21 decision are: whether Mr. and Mrs. Gibbs substantiated
22 their entitlement to an Education Credit in 2013; whether
23 they substantiated their entitlement to deductions for
24 contributions to Individual Retirement Accounts ("IRAs")
25 in 2013 and 2015, and for casualty losses, unreimbursed



1 employee business expenses (including vehicle expenses),
2 and medical expenses in all three years; and whether they
3 are liable for accuracy-related penalties. We sustain the
4 IRS's disallowances and the imposition of the penalties.

5 This case was tried in Winston-Salem, North
6 Carolina, on May 21, 2018. James Yandle represented the
7 petitioners, and Olivia Hyatt Rembach represented the
8 Commissioner. On the evidence before us, we find the
9 following facts:

10 FINDINGS OF FACT

11 Petitioners' employment

12 In the years at issue, Mrs. Gibbs was employed
13 by Camco Manufacturing, Inc. (Stip. 11).

14 In the years at issue, Mr. Gibbs was a project
15 manager for Environmental Air Systems, LLC ("EAS"; Stip.
16 15), and he supervised projects in 14 states. To an
17 extent we cannot quantify, Mr. Gibbs used, for business-
18 related travel, a vehicle that he owned. For at least
19 some of his gasoline purchases, Mr. Gibbs used an EAS
20 credit card that EAS paid. EAS had a policy of
21 reimbursing employees for their travel expense. (See Ex.
22 17-J, p. 004.) From the evidence presented, we cannot
23 tell the extent (if any) to which Mr. Gibbs bore the
24 expenses for his travel.

25 EAS provided Mr. Gibbs some office space on an



1 apparently limited basis, and he did some of his paperwork
2 from his home. We are unable to conclude that he used any
3 portion of his home exclusively for this purpose, and at
4 trial Mr. Gibbs pointed to no evidence of the expenses of
5 maintaining his home.

6 Tax returns, notice of deficiency, and petition

7 Mr. and Mrs. Gibbs timely filed tax returns for
8 the years 2013, 2014, and 2015 (Exs. 1-J, 2-J, 3-J). They
9 failed to report small amounts of qualified dividends on
10 their returns for all three years (which they now
11 concede), and on their return for 2015 they claimed on
12 Schedule C a deduction of \$148,014 for depreciation or
13 section 179 expense (which they also now concede).

14 On their return for 2013 the Gibbs^{es} claimed an DA
15 Education Credit. On their returns for 2013 and 2015 they
16 claimed deductions for contributions to Individual
17 Retirement Accounts ("IRAs"). And on their returns for
18 all three years they claimed deductions for casualty
19 losses, unreimbursed employee business expenses (including
20 vehicle expenses), and medical expenses.

21 The IRS examined their returns and made
22 adjustments for the dividend income, the education credit,
23 and the deductions mentioned above. The IRS issued its
24 notice of deficiency on December 14, 2016 (Stip. 7; Ex. 6-
25 J). Mr. and Mrs. Gibbs timely mailed their petition to



1 this Court on March 10, 2017. At the time they filed
2 their petition, the Gibbsses resided in North Carolina.
3 (Stip. 1.)

4 Pretrial proceedings

5 Five months before trial, we issued our notice
6 of trial (ECF 5) and our standing pretrial order (ECF 6),
7 which required the parties to exchange the documents on
8 which they would rely at trial by no later than May 7,
9 2018. On May 4, 2018, the Commissioner filed a pretrial
10 memorandum that stated (at 11), "To date, petitioners have
11 not provided any documentation to substantiate any
12 business expenses or deductions." On May 9, 2018,
13 petitioners filed a pretrial memorandum that stated, "The
14 documents we have are to (sic) enormous to send with this
15 letter and we do not have the resources to copy them.
16 Therefore we will be bringing all 10 boxes with us to
17 court." Concerned about the obvious unworkability of the
18 procedure that petitioners anticipated -- 10 boxes of
19 unorganized original documents to be dumped on the Court
20 and the respondent for the first time at trial -- the
21 Court initiated a telephone conference with the parties,
22 which occurred on May 15, 2018.

23 During that conference, the Court explained how
24 Mr. Gibbs's course of action failed to comply with the
25 Court's standing pretrial order and would not be

1 acceptable. The Commissioner's counsel offered to receive
2 the 10 boxes from Mr. Gibbs that day (May 15), to
3 immediately assign multiple IRS employees to copy and
4 number the documents, to provide copies to the Court and
5 Mr. Gibbs, and to analyze the documents with a view toward
6 completing a stipulation of facts and conducting the trial
7 on Wednesday, May 23 (the third day of the trial session).
8 Mr. Gibbs (at that time still representing himself)
9 declined the offer, because he said he was not willing to
10 surrender the documents to the IRS. The Court therefore
11 instructed Mr. Gibbs to do the copying and analyzing
12 himself and to be ready to present the documents at the
13 commencement of the trial session on May 21, 2018.

14 Trial proceedings

15 When the case was called from the calendar on
16 May 21, 2018, Mr. Yandle entered an appearance on behalf
17 of the petitioners. He explained that he is a volunteer
18 from a Low Income Taxpayer Clinic and that he had met the
19 petitioners for the first time that morning. Mr. Gibbs
20 had not brought with him to the courtroom any of the 10
21 boxes of documents. The parties submitted a stipulation
22 of facts, to which were attached 20 exhibits, most of
23 which were derived from the IRS. At the trial of this
24 case that afternoon, only Mr. Gibbs testified.
25 Petitioners offered documentary support for only two of

1 the issues that they did not concede -- i.e., (1) a
2 purported letter from a bank (Ex. 19-P), unsigned, in
3 support of the IRA contribution deduction, which we
4 excluded as hearsay, and (2) purported mileage logs for
5 each of the three years at issue, in support of Mr.
6 Gibbs's vehicle expense deductions. For the other issues
7 in dispute -- i.e., education credit, casualty losses,
8 unreimbursed employee business expenses (other than
9 vehicle expenses), and medical expenses -- petitioners
10 offered no documentary evidence but relied solely on Mr.
11 Gibbs's very general testimony.

12 OPINION

13 I. Burden of proof

14 A. General Principals

15 The IRS's determination is presumed correct, and
16 taxpayers generally bear the burden to prove their
17 entitlement to any deductions they claim. Rule 142(a).
18 Taxpayers must satisfy the specific requirements for any
19 deduction claimed. See INDOPCO, Inc. v. Commissioner, 503
20 U.S. 79, 84 (1992). Furthermore, taxpayers are required
21 to maintain records sufficient to substantiate their
22 claimed deductions. See sec. 6001; 26 C.F.R. sec. 1.6001-
23 1(a), Income Tax Regs.

24 B. Section 274

25 Section 274(d) establishes higher substantiation



1 requirements for expenses related to travel, meals and
 2 entertainment, and "listed property", defined in section
 3 280F(d)(4) to include passenger automobiles. For these
 4 expenses, a taxpayer must prove: (1) The amount of each
 5 separate expenditure with respect to such property; (2)
 6 the amount of each business use; and (3) the business
 7 purpose for an expenditure or use with respect to such
 8 property. Sec. 1.274-5T(b)(6), Temporary Income Tax
 9 Regs., 50 Fed. Reg. 46016 (Nov. 6, 1985). The Court may
 10 not estimate these expenses. See Sanford v. Commissioner,
 11 50 T.C. 823, 827-828 (1968), aff'd per curiam, 412 F.2d
 12 201 (2d Cir. 1969).

13 II. Analysis

14 A. Employee business expense

15 A taxpayer may claim an unreimbursed employee
 16 business expense as a miscellaneous deduction on Schedule
 17 A, pursuant to the provision in section 162(a) that one
 18 may deduct expenses of a business; and an employee is
 19 considered to be in the business of being an employee.
 20 The employee business deductions that petitioners claimed
 21 must be disallowed, because they did not substantiate
 22 them.

23 1. Vehicle expenses. Mr. Gibbs did not show
 24 an entitlement to vehicle expense deductions, and his
 25 claim has several fatal flaws. First, an employee may



1 deduct only unreimbursed vehicle expenses, but his
2 employer's policy was evidently to reimburse such
3 expenses. It is not clear that Mr. Gibbs actually bore
4 any of these expenses.

5 Second, he did not persuade us of the number of
6 miles he actually drove for his employer in the years at
7 issue. His testimony did not convince us that his mileage
8 logs (Ex. 20-P) were actually contemporaneous. On cross-
9 examination, the Commissioner showed that the log was
10 contradicted by EAS's records of Mr. Gibbs's leave-taking.

11 2. Home office expense. Section 280A(c)(1)(A)
12 allows a taxpayer to deduct expenses for the business use
13 of his residence, but only to the extent the expenses are
14 allocable to a portion of the residence which is
15 exclusively used on a regular basis as the principal place
16 of business for a trade or business of the taxpayer. Mr.
17 Gibbs gave very general testimony about having a home
18 office, but he provided no floor plan or other information
19 to establish a portion of the house used exclusively for
20 business, and he provided no information about the
21 expenses incurred to maintain his residence. He proved no
22 deductible home office expense.

23 3. Other business expenses. If there were
24 other employee business expenses, Mr. Gibbs did not
25 suggest what they are, nor offer any evidence to

1 substantiate them, in excess of the amounts allowed by the
2 IRS on audit.

3 B. Other adjustments.

4 1. Education Credit. Mr. and Mrs. Gibbs
5 claimed an Education Credit for 2013 pursuant to section
6 25A. At trial Mr. Gibbs testified that he had enrolled in
7 continuing education courses, but he did not give any
8 testimony about the courses, the schools attended, or the
9 expenses incurred. He did not show an entitlement to the
10 credit.

11 2. IRA contributions. Mr. and Mrs. Gibbs
12 claimed deductions for contributions to Individual
13 Retirement Accounts in 2013 and 2015, pursuant to section
14 219(a). Their only substantiation of these alleged
15 contributions was inadmissible hearsay. (And that letter
16 did not specify whether the IRAs were regular IRAs or
17 instead Roth IRAs. "In general, contributions to a
18 traditional individual retirement account (IRA) are
19 deductible when made, but ... contributions to a Roth IRA
20 are not deductible". Elder v. Commissioner, T.C. Memo.
21 2007-281, slip op. at 2, n.2.)

22 3. Casualty losses. Mr. and Mrs. Gibbs
23 claimed deductions for casualty losses under section 165.
24 At trial Mr. Gibbs gave general testimony that the
25 casualties were the destruction of a shed by a tornado,

1 damage to their house from a burst pipe, and loss of a
2 vehicle; but he gave no substantiation for any basis in
3 the property damaged nor any expenses incurred as a result
4 of such events. Petitioners are not entitled to any
5 casualty loss deduction beyond what respondent allowed.

6 4. Medical expenses. Medical expenses may be
7 deducted under section 213(a), but only to the extent they
8 are not covered by insurance -- and, of course, only to
9 the extent they are substantiated. Mr. Gibbs acknowledged
10 that he and his wife had health insurance. He made no
11 showing of dental or medical expenses in the years at
12 issue, and he made no showing that any such expenses that
13 they did incur were not paid for by insurance.

14 C. Accuracy-related penalty

15 Section 6662(a) and (b)(1) imposes an "accuracy-
16 related penalty" of 20 percent of the portion of the
17 underpayment of tax that is attributable to the taxpayer's
18 negligence or disregard of rules or regulations or that is
19 "substantial". Under section 7491(c), the Commissioner has
20 the burden of production to show liability for the
21 penalty.

22 Here the deficiency that the Commissioner
23 determined (and that we sustain) is great enough that the
24 resulting underpayment is "substantial" for purposes of
25 section 6662(b)(2) and (d)(1)(A) -- i.e., it exceeds

1 \$5,000 and it exceeds by more than 10% the tax liability
2 that the Gibbsses reported. (The arithmetic is set out in
3 the Commissioner's pretrial memorandum at 13.) Mr. and
4 Mrs. Gibbs did not make any showing of "reasonable cause"
5 that could excuse them from penalty liability. See sec.
6 6664(c). The Commissioner showed compliance with section
7 6751(b). (See Ex. 18-J.) The Commissioner has made his
8 showing, and the petitioners are liable.

9 Because we sustain in full the adjustments in
10 the IRS's notice of deficiency, decision will be entered
11 in favor of the Commissioner.

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

14 (Whereupon, at 1:15 p.m., the above-entitled
15 matter was concluded.)

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