

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DUNCAN BASS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 12871-17.
	)	
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 under Rule 155.

**(Signed) David Gustafson  
Judge**

Dated: Washington, D.C.  
June 8, 2018

**SERVED Jun 08 2018**

1 Bench Opinion by Judge David Gustafson  
2 May 23, 2018  
3 Duncan Bass v. Commissioner of Internal Revenue  
4 Docket No. 12871-17

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 May 22, 2017 (Ex.  
13 1-J), the Internal Revenue Service ("IRS") determined a  
14 deficiency in the Federal income tax of petitioner Duncan  
15 Bass for the year 2014. The issue for decision is whether  
16 Mr. Bass substantiated his entitlement to deduct business  
17 expenses claimed on Schedule C, which the IRS disallowed.  
18 We uphold the IRS's disallowances in large part.

19 This case was tried in Winston-Salem, North  
20 Carolina, on May 22, 2018. Mr. Bass represented himself,  
21 and Tammie A. Geier represented the Commissioner. On the  
22 evidence before us, we find the following facts:

23 FINDINGS OF FACT

24 Mr. Bass's employment

25 Mr. Bass is a hard-working man. In 2014 he was



1 employed full-time by Hirschfeld Industries in Colfax,  
2 North Carolina. (Stip. 6.) Hirschfeld builds highway  
3 bridges, and Mr. Bass's work in Colfax involved processing  
4 steel. We take notice, by means of an internet map, that  
5 the Colfax work site was about 20 miles from Mr. Bass's  
6 home. He commuted to work in his pickup truck, and he did  
7 not need to take tools with him to work. His daily 40-  
8 mile round-trip to Colfax, if undertaken 5 days per week  
9 for 50 weeks, would total 10,000 miles of commuting.

10 Mr. Bass also worked part-time for Supreme  
11 Maintenance Organization ("SMO") and Beaman Realty Co.  
12 ("Beaman"), both in Greensboro, North Carolina. His work  
13 for SMO and Beaman was mainly janitorial. Commuting to  
14 his SMO and Beaman jobs in Greensboro would add to his  
15 commuting miles to an extent we cannot determine.

16 From his three employers Mr. Bass received wages  
17 totaling \$64,336, which the employers reported on Forms W-  
18 2 and Mr. Bass reported on his Federal income tax return  
19 (Ex. 2-J).

20 Mr. Bass's self-employment

21 In addition to his work for those three  
22 employers, Mr. Bass was also self-employed and did  
23 janitorial, lawn, and a variety of other work under the  
24 name Bass & Co. He performed this work both on weekends  
25 and on weekdays. When working as Bass & Co. on weekdays,

1 he worked before and after his employee work in Colfax and  
2 Greensboro, so that some of his weekdays involved driving  
3 in his truck to multiple sites on his way to and from his  
4 employers.

5 From his self-employment as Bass & Co., Mr. Bass  
6 received gross receipts of \$5,771 (i.e., about \$110 per  
7 week), which he also reported on his return on Schedule C  
8 ("Profit or Loss from Business"). (Ex. 2-J.)

9 Bass & Co. expenses

10 For Bass & Co., Mr. Bass drove his truck to  
11 clients' locations, and he took with him in the truck his  
12 lawn mower and tools, plus gas cans for fuel for his power  
13 tools. However, employing the burden of proof principles  
14 described below, we are unable to quantify the mileage he  
15 drove for Bass & Co.

16 For the mower and power tools that he used, Mr.  
17 Bass purchased gasoline, and he estimates that he spent  
18 \$27 to \$30 per week for this gasoline. From debit card  
19 entries on his bank statements, he is able to substantiate  
20 that he purchased gasoline in 2014; but some of his  
21 purchases were with cash (for which he presented no  
22 receipts), and at least some of his substantiated debit  
23 card purchases of gasoline included gasoline for his  
24 truck. In view of the burden of proof and his poor  
25 evidence, we estimate conservatively that he spent \$15 per

1 week for 50 weeks, totaling \$750.

2           Daily in 2014 Mr. Bass wore a Bass & Co. uniform  
3 (of which he brought a sample to the trial), and he  
4 cleaned the uniforms with his laundry at the "Wash-N-Go".  
5 He demonstrated (citing Ex. 7-J at 056) that the cost of  
6 the washer is \$4.50, and he testified credibly that a  
7 detergent packet costs \$1 and running the dryer costs  
8 another \$1, for a total cost of \$6.50 for each trip to the  
9 laundry. He sometimes did laundry more than once a week,  
10 so we estimate that he made 60 trips per year, for a total  
11 cost of \$390. However, Mr. Bass seems to have considered  
12 all of his clothing, including socks and underwear, to be  
13 his "uniform", and since that is not so, we must allocate  
14 to business expense the percentage of this cost that  
15 actually relates to the Bass & Co. uniforms. We therefore  
16 conservatively estimate that 50% of this laundry  
17 expense -- \$195 -- was a business expense for laundering  
18 uniforms.

19           Mr. Bass maintained a cell phone account in 2014  
20 (Exs. 12-J, 23-P), used the cell phone for his personal  
21 and Bass & Co. calls, and paid for the cell phone from his  
22 bank account (Ex. 7-J). However, the bank statements are  
23 difficult to read, and Mr. Bass did not make a tally of  
24 the payments. The smallest phone payment for his cell  
25 phone that we spotted in the bank statements is \$121.50,

1 so we estimate his yearly total by assuming 12 monthly  
2 payments of \$120, for a yearly total of \$1,440. We find  
3 reasonable his estimate that 50% of his phone usage was  
4 for Bass & Co., so the business expense portion was \$720.

5 Lend-a-Hand

6 Before 2014 Mr. Bass formed a non-profit company  
7 called Lend-a-Hand. The Commissioner does not dispute  
8 that Lend-a-Hand is an organization described in sections  
9 170(c)(2) and 501(c)(3), eligible to receive tax  
10 deductible donations. Mr. Bass made in-kind contributions  
11 to Lend-a-Hand, for which he claimed a charitable  
12 contribution deduction on Schedule A ("Itemized  
13 Deductions") on his 2014 tax return. This deduction was  
14 not disallowed on audit, and the Commissioner did not  
15 contend at trial that it should be disallowed.

16 However, Mr. Bass alleges that he made  
17 additional in-kind donations to Lend-a-Hand which he  
18 reported on Schedule C as a business expense of Bass & Co.  
19 We are unable to quantify those donations.

20 2014 tax return

21 In January 2015 Mr. Bass filed his 2014 Federal  
22 income tax return (Ex. 2-J). Mr. Bass reported on his  
23 return the wage income he had received from his three  
24 employers, and he reported gross receipts of Bass & Co. on  
25 Schedule C. Also on Schedule C, he reported 18,276



1 business miles driven and claimed the prescribed 56 cents  
2 per mile, yielding "Car and truck expenses" of \$10,235,  
3 and he claimed "Other expenses" totaling \$12,566 on line  
4 27a, which he itemized in Part V as including "power tool  
5 expense" (meaning gas) of \$1,377; "uniforms" (meaning  
6 laundering uniforms) of \$408; "cell phone" of \$1,621; and  
7 "Lend a Hand" of \$9,160. (He also claimed other business  
8 expense deductions not in dispute here.)

9 Notice of deficiency and petition

10 After examining Mr. Bass's return, the IRS  
11 disallowed the claimed car and truck expense and "other  
12 expenses" that Mr. Bass had claimed. The IRS issued its  
13 notice of deficiency on May 22, 2017 (Stip. 2; Ex. 1-J).  
14 Mr. Bass timely mailed his petition to this Court on June  
15 4, 2017. At the time he filed his petition, Mr. Bass  
16 resided in North Carolina. (Stip. 1.)

17 OPINION

18 I. Applicable legal principles

19 A. Burden of proof

20 The IRS's determination is presumed correct, and  
21 taxpayers generally bear the burden to prove their  
22 entitlement to any deductions they claim. Rule 142(a).  
23 Taxpayers must satisfy the specific requirements for any  
24 deduction claimed. See INDOPCO, Inc. v. Commissioner, 503  
25 U.S. 79, 84 (1992). Furthermore, taxpayers are required



1 to maintain records sufficient to substantiate their  
2 claimed deductions. See sec. 6001; 26 C.F.R. sec. 1.6001-  
3 1(a), Income Tax Regs.

4 B. Business expense deductions

5 Pursuant to section 162(a), a taxpayer may  
6 deduct "all the ordinary and necessary expenses paid or  
7 incurred during the taxable year in carrying on any trade  
8 or business". In contrast, except where specifically  
9 enumerated in the Code, no deductions are allowed for  
10 personal, living, or family expenses. Sec. 262(a).

11 C. The Cohan rule and section 274

12 When a taxpayer establishes that he paid or  
13 incurred a deductible expense but fails to establish the  
14 amount of a deduction, the Court may estimate the amount  
15 allowable as a deduction. The seminal case so holding is  
16 Cohan v. Commissioner, 39 F.2d 540, 543-544 (2d Cir.  
17 1930), and we therefore call this principle "the Cohan  
18 rule." See also Vanicek v. Commissioner, 85 T.C. 731,  
19 742-743 (1985). A taxpayer may substantiate deductions  
20 through secondary evidence only where the underlying  
21 documents have not been intentionally lost or destroyed,  
22 see Boyd v. Commissioner, 122 T.C. 305, 320-321 (2004),  
23 and there must be sufficient evidence in the record to  
24 permit the Court to conclude that a deductible expense was  
25 paid or incurred in at least the amount allowed. Williams

1 v. United States, 245 F.2d 559, 560 (5th Cir. 1957).

2 D. Section 274(d)

3 The Cohan rule has been limited by Section  
4 274(d), which establishes higher substantiation  
5 requirements for expenses related to (among other things)  
6 "listed property", defined in section 280F(d)(4) to  
7 include passenger automobiles. For these expenses, a  
8 taxpayer must prove: (1) The amount of each separate  
9 expenditure with respect to such property; (2) the amount  
10 of each business use; and (3) the business purpose for an  
11 expenditure or use with respect to such property. Sec.  
12 1.274-5T(b)(6), Temporary Income Tax Regs. (Nov. 6, 1985).  
13 The Court may not estimate these expenses. See Sanford v.  
14 Commissioner, 50 T.C. 823, 827-828 (1968), aff'd per  
15 curiam, 412 F.2d 201 (2d Cir. 1969).

16 II. Analysis

17 A. Car and truck expenses

18 In view of the strict standard of section  
19 274(d), Mr. Bass did not establish that he is entitled to  
20 a business expense deduction for mileage on his truck.  
21 First, he did not convince us of the miles that he drove.  
22 He proffered mileage logs (Ex. 15-J) that he admitted were  
23 not literally "contemporaneous" but alleged were prepared  
24 periodically throughout 2014. However, the Commissioner  
25 established during cross-examination that these logs were

1 presented piecemeal to the Commissioner after this Court  
2 issued its decision in Bass v. Commissioner, T.C. Memo.  
3 2018-19 (Feb. 21, 2018), holding against Mr. Bass on this  
4 issue. (See pages 8-9, commenting on petitioner's lack of  
5 "a mileage log, trip sheets, or similar records".) We  
6 cannot rule out the substantial possibility that these  
7 logs were recently composed in preparation for trial.

8           Second, Mr. Bass did not distinguish between  
9 non-deductible expenses of commuting to one's employment  
10 and deductible expenses of one's business. Of the miles  
11 Mr. Bass drove in 2014, no fewer than 10,000 must be  
12 attributed to his commutes to his main job in Colfax and  
13 his part-time jobs in Greensboro. We attempted at trial  
14 to discern whether one could calculate the extent to which  
15 his driving for Bass & Co. added to his commuting miles so  
16 that the excess would be deductible, cf. Freeman v.  
17 Commissioner, T.C. Memo. 2009-213, but Mr. Bass did not  
18 offer enough information about the locations, much less  
19 reliable information about the actual trips made, so we  
20 are unable to identify deductible mileage.

21           B. Power tool gas expense

22           The Commissioner does not dispute that the  
23 expense of gas that Mr. Bass purchased for the mower and  
24 power tools is deductible on Schedule C, but contended  
25 rather that Mr. Bass failed to substantiate the expense.



1 We found that he spent not the \$1,377 that he claimed but  
2 rather the lower amount of \$750, and he is entitled to  
3 deduct that amount.

4 C. Uniform cleaning

5 The Commissioner does not dispute that the  
6 expense of cleaning uniforms is deductible on Schedule C,  
7 but contended rather that Mr. Bass failed to substantiate  
8 the expense. We found that he spent not the \$404 that he  
9 claimed but rather the lower amount of \$195, and he is  
10 entitled to deduct that amount.

11 D. Cell phone

12 The Commissioner does not dispute that the  
13 expense of a cell phone used for business is deductible on  
14 Schedule C, but contended rather that Mr. Bass failed to  
15 substantiate the amount of his cell phone expense and the  
16 business-related portion of it. We found that he spent  
17 not the \$1,621 that he claimed but rather the lower amount  
18 of \$1,440, and that the business portion was not 100% (as  
19 he reported on his return -- a mistake by his preparer, he  
20 said) but 50% (as he testified at trial), so that he is  
21 entitled to deduct \$720.

22 E. Lend-a-Hand

23 Mr. Bass contended that he is entitled to deduct  
24 as a business expense on Schedule C amounts that would  
25 otherwise be charitable deductions but that exceed the



1 limit of section 170(b)(1). He evidently misunderstood a  
2 publication that he found (see Ex. 10-J at 093), advising  
3 that where "transfers" to a charity can be characterized  
4 as business expenses, then "Business expense treatment may  
5 be preferable where the 'contribution' exceeds the  
6 charitable deduction ceiling." However, that advice does  
7 not apply where the transfer to the charity is truly  
8 gratuitous, as Mr. Bass admits was the case here. One  
9 cannot evade the limit of section 170(b)(1) simply by  
10 reporting the excess on Schedule C. Mr. Bass admits that  
11 his transfers to Lend-a-Hand that he deducted as business  
12 expenses on Schedule C are indistinguishable from the  
13 transfers that he deducted as charitable contributions on  
14 Schedule A. For that reason, the entire \$9,160 "Lend-a-  
15 Hand" deduction was properly disallowed.

16 Even if in-kind donations to a charity could be  
17 deductible as business expenses, we are not persuaded that  
18 Mr. Bass actually made the donations that he claims. They  
19 are substantiated (if at all) by receipts from Lend-a-Hand  
20 that Mr. Bass composed and issued to himself. This is not  
21 absolutely disqualifying, since one can indeed make a  
22 contribution to a charity that one founded and operates,  
23 but the receipts do not prove anything that Mr. Bass's  
24 testimony would not prove; in this case, they add nothing.  
25 Moreover, Mr. Bass seems to admit that the receipts do not

1 add up to \$9,160; and he originally justified his \$9,160  
2 deduction not by such receipts but by purporting to prove  
3 actual cash payments to Lend-a-Hand for advertising and  
4 rent (see Ex. 24-J). He disclaimed this contention by the  
5 time of trial (after this Court rejected his similar  
6 contention for 2013 as "attempting to take a deduction for  
7 paying himself"; see T.C. Memo. 2018-19 at \*10-\*11), but  
8 this radical change in his characterization of the Lend-a-  
9 Hand deduction makes us doubt the reality of the alleged  
10 contributions and their supposed substantiation.

11 Because we allow a portion of the power tool gas  
12 expense, uniform cleaning expense, and cell phone expense  
13 that was disallowed in the IRS's notice of deficiency,  
14 decision will be entered under Rule 155, so that the  
15 deficiency can be recomputed.

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

18 (Whereupon, at 10:16 a.m., the above-entitled  
19 matter was concluded.)  
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