United States Tax Court

T.C. Summary Opinion 2022-11

MARK RYAN PEDERSEN,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 12748-19S. Filed June 28, 2022.

Mark Ryan Pedersen, pro se.

Nchekube U. Onyima, for respondent.

SUMMARY OPINION

WELLS, *Judge*: This case was heard pursuant to the provisions of section 7463 of the Internal Revenue Code in effect when the petition was filed.[1] Pursuant to section 7463(b), the decision to be entered is not reviewable by any other court, and this opinion shall not be treated as precedent for any other case.

In a notice of deficiency dated April 8, 2019, respondent determined a deficiency of $5,176 in petitioner's federal income tax for the 2016 tax year (year in issue) and an accuracy-related penalty under section 6662(a) of $1,227. Petitioner filed a timely Petition for

[1] Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. Monetary amounts are rounded to the nearest dollar.

Served 06/28/22

redetermination with the Court. He resided in Oregon when the Petition was filed.

After concessions,[2] the sole issue remaining for decision is whether petitioner is entitled to a deduction for unreimbursed employee business expenses of $24,201 for tax year 2016.

Background

Some of the facts have been stipulated and are so found. Accordingly, the stipulation of facts and the attached exhibits are incorporated herein by this reference. The record consists of the stipulation of facts, as supplemented with attached exhibits, and petitioner's testimony.

I. *Petitioner's Employment*

Petitioner worked as a project manager in construction management with JE Dunn Construction Co. (JE Dunn or company) for approximately nine years beginning in July 2011. He was charged with overseeing various JE Dunn project sites and keeping his superiors apprised of their progress. His main duties involved managing mechanical, electrical, and plumbing system installations for those projects.

Sometime in 2016 JE Dunn called on petitioner to oversee multiple construction projects in California. However, there was no apparent agreement between the two parties regarding the required duration of petitioner's obligation to work there. As a consequence of his interstate employment, petitioner maintains that he incurred employee business expenses for temporary housing, meals, entertainment, and travel between several cities in California and his then-current residence in Hood River, Oregon. Petitioner earned wages in and paid state tax to both states in 2016 and 2017 during his employment with JE Dunn.

Petitioner was no longer employed with JE Dunn at the time of trial; he has not provided an employment agreement or other document indicating the terms of his work agreement, nor has he produced any objective evidence of the company's reimbursement policy or whether he

[2] Respondent concedes that petitioner is not liable for an accuracy-related penalty under section 6662(a) and is entitled to deduct tax preparation fees of $120 for the year in issue.

was reimbursed for any of his reported and disallowed expenses. He has provided no documentation showing the location of his principal place of employment during the year in issue, a work schedule showing that he was required by JE Dunn to be in California on certain dates, or any other evidence indicating the period he was required to work in California.

II. *Petitioner's 2016 Tax Return*

Petitioner filed a 2016 Form 1040, U.S. Individual Income Tax Return, reporting his home address as an address in Portland, Oregon. Petitioner reported wages of $96,265 from Form W–2, Wage and Tax Statement, showing earnings in both Oregon and California, offset in part by miscellaneous itemized deductions of $31,638 claimed on Schedule A, Itemized Deductions.

Petitioner attached to his 2016 tax return a Form 2106–EZ, Unreimbursed Employee Business Expenses, reporting unreimbursed employee business expenses of $24,201 claimed as Schedule A miscellaneous deductions. These expenses, purportedly incurred in connection with his employment with JE Dunn, comprised vehicle expenses, parking fees, tolls and transportation expenses, travel expenses while away from home overnight, and meals and entertainment expenses. Respondent disallowed these deductions as summarized below.

A. *Vehicle, Parking Fees, Tolls, and Transportation Expenses*

Petitioner reported vehicle expenses of $4,455 (using the standard mileage rate of 54 cents per mile) and parking fees, tolls, and transportation expenses of $360.

To substantiate these expenses petitioner produced an estimated mileage log, prepared in advance of trial, approximating the number of miles he claimed to have driven for business purposes. The mileage log, does not show a beginning or ending address for each trip. Instead, it shows the date of each purported trip, the general starting location and destination ("San Jose," "PDX," or "Hood River"), the method of transportation ("car," "plane," or "train"), a general purpose ("business travel"), and an approximate number of miles traveled. Petitioner attests that there are lapses within his mileage log, such that it does not reflect all the miles he deducted as vehicle expenses, because he relied on his 2016 calendar in lieu of credit card statements to determine where he was on a particular date. He has not provided any parking

receipts showing that he incurred parking expenses nor any evidence showing that he traveled over toll roads on specific dates. Nor did he explain the specific business purpose for any of these purported business trips.

B. *Travel Expenses While Away from Home Overnight*

Petitioner reported travel expenses while away from home overnight of $16,200, which included expenses for rent/utilities paid for lodging, air travel, Amtrak, Uber, and car repairs.

To substantiate these expenses petitioner produced a travel log listing miscellaneous expenses, a travel lodging log listing rent/utility expenses, a spreadsheet of Venmo charges split between Oregon and California, Venmo account screenshots, and a Wells Fargo bank statement summary. The travel log provides, for each entry, the date of the expense, a short description ("Southwest Airlines," "Alaska Air," "Uber.com," "O'Reilly Auto Parts," "Hood River Napa," or "City of Portland"), the description purportedly shown on petitioner's bank statement, the amount, the form of the transaction ("debit"), an expense category ("Air Travel," "Rental Car & Taxi," "Fees & Charging," "Parking," "Auto & Transport," or "Service & Parts"), and for a few of the entries, a general purpose ("Business Travel"). The travel lodging log provides, for each entry, the date of the expense, whether it was for rent or utilities, the general location ("California"), the amount, and the general purpose ("Travel Lodging"). Both the travel log and the travel lodging log were prepared in advance of trial. The spreadsheet of Venmo charges was produced to substantiate the expense entries shown on the travel lodging log, with screenshots of these same charges provided to prove that the logged expenses had been paid. Each Venmo spreadsheet entry and accompanying screenshot provides the date of the charge, the amount, the person it was paid to, and various descriptions of the charge ranging from words loosely describing monthly rent payments to the use of ambiguous emoticons. The Wells Fargo bank statement shows an ending balance in April of an unspecified year; it does not include a list of transactions during any specific period. Petitioner did not produce a lease, rental, or other contractual agreement evidencing a requirement to pay housing costs or utility bills in California in 2016.

C. *Meals and Entertainment Expenses*

Petitioner reported meals and entertainment expenses of $6,372 ($3,186 after the 50% limitation of section 274(n)(1)) based on the U.S.

General Service Administration's per diem rates for the Sunnyvale/Palo Alto/San Jose, California, area.

Petitioner produced a meals and entertainment log that provides, for each entry, the date of the expense, a short description, the amount, an expense category ("Groceries," "Food & Dining," "Fast Food," "Alcohol & Bars," or "Entertainment"), and the credit/debit card which was used to pay the expense ("Travel Checking" or "Alaska Airlines Card"). He attempted to substantiate these entries by providing 2016 Visa Signature (Alaska Airlines) credit card statements, which display numerous transactions and do not distinguish between personal and business expenses. And, as with his other logs, petitioner did not explain the specific business purpose for any of his meals and entertainment expenses.

Discussion

As a general rule, the Commissioner's determinations of a taxpayer's liability in a notice of deficiency are presumed correct, and the taxpayer bears the burden of proving that those determinations are erroneous. Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). Section 7491(a) shifts the burden of proof to the Commissioner as to any factual issue relevant to a taxpayer's liability for tax if the taxpayer meets certain preliminary conditions. *See Higbee v. Commissioner*, 116 T.C. 438, 442–43 (2001). Petitioner does not contend, and respondent has not conceded, that the burden of proof has shifted to respondent pursuant to section 7491(a).

Deductions are a matter of legislative grace, and the taxpayer generally bears the burden of proving entitlement to any deduction claimed. Rule 142(a); *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934). A taxpayer claiming a deduction on a federal income tax return must demonstrate that the deduction is allowable pursuant to some statutory provision and must further substantiate that the expense to which the deduction relates has been paid or incurred. I.R.C. § 6001*; Hradesky v. Commissioner*, 65 T.C. 87, 89–90 (1975), *aff'd per curiam*, 540 F.2d 821 (5th Cir. 1976); *Meneguzzo v. Commissioner*, 43 T.C. 824, 831–32 (1965); Treas. Reg. § 1.6001-1(a). A taxpayer must substantiate deductions claimed by keeping and producing adequate records that enable the Commissioner to determine the taxpayer's correct tax liability. I.R.C. § 6001; Treas. Reg. § 1.6001-1(a). Such records must substantiate both

the amount and purpose of the claimed deductions. *Higbee*, 116 T.C. at 440.

Under section 162(a), a deduction is allowed for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Performing services as an employee constitutes a trade or business. *Primuth v. Commissioner*, 54 T.C. 374, 377–78 (1970). Personal living expenses, on the other hand, are nondeductible. I.R.C. § 262; Treas. Reg. §§ 1.162-2(a), 1.262-1(b)(5). The taxpayer bears the burden of proving that expenses were of a business nature rather than personal and that they were ordinary and necessary. Rule 142(a); *Welch v. Helvering*, 290 U.S. at 115.

In order to deduct employee business expenses, a taxpayer must not have received reimbursement, and must not have had the right to obtain reimbursement, from his employer. *See Orvis v. Commissioner*, 788 F.2d 1406, 1408 (9th Cir. 1986), *aff'g* T.C. Memo. 1984-533. The taxpayer bears the burden of proving that he is not entitled to reimbursement from his employer for such expenses. *See Fountain v. Commissioner*, 59 T.C. 696, 708 (1973). The taxpayer can prove that he was not entitled to reimbursement by showing, for example, that he was expected to bear these costs. *See id.*; *see also Dunkelberger v. Commissioner*, T.C. Memo. 1992-723 (finding that management team expected taxpayer to bear expense of business lunches with vendors).

When a taxpayer establishes that he or she paid or incurred a deductible expense but fails to establish the amount of the deduction, the Court may sometimes estimate the amount allowable as a deduction. *Cohan v. Commissioner*, 39 F.2d 540, 543–44 (2d Cir. 1930); *Vanicek v. Commissioner*, 85 T.C. 731, 742–43 (1985). There must be sufficient evidence in the record to permit the Court to conclude that a deductible expense was paid or incurred in at least the amount allowed. *Vanicek*, 85 T.C. at 742–43.

Section 274(d) prescribes more stringent substantiation requirements to be met before a taxpayer may deduct certain categories of expenses, including entertainment, travel away from home (including meals and lodging), and "listed property," defined in section 280F(d)(4) to include passenger automobiles. Temp. Treas. Reg. § 1.274-5T(a); *see Balyan v. Commissioner*, T.C. Memo. 2017-140, at *7. To satisfy the requirements of section 274(d), a taxpayer generally must maintain adequate records or produce sufficient evidence corroborating her own statement, which, in combination, are sufficient to establish the amount,

time and place, and business purpose for each expenditure. Temp. Treas. Reg. § 1.274-5T(b)(2), (6), (c)(1). Temporary Treasury Regulation § 1.274-5T(c)(2) provides in relevant part that "adequate records" generally consist of an account book, a diary, a log, a statement of expense, trip sheets, or a similar record, made at or near the time of the expenditure or use, along with supporting documentary evidence. The Court may not use the *Cohan* doctrine to estimate expenses covered by section 274(d). *See Boyd v. Commissioner*, 122 T.C. 305, 320 (2004); Temp. Treas. Reg. § 1.274-5T(a).

Petitioner reported on Schedule A unreimbursed employee business expenses of $24,201 comprising vehicle expenses, parking fees, tolls and transportation, travel expenses while away from home overnight, and meals and entertainment expenses. According to respondent, petitioner has failed to (1) substantiate the reported expenses, (2) prove that he was required to incur the expenses in the course of his employment, and (3) prove that any expenses incurred were not reimbursable or reimbursed by his employer. Petitioner has offered various records in the form of credit card statements, a bank account summary, and Venmo screenshots to substantiate that he paid the expenses. While he has cross-referenced some of these expenditures with logs and spreadsheets that list the dates and amounts of certain expenses, his records do not contain any contemporaneous indication of the specific business purpose for any given expenditure.

A. *Vehicle, Parking Fees, Tolls, and Transportation Expenses*

Petitioner reported $4,455 in vehicle expenses for the year in issue using the standard mileage rate of 54 cents per mile. He reported an additional $360 in parking fees, tolls, and transportation expenses for the same year. These expenses are subject to the strict substantiation rules of section 274(d), and thus they cannot be estimated under the *Cohan* doctrine.

For expenses relating to passenger automobiles, a taxpayer must substantiate with adequate records or sufficient evidence corroborating his own statement (1) the amount of each separate expense using either actual costs or the standard mileage rate; (2) the mileage for each business use of the passenger automobile and the total mileage for all purposes during the taxable period; (3) the date of the business use; and (4) the business purpose of the use. *See* Treas. Reg. § 1.274-5(j)(2); Temp. Treas. Reg. § 1.274-5T(b)(6).

The mileage log that petitioner offered to substantiate the vehicle expenses that he reported on Schedule A does not satisfy the heightened requirements of section 274(d). In sum the mileage log is not reliable because it was not made contemporaneously with his purported trips and the log entries lack necessary information such as the location where petitioner started a particular trip, his precise destination, and the business purpose for the trip. *See, e.g.*, *Sullivan v. Commissioner*, T.C. Memo. 2002-131. Upon collective review of the records provided, it appears as though the business miles petitioner reported as vehicle expenses were in fact attributable to the several trips he took by airplane and train. With respect to his deduction for parking fees, tolls, and transportation expenses, petitioner failed to produce any evidence, such as parking receipts or tickets, showing that he incurred parking expenses, nor any evidence showing that he incurred tolls on a specific date that he was traveling for work. Furthermore, petitioner has failed to show that his vehicle, parking fees, tolls, and transportation expenses were not reimbursed by his employer. Under the circumstances, we conclude that petitioner has not established that he is entitled to deduct any amount of vehicle, parking fees, toll, or transportation expenses for the year in issue.

B. *Travel Expenses While Away from Home Overnight*

Petitioner reported travel expenses while away from home overnight of $16,200, which included expenses for lodging rent/utilities, air travel, Amtrak, Uber, and car repairs. Deductions for travel expenses (including lodging while away from home) are subject to the strict substantiation rules of section 274(d). I.R.C. § 274(d)(1); *Baca v. Commissioner*, T.C. Memo. 2019-78, at *16; Temp. Treas. Reg. § 1.274-5T(a)(1).

Deductions for traveling expenses are allowed if the expenses are ordinary and necessary and paid or incurred while away from home in the pursuit of a trade or business, including the business of being an employee. *See* I.R.C. § 162(a)(2); *Mitchell v. Commissioner*, 74 T.C. 578, 581 (1980). Travel expenses include travel fares, lodging, meals, and expenses incident to travel. Treas. Reg. § 1.162-2(a); Temp. Treas. Reg. § 1.274-5T(b)(2). To be entitled to deduct travel expenses a taxpayer must substantiate by adequate records or by other sufficient evidence corroborating the taxpayer's own testimony (1) the amount of the expense, (2) the dates of departure and return and the number of days spent away from home on business, (3) the destination or locality of

travel, and (4) the business reason for the travel. Temp. Treas. Reg. § 1.274-5T(b)(2).

Under section 162 the term "home" does not have its usual and ordinary meaning. *Henderson v. Commissioner*, 143 F.3d 497, 499 (9th Cir. 1998), *aff'g* T.C. Memo. 1995-559. For purposes of section 162(a)(2), a taxpayer's home generally means the vicinity of his principal place of employment. *Mitchell*, 74 T.C. at 581. As an exception to this general rule, a taxpayer's residence may be treated as the taxpayer's tax home, even though it is outside the vicinity of the principal place of employment, if the taxpayer's employment is "temporary" and not "indefinite." *Peurifoy v. Commissioner*, 358 U.S. 59, 60 (1958). This Court has treated employment as "indefinite" rather than "temporary" if "its termination cannot be foreseen within a fixed or reasonably short period of time." *Stricker v. Commissioner*, 54 T.C. 355, 361 (1970), *aff'd*, 438 F.2d 1216 (6th Cir. 1971). Section 162(a) further provides that a taxpayer will not be treated as temporarily away from home during any period of employment if such a period exceeds one year. *See Barrett v. Commissioner*, T.C. Memo. 2017-195, at *9.

The records that petitioner offered to substantiate travel expenses while away from home overnight are inadequate to satisfy the requirements of section 274(d). The travel log, travel lodging log, evidence of Venmo payments, bank account summary, and corroborating testimony do not meet the strict substantiation standard as outlined above. Petitioner failed to substantiate his alleged rental payments with any rental agreement, lease, or other contract evidencing a requirement to pay housing costs or utility bills in California. He also failed to specifically demonstrate how any of these expenses were related to furthering JE Dunn's business. Additionally, several of the deducted expenses are inconsistent with his records or appear to be personal expenditures. For example, petitioner deducted a trip he took from San Jose, California, to Hood River; however, his credit card statements show that several purchases were made in San Diego, California, immediately following that purported trip. Petitioner attempted to explain this discrepancy by averring that he had planned to travel to Portland but the bachelor party he was traveling with decided to travel south instead of north. This explanation confirms that the trip was taken for only personal reasons. In another example petitioner testified that he included in his travel expenses a one-way Amtrak trip with his girlfriend from San Jose to Klamath Falls, Oregon, for a wedding. Irrespective of these inconsistencies, petitioner failed to show that he was required to travel and stay away from home by JE

Dunn during specific periods in furtherance of the company's business and that he was not reimbursed for these expenses.

Another problem with petitioner's deduction is our inability to definitively determine whether his employment in California was temporary rather than indefinite. Even if we found that petitioner's tax home was in Oregon, as petitioner contends, there is no basis for us to find that the work he performed in California was temporary because there is no evidence of a work schedule, employment agreement, or any other document indicating the nature of his work there. Petitioner contended that his assignments were sporadic but conceded that he had no documents to show that the jobs he was hired to perform were not continuous. Consequently, we will sustain respondent's disallowance of the deduction petitioner claimed for travel expenses while away from home overnight.

C. Meals and Entertainment Expenses

Petitioner reported meals and entertainment expenses of $6,372 ($3,186 after the 50% limitation of section 274(n)(1)) based on the U.S. General Service Administration's per diem rates for the Sunnyvale/Palo Alto/San Jose area. As noted above, meals and entertainment expenses are subject to the strict substantiation requirements of section 274(d) and may not be estimated. Standing alone, petitioner's credit card statements, which do not distinguish between personal and business expenses, are insufficient to demonstrate that he incurred any of his reported meals or entertainment expenses in connection with his employment. Further, no evidence shows that JE Dunn would not have reimbursed any such expenses. *See Orvis v. Commissioner*, 788 F.2d at 1408; *Fountain*, 59 T.C. at 708. For these reasons, we conclude that petitioner is not entitled to deduct any amount of meals and entertainment expenses for the year in issue.

We have considered all of the parties' arguments, and, to the extent not addressed above, we conclude that they are moot, irrelevant, or without merit.

To reflect the foregoing,

Decision will be entered under Rule 155.