

# United States Tax Court

T.C. Memo. 2022-68

JOHN EDWARD BARRINGTON AND DEANNA BARRIE  
BARRINGTON,  
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent

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Docket No. 1781-14.

Filed July 6, 2022.

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*James Monroe*, for petitioners.

*Jeremy Cameron* and *Mark J. Tober*, for respondent.

## MEMORANDUM FINDINGS OF FACT AND OPINION

BUCH, *Judge*: John and Deanna Barrington pleaded guilty to tax evasion, among other crimes. As part of their plea agreements, the Barringtons admitted to receiving specific items of income for 2003, 2004, and 2005. The Barringtons did not preserve their records, and the government destroyed its files in the ordinary course of its operations. The Commissioner determined tax deficiencies and additions to tax solely on the basis of the factual admissions in the Barringtons' plea agreements. The Barringtons challenged the Commissioner's determinations; however, their scant records sometimes contradicted their testimony, and they failed to meet their burden of proof.

## FINDINGS OF FACT

From October 2001 to July 2002, John Stewart Jakows served time in a Florida prison for a felony conviction for forgery and theft. After his release, he changed his name to John Edward Barrington and

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[\*2] joined with his wife, Deanna Barrington, in creating what they represented to be a real estate development business.

In reality, the business was a fraud. During 2003, 2004, and 2005 (the years at issue), the Barringtons operated the business through three Florida corporations, which we will refer to collectively as Barrington Corp.<sup>1</sup> Together, they were the officers, directors, and sole shareholders of Barrington Corp. They painted a false image of Mr. Barrington as an experienced developer and marketed property for sale in central Florida. Investors and homebuyers took the bait and entrusted them with more than \$6 million.<sup>2</sup>

The Barringtons played active roles in Barrington Corp. Mr. Barrington guided the business. He created and distributed marketing materials and solicited money from prospective purchasers. He dealt with clients, investors, and lawyers, entered into contracts, and took deposits. Mrs. Barrington, a realtor, focused on sales. She listed, showed, and sold properties, and she attended corporate meetings.

Mrs. Barrington worked for other companies in 2003, earning \$45,234 in real estate sales commissions, but she stopped working for those other companies as she became more involved in Barrington Corp.

The Barringtons hired employees and retained lawyers for the business. The law firm Infantino & Berman represented Barrington Corp. in various real estate matters (e.g., contract drafting, homeowners association documents). Barrington Corp. paid the firm \$21,667 in 2005.

The Barringtons paid their personal expenses through Barrington Corp. Neither of them received a salary. Instead, they used corporate credit cards and drew on corporate accounts. They also funneled sales commissions through corporate accounts.

The Barringtons' personal expenses, paid by Barrington Corp., included payments for their home and vehicles. Together, they moved into a home in Ocoee, Florida, and they resided there during the years at issue. They did not own the home outright, but they contracted with

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<sup>1</sup> The three corporations were (1) Barrington Homes, Inc., (2) Barrington Realty & Associates, Inc., and (3) Barrington Mortgage Group, Inc. Both Barringtons registered (1) and (2) and reported that they were officers or directors for 2003 through 2005. Mrs. Barrington registered (3) and reported that she was an officer or director for 2004 and 2005.

<sup>2</sup> All monetary amounts are rounded to the nearest dollar.

[\*3] the homeowner to purchase it over time by making monthly payments. During 2003 and 2004, each owned a car that was subject to a loan. Mr. Barrington owned a Chevy Avalanche, and Mrs. Barrington owned a Nissan Xterra, for which her monthly payment was \$350 (\$4,200 annually). They purchased two jet skis in 2003 and two Hummer H2s in 2005. They also purchased new home furnishings in 2005. Payments for these purchases were made out of Barrington Corp.

The Barringtons failed to file individual income tax returns, and only one of the three corporations filed an income tax return for 2003, reporting no income and no expenses. Other than this one return, Barrington Corp. did not file any income tax returns.

The FBI investigated the Barringtons and involved the Commissioner's Criminal Investigation Division (CI). In 2006, the government executed search warrants and seized records. Following the investigation, a grand jury in the U.S. District Court for the Middle District of Florida indicted the Barringtons on multiple counts, including tax evasion.

With the assistance of counsel, the Barringtons waived their right to trial and entered guilty pleas. Each was represented by an experienced, court-appointed attorney. Documents obtained by the government in pursuit of the Barringtons' cases consisted of more than 10,000 pages, including records seized by the FBI. Their attorneys gave them copies of discovery documents. The Barringtons entered separate guilty pleas. Mrs. Barrington pleaded guilty to tax evasion for 2003 through 2005. Mr. Barrington pleaded guilty to tax evasion for 2005 plus charges for conspiracy and money laundering.

The Barringtons understood the contents of their plea agreements and the consequences of entering into them. They reviewed them extensively with their attorneys. The agreements contained a recitation of facts giving rise to their charges, which they admitted were true and would be provable beyond a reasonable doubt at trial. At their plea hearings, the district court judge warned that dishonesty could be the basis of perjury charges. They confirmed their guilt and their voluntary entry into the agreements. They also expressed satisfaction with their attorneys' services. The district court accepted their pleas, sentenced them to prison, and ordered them to pay restitution.

The Barringtons' admissions in their plea agreements provide the basis for the Commissioner's determination of their federal income tax

[\*4] liabilities. In separate agreements, each admitted to receiving unreported income totaling over \$600,000 for 2003 through 2005. Their agreements recite identical amounts. The plea agreements separated the unreported income into six categories of personal expenses paid by Barrington Corp. on their behalf for each year at issue: (1) home mortgage, (2) vehicle and boat, (3) household furnishings, (4) cash/check withdrawal, (5) legal fees, and (6) miscellaneous expenses labeled as “general ledger shareholders equity.”

A bank records analysis revealed that the Barringtons withdrew cash or “authorized or conducted transaction[s]” using corporate checks. Miscellaneous expenses were labeled “general ledger shareholders equity” because Barrington Corp. bookkeepers recorded them in a spreadsheet titled “Shareholders Equity.” To reduce confusion, we refer to that category as miscellaneous expenses. The plea agreements recited the following amounts per category:

<i>Personal Expenses</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
Home Mortgage	\$28,183	\$25,554	\$22,154
Vehicle and Boat	21,516	5,500	124,500
Household Furnishings	-0-	-0-	54,515
Cash/Check Withdrawal	20,300	43,545	199,200
Legal Fees	-0-	-0-	60,000
Miscellaneous Expenses	14,142	13,561	1,434
<b>Total Unreported Income<sup>3</sup></b>	<b>\$84,141</b>	<b>\$88,160</b>	<b>\$461,803</b>

In the time between the criminal pleas and the Commissioner’s civil examination, the FBI’s records were destroyed in the ordinary course of its operations. The FBI notified the Barringtons that they could reclaim their records and held them for some time. During that time, the Barringtons never attempted to reclaim their records, and the FBI destroyed them in late 2009. When the Commissioner commenced

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<sup>3</sup> After concessions, the Barringtons dispute only amounts for the cash/check withdrawals, legal fees, and miscellaneous expenses.

[\*5] a civil examination in 2012, the examination function could not obtain records from CI because they were grand jury materials.<sup>4</sup> Bank records were also unavailable because of the amount of time that had elapsed since the years at issue. As a result, the Commissioner used the information and figures from the plea agreements as the basis for his deficiency determinations.

The Commissioner determined deficiencies in the Barringtons' federal income tax for the years 2003, 2004, and 2005. The Commissioner issued a separate notice of deficiency to each of the Barringtons. For Mr. Barrington, the Commissioner determined deficiencies of \$31,706, \$17,750, and \$147,033. For Mrs. Barrington, the Commissioner determined deficiencies of \$37,007, \$17,750, and \$146,916. For each of the Barringtons, the Commissioner also determined additions to tax under section 6651(a)(2), section 6651(f), and section 6654 for all three years.<sup>5</sup>

The notices set forth various adjustments. The principal adjustments in both notices are increases to compensation from Barrington Corp. Each notice includes adjustments for many of the same items of income all predicated on the Barringtons' identical plea agreements.

While residing in Florida, the Barringtons filed a joint petition challenging the Commissioner's deficiency determinations. One of the Barringtons' main contentions is that the adjustments in their separate notices are duplicative in that the Commissioner determined the same income items for both Mr. and Mrs. Barrington. The Commissioner has conceded that these amounts were duplicated. The parties resolved many issues, and only two matters remain in dispute. First, the Barringtons dispute the Commissioner's determinations of compensation from Barrington Corp. of \$84,141, \$88,160, and \$461,803, for 2003, 2004, and 2005, respectively. They disagree with the Commissioner about the amount, allocation, and characterization of this income. Second, Mrs. Barrington alleges that she incurred expenses that offset her 2003 gross receipts. We tried this case remotely over Zoom.

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<sup>4</sup> See Fed. R. Crim. P. 6(e). Any grand jury materials in CI's files were eventually destroyed in the normal course of CI's operations.

<sup>5</sup> Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

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## OPINION

I. *Burden of Proof and Production*

The Commissioner's determinations in a notice of deficiency are generally presumed correct. Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). The Commissioner's determinations of unreported income are presumptively correct if supported by a minimal evidentiary foundation linking the taxpayer to an income-producing activity. *Blohm v. Commissioner*, 994 F.2d 1542, 1549 (11th Cir. 1993), *aff'g* T.C. Memo. 1991-636. After the Commissioner produces evidence linking the taxpayer to an income-producing activity, the burden shifts to the taxpayer to prove the determinations are arbitrary or erroneous. *Id.*

Here, the Commissioner's determinations are presumptively correct. The Barringtons failed to report any income for 2003 through 2005. Thus, the Commissioner needed only to present evidence linking them to an income-producing activity to shift the burden to them. To that end, the Commissioner introduced the Barringtons' plea agreements, which clearly establish that they were engaged in an income-producing activity as owners and operators of Barrington Corp. Thus, they must prove the Commissioner's determinations are arbitrary or erroneous.

Their burden is particularly heavy because they lack contemporaneous records and their testimony lacks credibility. Leading to this case, they were convicted of tax evasion, and Mr. Barrington conceded fraud during trial. And despite maintaining that they lack records because of the government's actions, they had the opportunity, yet failed, to preserve their records. Moreover, Mrs. Barrington testified that she obtained bank statements, yet those statements are not in the record.

II. *Income—Admissions from Plea Agreement*

The Barringtons argue mainly that the determinations in the notices of deficiency are erroneous because the Commissioner reconstructed income using their plea agreements, which they claim are "suspect and/or inaccurate."

Gross income includes all income from whatever source derived. I.R.C. § 61(a); *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 429 (1955). Section 6001 requires taxpayers to maintain records substantiating their income. If a taxpayer fails to do so, the

[\*7] Commissioner may reconstruct the taxpayer's income using any reasonable method that reflects income. *Petzoldt v. Commissioner*, 92 T.C. 661, 693 (1989). The Commissioner's reconstruction "need only be reasonable in light of all surrounding facts and circumstances" and "is given greater latitude . . . where the case involves an illegal enterprise in which the taxpayer has failed to file a return and has kept no records." *Id.* at 687, 693. Further, a taxpayer's admissions in a plea agreement from a prior criminal proceeding as to the amount of his or her unreported income is strong evidence of that amount. *Ephrem v. Commissioner*, T.C. Memo. 2014-12, at \*6-7. However, it does not establish the nonexistence of factual issues as to the precise amount. *Id.*

Given the unavailability of records, the Commissioner reasonably reconstructed income using the plea agreements. The Barringtons' admissions are strong evidence of the amounts of their unreported income. The circumstances reinforce why their admissions give the determinations a strong foundation. They made them: (1) while represented by counsel, (2) in a criminal case, where the government's burden of proof is higher, and (3) close in time to the relevant events, when they likely had a better memory. When they entered their pleas, voluminous documents, including their own records, were available. They confirmed their admissions were true under penalties of perjury. Finally, they conceded that many previously admitted amounts are correct, despite arguing that the plea agreements are suspect or inaccurate.

### III. *Amount and Allocation*

The Commissioner argues that we should accept the amounts listed in the plea agreements as precise amounts of unreported income, allocable 50-50 between the Barringtons. The Barringtons concede the amounts identified as payments for home mortgage, vehicle and boat, and household furnishings. They dispute the amounts identified as cash/check withdrawal, legal fees, and miscellaneous expenses. With respect to allocating these amounts, they oppose 50-50 allocation, except for household furnishings to which they agree.

#### A. *Home Mortgage*

The Barringtons argue that the entire "home mortgage" amounts of \$28,183, \$25,554, and \$22,154, in 2003, 2004, and 2005, respectively, should be allocated to Mr. Barrington. They argue Mrs. Barrington received no benefit from the payments because she was not liable for the

[\*8] payments nor on the contract with the homeowner. They claim only Mr. Barrington signed the “documents and paperwork.” But the home was the Barringtons’ shared residence, and they have no documents to support their claim that only Mr. Barrington was liable for payments on the home. We find this income is allocable 50-50.

B. *Vehicle and Boat*

The Barringtons argue against 50-50 allocation of vehicle and boat amounts of \$21,516, \$5,500, and \$124,500 for 2003, 2004, and 2005, respectively. We reject the Barringtons’ proposed allocations for 2003 and 2005 and accept their proposed allocations for 2004.

We will start with 2004, because the allocation for that year will assist in making allocations for other years. The Barringtons allege that Mrs. Barrington’s car payments totaled \$4,200, annually. We will accept their position. The total car payments in 2004 were \$5,500. Accepting that Mrs. Barrington’s car payments were \$4,200, the remaining \$1,300 constitutes Mr. Barrington’s car payments.

For 2003, the Barringtons argue \$4,200 should be allocated to Mrs. Barrington for her car payments, and the balance of \$17,316 should be allocated to Mr. Barrington for his car payments and the purchase of two jet skis. Having accepted that Mrs. Barrington’s car payments were \$4,200 and Mr. Barrington’s car payments were \$1,300, we are left to decide how to allocate the \$16,016 balance. The Barringtons argue that this amount is for two jet skis, both of which should be allocated to Mr. Barrington. Like two people sharing a home, two people sharing two jet skis is far more plausible. Without any documentary evidence, such as titles to the jet skis, we will divide the \$16,016 balance equally between the Barringtons. Of the total 2003 amount, \$9,308 is allocable to Mr. Barrington and \$12,208 to Mrs. Barrington.

For 2005, the Barringtons’ position is muddled. They agreed with a 50-50 allocation at trial. The statement of facts in their brief is also consistent with a 50-50 allocation; they stated that they made car payments in only 2003 and 2004 and purchased two new Hummers in 2005. Yet they argue that \$70,300 of the vehicle and boat amount should be allocated to Mr. Barrington for 2005 without explanation of why more is allocable to him. Because the Barringtons have failed to support any other allocation, we will divide the 2005 vehicle and boat amount equally between them (\$62,250 each).

**[\*9]** C. *Household Furnishings*

The Commissioner determined that Barrington Corp. paid \$54,515 for the Barringtons' home furnishings in 2005. The Barringtons concede this amount and agree to 50-50 allocation.

D. *Cash/Check Withdrawals*

The Commissioner determined income from cash/checks of \$20,300, \$43,545, and \$199,200 for 2003, 2004, and 2005, respectively. The Barringtons concede the amounts for 2003 and 2004. And they concede \$43,545 for 2005, but they dispute the remaining \$155,655. As for dividing these amounts between the Barringtons, their argument is muddled, but they consistently argue that most or all of these amounts should be allocated to Mr. Barrington.

The Barringtons claim that the 2005 amount is erroneous because it includes nontaxable income. They suggest two potential nontaxable sources: a \$274,500 loan and a \$200,000 transfer made to Mr. Barrington that he promptly transferred back to Barrington Corp. Their explanations defy logic. They claim that the amount of cash and checks was inflated by two items, either of which standing alone is more than the total amount of cash/checks. But again, the Barringtons failed to meet their burden. They provided no documentary evidence of an alleged transfer from Mr. Barrington returning \$200,000 to Barrington Corp. As for the loan, they provided documentary evidence of a personal loan of \$274,500 in 2005. But the income reconstructed in the plea agreements was based on payments made to or on behalf of the Barringtons by Barrington Corp. The Barringtons offer no explanation why a personal loan would have been funneled to them through their corporation. We do not find their claim of nontaxable proceeds to be credible.

The Barringtons claim that most or all of these amounts should be allocated to Mr. Barrington because he withdrew most of the cash and wrote most of the checks. No documentary evidence supports this claim. Accordingly, these amounts are allocable 50-50 between the Barringtons.

E. *Legal Fees*

The Commissioner determined that Barrington Corp. paid \$60,000 for personal legal fees in 2005. The Barringtons concede \$1,500 should be allocated to Mr. Barrington but argue the remaining \$58,500

[\*10] is attributable to legal fees incurred by Barrington Corp. business entities. At trial, the Barringtons offered billing invoices showing Barrington Corp. paid \$21,667 for legal services related to its operations. The Commissioner has not argued otherwise, and the Barringtons met their burden as to that amount. The remaining \$36,833 is income allocable 50-50 between the Barringtons.

#### F. *Miscellaneous Expenses*

The Barringtons dispute the entire miscellaneous expense amounts of \$14,142, \$13,561, and \$1,434 for 2003, 2004, and 2005, respectively. Focusing on the label “general ledger shareholders equity,” they argue this category is not income because “shareholders equity,” as an accounting concept, is a net worth calculation. They also argue that these amounts are already included in other categories. They did not dispute the Commissioner’s 50-50 allocation.

Their argument fails. The spreadsheet was described and understood at the time of the Barringtons’ plea agreements to be a reconstruction of income. They offered no documents to support their argument. Nor did they offer testimony of anyone with personal knowledge of the bookkeeping underlying these amounts. They failed to meet their burden in challenging these amounts, and they offered no other allocation. The full amount for each year is allocable 50-50 between the Barringtons.

#### IV. *Characterization*

The Barringtons argue that their income from Barrington Corp. was a constructive dividend, not compensation. Whether a corporation’s payment of personal expenses of a shareholder who is also an employee is a constructive dividend or compensation is a question of fact. *Smith v. Commissioner*, T.C. Memo 1995-410, 70 T.C.M. (CCH) 502, 506; *Manning v. Commissioner*, T.C. Memo. 1993-127, 65 T.C.M. (CCH) 2221, 2237.

##### A. *Constructive Dividends*

Section 61(a)(7) provides that gross income includes dividends. A dividend is a distribution from a corporation to its shareholders out of earnings and profits. I.R.C. § 316(a). A corporation may formally declare dividends, but a constructive dividend occurs when “a corporation confers an economic benefit on a shareholder without the expectation of repayment.” *Magnon v. Commissioner*, 73 T.C. 980, 993–94 (1980).

[\*11] Accordingly, corporate payments for personal shareholder expenses that serve no corporate business purpose may be treated as constructive dividends to the shareholder. *Strong v. Commissioner*, T.C. Memo. 2005-125, 89 T.C.M. (CCH) 1339, 1351.

#### B. *Compensation*

Section 61(a)(1) provides that gross income includes “[c]ompensation for services, including fees, commissions, fringe benefits, and similar items.” Payments from a corporation to a shareholder warrant close scrutiny to determine whether they are more appropriately construed as compensation for services or dividends. *Wienke v. Commissioner*, T.C. Memo. 2020-143, at \*32.

When shareholders were actively involved in business operations but received little to no salary, we have found that the payment of personal expenses was compensation. In *Smith*, 70 T.C.M. (CCH) at 506, we found that the corporate payments of living expenses by means of cash withdrawal were compensation where the corporation did not pay a salary. We reached a similar conclusion in *Ghosn v. Commissioner*, T.C. Memo. 1995-192, 69 T.C.M. (CCH) 2508, 2510, where a corporation (a restaurant) paid minimal salary to its sole shareholder but paid his personal expenses. The restaurant’s sole shareholder was also its cook, janitor, driver, and chief executive. *Id.* at 2509. The restaurant had no employees other than the shareholder, his wife, and occasionally their teenage son. *Id.* The restaurant reported no expense for salaries and reported minimal “management expenses.” *Id.* at 2510.

The payments to the Barringtons were compensation because they were made in exchange for their efforts at Barrington Corp. They were not mere shareholders; they were employees who played active roles. But despite performing various services, they never received a salary. Barrington Corp.’s earnings would not exist but for Mr. Barrington’s efforts to entice investors and homebuyers, and Mrs. Barrington’s sales. Our conclusion is reinforced by the Barringtons’ practice of putting personal commissions into the corporate accounts before using them to pay personal expenses. Because commissions are a form of compensation, this practice shows consistent funneling of the Barringtons’ compensation through Barrington Corp.

#### V. *Business Expenses*

Mrs. Barrington argues that she incurred deductible expenses that offset her 2003 real estate sales commissions. Because she lacks

[\*12] records, she argues that we should apply the *Cohan* rule and supply an estimate. See *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930). She approximated the following expenses: (1) \$1,400 per month for 5 months (\$7,000) for office space; (2) \$400 per month for approximately 2 months (\$800) for office space, (3) \$400 per month for 12 months (\$4,800) for multiple listing service fees, and (4) \$300 to \$400 in advertising expenses. Thus, she argues her income should be reduced by \$12,900.

Taxpayers bear the burden of proving their entitlement to deductions. Rule 142(a); *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992). Section 6001 requires taxpayers to maintain records sufficient to establish the amount of each deduction. Failure to present such records counts heavily against a taxpayer's attempted proof. See *Rogers v. Commissioner*, T.C. Memo. 2014-141, at \*17.

Section 162(a) generally allows a deduction for ordinary and necessary expenses paid in carrying on a trade or business. A taxpayer bears the burden of proving that she incurred business expenses and that they were "ordinary and necessary." I.R.C. § 162(a); Rule 142(a). If the taxpayer establishes that an expense is deductible but cannot substantiate the precise amount, the Court may estimate the amount, bearing heavily against the taxpayer whose inexactitude is of her own making. *Cohan v. Commissioner*, 39 F.2d at 543-44; *Mileham v. Commissioner*, T.C. Memo. 2017-168, at \*36. The taxpayer must provide sufficient evidence for the Court to form an estimate. See *Vanicek v. Commissioner*, 85 T.C. 731, 742-43 (1985).

We cannot supply an estimate here because Mrs. Barrington failed to provide sufficient evidence for us to make one. Her approximations are an insufficient basis for an estimate. Thus, she failed to prove she is entitled to deduct business expenses.

## VI. *Additions to Tax*

The Commissioner determined additions to tax for all three years. The Commissioner determined that the Barringtons are liable for additions to tax for failure to timely file returns under section 6651(a)(1) for each year at issue. The Commissioner further determined that the addition to tax should be calculated at the increased rate on account of fraud. See I.R.C. § 6651(f). The Commissioner also determined additions to tax for failure to timely pay under section 6651(a)(2) and failure to make estimated tax payments under section 6654 for each year.

[\*13] With one exception, all issues with respect to the additions to tax were resolved before trial. The Court previously granted summary judgment as to fraudulent failure to file as to Mrs. Barrington for all years and as to Mr. Barrington for 2005. At trial, Mr. Barrington conceded fraudulent failure to file as to the remaining years. As for the addition to tax for failure to timely pay, the Barringtons both conceded that issue before trial in a stipulation of settled issues. That same stipulation of settled issues addressed the addition to tax for failure to make estimated tax payments. The Barringtons both conceded that issue for all years, with one exception. That one exception is the section 6654 addition to tax for 2003 as applied to Mr. Barrington; the Commissioner conceded that issue in the same stipulation of settled issues.

The one issue pertaining to additions to tax that the parties reserved for decision is whether the Commissioner complied with the supervisory approval requirement of section 6751(b). But the supervisory approval requirement does not apply to any addition to tax under section 6651 or 6654. *See* I.R.C. § 6751(b)(2). And we have previously held that this exception applies even in the case of fraudulent failure to file. *Hendrickson v. Commissioner*, T.C. Memo. 2019-10, at \*26, *aff'd*, 125 A.F.T.R.2d 2020-2185 (6th Cir. 2020).

## VII. *Conclusion*

There is no documentary evidence in the record before us to substantiate most of the Barringtons' claims. Except with respect to legal fees, we can go no further than to find the Barringtons failed to meet their burden. To the extent they have substantiated claims as to the allocations between them, we have allowed alternative allocations. We have considered all of the parties' arguments and, to the extent not discussed above, conclude that those arguments are irrelevant, moot, or without merit.

To reflect the foregoing,

*Decision will be entered under Rule 155.*