United States Tax Court

T.C. Memo. 2022-70

JULIAN WOLPERT AND ESTATE OF EILEEN WOLPERT, DECEASED, JULIAN WOLPERT, EXECUTOR,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

JULIAN WOLPERT,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

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Docket Nos. 3182-20, 4693-20. Filed July 7, 2022.

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Elizabeth Ann Maresca, Lauren Boix (student), Amr Samie (student), Timothy Schubert (student), Jocelyn Ng (student), and Zachary Marshall-Carter (student), for petitioners.

Francesca Chou and *Mimi M. Wong*, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

JONES, *Judge*: Pursuant to section 6213(a), Julian Wolpert (Mr. Wolpert) and the Estate of Eileen Wolpert (estate) seek redetermination of deficiencies in federal income tax determined by the Internal Revenue Service (IRS) totaling $15,336 and $10,468 for taxable years 2016 and

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[*2] 2017, respectively.[1] After concessions, the issues for decision in these consolidated cases are (1) whether Mr. Wolpert and the estate are entitled to deduct $34,627 in purported business expenses with respect to taxable year 2016, (2) whether Mr. Wolpert is entitled to deduct $31,261 in purported business expenses with respect to taxable year 2017, and (3) whether Mr. Wolpert is liable for an accuracy-related penalty under section 6662(a) with respect to taxable year 2017.[2]

We hold that Mr. Wolpert and the estate failed to substantiate the purported business expenses totaling $34,627 and $31,261 for taxable years 2016 and 2017, respectively. Consequently, they are not entitled to deduct those amounts under section 162(a). We also hold that Mr. Wolpert is not liable for an accuracy-related penalty for taxable year 2017 because respondent did not satisfy his burden of production with respect to section 6751(b)(1) (requiring written supervisory approval for the assessment of penalties).

FINDINGS OF FACT

This case was tried on April 27, 2021, during the New York, New York, remote trial session (via Zoomgov). The Stipulation of Facts, including the jointly stipulated exhibits contained therein, are incorporated by this reference. When Mr. Wolpert filed the Petitions, he resided in Philadelphia, Pennsylvania.

I. *Background*

Mr. Wolpert is a former professor of public affairs and urban planning. His academic career included posts at the Wharton School of the University of Pennsylvania and at Princeton University. Mr. Wolpert was married to Eileen Wolpert (Mrs. Wolpert) until her death in 2016, and he is the executor of her estate. They had at least three children—Joshua Wolpert, Seth Wolpert, and Rebekah Narli

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[1] Unless indicated otherwise, all statutory references are to the Internal Revenue Code (Code), Title 26 U.S.C., in effect at all relevant times, all regulatory 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. All monetary amounts are rounded to the nearest dollar unless indicated otherwise.

[2] On brief, respondent conceded the section 6662(a) accuracy-related penalty determined against the Wolperts with respect to taxable year 2016. As that penalty is no longer at issue, Exhibit 1003-R, which we reserved for ruling at trial, is irrelevant; we therefore hold that it is not admissible. *See* § 7453; Fed. R. Evid. 401 and 402.

[*3] (Ms. Narli)—and at least one grandson—Jacob Wolpert.[3] During the taxable years at issue, Mr. and Mrs. Wolpert resided in Honesdale, Pennsylvania, where Mr. Wolpert engaged in various consulting activities focused on civic engagement. Mr. Wolpert did not maintain a separate checking or credit card account for his consulting activities, the expenses for which were paid primarily through a TD Bank checking account ending in -3528 and a credit card account ending in -9858 (maintained with an unknown issuer).

II. *Returns at Issue*

Mr. Wolpert filed a Form 1040, U.S. Individual Income Tax Return, for his and Mrs. Wolpert's taxable year 2016 under the filing status "married filing jointly." The return included a Schedule C, Profit or Loss From Business, for Mr. Wolpert's consulting activities.[4] Mr. Wolpert reported $7,528 in car and truck expenses (line 9); $5,184 in travel expenses (line 24a); and $25,334 in "other" expenses (line 27a). Mr. Wolpert reported on line 44a that with respect to the $7,528 in car and truck expenses reported on line 9, a total of 13,075 miles were driven for business purposes. Moreover, he itemized the "other" expenses (reported on line 27a) as follows: $1,962 (internet); $758 (cellular phone); $162 (scanning and typing); $11,400 (analysis and editing of reports); $10,725 (software, mapping, and programming); and $327 (postage and freight).

Mr. Wolpert filed a Form 1040 for his taxable year 2017 under the filing status "single." The 2017 return similarly included a Schedule C for Mr. Wolpert's consulting activities. Mr. Wolpert reported $7,204 in car and truck expenses (line 9); $7,022 in travel expenses (line 24a); and $19,962 in "other" expenses (line 27a). Mr. Wolpert reported on line 44a that with respect to the $7,204 in car and truck expenses reported on line 9, a total of zero miles were driven for business purposes. Moreover, he itemized the "other" expenses (reported on line 27a) as follows: $1,848 (internet); $772 (cellular phone); $184 (scanning and copying); $10,640 (analysis and editing of reports); $6,240 (software, mapping, and programming); and $278 (postage and freight).

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[3] The record is silent regarding Mr. and Mrs. Wolpert's relation to a fifth apparent relative, Jesse Wolpert.

[4] We assume, without finding as a matter of fact, that Mr. Wolpert carried out his consulting activities as a trade or business. *See infra* Findings of Fact Part IV.

[*4] III. *Examination and Issuance of Notices of Deficiency*

The Wolperts' joint 2016 return and Mr. Wolpert's individual 2017 return were selected for audit. Upon conclusion of the examination, the IRS issued two notices of deficiency dated November 22 and December 9, 2019, for taxable years 2016 and 2017, respectively.

The notice for taxable year 2016 determined a deficiency (with respect to the Wolperts) in federal income tax of $15,336 and a section 6662(a) accuracy-related penalty of $3,067. *See supra* note 2. In pertinent part, the IRS disallowed the $7,528 in car and truck expenses; the $5,184 in travel expenses; and the $25,334 in "other" expenses reported on the Schedule C for taxable year 2016. These expenses were disallowed for lack of substantiation.

The notice for taxable year 2017 determined a deficiency (with respect to Mr. Wolpert) in federal income tax of $10,468 and a section 6662(a) accuracy-related penalty of $2,094. In pertinent part, the IRS disallowed the $7,204 in car and truck expenses; the $7,022 in travel expenses; and the $19,962 in "other" expenses reported on the Schedule C for taxable year 2017. These expenses were similarly disallowed for lack of substantiation.

IV. *Current Proceeding*

Mr. Wolpert and the estate timely filed Petitions challenging the determinations set forth in the notices of deficiency.[5] On the eve of trial, respondent moved to amend his Answer to raise the issue of whether Mr. Wolpert possessed the requisite profit motive in carrying out his consulting activities for purposes of the business expense deductions claimed under section 162(a). We denied the motion for reasons detailed in an Order dated April 22, 2021. Following trial, respondent renewed his attempt to place profit motive at issue through his Motion to Conform Pleadings to the Proof under Rule 41(b), which we denied for reasons set forth in an Order dated March 16, 2022.

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[5] On brief, Mr. Wolpert and the estate did not address the amounts disallowed for (1) scanning and typing and (2) postage and freight, for taxable year 2016, which we deem conceded. *See Mendes v. Commissioner*, 121 T.C. 308, 312–13 (2003). On brief, Mr. Wolpert also did not address the amounts disallowed for (1) scanning and copying and (2) postage and freight, for taxable year 2017, which we similarly deem conceded. *See id.*

[*5] OPINION

I. *Burden of Proof*

The determinations rendered in a notice of deficiency bear a presumption of correctness, *see, e.g., Welch v. Helvering*, 290 U.S. 111, 115 (1933), and the taxpayer generally bears the burden of proving them erroneous in proceedings in this Court, *see* Rule 142(a)(1).

II. *Schedule C Business Expenses*

Section 162(a) permits a deduction for ordinary and necessary expenses paid to carry on a trade or business during the taxable year.

Deductions are a matter of legislative grace, and the taxpayer bears the burden of clearly showing his entitlement to any deduction claimed. *See INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992). Under that burden, the taxpayer must substantiate the amount and the purpose of the expense underlying the deduction. *See Higbee v. Commissioner*, 116 T.C. 438, 440 (2001). A taxpayer must also maintain adequate records to demonstrate the propriety of any deduction claimed. *See* § 6001.

Certain expenses otherwise deductible under section 162(a) are subject to heightened substantiation requirements under section 274(d); these include expenses for traveling and expenses with respect to any listed property under section 280F(d)(4). *See* § 274(d)(1), (4). No deduction is permitted for personal, living, or family expenses unless expressly permitted under the Code. *See* § 262(a).

If a taxpayer is unable to substantiate the amount of a deduction, the Court may nonetheless allow it (or a portion thereof) if there is an evidentiary basis for doing so. *See Cohan v. Commissioner*, 39 F.2d 540, 543–44 (2d Cir. 1930); *Vanicek v. Commissioner*, 85 T.C. 731, 742–43 (1985). In estimating the amount of an allowable expense under the *Cohan* rule, the Court bears heavily against the taxpayer whose inexactitude is of his own making. *See Cohan v. Commissioner*, 39 F.2d at 544. The *Cohan* rule cannot be applied to deductions subject to the strict substantiation requirements of section 274(d). *See* Temp. Treas. Reg. § 1.274-5T(a) (flush language).

With these general principles in mind, we address the deductibility of the purported business expenses totaling $34,627 and $31,261 for taxable years 2016 and 2017, respectively.

[*6] A. *Car and Truck Expenses*

In pertinent part, section 274(d)(4) provides that no deduction claimed with respect to "listed property" shall be allowed unless the taxpayer satisfies certain heightened substantiation requirements. Section 280F(d)(4)(A)(i) defines listed property to include any passenger automobile. *See also* § 280F(d)(5) (defining passenger automobile). Under those requirements and as applicable to car and truck expenses, a taxpayer must substantiate (1) the amount of each expense, (2) the mileage for each business use of the vehicle and the total mileage for all use of the vehicle during the taxable year, (3) the date of each business use of the vehicle, and (4) the purpose of each business use. *See* Temp. Treas. Reg. § 1.274-5T(b)(6). These elements must be substantiated using "adequate records" or "sufficient evidence corroborating the taxpayer's own statement." *See* § 274(d) (flush language); *see also* Temp. Treas. Reg. § 1.274-5T(c)(1), (2), and (3).

In order to substantiate car and truck expenses through adequate records, a taxpayer must generally maintain a contemporaneous log, trip sheet, or similar record, as well as corroborating documentary evidence that together establish each required element of the expense. *See* Temp. Treas. Reg. § 1.274-5T(c)(2)(i) and (ii). In the absence of adequate records, a taxpayer must establish each required element by "his own statement, whether written or oral, containing specific information in detail as to such element" and by "other corroborative evidence sufficient to establish such element." *See id.* subpara. (3)(i).

In lieu of substantiating the actual amount of expenses for operating a car or truck used in a business, a taxpayer may use the business standard mileage rate to calculate the amount of such expenses. *See* Rev. Proc. 2010-51, § 1, 2010-51 I.R.B. 883, 883. Under the business standard mileage rate method, a taxpayer multiplies the total number of business miles traveled during the taxable year by the applicable business standard mileage rate (published in an annual notice). *See id.* § 4.01, 2010-51 I.R.B. at 884. However, use of the business standard mileage rate method does not relieve a taxpayer from strictly substantiating (1) the mileage for each business use of the vehicle and the total mileage for all use of the vehicle during the taxable year, (2) the date of each business use of the vehicle, and (3) the purpose of each business use. *See* Treas. Reg. § 1.274-5(j)(2); *see also Barnes v. Commissioner*, T.C. Memo. 2016-212, at *65–67, *aff'd*, 773 F. App'x 205 (5th Cir. 2019).

[*7] Mr. Wolpert reported $7,528 and $7,204 in car and truck expenses on the Schedules C for taxable years 2016 and 2017, respectively. On brief, Mr. Wolpert and the estate claim entitlement to deductions for purported car and truck expenses of $6,013 and $4,407 under the business standard mileage rate for taxable years 2016 and 2017, respectively.[6] The amount for taxable year 2016 is based upon purported business mileage of 11,136 miles and an applicable rate of $0.54 per mile.[7] The amount for taxable year 2017 is based upon purported business mileage of 8,236.8 miles and an applicable rate of $0.535 per mile.[8] These car and truck expenses are subject to the heightened substantiation requirements of section 274(d). *See* §§ 274(d)(4), 280F(d)(4)(A)(i).

We hold that Mr. Wolpert and the estate failed to satisfy their burden of substantiating the $6,013 and $4,407 in purported car and truck expenses (under the business standard mileage rate) for taxable years 2016 and 2017, respectively, in accordance with section 274(d) and the regulations promulgated thereunder.

Mr. Wolpert and the estate did not substantiate the car and truck expenses through adequate records. *See* Temp. Treas. Reg. § 1.274-5T(c)(2). The evidentiary record includes (1) mileage logs indicating inter alia purported dates of vehicle use and the purported origin and destination city (and mileage) of each trip noted therein, and (2) calendars similarly indicating purported dates of vehicle use and the purported origin and destination city (but not mileage) of each trip noted therein.

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[6] Mr. Wolpert and the estate inconsistently assert on brief entitlement to $6,014 and $4,047 in car and truck expenses for the respective years at issue. We construe references to those amounts to mean $6,013 and $4,407, respectively, in the light of the purported business mileage and the applicable business standard mileage rates for the years at issue.

Moreover, to the extent Mr. Wolpert and the estate claim $1,515 and $2,797 less in car and truck expenses than reported on the Schedules C for the respective years at issue, we construe those amounts as conceded.

[7] *See* I.R.S. Notice 2016-1, § 3, 2016-2 I.R.B. 265, 265 (setting the business standard mileage rate for taxable year 2016 at 54 cents per mile).

[8] On brief, Mr. Wolpert and the estate stated that the applicable rate per mile for taxable year 2017 was "$.53.5," which we construe to mean $0.535. *See also* I.R.S. Notice 2016-79, § 3, 2016-52 I.R.B. 918, 918 (setting the business standard mileage rate for taxable year 2017 at 53.5 cents per mile).

[*8] On brief, Mr. Wolpert and the estate represent that these materials were contemporaneously maintained while respondent claims otherwise. We find the record ambiguous as to this question of fact. Mr. Wolpert did not explicitly testify on direct or cross-examination that these particular items of evidence were contemporaneous records, although Mr. Wolpert did testify that he "kept a log, a calendar on a clipboard in the car."[9] Furthermore, the Stipulation of Facts is silent as to whether these materials were contemporaneously maintained.[10] Nonetheless, the burden was on Mr. Wolpert and the estate to clearly establish entitlement to any deduction claimed. *See INDOPCO, Inc. v. Commissioner*, 503 U.S. at 84. Consequently, the onus was also on them to establish that these documents constitute contemporaneous records, *see* Temp. Treas. Reg. § 1.274-5T(c)(2)(ii), which they did not do.

Regardless, even assuming arguendo that they constitute contemporaneous records, they make no mention whatsoever of the business purpose of each purported trip nor the total mileage of all use of the vehicle during the respective taxable years. *See id.* para. (b)(6)(i)(B), (iii). Moreover, there is no documentary evidence otherwise establishing any of the required elements of the purported expenses. *See id.* para. (c)(2)(i). Thus, Mr. Wolpert and the estate failed to substantiate the car and truck expenses through adequate records. *See id.* subpara. (1) and (2)(i).

Mr. Wolpert and the estate also failed to substantiate the car and truck expenses through sufficient evidence corroborating their own statements. *See id.* subpara. (3)(i). To the extent we construe (1) the mileage logs and calendars and (2) relevant portions of Mr. Wolpert and the estate's brief as "statements" for purposes of Temporary Treasury Regulation § 1.274-5T(c)(3)(i), such statements lacked specificity and detail as to the purpose of each purported business use of the vehicle. *See id.* subdiv. (i)(A). Mr. Wolpert and the estate did not associate even a single purported trip with any one of the purported consulting projects Mr. Wolpert undertook during the taxable years at issue. Moreover, no assertion was made regarding the total use of the vehicle during the respective taxable years. *See id.* para. (b)(6)(i)(B). Last, the only corroborative evidence, *see id.* para. (c)(3)(i)(B), is Mr. Wolpert's

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[9] The mileage logs appear to be printouts from a computer-generated spreadsheet rather than the original log referred to by Mr. Wolpert and allegedly kept in the vehicle.

[10] The parties offered these items of evidence into the record as jointly stipulated exhibits.

[*9] generalized testimony (regarding the mileage logs and calendars), which we found insufficient to otherwise establish any of the required elements for these expenses, *see id.* para. (b)(6). Consequently, Mr. Wolpert and the estate failed to substantiate the car and truck expenses through sufficient evidence corroborating their own statements. *See id.* para. (c)(1), (3)(i).

In sum, we hold that Mr. Wolpert and the estate failed to substantiate the purported car and truck expenses at issue in accordance with section 274(d) and the regulations promulgated thereunder.

B. *Traveling Expenses*

In pertinent part, section 274(d)(1) also provides that no deduction claimed under section 162 shall be allowed for any traveling expense unless the taxpayer satisfies heightened substantiation requirements. Those requirements permit a deduction for traveling expenses only to the extent the taxpayer proves (1) the amount of each expenditure for traveling away from home, (2) the date of departure and return for each trip and the number of days spent on business, (3) the destination or locality of travel, and (4) the business reason for travel or the expected benefit to be derived from such travel. *See* Temp. Treas. Reg. § 1.274-5T(b)(2).

In order to substantiate traveling expenses in accordance with section 274(d)(1), a taxpayer is subject to the same substantiation rules set forth in Temporary Treasury Regulations § 1.274-5T(c) as are applicable to car and truck expenses. That is, each required element of a traveling expense must be substantiated through "adequate records" or by "sufficient evidence corroborating the taxpayer's own statement." *See* § 274(d) (flush language); *see also* Temp. Treas. Reg. § 1.274-5T(c)(1), (2), and (3).

Mr. Wolpert reported $5,184 and $7,022 in traveling expenses on the Schedules C for taxable years 2016 and 2017, respectively. On brief, Mr. Wolpert and the estate claim entitlement to deductions for purported traveling expenses totaling $994 and $1,737 for taxable years 2016 and 2017, respectively.[11]

[11] To the extent Mr. Wolpert and the estate claim $4,190 and $5,285 less in traveling expenses than reported on the Schedules C for the respective years at issue, we construe those amounts as conceded.

[*10] We hold that Mr. Wolpert and the estate failed to satisfy their burden of substantiating the $994 and $1,737 in traveling expenses for taxable years 2016 and 2017, respectively, in accordance with section 274 and the regulations promulgated thereunder.

Mr. Wolpert and the estate failed to substantiate each required element of the purported traveling expenses using adequate records as they offered no contemporaneous log, statement of travel expense, or similar record. *See* Temp. Treas. Reg. § 1.274-5T(c)(2)(i) and (ii). Furthermore, the documentary evidence they offered was insufficient to otherwise establish each required element of the expenses.[12] *See id.* subdiv. (i).

Mr. Wolpert and the estate also failed to substantiate each required element of the purported traveling expenses through sufficient evidence corroborating their own statements. *See id.* subpara. (3)(i). As a preliminary matter, we note that Mr. Wolpert and the estate did not comprehensively allege with respect to each purported trip all of the elements required to be proven under Temporary Treasury Regulation § 1.274-5T(b)(2). To the extent Mr. Wolpert testified regarding the traveling expenses, his testimony lacks the specificity and detail called for under Temporary Treasury Regulation § 1.274-5T(c)(3)(i)(A).[13] Mr. Wolpert and the estate's brief similarly lacked detail with respect to the

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[12] The Court acknowledges four items of evidence cited on brief by Mr. Wolpert and the estate with respect to the traveling expenses.

Two of the items of evidence in question are (1) a letter dated March 25, 2019, and (2) a letter dated December 12, 2018. Both of these letters were addressed to the IRS and written by Mr. Wolpert well after the taxable years at issue. However, these letters do not substantiate any of the elements required to be substantiated under Temporary Treasury Regulation § 1.274-5T(b)(2). The 2019 letter makes no reference to Mr. Wolpert's travel whatsoever. The 2018 letter does allude to Mr. Wolpert's travel but without specificity or detail (and only with respect to taxable year 2016). Moreover, the relevant statements therein are mere allegations; they are neither direct nor circumstantial evidence of any travel or travel-related expenses.

The remaining two items of evidence in question are credit card statements for 2016 and 2017 for the account ending in -9858. In themselves, these statements do not substantiate the dates of travel and the number of days spent on business, the destination of each trip, and the business purpose (or expected benefit) of each trip. *See* Temp. Treas. Reg. § 1.274-5T(b)(2).

[13] For example, he did not elaborate on the dates or destination of his travel or on the specific purpose for which each trip was taken.

[*11] traveling expenses.[14] Moreover, they produced no corroborative evidence that otherwise established the dates of any purported business trip and the number of days spent on business, the destination of any such trip, and the business purpose (or expected benefit) of any such trip. *See id.* subdiv. (i)(B); *supra* note 12. Consequently, Mr. Wolpert and the estate failed to substantiate the traveling expenses through sufficient evidence corroborating their own statements. *See* Temp. Treas. Reg. § 1.274-5T(c)(1), (3)(i).

In sum, we hold that Mr. Wolpert and the estate failed to substantiate the traveling expenses at issue in accordance with section 274(d) and the regulations promulgated thereunder.

C. *Internet and Cellular Phone Service Expenses*

Mr. Wolpert reported $2,720 and $2,620 in internet and cellular phone service expenses on the Schedules C for taxable years 2016 and 2017, respectively.[15] On brief, Mr. Wolpert and the estate assert entitlement to deduct $790 and $938 in such purported expenses for the respective years at issue.[16] We sustain the disallowance of these expenses for lack of substantiation.

Mr. Wolpert and the estate offered no bills or invoices from Time Warner Cable with whom the Wolperts allegedly maintained a bundled internet and cellular phone service plan.[17] The only documentary evidence they offered is a set of credit card statements (for the account

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[14] On brief, Mr. Wolpert and the estate merely alleged in general terms that Mr. Wolpert took business trips to "New Jersey, New York City, Washington, and Denver for meetings with government and other officials to discuss the projects and solicit funding" during the taxable years at issue.

[15] These expenses are subsets of the $25,334 and $19,962 reported on line 27a for "other expenses" for the respective years at issue. We also note that on brief, Mr. Wolpert and the estate refer to cellular phone, phone, and telephone (expenses) interchangeably. For the sake of consistency, we construe those references to telephone and phone to mean cellular phone.

[16] To the extent Mr. Wolpert and the estate claim $1,930 and $1,682 less in internet and cellular phone service expenses than reported on the Schedules C for the respective years at issue, we construe those amounts as conceded.

[17] Mr. Wolpert and the estate stated on brief that Time Warner Cable provided both internet and cellular phone service. With respect to the expenses for those services, Time Warner Cable is the only service provider identified.

[*12] ending in -9858) from 2016 and 2017 reflecting charges from Time Warner Cable.[18]

As a preliminary matter concerning the amounts of the asserted expenses, the Court found (1) 10 charges from Time Warner Cable in 2016 totaling $773 and (2) 12 charges from Time Warner Cable in 2017 totaling $927. Mr. Wolpert and the estate provided no explanation as to how they arrived at the amounts asserted. Nonetheless, we find no evidence to support the respective $17 and $11 differences.

More significantly, the credit card statements do not provide the Court with any evidence of what the Time Warner Cable charges were paid for; it only informs us of the identity of the payee and the amount, date, and means of payment. Although one may speculate that they were paid for internet and cellular phone service, these charges may alternatively have been for cable television service, which would presumably constitute a nondeductible personal expense. *See* § 262(a). We also note the possibility that these charges may not even be associated with internet service to the Wolperts' Honesdale residence where Mr. Wolpert's consulting activities were based during the taxable years at issue.[19] Mr. Wolpert himself appeared unsure of the exact nature of the Time Warner Cable charges when examined at trial.

Notwithstanding the numerous Time Warner Cable charges reflected on the credit card statements, the Court is without evidence to conclude what exactly these charges were paid for and that they were in furtherance of a business purpose. In the absence of any other relevant evidence, we hold that Mr. Wolpert and the estate failed to substantiate the purported internet and cellular phone service expenses. Moreover, we will not apply the *Cohan* rule given the lack of an evidentiary basis.[20]

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[18] These charges appear as "TWC*TIME WARNER NYC" on the statements for the account ending in -9858.

[19] Mr. Wolpert listed a Philadelphia, Pennsylvania, address as a home and business address on the Forms 1040 and Schedules C for the taxable years at issue. The returns also indicated ownership of properties in Portland, Oregon, and New York, New York.

[20] We note nonetheless that Mr. Wolpert and the estate did not invoke the *Cohan* rule as an alternative position.

[*13] D. *Payments to Various "Assistants"*

At issue are numerous payments to "assistants" totaling $26,830[21] and $24,179 for taxable years 2016 and 2017, respectively.[22] With the exception of a $4,000 payment purportedly for reimbursement to Ms. Narli in 2016, Mr. Wolpert and the estate argue that these payments were all compensation for various services rendered in connection with his consulting activities.

With respect to taxable year 2016, the record includes copies of negotiated checks (from the account ending in -3528) totaling $23,730 to various individuals including Ms. Narli and Jacob, Jesse, and Seth Wolpert; $20,645 of this amount was for two checks to Ms. Narli alone.[23] As to the remaining $3,100 (of the $26,830 asserted for 2016), there is

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[21] Mr. Wolpert and the estate did not include in the amount asserted for taxable year 2016 a $1,200 check (No. 1432 from the account ending in -3528) paid to Joseph Blaskiewicz (Mr. Blaskiewicz), although they did reference this check in their proposed findings of fact and characterized it as a payment to an "assistant." Regardless of whether the omission was intentional, the $1,200 payment in 2016 would not be deductible under section 162(a).

As best we can reconcile (without deciding as a finding of fact) Mr. Wolpert and the estate's representations on brief concerning this check, Mr. Wolpert's testimony at trial, and the face of the check (No. 1432), this payment was for the preparation of the Wolperts' and Ms. Narli's 2015 tax returns. The entirety of the payment that relates to Ms. Narli's returns is a personal expense, which is not deductible. *See* § 262(a). The portion of the payment which does not concern the Wolperts' Schedule C is also a personal expense, which is not deductible. *See id.* The portion of the payment which relates to preparation of the Schedule C (assuming one was prepared for the 2015 return) may be deductible under section 162(a); however, Mr. Wolpert and the estate did not substantiate (nor allege) what that amount is.

[22] On brief, Mr. Wolpert and the estate suggest that these expenses were previously reported on the Schedules C at issue as "other" expenses (line 27a) for (1) analysis and editing of reports and (2) software, mapping, and programming, which totaled $22,125 and $16,880 for taxable years 2016 and 2017, respectively. *See supra* Findings of Fact Part II.

[23] Namely, a $4,000 check (No. 1467) for purported reimbursement and a $16,645 check (No. 1496) for purported compensation. We also note that the $16,645 check (No. 1496) was written payable to Ms. Narli's credit card account ending in -6983.

[*14] no documentary evidence whatsoever substantiating payment of such an amount.[24]

With respect to taxable year 2017, the record includes copies of negotiated checks (from the account ending in -3528) totaling $9,179 to various individuals including Jesse, Joshua, and Seth Wolpert, who collectively received $5,850 of this amount. As to the remaining $15,000 (of the $24,179 asserted for 2017), Mr. Wolpert and the estate produced a copy of Ms. Narli's Form 1040 for taxable year 2017 which includes a Schedule C reporting receipt of $15,000. They also produced a copy of a Form 1099–MISC, Miscellaneous Income, for taxable year 2017, which states payment of $15,000 to Ms. Narli by Mr. Wolpert.[25]

To the extent Mr. Wolpert and the estate allege payment of $3,100 in compensation in taxable year 2016 without any substantiating documentary evidence, we hold that they failed to satisfy their burden of substantiating such expenses. Although Mr. Wolpert testified regarding the alleged cash payments totaling $3,000, *see supra* note 24, we are not obligated to accept his self-serving testimony,[26] *see Tokarski v. Commissioner*, 87 T.C. 74, 77 (1986).

To the extent there are negotiated checks in the record totaling $23,730 and $9,179 for the respective years at issue for purported compensation and reimbursement in connection with Mr. Wolpert's consulting activities, we also hold that Mr. Wolpert and the estate failed

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[24] Of this $3,100, $100 was purportedly paid to Seth Wolpert with check No. 1443. There is no copy of check No. 1443 in the record. The record does include a slip of paper with a handwritten note (undated) thereon stating "#1443 SETH $100."

The remaining $3,000 was purportedly paid in cash to an individual named Luke. Mr. Wolpert testified at trial that he believed Luke was one of his "chief research people." Mr. Wolpert did not provide any details regarding the research Luke conducted; and when asked how much he compensated him, he answered: "You know, I really don't know. I would probably *guess* it was 2 – or $3,000." (Emphasis added.) Although Mr. Wolpert testified that he recorded cash payments to Luke on "[l]ittle slips of paper," Mr. Wolpert did not offer them into evidence. There is also no documentary evidence of the research allegedly conducted by Luke.

[25] According to Mr. Wolpert and the estate's representations on brief, Mr. Wolpert gave the Form 1099–MISC (completed handwritten) to Mr. Blaskiewicz who they believe filed the form with the IRS. Respondent produced Ms. Narli's Wage and Income Transcript for taxable year 2017, which indicates that the form was not submitted to the IRS.

[26] Mr. Wolpert did not offer testimony regarding the $100 check (No. 1443) to Seth Wolpert.

[*15] to satisfy their burden of substantiating such expenses; we are unpersuaded such amounts were paid for business purposes.

None of these checks bear any notation in the respective "For" lines stating the purpose of the payment with the exception of one check whose "For" line states "garden."[27] We find the lack of notation as to the purpose of payment on the face of these checks particularly problematic given the use of the same checking account (ending in -3528) for personal purposes.[28] As there is no corroborating documentary evidence (e.g., time cards or pay stubs), Mr. Wolpert and the estate appear to rely solely on conjecture and memory in asserting that such checks were paid for business purposes. Furthermore, none of the payees with the exception of Ms. Narli testified at trial, nor did any of them, including Jacob, Jesse, Joshua, and Seth Wolpert, submit a written declaration or affidavit otherwise corroborating Mr. Wolpert and the estate's allegations regarding the purpose of these payments.

To the extent Ms. Narli testified at trial, we did not find her to be a credible witness, and her testimony did not establish the specific services she performed for which she received the $16,645 check in taxable year 2016. Moreover, there is no documentary evidence corroborating any of Ms. Narli's purported work for her father.[29] Neither did Ms. Narli's testimony establish that the $4,000 check she received in taxable year 2016 was reimbursement,[30] and there is no documentary evidence otherwise substantiating the expenses she was purportedly being reimbursed for.

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[27] None of the purported consulting projects described by Mr. Wolpert and the estate bear a logical nexus with such a stated purpose, and they did not otherwise offer an explanation. This appears to be a disguised personal expense, which is not deductible. *See* § 262(a).

[28] The record includes copies of several negotiated checks from the account ending in -3528 for which section 162(a) deductions are not claimed in the present proceeding (e.g., check No. 1491 to the Wolpert Family Trust for $80,000).

[29] Ms. Narli testified to her general involvement in Mr. Wolpert's consulting activities, which purportedly included preparing flyers, taking photographs, and conducting research. Yet, none of these flyers, photographs, and research were offered into evidence.

[30] Ms. Narli testified in general terms concerning the expenses she paid for the "library project," but she did not specifically testify regarding the $4,000 check and the expenses she was purportedly being reimbursed for through that payment (including whether the check was even related to the vaguely described expenses she paid for the "library project").

[*16] Although Mr. Wolpert also testified regarding a subset of these negotiated checks and the purported purpose for which they were paid, we are (again) not obligated to accept his self-serving testimony. *See Tokarski*, 87 T.C. at 77.

As to the remaining $15,000 allegedly paid to Ms. Narli in taxable year 2017 on multiple, unspecified dates for unspecified sums and through unspecified form(s) of payment, we similarly hold that Mr. Wolpert and the estate failed to satisfy their burden of substantiating such expenses. They provided no direct evidence (e.g., a copy of a negotiated check or a checking account statement) proving payment of the aggregate $15,000; Ms. Narli's tax return for taxable year 2017 and the unfiled Form 1099–MISC are circumstantial. Even assuming arguendo that the $15,000 was in fact paid, Mr. Wolpert and the estate failed to prove the business purpose for paying that aggregate amount through credible testimony or documentary evidence.

In sum, we hold that Mr. Wolpert and the estate failed to substantiate the $26,830 and $24,179 in purported compensation and reimbursement to various "assistants" in taxable years 2016 and 2017, respectively. Moreover, we will not apply the *Cohan* rule given the lack of an evidentiary basis.[31]

For the reasons elaborated upon *supra* Part II.A through D, we sustain the IRS's determinations disallowing the purported business expenses for the taxable years at issue. The lack of documentary evidence substantiating the amounts and purposes of these expenses, *see Higbee*, 116 T.C. at 440, is pervasive. Notwithstanding Mr. Wolpert and the estate's vague representations on brief that Ms. Narli inadvertently threw out business records stored in the Wolperts' Honesdale residence following Mrs. Wolpert's death,[32] there is no evidentiary basis in the record (including Ms. Narli's testimony) supporting such an allegation.

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[31] We note nonetheless that Mr. Wolpert and the estate did not invoke the *Cohan* rule as an alternative position.

[32] Mr. Wolpert and the estate did not specify when this incident allegedly took place. If the business records were thrown out in mid-2016, such an incident should have had no impact on business records generated after that date (including all of 2017).

[*17] III. *Section 6662(a) Penalty*

At issue is a section 6662(a) accuracy-related penalty determined against Mr. Wolpert for taxable year 2017. As part of his burden of production under section 7491(c) regarding inter alia penalties, respondent must produce evidence of IRS compliance with the written supervisory approval requirement of section 6751(b)(1) for the assessment of penalties. *See Frost v. Commissioner*, 154 T.C. 23, 32 (2020). On brief, respondent did not address whether the IRS complied with section 6751(b)(1), nor did he otherwise produce evidence establishing compliance.[33] We therefore conclude that respondent failed to satisfy his burden of production with respect to the section 6662(a) accuracy-related penalty determined against Mr. Wolpert for taxable year 2017.

IV. *Conclusion*

The Court holds that (1) Mr. Wolpert and the estate are not entitled to deduct $34,627 in purported business expenses with respect to taxable year 2016, (2) Mr. Wolpert is not entitled to deduct $31,261 in purported business expenses with respect to taxable year 2017, and (3) Mr. Wolpert is not liable for a section 6662(a) accuracy-related penalty determined with respect to taxable year 2017. We have considered all of the arguments made by the parties, and to the extent not mentioned above, we conclude that they are moot, irrelevant, or without merit. To reflect the foregoing,

Decisions will be entered under Rule 155.

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[33] For the first time at trial, respondent argued that the written supervisory approval requirement was inapplicable to the penalty at issue because it was "automatically calculated through electronic means," thus satisfying the exception enumerated in section 6751(b)(2)(B). Respondent pursued this argument on brief; however, we struck those portions for reasons set forth in an Order dated March 16, 2022.