United States Tax Court

T.C. Memo. 2022-8

JAMES P. HARWOOD AND CONNIE J. HARWOOD,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 425-19. Filed February 15, 2022.

James P. Harwood and Connie J. Harwood, pro se.

Melissa D. Lang, *Daniel G. Kempland*, *Ara Derhartonian*, and *Janice B. Geier*, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

URDA, *Judge*: Petitioners, James P. Harwood and Connie J. Harwood, challenge the determination by the Internal Revenue Service (IRS) of federal income tax deficiencies of $3,314, $5,885, and $5,004, respectively, for their 2015–17 tax years.[1] The deficiencies stem primarily from the IRS's disallowance of certain deductions for unreimbursed employee expenses that the Harwoods claimed in connection with Mr. Harwood's work as a union steamfitter. We will uphold the IRS's deficiency determinations in part.

[1] Unless otherwise indicated, all statutory references are to the Internal Revenue Code (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.

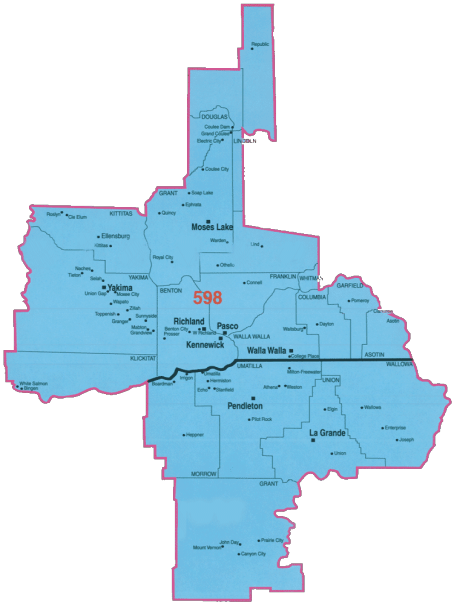
Served 02/15/22

[*2] FINDINGS OF FACT

This case was tried in Spokane, Washington. We base our factual findings on the parties' stipulations and supporting exhibits as well as the testimony of Mr. Harwood, the sole trial witness. The Harwoods lived in Washington when they timely filed their petition.

I. *Background*

During the years at issue, Mr. Harwood worked as a steamfitter and brazier on construction projects in Washington and Oregon.[2] Mr. Harwood joined Plumber and Steamfitters Local 598 (Local), headquartered in Pasco, Washington, in the 1970s, and he obtained each of the jobs during the years at issue through the Local. The Local's territory straddles southern Washington and northern Oregon, as shown in the map below.[3]



[2] According to the U.S. Bureau of Labor Statistics, steamfitters "specialize in systems that are designed for the flow of liquids or gases at high pressure." *What Plumbers, Pipefitters, and Steamfitters Do*, Occupational Outlook Handbook, U.S. Bureau of Lab. Stat., https://www.bls.gov/ooh/construction-and-extraction/plumbers-pipefitters-and-steamfitters.htm#tab-2 (last visited Feb. 10, 2022). Brazing is a type of welding specific to steamfitting.

[3] *See Territorial Jurisdiction*, Plumbers and Steamfitters Local Union 598, http://www.ua598.org/territorial.aspx#content (last visited Feb. 9, 2022). We take judicial notice of the map under Rule 201 of the Federal Rules of Evidence. *See* Rule 143(a).

[*3] The Harwoods lived in Yakima, Washington, nestled within the western part of the Local's territory. Mr. Harwood, a Yakima native, loved his hometown and took great pride in raising a family there with his wife. Mr. Harwood's work often required that he leave for significant chunks of time, but he made a concerted effort to spend weekends at home in Yakima even while on the job. He believed that his family and his economic prospects would both suffer were he to move his home whenever his work location shifted.

The Harwoods owned three vehicles during the years at issue, two of which were devoted to their personal use. The third, a Buick Verano, was dedicated for use in connection with Mr. Harwood's work, with de minimis personal use. Mr. Harwood maintained a log in which he recorded the date and odometer reading each time he refueled the Verano.

II. *Mr. Harwood's Employment*

Mr. Harwood worked for five separate employers during 2015–17, with intermittent periods of unemployment between projects.[4] When beginning a job, Mr. Harwood did not know how long the project might last.

A. *2015 Projects*

1. *Temp. Control Mechanical (Temp. Control)*

Mr. Harwood worked two stints at Temp. Control in Quincy, Washington, in 2015: a 6-1/2 month project from January 1 through July 16 and another job from August 13 through September 3. Mr. Harwood began the first assignment in November 2014 with the understanding that it would take approximately three months, but the work took longer than anticipated.

During these periods, Mr. Harwood drove with a coworker approximately 87 miles from Yakima to Quincy, worked his day's shift, and then drove home. Temp. Control maintained a reimbursement policy that applied to Mr. Harwood, under which he was entitled to

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[4] Specifically, during the years at issue Mr. Harwood was unemployed (1) July 17 through August 12, 2015, (2) September 4 through October 1, 2015, (3) December 17, 2015, through January 19, 2016, (4) May 6 through May 19, 2016, (5) April 7 through September 10, 2017, and (6) November 18 through November 19, 2017.

[*4] reimbursement for a certain amount of daily travel expenses and a one-time reimbursement of $100 for safety boots.

2. *Abacus Project Management, Inc. (Abacus)*

From October 2 until December 16, 2015, Mr. Harwood worked for Abacus at the Carty Generating Station in Boardman, Oregon, which is within the Local's territory, but 147 miles from Yakima. While working at Abacus Mr. Harwood typically would drive from Yakima to Boardman on Sunday afternoons and return the following Wednesday or Thursday.

During his two months in Boardman, Mr. Harwood stayed 36 nights at the Rodeway Inn in Boardman. Mr. Harwood drove from the Rodeway Inn to his worksite (or vice versa) a total of 82 times while working for Abacus. Abacus also maintained a reimbursement policy that applied to Mr. Harwood.

B. *2016 Projects*

1. *Day & Zimmerman Corp. (Day & Zimmerman)*

Mr. Harwood began 2016 where he left off in 2015, i.e., the Carty Generating Station in Boardman. Abacus had been replaced by another company, Day & Zimmerman, which recalled Mr. Harwood to serve as a general foreman running an instrumentation crew. He worked in this capacity from January 20 through May 5, 2016.

The project had fallen behind in the interregnum between Abacus and Day & Zimmerman, which required Mr. Harwood to often work six or seven days a week, putting in 13-hour days. As before, Mr. Harwood stayed at the Rodeway Inn, totaling 85 nights during this period. Mr. Harwood drove from the Rodeway Inn to his worksite (or vice versa) a total of 181 times while working for Day & Zimmerman.

Mr. Harwood did not stay in Boardman exclusively. He made 10 round trips from Boardman to his home in Yakima during his time with Day & Zimmerman. Mr. Harwood also attended continuing education classes hosted by his Local in Tri-Cities, Washington, 54 miles from Boardman, making that drive twice a week for 15 weeks. Day & Zimmerman had a reimbursement policy that applied to Mr. Harwood.

[*5] 2. *Temp. Control*

In May 2016 Mr. Harwood again began an assignment at Temp. Control, ultimately working there until April 6, 2017, a duration of approximately ten months. Mr. Harwood's work started with a change order relating to a Microsoft Corp. building in Quincy. Mr. Harwood was told that this project would last approximately four or five months and that he could work four days a week, ten hours a day. Although the first two months held true to the prediction, Microsoft added more work, lengthening the project timeline and requiring Mr. Harwood to spend more than four days a week in Quincy.

Although Mr. Harwood had felt comfortable commuting to Quincy when he was working only four days a week, as the time commitment grew he began to investigate options to stay in Quincy during his work week. Estimating that his work for Microsoft (either on the original project or another project that was running at the same time) might last another six months, he decided it would be most cost effective to bring a travel trailer that he owned to Quincy so that he could stay overnight and drive to and from his work location. He ultimately settled on Crescent Bar RV Park (Crescent Bar), which required upfront payments of $488 to Thousand Trails Corp. (paid on September 7, 2016) and $2,700 to Crescent Bar (paid on September 27, 2016) for a year's access.

Mr. Harwood brought his trailer to Crescent Bar and began staying overnight at the start of October. Mr. Harwood spent 91 nights in his trailer at Crescent Bar. Although he stayed at Crescent Bar during the work week, Mr. Harwood made 23 round trips (11 in 2016 and 12 in 2017) between Quincy and Yakima, typically leaving Quincy sometime between Wednesday and Friday and returning for work on Monday.[5]

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[5] We note that, before trial, the parties stipulated that (1) Mr. Harwood brought his travel trailer to Quincy before May 20, 2016, (2) Mr. Harwood stayed overnight 135 nights in his travel trailer at Crescent Bar, and (3) Mr. Harwood made 38 round trips during 2016 and 2017 between his home in Yakima and Quincy. At trial, however, Mr. Harwood testified that he commuted to and from Quincy until October 2016, when he began to stay at Crescent Bar (a point supported by his credit card statements). Mr. Harwood also introduced detailed calendars that show his travel to and from Quincy from October 2016 through April 2017 and reflect a significantly lower number of round trips than the parties' stipulation. We have accordingly used our discretion to modify the stipulation to comport with the facts established in the record. *See, e.g.*, *Cal-Maine Foods, Inc. v. Commissioner*, 93 T.C. 181, 195 (1989).

[*6] C. *Other 2017 Projects*

In addition to his work at Temp. Control, Mr. Harwood worked on two other projects in 2017.

1. *Charter Mechanical*

From September 11 through November 17, 2017, Mr. Harwood worked for a company called Charter Mechanical at an Intel Corp. facility in Hillsboro, Oregon, a job he obtained through the union's "travel card" program (which allows union members to work out of other local halls). Hillsboro is approximately 203 miles from Yakima, and Mr. Harwood typically drove to his sister's house in Hillsboro on Sunday evenings and stayed until Wednesday or Thursday, as his schedule permitted, at which time he would return home to Yakima. Mr. Harwood made 10 such round trips and paid his sister $100 per week for 10 weeks of room and board, staying with her a total of 29 nights.[6]

2. *Waste Treatment Completion Co. (Waste Treatment)*

On November 20, 2017, Mr. Harwood was dispatched to Waste Treatment, located in Hanford, Washington, and worked there through December 31, 2017. This worksite was approximately 41 miles from the Harwoods' home. Mr. Harwood typically drove to the worksite, worked his shift, and then drove home at the end of the day, making 25 such round trips in 2017. Waste Treatment maintained a reimbursement policy that applied to Mr. Harwood.

III. *Tax Returns and Notice of Deficiency*

The Harwoods timely filed Forms 1040, U.S. Individual Income Tax Return, for their 2015, 2016, and 2017 tax years, reporting adjusted gross income of $145,527, $175,241, and $124,476, respectively. The Harwoods claimed unreimbursed employee business expense deductions of $23,309 for 2015, $37,076 for 2016, and $27,442 for 2017.

The Harwoods offered further details on Form 2106-EZ, Unreimbursed Employee Business Expenses, attached to each return. For 2015 they specified $931 of meals and entertainment expenses, $15,553 of vehicle expenses, and $6,825 of other business expenses. For 2016 they reported $4,928 of lodging expenses, $3,162 of meals and

[6] We address reimbursement with respect to Charter Mechanical in our analysis section, *infra*.

[*7] entertainment expenses, $14,898 of vehicle expenses, and $14,088 of other business expenses. Finally, for 2017 they noted $2,481 of lodging expenses, $2,277 of meals and entertainment expenses, $7,501 of vehicle expenses, and $15,183 of other business expenses.

The IRS thereafter issued a notice of deficiency determining deficiencies of $3,314, $5,885, and $5,004 for the Harwoods' 2015, 2016, and 2017 tax years, respectively. The IRS premised the deficiency determinations on the disallowance of a portion of the Harwoods' claimed deductions for unreimbursed employee business expenses for each year ($13,252 for 2015, $30,814 for 2016, and $23,148 for 2017), asserting that the Harwoods had failed to offer adequate substantiation or show that the expenses were ordinary and necessary to Mr. Harwood's business.

OPINION

I. *Burden of Proof*

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 taxpayer bears the burden of proving those determinations erroneous. *See* Rule 142(a). The Harwoods do not contend that the burden of proof should shift to respondent as to any issue of fact, and the burden accordingly remains with them. *See* § 7491(a)(1).

II. *Legal Background*

A. *Business Expense Deduction*

This case centers on deductions of unreimbursed employee business expenses claimed by the Harwoods on their 2015–17 federal income tax returns. As a general matter, section 162(a) allows the deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." The term "trade or business" includes performing services as an employee. *See Primuth v. Commissioner*, 54 T.C. 374, 377–78 (1970).

B. *Substantiation*

The taxpayer bears the burden of establishing his entitlement to deductions allowed by the Code and substantiating the amounts of his

[*8] claimed deductions.[7] *See* § 6001; *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); Treas. Reg. § 1.6001-1(a). The failure to keep and present accurate records counts heavily against a taxpayer's attempted proof. *See Rogers v. Commissioner*, T.C. Memo. 2014-141, at *17. Unless specifically enumerated in the Code, no deductions are allowed for personal, living, or family expenses. *See* § 262(a).

Section 274(d) imposes stricter substantiation requirements for deductions claimed for, among others, expenses of travel (including meals and lodging while away from home) and listed property. No such deduction is allowed unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating his own statement the amount, time and place, and business purpose for each expenditure. *See* § 274(d) (flush language). Temporary Treasury Regulation § 1.274-5T(b)(2)(ii) defines the term "time" as "[d]ates of departure and return for each trip away from home, and number of days away from home spent on business," and subdivision (iii) defines the term "place" as "[d]estinations or locality of travel, described by name of city or town or other similar designation." For certain property, such as an automobile, the taxpayer must also establish the amount of business use "based on the appropriate measure (i.e., mileage for automobiles . . .), and the total use of the listed property for the taxable period." *See* subpara. (6)(i)(B).

Adequate records for this purpose include an account book, log, or similar record and documentary evidence that together are sufficient to establish each element of the expenditure. *Id.* para. (c)(2)(i). To be adequate, records must be prepared or maintained in such a manner that each recording of an element of expenditure is made at or near the time of the expenditure or use. *Id.* subdiv. (ii). A taxpayer who lacks contemporaneous records may attempt to reconstruct such expenses with corroborative evidence of a high degree of probative value that would supply the same level of credibility as a contemporaneous record. *Id.* subpara. (1).

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[7] In certain circumstances the Court may approximate the amount of an expenditure if the taxpayer proves that it was incurred but cannot substantiate the exact amount (*Cohan* rule). *See Cohan v. Commissioner*, 39 F.2d 540, 543–44 (2d Cir. 1930). A court may not, however, apply the *Cohan* rule to approximate expenses covered by section 274(d), such as those at issue here. *See Sanford v. Commissioner*, 50 T.C. 823, 827–28 (1968), *aff'd per curiam*, 412 F.2d 201 (2d Cir. 1969).

[*9] III. *Analysis*

A. *Travel Expenses While Away from Home*

A taxpayer may deduct reasonable and necessary travel expenses such as meals and lodging incurred "while *away from home* in the pursuit of a trade or business." § 162(a)(2) (emphasis added). This deduction is meant to alleviate the burden on taxpayers whose business or employment requires them to incur duplicative living expenses. *See, e.g.*, *Kroll v. Commissioner*, 49 T.C. 557, 562 (1968). To claim such a deduction, he must show that he was away from home when he incurred the expense, that the expense is reasonable and necessary, and that the expense was incurred in pursuit of a trade or business. *See Commissioner v. Flowers*, 326 U.S. 465, 470 (1946).

A taxpayer generally must show that he was away from home overnight when the expenses were incurred. *United States v. Correll*, 389 U.S. 299, 302–07 (1967); *Strohmaier v. Commissioner*, 113 T.C. 106, 115 (1999). For present purposes, our consideration is limited to Mr. Harwood's work for Abacus, Day & Zimmerman, and Charter Mechanical as well as his 2016–17 work for Temp. Control, i.e., jobs for which he stayed overnight away from Yakima.

1. *"[A]way from Home"*

For purposes of section 162(a)(2), the word "home" has been given a specialized meaning that differs from ordinary usage. *See, e.g.*, *Henderson v. Commissioner*, 143 F.3d 497, 499 (9th Cir. 1998), *aff'g* T.C. Memo. 1995-559; *see also Daly v. Commissioner*, 72 T.C. 190, 195 (1979), *aff'd*, 662 F.2d 253 (4th Cir. 1981). Specifically, we have interpreted a taxpayer's home to refer to the vicinity of a taxpayer's principal place of business rather than his personal residence. *See, e.g.*, *Mitchell v. Commissioner*, 74 T.C. 578, 581 (1980); *Geiman v. Commissioner*, T.C. Memo. 2021-80, at *12.

A taxpayer's residence may be treated as his tax home, however, if his principal place of business is temporary rather than indefinite. *See Geiman*, T.C. Memo. 2021-80, at *11–15; *see also Peurifoy v. Commissioner*, 358 U.S. 59, 60 (1958); *Yanke v. Commissioner*, T.C. Memo. 2008-131, 2008 WL 2065068, at *3. Employment is "temporary" if it is the type that can be expected to last for only a short period, *Albert v. Commissioner*, 13 T.C. 129, 131 (1949), and is indefinite if "its termination cannot be foreseen within a fixed or reasonably short period

[*10] of time," *Stricker v. Commissioner*, 54 T.C. 355, 361 (1970), *aff'd*, 438 F.2d 1216 (6th Cir. 1971).[8]

Each of the jobs at issue here was temporary. All were expected to last a limited period of time, and none lasted more than a year. *See* § 162(a) (flush language) (barring the deduction of travel expenses where the duration of employment lasts for more than a year). Given the relatively short and uncertain duration of these jobs, we do not believe it would have been reasonable to expect the Harwoods to move to be nearer to Mr. Harwood's places of work. *See Wright v. Hartsell*, 305 F.2d 221, 223–25 (9th Cir. 1962).

We next determine whether Mr. Harwood had a tax home during tax years 2015–17 by referring to the three factors set forth in Revenue Ruling 73-529, 1973-2 C.B. 37. *See, e.g.*, *Geiman*, T.C. Memo. 2021-80, at *13; *Lyseng v. Commissioner*, T.C. Memo. 2011-226, 2011 WL 4389644, at *3; *Minick v. Commissioner*, T.C. Memo. 2010-12, 2010 WL 199954, at *4; *see also Henderson v. Commissioner*, 143 F.3d at 500. We consider whether the taxpayer (1) incurs duplicate living expenses while traveling and maintaining the home, (2) has personal and historical connections to the home, and (3) has a business justification for maintaining the home. *See Geiman*, T.C. Memo. 2021-80, at *13–15; *Lyseng v. Commissioner*, 2011 WL 4389644, at *3; *Yanke v. Commissioner*, 2008 WL 2065068, at *3.

These factors demonstrate that Mr. Harwood had a tax home in Yakima. First, the Harwoods had a home in Yakima for which they incurred expenses. As Mr. Harwood explained at trial, Mrs. Harwood raised the family in Yakima while he was on the road, a point underscored by the deductions for home mortgage interest payments on their 2015–17 tax returns. And Mr. Harwood paid living expenses while traveling as well, which were duplicative of the family's Yakima expenditures. Second, Mr. Harwood persuasively testified about the Harwoods' significant personal and historical ties to Yakima, explaining that their life and family were rooted there.

The parties principally dispute the final factor: whether Mr. Harwood had a business justification for maintaining his home in

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[8] In his brief, the Commissioner argues that Mr. Harwood is not entitled to deduct travel expenses for his employment with Waste Treatment, which began in November 2017 and ultimately lasted more than one year. *See* § 162(a) (flush language). As explained, we do not consider these expenses here because Mr. Harwood did not stay overnight in connection with this work.

[*11] Yakima. The Commissioner asserts that the Harwoods had no business justification for living in Yakima and did so merely for the personal reasons that Mr. Harwood described at trial.

We are satisfied that Mr. Harwood had a sufficient business reason for living in Yakima. He was a member of a union local with a geographically disparate territory. Although he had not worked jobs in Yakima since 2005, almost all of his work during 2015–17 was within the Local's footprint, with some assignments closer to his house than the hall in Pasco (Temp. Control) and some further away (Abacus/Day & Zimmerman). We believe that his union membership, which gave him access to jobs within the union's expansive territory, provided an adequate business justification for continuing to live in Yakima. *See Geiman*, T.C. Memo. 2021-80, at *15; *Lyseng v. Commissioner*, 2011 WL 4389644, at *3; *Williams v. Commissioner*, T.C. Memo. 1990-467, 1990 WL 124573.

We accordingly conclude that Mr. Harwood was "away from home" for purposes of section 162(a)(2) when he stayed overnight during the years at issue.

2. *Claimed Travel Expense Deductions*

a. *Meals*

Revenue Procedure 2011-47, section 4.03, 2011-42 I.R.B. 520, 522–23, states that employees who are not reimbursed by their employers may substantiate the amount of deductible meal and incidental expenses by using an amount computed at the federal per diem rate for the locality of travel for each calendar day they are traveling away from home. This amount is deemed substantiated for purposes of Temporary Treasury Regulation § 1.274-5T(b)(2)(i) and (c), provided the employee substantiates the elements of time, place, and business purpose of the travel for that day or partial day in accordance with those regulations. Rev. Proc. 2011-47, § 4.03, 2011-42 I.R.B. at 522–23.

As an initial matter, we have found (consistent with the parties' stipulation) that Mr. Harwood worked for Abacus in 2015, Day & Zimmerman in 2016, Temp. Control from 2016 to 2017, and Charter Mechanical in 2017. Accordingly, the Harwoods have sufficiently substantiated the time, place, and business purpose of Mr. Harwood's travel with respect to his work during those general periods.

[*12] Mr. Harwood has conceded through stipulations, his testimony, and calendars (prepared after the fact) that he did not work each day during these general periods, however, often returning to Yakima as soon as his work allowed, sometimes on a Wednesday or a Thursday. Relying on Mr. Harwood's concessions, we determine that he traveled for work: (1) 47 days in 2015 (all while working for Abacus in Boardman); (2) 143 days in 2016 (94 days while working for Day & Zimmerman in Boardman and 49 days while working for Temp. Control in Quincy); and (3) 103 days in 2017 (64 days while working for Temp. Control in Quincy and 39 days while working for Charter Mechanical in Hillsboro). The Harwoods are entitled to deduct Mr. Harwood's meal expenses according to the federal per diem rate for these periods during the years at issue (subject to our ruling on reimbursement *infra*).

b. *Lodging*

The Harwoods reported deductible lodging expenses of $4,928 and $2,481 for 2016 and 2017, respectively.

i. *2016*

As to 2016, we have found (and the parties agree) that Mr. Harwood worked for Day & Zimmerman in Boardman from January 20 through May 5, 2016, and stayed at the Rodeway Inn while doing so. The Harwoods have introduced credit card statements from this time establishing $4,324 in payments to the Rodeway Inn. We conclude that the Harwoods have adequately substantiated the time, place, and business purpose of the travel, as well as the amount of his lodging while Mr. Harwood was working in Boardman.

We have also found that Mr. Harwood stayed at Crescent Bar in Quincy while working for Temp. Control from October 2016 until April 2017. We are satisfied that the Harwoods have substantiated the time, place, and business purpose of lodging expenses incurred at Crescent Bar.

As to the proper amount, the record shows that he made upfront payments to Thousand Trails Corp. and Crescent Bar for a year pass, with Mr. Harwood's credit card statement showing a payment of $488 to Thousand Trails Corp. on September 7 and a payment of $2,700 to Crescent Bar on September 27. Given that Mr. Harwood stayed at Crescent Bar during 2016 and 2017, we must determine the proper allocation of the required upfront rental payments between these two tax years.

[*13] As a general rule, a cash basis taxpayer deducts expenses for the year of payment. Treas. Reg. § 1.461-1(a)(1). The U.S. Court of Appeals for the Ninth Circuit, the court to which an appeal in this case would ordinarily lie, *see* § 7482(b)(1)(A), has addressed the treatment of a required upfront rental payment for a 12-month period spread across two tax years, *see Zaninovich v. Commissioner*, 616 F.2d 429, 430 (9th Cir. 1980), *rev'g* 69 T.C. 605 (1978). In *Zaninovich*, the Ninth Circuit concluded that the upfront rental payment was fully deductible in the year of payment, rejecting proration of the rent between the two tax years. *Id.* at 431–33. Consistent with this Court's rule announced in *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971), we will follow the Ninth Circuit's holding in *Zaninovich* and permit the deduction of the full amount of the required rental payments in 2016.

As a final matter, Mr. Harwood's credit card statements also reflect monthly payments of $35 to Crescent Bar on the last day of October, November, and December 2016. In total the Harwoods are entitled to deduct $3,293 with respect to Mr. Harwood's stay at Crescent Bar in 2016.

ii. *2017*

Mr. Harwood continued to work at Temp. Control until April 6, 2017. During this time his trailer remained at Crescent Bar, and his credit card statements reflect two additional charges of $35. We conclude that he has adequately substantiated these expenses.

Mr. Harwood also claimed a lodging expense deduction for his time working at Charter Mechanical in Hillsboro. Based on his credible testimony and the parties' stipulation, we have found that he paid $100 per week to his sister for room and board for a period of 10 weeks, from September 16 through November 16, 2017. The Harwoods have adequately substantiated the amount, time, place, and business purpose for these lodging expenses as well.

iii. *Conclusion*

We conclude that Mr. Harwood has substantiated lodging expenses of $7,617 for 2016 and $1,070 for 2017 and is therefore entitled to deduct those amounts (subject to our ruling on reimbursement *infra*).

[*14] B. *Vehicle Expenses*

Passenger automobiles constitute listed property, and the Harwoods' reported vehicle expenses accordingly are subject to the heightened substantiation requirements of section 274(d). *See* § 280F(d)(4); *Fernandez v. Commissioner*, T.C. Memo. 2011-216, 2011 WL 3875061, at *3. A taxpayer may deduct vehicle expenses on the basis of actual cost or the standard mileage rate, provided he substantiates the amount of business mileage and the time and purpose of each use. *See* Treas. Reg. § 1.274-5(j)(2).

If the taxpayer uses the standard mileage rate and satisfies these requirements, he may deduct vehicle expenses in an amount equal to the rate multiplied by the number of business miles. The taxpayer generally must keep a contemporaneous mileage log or a similar record, such as a diary or trip sheets, that substantiates the extent to which the vehicle was actually used for business rather than personal purposes. *See* Temp. Treas. Reg. § 1.274-5T(b)(6)(i)(B), (c); *see also Michaels v. Commissioner*, 53 T.C. 269, 275 (1969); *Flake v. Commissioner*, T.C. Memo. 2014-76, at *8–9.

A taxpayer may also deduct "[e]ducation expenditures, including transportation from work to class, parking, and travel expenses while away from home in connection with such education . . . when the education maintains or improves the skills required by a taxpayer in his or her employment or if the education meets the express requirements of the taxpayer's employer." *Whalley v. Commissioner*, T.C. Memo. 1996-533, 1996 WL 687033, at *3; Treas. Reg. § 1.162-5(a)(1). To deduct vehicle expenses incurred for job-related education, a taxpayer must satisfy the stringent substantiation requirements of section 274(d).

The Harwoods claimed significant vehicle expense deductions for 2015–17, which they calculated by multiplying Mr. Harwood's purported work mileage for each year by the standard mileage rate. On their tax returns they stated that Mr. Harwood drove 27,048 miles for business during 2015, 27,588 for 2016, and 14,020 for 2017.

The Harwoods derived their mileage from the odometer of the Buick Verano that Mr. Harwood drove for work. Mr. Harwood testified that he recorded the odometer readings when he filled up his gas tank throughout each year, introducing the contemporaneous log into evidence at trial. He further explained (and we accept) that this Buick

[*15] was dedicated for business use and that any personal use was de minimis. In support of that point, he noted that he and his wife owned two other cars during the years at issue, which they used for personal driving.

Although we find Mr. Harwood credible in describing his system, his log is unreliable in that it failed to exclude nondeductible commuting mileage, which he incurred in each of the three years at issue. "As a general rule, expenses for traveling between one's home and one's place of business or employment constitute commuting expenses and, consequently, are nondeductible personal expenses." *Bogue v. Commissioner*, T.C. Memo. 2011-164, 2011 WL 2709818, at *5, *aff'd*, 522 F. App'x 169 (3d Cir. 2013); *see also* § 262(a); *Commissioner v. Flowers*, 326 U.S. at 469–70; *Feistman v. Commissioner*, 63 T.C. 129, 134 (1974).[9] The rationale for this rule is "founded on the premise that one is free to choose the location of his personal residence." *Anderson v. Commissioner*, 60 T.C. 834, 835 (1973) (quoting *Gilberg v. Commissioner*, 55 T.C. 611, 616 (1971)). "[D]ifferences in the distances traveled and the amounts spent on traveling are influenced by one's personal preference as to his place of living and his means of transportation." *Id.* "The basic and unmodified fact of whether the taxpayer is going to the place where he begins work or is returning from the place where he ceases work should be determinative [of whether expenses for such travel are deductible]." *Sanders v. Commissioner*, 439 F.2d 296, 299 (9th Cir. 1971) (quoting *United States v. Tauferner*, 407 F.2d 243, 246 (10th Cir. 1969)), *aff'g* 52 T.C. 964 (1969).

During 2015 Mr. Harwood commuted to Temp. Control from January 1 through July 16 and again from August 13 through September 3. According to his trial testimony, he likewise commuted to Temp. Control from May 20, 2016, until the beginning of October, when he brought his trailer to Quincy. Finally, he commuted to Waste

[9] We have recognized three exceptions to the general rule prohibiting the deduction of commuting expenses. Of the three only one is conceivably relevant, *viz.*, a taxpayer may deduct travel expenses between his or her residence and temporary work locations outside of the "metropolitan area" where the taxpayer lives and normally works. *See Brockman v. Commissioner*, T.C. Memo. 2003-3, 2003 WL 43371, at *2; *Aldea v. Commissioner*, T.C. Memo. 2000-136, 2000 WL 371549, at *2–4. Thus, if a taxpayer usually works in Chicago, she may be entitled to deduct expenses if she drove back and forth to a worksite in Springfield. Although Mr. Harwood lives in Yakima, he does not normally work there, instead working throughout the disparate territorial jurisdiction of the Local. His travel accordingly does not qualify for this exception. *Cf. Harris v. Commissioner*, T.C. Memo. 1980-56, 1980 WL 3912, *aff'd in part and remanded in part without published opinion*, 679 F.2d 898 (9th Cir. 1982).

[*16] Treatment from November 20, 2017, until the end of that year. None of the mileage associated with these commutes can be taken into account in determining deductible vehicle expenses, and their inclusion undermines the mileage derived from Mr. Harwood's odometer log.

Mr. Harwood nonetheless has substantiated a portion of the mileage reported for each year, according to the record before us. We take judicial notice of a few distances: (1) the distance between Yakima and Boardman is 147 miles; (2) the distance between the Rodeway Inn and the Carty Generating Station (both in Boardman) is 15 miles; (3) the distance between Tri-Cities and Boardman is 54 miles; (4) the distance between Yakima and Quincy is 87 miles; and (5) the distance between Yakima and Hillsboro is 203 miles.

1. *2015 Vehicle Expenses*

The parties have stipulated that during 2015 Mr. Harwood made 11 round trips between Yakima and Boardman to work for Abacus, which equals 3,234 miles (11 × 2 × 147). Mr. Harwood has established that he worked 47 days at the Carty Generating Plant, while staying at the Rodeway Inn 36 nights. On the record before us, we conclude that he made a total of 82 trips between the Rodeway Inn and his worksite during this period, which totals 1,230 miles (82 × 15).

2. *2016 Vehicle Expenses*

During 2016 Mr. Harwood worked for Day & Zimmerman at the Carty Generating Plant in Boardman. He made 10 round trips between Yakima and Boardman during this time, which equals 2,940 miles (10 × 2 × 147). Mr. Harwood has shown that he worked 94 days and stayed 85 nights at the Rodeway Inn during this period. On the record before us, we find that he drove between the Rodeway Inn and the worksite 181 times, which equals 2,715 miles (181 × 15).

Mr. Harwood also attended continuing education classes in Tri-Cities while working at Day & Zimmerman. These classes were hosted by the Local and focused on instrumentation, thus improving the skills required by Mr. Harwood's line of employment. *See Whalley v. Commissioner*, 1996 WL 687033, at *3. He made the round trip between Tri-Cities and Boardman 30 times and thus drove 3,240 miles (30 × 2 × 54). All told, Mr. Harwood had business mileage of 8,895 while working for Day & Zimmerman in 2016.

[*17] During 2016 Mr. Harwood also worked at Temp. Control in Quincy. We conclude that he made 11 round trips between Yakima and Quincy from October 2016 through the end of the year. We will thus recognize business mileage of 1,914 miles (87 × 2 × 11). We are unable to recognize any business mileage between Crescent Bar and Mr. Harwood's Microsoft worksite, however, as the Harwoods failed to provide adequate information that would allow for such a determination.

3. *2017 Vehicle Expenses*

Finally, the record before us establishes that Mr. Harwood made 12 round trips between Yakima and Quincy during 2017, totaling 2,088 miles (87 × 2 × 12). Later in the year, he worked for Charter Mechanical in Hillsboro. He made the round trips between Yakima and Hillsboro 10 times, which amounted to 4,060 miles (10 × 2 × 203). The Harwoods failed to provide any information that would allow us to determine the mileage between Mr. Harwood's lodging and his work site.

In summary, we conclude that the Harwoods have substantiated business mileage of 4,464 miles for 2015, 10,809 miles for 2016, and 6,148 miles for 2017.

C. *Other Expenses*

The Harwoods also reported on their tax returns for tax years 2015, 2016, and 2017 "other" business expenses of $6,825, $14,088, and $15,183, respectively. As an initial matter, the Harwoods have failed to explain the nature of the expenses reported, much less detail how they qualify as ordinary and necessary business expenses under section 162. Although the Harwoods have offered a few receipts for car maintenance and repair during the years at issue, we cannot recognize such expenses (even if the Harwoods had shown them to be business expenses) as the Harwoods claimed vehicle expense deductions based on the standard mileage rate for these years. *See Larson v. Commissioner*, T.C. Memo. 2008-187, 2008 WL 2986387, at *5 (explaining that recognition of vehicle expenses based on the standard mileage rate "is in lieu of an itemized list of expenses including leasing, insurance, and maintenance."). Lacking adequate explanation and substantiation, we cannot recognize any of the other business expense deductions claimed by the Harwoods.

[*18] D. *Reimbursements*

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, 1992 WL 379282, at *2 (finding that management team expected taxpayer to bear expense of business lunches with vendors). If a taxpayer's business expenses are reimbursed by the employer, then the taxpayer is entitled to a deduction only for the amount of expenses that exceeds the reimbursement. Treas. Reg. § 1.162-17(b)(3); Temp. Treas. Reg. § 1.274-5T(f)(2)(iii); *see also Daiz v. Commissioner*, T.C. Memo. 2002-192, 2002 WL 1796832, at *7.

The Harwoods have conceded (and the Commissioner does not challenge) that Mr. Harwood received reimbursement in the following amounts: (1) $2,110 from Abacus in 2015; (2) $4,476 from Day & Zimmerman in 2016; (3) $1,415 from Temp. Control in 2016; and (4) $1,011 from Temp. Control in 2017. Mr. Harwood's trial testimony regarding Charter Mechanical was equivocal: "I don't think [they have a reimbursement policy], but I don't know that for a fact." This testimony is insufficient to satisfy his burden, and thus we will not allow him to deduct employee business expenses for his time working with Charter Mechanical.

IV. *Conclusion*

The Harwoods have adequately substantiated a portion of their meal expenses for 2015–17, lodging expenses for 2016 and 2017, and vehicle expenses for 2015–17. These expenses must be reduced by the reimbursement amounts received by Mr. Harwood for each year and must exclude any expenses associated with Charter Mechanical in 2017.

To reflect the foregoing,

Decision will be entered under Rule 155.