United States Tax Court

T.C. Memo. 2022-35

PEDIATRIC IMPRESSIONS HOME HEALTH, INC.,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 5769-20. Filed April 12, 2022.

Nnaemeka I. Odunze, for petitioner.

Jason D. Laseter, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

GREAVES, *Judge*: This case is before the Court on a Petition for redetermination of employment status filed pursuant to section 7436.[1] In a Notice of Employment Tax Determination of Worker Classification dated January 16, 2020 (notice of determination), the Internal Revenue Service (respondent or Service) determined that: (1) Pediatric Impressions Home Health, Inc., failed to classify approximately 99 individuals as employees during tax years 2016 through 2018 (years at issue); (2) petitioner was not entitled to relief under the Revenue Act of 1978, Pub. L. No. 95-600, § 530 (section 530), 92 Stat. 2763, 2885 (as amended); and (3) petitioner was therefore liable for federal employment

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

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[*2] taxes,[2] additions to tax under section 6651(a)(1), failure-to-deposit penalties under section 6656, and accuracy-related penalties under section 6662(a) in the following amounts with respect to the following taxable periods (periods at issue) during the years at issue:

Taxable period ending	*Type of tax*	*Amount*	*Additions to tax/penalties*		
			§ 6651(a)(1)	*§ 6656*	*§ 6662(a)*
12/31/2016	940	$8,228	-0-	$823	$1,646
3/31/2016	941	101,066	-0-	1,919	20,213
6/30/2016	941	74,591	-0-	1,416	14,918
9/30/2016	941	88,126	-0-	1,673	17,625
12/31/2016	941	136,191	-0-	2,585	27,238
12/31/2017	940	13,744	-0-	1,374	2,749
3/31/2017	941	91,793	-0-	1,742	18,359
6/30/2017	941	93,940	$23,485	1,783	18,788
9/30/2017	941	81,309	-0-	1,543	16,262
12/31/2017	941	112,511	-0-	2,136	22,502
12/31/2018	940	18,543	-0-	1,854	3,709
3/31/2018	941	82,153	12,323	1,559	16,431
6/30/2018	941	105,905	-0-	2,010	21,181
9/30/2018	941	127,478	-0-	2,420	25,496
12/31/2018	941	171,488	-0-	3,255	34,298

Following trial, the issues for decision are whether: (1) the approximately 99 individuals listed in the notice of determination and as modified by the Stipulation of Facts[3] (nurses)[4] are properly classified

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[2] Unless specifically noted otherwise, the term "federal employment taxes" refers to the taxes imposed under the Federal Insurance Contributions Act (FICA), §§ 3101–3128, the Federal Unemployment Tax Act (FUTA), §§ 3301–3311, and federal income tax withholding, §§ 3401–3406.

[3] Respondent conceded that the following individuals, who were included in the notice of determination, were not employees of petitioner for any period of petitioner's 2017 tax year: Chinwe A., Esosa A., Osamuyimen A., Jennifer J., Oluswun S., Sarah T., and Sunny A. Respondent concurrently conceded that the payments made to these individuals of $2,771.90, $2,779.29, $2,772.91, $500, $2,773.71, $2,770.09, and $1,392.08, respectively, should not be included in taxable wages for petitioner's 2017 tax year as asserted in the notice of determination.

[4] We refer to the workers as "nurses" on the basis of the parties' use of the term in the Stipulation of Facts, not on the basis of any degrees or licenses the workers may have obtained.

[*3] as employees of petitioner for the periods at issue; (2) petitioner is entitled to section 530 relief for the periods at issue with respect to the nurses; (3) petitioner is liable for the above additions to tax under section 6651(a)(1) for the taxable periods ending June 30, 2017, and March 31, 2018; (4) petitioner is liable for the above failure-to-deposit penalties under section 6656 for the periods at issue; and (5) petitioner is liable for the above accuracy-related penalties under section 6662(a) for the periods at issue. For the reasons explained below, we resolve all issues in respondent's favor.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The parties filed a Stipulation of Facts and a First Supplemental Stipulation of Facts with accompanying exhibits that are incorporated by this reference. Petitioner was a Texas corporation with its principal place of business in Houston, Texas, when the Petition was filed.

I. *Petitioner's Business*

Petitioner was engaged in the business of providing at-home private duty nursing services to children with special needs (patients) during the periods at issue. Petitioner hired nurses to perform these services on its behalf. When a nurse applied to work for petitioner, petitioner required the nurse to complete a written job application, pass a background check, and complete a nursing skills assessment it administered. Petitioner also verified the applicant's nursing credentials, ensured the applicant did not have any professional infractions, checked his or her references, and confirmed that he or she was adequately trained.

Petitioner supplied all nurses with a contract for services that the nurses signed before beginning work. Petitioner hired the nurses on a permanent basis for an indefinite period, with petitioner normally informing the nurses that they were "employed" on a "full-time" basis with petitioner. Petitioner had the sole authority to fire a nurse at will whereas a nurse could not end the working relationship without a minimum of two weeks' notice.

Petitioner, not the nurses, received payment for the nursing services. The nurses had no contact with the patients' insurance companies, the state, or Medicaid, with petitioner representing to the patients and their legal guardians that the nurses worked for petitioner. The nurses were not required to find their own patients. Rather,

[*4] insurance companies assigned a patient to petitioner, who would then assign a nurse to that patient. Petitioner likewise had sole authority to reassign a nurse to another patient. Petitioner did not allow the nurses to admit new patients to petitioner's business. A nurse could decline to provide services to a patient, but, depending on the reason, refusal to accept an assignment could jeopardize future assignments and potentially lead to termination.

Petitioner set the nurses' work schedules, which varied for each nurse. Petitioner typically provided the nurses with full-time hours by assigning them multiple patients, although the nurses understood that this was not necessarily guaranteed. The nurses could work for other nursing agencies while working for petitioner but only during their off-hours. If a nurse was unable to work an assigned shift or needed additional help, the nurse was not permitted to unilaterally hire substitutes or assistants; rather, the nurse was required to contact petitioner's office and petitioner would send a replacement or additional nurse whom it had approved.

Petitioner required the nurses to attend in-service training sessions at petitioner's office on issues relating to patient care, medical topics, emergency procedures, and other topics. If a nurse missed a particular training, petitioner required the nurse to make up the training at a later date or risk the withholding of pay and additional work or even termination.

Each patient's physician prescribed the patient's care as part of a "plan of care," and petitioner was ultimately responsible for ensuring that the nurses followed that plan of care. Petitioner required the nurses to complete case notes on every activity performed for the patients' care, along with incident reports, via a software system it provided. The nurses would submit these notes and reports to petitioner, who would then review them to ensure quality control and compliance with each patient's plan of care. If needed, petitioner would provide the nurses with additional instructions.

Petitioner paid the nurses an hourly rate based on timesheets they submitted to petitioner. Petitioner did not offer the nurses benefits such as health insurance, paid time off, or retirement benefits, but did occasionally pay incentive or performance bonuses. Petitioner also reimbursed the nurses for certain transportation costs, e.g., when a nurse had to escort a patient to the hospital or a patient needed a ride back to his or her residence. Although the nurses would sometimes use

[*5] their own protective gloves, they were not expected to personally obtain any supplies or equipment needed for the performance of their duties. Petitioner also purchased and maintained all necessary professional liability insurance policies and did not require the nurses to carry their own insurance policies.

The nurses were supervised by Ify Agbo, petitioner's administrator, president, and sole shareholder during the years at issue, along with case managers petitioner employed. Although the nurses were not normally subject to in-person supervision, petitioner monitored and reviewed the nurses' performance through quality assurance personnel and provided the nurses with immediate feedback as needed. Petitioner's case managers would also visit patients' homes periodically to discuss any patient or guardian concerns and ensure that the nurses were following all required policies and procedures. A patient or guardian who raised a complaint or had an issue with a nurse reported it directly to petitioner, who was responsible for its resolution, which might entail counseling, discipline, reassignment, or termination. Petitioner annually assessed and evaluated each nurse's performance on the basis of certain criteria such as recertification results, patient notes, timesheets, and patient care.

II. *Petitioner's Tax Reporting of the Nurses and the Notice of Determination*

Before 2016, petitioner treated the nurses as employees for federal employment tax purposes. Starting in 2016 petitioner unilaterally began treating many of the nurses as independent contractors.[5] The jobs performed and services provided by the nurses, including petitioner's supervision thereof, however, remained the same following this change in employment status.

Petitioner made no deposits of federal employment taxes into any federal depository for the years at issue with respect to the nurses. Petitioner's Forms 941, Employer's Quarterly Federal Tax Return, for the quarters ending June 30, 2017, and March 31, 2018, were filed on or about July 2, 2018, and July 9, 2018, respectively.

Following an examination of petitioner's returns for the years at issue, respondent determined that: (1) petitioner had not properly classified the nurses during the periods at issue; (2) petitioner was not

[5] The parties dispute the reason for the change, and the record is unclear.

[*6] entitled to section 530 relief; and (3) petitioner was liable for federal employment taxes, additions to tax, and penalties with respect to the periods at issue. On January 16, 2020, respondent mailed to petitioner the notice of determination, in which respondent informed petitioner of the above determinations. Petitioner thereafter timely petitioned this Court disputing the notice of determination.

OPINION

I. *Burden of Proof*

The determinations set forth in the Commissioner's notice of determination are presumed correct, and the taxpayer bears the burden of proving these determinations are in error. Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933); *Ewens & Miller, Inc. v. Commissioner*, 117 T.C. 263, 268 (2001).[6] Petitioner thus bears the burden of proving that the nurses were not its employees during the periods at issue. Petitioner, a corporation, also bears the burden of proving that it is not liable for penalties. *See* § 7491(c); *Dynamo Holdings Ltd. P'ship v. Commissioner*, 150 T.C. 224, 231–32 (2018).

II. *Analysis*

A. *The Nurses' Legal Classification*

Employers are subject to "employment taxes," which include taxes imposed by FICA and FUTA, and income tax withholding under section 3402. Employers must make periodic deposits of amounts withheld from employees' wages and amounts corresponding to the employer's share of FICA and FUTA tax. §§ 6302, 6157; Treas. Reg. §§ 31.6302-1, 31.6302(c)-3. These employment taxes apply only in the case of employees and do not apply to payments made to independent contractors.

We determine a worker's employment status by applying common law concepts, *see* §§ 3121(d)(2), 3306(i), while keeping in mind that doubtful questions should be resolved in favor of employment, *Ewens &*

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[6] Section 7491(a), which shifts the burden of proof to the Commissioner in certain circumstances, does not apply to federal employment tax disputes. *Charlotte's Office Boutique, Inc. v. Commissioner*, 121 T.C. 89, 102 (2003), *supplemented by* T.C. Memo. 2004-43, *aff'd*, 425 F.3d 1203 (9th Cir. 2005). While the burden of proof may also shift to the Commissioner with respect to certain issues under section 530, *see* § 530(e)(4), this provision does not affect our analysis here.

[*7] *Miller, Inc.*, 117 T.C. at 269 (citing *Breaux & Daigle, Inc. v. United States*, 900 F.2d 49, 52 (5th Cir. 1990)). The "relevant question is whether the alleged employee so economically depends upon the business to which he renders his services, such that the individual, as a matter of economic reality, is not in business for himself." *Hobbs v. Petroplex Pipe & Constr., Inc.*, 946 F.3d 824, 829 (5th Cir. 2020) (quoting *Thibault v. Bellsouth Telecomms., Inc.*, 612 F.3d 843, 845 (5th Cir. 2010)). The U.S. Court of Appeals for the Fifth Circuit, the court to which an appeal of this case would lie under section 7482(b), considers five nonexhaustive factors to guide this inquiry:[7] (1) the degree of control exercised by the alleged employer; (2) the degree to which the worker's opportunity for profit or loss is determined by the alleged employer; (3) the extent of the relative investments of the worker and the alleged employer; (4) the permanency of the relationship; and (5) the skill and initiative required in performing the job. *Id.* (citing *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 343 (5th Cir. 2008)). However, "[n]o single factor is determinative. Rather, each factor is a tool used to gauge the *economic dependence* of the alleged employee, and each must be applied with this ultimate concept in mind." *Hopkins*, 545 F.3d at 343 (citation omitted).

1. *Degree of Control*

The right of the principal to exercise meaningful control over the agent, i.e., whether the worker is independent of his manager's control or dependent for direction or control in carrying out his work, is the crucial test for determining the existence of an employer-employee relationship. *See Hobbs*, 946 F.3d at 830 (citing *Usery v. Pilgrim Equip. Co.*, 527 F.2d 1308, 1312–13 (5th Cir. 1976)); *Weber v. Commissioner*, 103 T.C. 378, 387 (1994), *aff'd per curiam* 60 F.3d 1104 (4th Cir. 1995). For an individual to be considered an employee, the employer "must control not merely the end sought to be accomplished, but also the means and details of its accomplishment as well." *Consumers Cty. Mut. Ins. Co. v. P.W. & Sons Trucking, Inc.*, 307 F.3d 362, 364 n.3 (5th Cir.

[7] Petitioner's argument that the nurses were independent contractors heavily relied on two opinions from other courts of appeals that are not binding on this Court, *Hospital Resource Personnel, Inc. v. United States*, 68 F.3d 421 (11th Cir. 1995), and *Critical Care Register Nursing, Inc. v. United States*, 776 F. Supp. 1025 (E.D. Pa. 1991). While both of these cases involved the worker classification of temporary nurses, they are factually and legally distinguishable. *Accord United States v. Crabbe*, 364 F. App'x 412, 418–19 (10th Cir. 2010). Accordingly, we do not address them and instead rely on the Fifth Circuit's worker classification factors as they apply to the facts of this case.

[*8] 2002) (quoting *Thompson v. Travelers Indem. Co. of R.I.,* 789 S.W.2d 277, 278 (Tex. 1990)).

Petitioner's role with respect to the nurses was more than that of a "dispatcher." *Cf. Santos v. Commissioner*, T.C. Memo. 2020-88, at *13. First, each nurse was subject to petitioner's thorough hiring and background review process. Thereafter, any hired nurse was dependent on petitioner to receive both initial and ongoing work assignments. Petitioner held the exclusive say over which patients a given nurse would service, annually re-assessed and evaluated the nurses, and verified that the nurses attended all required training. In other words, petitioner acted as the gatekeeper between the nurses and the patients.[8]

Petitioner also controlled the working hours and the schedule of the nurses, during which times petitioner barred the nurses from accepting work from other nursing agencies. Petitioner therefore required the nurses to prioritize petitioner's work over that of other nursing companies. Although the nurses could decline to provide services to a particular patient, a nurse's refusal to accept an assignment could, at the sole discretion of petitioner, jeopardize future assignments or even lead to termination. Thus the nurses were not truly free to reject job assignments without consequence. If a nurse was unable to work an assigned shift or needed additional help, the nurse was not permitted to unilaterally hire substitutes or assistants. Rather, the nurse was required to contact petitioner's office, and petitioner would send a replacement or additional nurse who was approved and verified by petitioner.

Any discretion that the nurses may have had as to the manner and means of accomplishing their job, i.e., compliance with a patient's plan of care, was limited. The patients' individual physicians prescribed the actual terms of care. Petitioner tasked quality assurance personnel with monitoring the nurses to ensure that the nurses followed the prescribed plan of care, and petitioner provided immediate feedback and instruction to any nurse who departed from the prescribed plan. It is irrelevant whether petitioner actually exercised such control; it was sufficient that petitioner had the right to do so. *See Pilgram Equip. Co.*, 527 F.2d at 1312 (noting that lack of supervision of a worker over minor

[8] Petitioner argued that some of these functions were mandated by Texas state law but offered no specific evidence or citation of these alleged state laws or regulations, including how they may have required petitioner to operate. Even if state law required petitioner to provide such oversight, petitioner failed to explain how that would then make the nurses "independent contractors."

[*9] regular tasks "cannot be bootstrapped into an appearance of real independence").

The nurses were not normally subject to in-person supervision, but petitioner closely monitored each nurse's actions through the daily case notes and reports each nurse was required to submit to petitioner. Petitioner's case managers would also visit patients' homes periodically to discuss any patient or guardian concerns. If a patient or guardian raised a complaint or had an issue with respect to a nurse, petitioner was solely responsible for its resolution, which might include counseling, disciplining, reassigning, or terminating the nurse.

2. *Opportunity for Profit or Loss*

The nurses' ability to control their own opportunities for profit or loss was negligible to nonexistent. Petitioner, not the nurses, received payment for the nursing services. The nurses did not share in the profits of a given project and earned only a fixed hourly wage based on a work schedule petitioner set during which times petitioner prohibited the nurses from taking on other work. Although the nurses could obtain incentive or performance bonuses, the record does not indicate that such amounts were common or substantial. The nurses also bore no risk of loss from the services they provided on behalf of petitioner.

3. *Relative Investments*

The fact that a worker provides his own supplies, tools, and materials generally indicates independent contractor status. *Breaux & Daigle, Inc.*, 900 F.2d at 53. In considering this factor, we must compare "each worker's *individual* investment to that of the alleged employer." *Hobbs*, 946 F.3d at 831 (quoting *Hopkins*, 545 F.3d at 344).

The nurses had almost no capital investment in the job. Petitioner was responsible for providing the supervision, training, and supplies needed for the nurses to perform their nursing services.[9] Petitioner also reimbursed the nurses for out-of-pocket expenses such as transportation costs if they had to escort patients to and from their residences.

[9] The record does not show that petitioner required reimbursement from the nurses to use its facilities or time in providing the training services.

[*10] 4. *Permanency of the Relationship and Right to Discharge*

We now consider whether the nurses worked exclusively for the alleged employer, the total length of the relationship, and whether the work was on a "project-by-project basis." *Parrish v. Premier Directional Drilling, L.P.*, 917 F.3d 369, 387 (5th Cir. 2019) (quoting *Carrell v. Sunland Constr., Inc.*, 998 F.2d 330, 332 (5th Cir. 1993)); *see also Ewens & Miller*, 117 T.C. at 273 (noting that a transitory work relationship may point toward independent contractor status). We also consider whether the alleged employer had the right to discharge a worker at will, a typical employer right, and whether the worker had the right to quit at any time. *Ellison v. Commissioner*, 55 T.C. 142, 155 (1970); *Kurek v. Commissioner*, T.C. Memo. 2013-64, at *13.

The record shows that the nurses had a continuing relationship with petitioner. They were normally hired on a permanent basis for an indefinite period, and petitioner required each nurse to sign a contract for services. Petitioner informed the nurses that they were typically "employed" on a "full-time" basis, which petitioner usually was able to achieve by assigning the nurses multiple patients. Although the nurses were permitted to work for other nursing agencies, such work could be performed only during the nurses' off-hours.

While petitioner and the nurses had the mutual ability to terminate their working relationship, only the nurses were required to provide two weeks' notice. Petitioner retained the exclusive authority to replace or fire any nurse who did not perform to petitioner's satisfaction or refused work from petitioner.

5. *Skill and Initiative Required*

"Greater skill and more demonstrated initiative counsel in favor of [independent contractor] status." *Parrish*, 917 F.3d at 385. Relevant to this inquiry is "the extent of discretion the worker has over his daily tasks and whether he must take initiative to find consistent work." *Hobbs*, 946 F.3d at 833 (citing *Parrish*, 917 F.3d at 385).

Petitioner required each nurse to have certain nursing skills and knowledge. Once a nurse was on the job, however, a patient's plan of care specified how the nurse was to complete the assigned tasks. Significant initiative on the part of the nurses was not necessary for them to receive consistent work as petitioner neither required nor permitted them to find new patients. Patients were instead assigned to

[*11] petitioner through insurance companies, after which petitioner would assign the patients to the nurses.

6. *Conclusion*

After considering the record, weighing the above Fifth Circuit factors, and being cognizant that doubtful questions should be resolved in favor of employment, the relationship between petitioner and the nurses during the periods at issue is best characterized as that of common law employment. Petitioner possessed and exercised significant control over the nurses, including hiring and firing, setting hours and work schedules, assigning patients, ensuring attendance at required training, mandating how the nurses reported and potentially performed their work in accordance with a patient's plan of care, and supervising the nurses. The nurses were normally hired on a permanent basis and were integral to petitioner's business. They had no meaningful capital investment in the job as petitioner (and others) provided all necessary supplies and equipment. The nurses also bore no risk of loss and had no opportunity for profit outside of their wages and occasional incentive or performance bonuses, which the record does not show was common or substantial. Thus, the nurses cannot be said to have been in business for themselves as a matter of economic reality during the periods at issue.[10]

B. *Section 530 Relief*

Section 530, when applicable, affords a taxpayer relief from federal employment taxes even if the relationship between the principal and the worker would otherwise require the payment of those taxes. § 530(a)(1); *Charlotte's Office Boutique*, 121 T.C. at 106. To qualify for section 530 relief, a taxpayer: (1) must not have treated the worker as an employee for any period for purposes of federal employment taxes (historic treatment requirement); (2) must have consistently filed all federal tax returns (including information returns) required to be filed by the taxpayer with respect to the individual for periods after 1978 on a basis consistent with the taxpayer's treatment of that individual as

[10] Petitioner argues that, even if it fails to satisfy the Fifth Circuit factors, it should nevertheless fall within a safe harbor created by the Service for private duty nurses under Rev. Rul. 61-196, 1961-2 C.B. 155. Because the factors to be considered as part of this revenue ruling do not materially differ from the Fifth Circuit factors, we do not find petitioner's contention persuasive, considering our findings above. *Cf. Rauenhorst v. Commissioner*, 119 T.C. 157, 171–73 (2002) (treating as a concession the position the Internal Revenue Service took in a revenue ruling).

[*12] not being an employee (reporting consistency requirement);[11] (3) must have had a reasonable basis for not treating the worker as an employee, e.g., the taxpayer's treatment of the worker was in "reasonable reliance" of one of the items specified in section 530(a)(2) (reasonable basis requirement); and (4) must not have treated as an employee any individual holding a position "substantially similar" to that of the worker in question (substantive consistency requirement). § 530(a)(1), (3).

Before 2016, petitioner treated its nurses as its employees. Starting in 2016, petitioner unilaterally began treating many of these individuals as independent contractors. Petitioner argues that, with respect to the substantive consistency requirement for the nurses before and after 2016, the two treatments were not substantially similar because, unlike petitioner's employees, the nurses could turn down any work assignment and were able to control their work schedules. We do not find that the record persuasively supports this argument. Any "right" the nurses may have had with respect to declining a post-2016 work assignment carried with it potential punitive measures by petitioner. Petitioner also unilaterally set the work hours and schedules of the nurses. While petitioner may have had less *direct* control over the nurses it classified as independent contractors, petitioner still retained material influence and meaningful control over these workers for the reasons previously discussed.

Finally, petitioner treated several of the nurses as employees before treating them as independent contractors in 2016 but makes no attempt at addressing how it should be seen as satisfying the historic treatment requirement under section 530(a)(1)(A). *See Joseph M. Grey Pub. Acct., P.C. v. Commissioner*, 119 T.C. 121, 130 (2002) (noting that a taxpayer must satisfy *all* requirements under section 530 to qualify for relief), *aff'd*, 93 F. App'x 473 (3d Cir. 2004). Petitioner is therefore not entitled to section 530 relief.[12]

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[11] Respondent concedes that petitioner meets the reporting consistency requirement.

[12] Because petitioner fails to satisfy both the historic treatment requirement and the substantive consistency requirement, we do not address the reasonable basis requirement, including whether petitioner reasonably relied on an item specified in section 530(a)(2) in treating the workers in question as nonemployees during the periods at issue.

[*13] C. *Additions to Tax and Penalties*

Section 6651(a)(1) provides for an addition to tax of 5% of the tax required to be shown on a return for each month, or fraction thereof, for which there is a failure to timely file a federal tax return, up to 25% in the aggregate. Section 6656(a) and (b) imposes a penalty equal to 10% of the amount of the underpayment in tax required to be deposited by an employer, if the deposit is more than 15 days late as determined by section 6656(b). Section 6662(a) and (b)(1) imposes an accuracy-related penalty equal to 20% of the portion of an underpayment in tax required to be shown on a return which is attributable to negligence. Negligence includes "any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return." Treas. Reg. § 1.6662-3(b)(1).

The section 6651(a)(1) addition to tax and the section 6656(a) penalty may be reduced to the extent a taxpayer can establish that its failure to file or deposit was due to reasonable cause and not willful neglect. Similarly, a taxpayer may avoid the section 6662(a) penalty if it can show that there was reasonable cause for, and it acted in good faith with respect to, the underpayment. § 6664(c)(1). To establish reasonable cause, the taxpayer must show that it exercised "ordinary business care and prudence" but nonetheless was unable to meet its obligations. *United States v. Boyle*, 469 U.S. 241, 245–46 (1985) (quoting Treas. Reg. § 301.6651-1(c)(1)); *Charlotte's Office Boutique*, 121 T.C. at 109. Willful neglect means a "conscious, intentional failure or reckless indifference." *Charlotte's Office Boutique*, 121 T.C. at 109 (quoting *Boyle*, 469 U.S. at 245).

Petitioner does not contest the substance of the additions to tax or penalties, except insofar as it disagrees with respondent's classification of the nurses as employees. Petitioner presented little evidence to support a finding of reasonable cause to abate either the additions to tax or the penalties. Petitioner's administrator, president, and sole shareholder, Ms. Agbo, testified that she decided to change the classification of its workers on the advice of petitioner's certified public accountant, but she failed to offer any evidence to support this claim.

On the limited basis of Ms. Agbo's testimony, petitioner has not established that anyone on its behalf "sought specific advice from return preparers regarding the legal status of its workers for [federal] employment tax purposes." *Cent. Motorplex, Inc. v. Commissioner*, T.C.

[*14] Memo. 2014-207, at *16. Nor has petitioner established that anyone on its behalf "provided its return preparers with all relevant information regarding the nature of their employment." *Id.* Accordingly, we uphold in full the additions to tax and penalties as the record does not reflect that petitioner acted with reasonable cause when it unilaterally decided to start treating the nurses as independent contractors for federal employment tax purposes in 2016.

To reflect the foregoing,

Decision will be entered under Rule 155.