

United States Tax Court

T.C. Summary Opinion 2022-8

BRANDON PAUL SPENCER,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 17106-19S.

Filed June 7, 2022.

Brandon Paul Spencer, pro se.

Timothy A. Lohrstorfer, Lawrence D. Sledz, and Nathan M. Swingley,
for respondent.

SUMMARY OPINION

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

Respondent determined deficiencies of \$36,838 and \$41,482 with respect to petitioner's federal income tax for tax years 2016 and 2017, respectively. After concessions, the issues for decision are (1) whether petitioner is entitled to deduct contract labor expenses of \$112,800 and \$72,000 reported on Schedules C, Profit or Loss From Business, for tax

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. We round monetary amounts to the nearest dollar.

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years 2016 and 2017, respectively; (2) whether petitioner is entitled to deduct car and truck expenses of \$80,664 and \$161,163 reported on Schedules C for tax years 2016 and 2017, respectively; and (3) whether petitioner is entitled to deduct repairs and maintenance expenses of \$104,000 reported on Schedule C for tax year 2017.²

Background

Some of the facts have been stipulated and are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference. Petitioner resided in Indiana when he timely filed the Petition.

I. Petitioner's Business Activities

During 2016 and 2017 petitioner operated Home Comfort Transportation, LLC (Home Comfort), a business that provided nonemergency transportation services to medical patients. To perform these services, Home Comfort purchased and maintained a fleet of 11 to 12 vehicles and paid various operating expenses related to vehicles, including gas and other fuel, vehicle registration, insurance, excise taxes, rental cars, and tolls. Home Comfort had 2 full-time and approximately 12 part-time drivers to transport patients to hospitals and medical offices for appointments. Petitioner paid the full-time drivers by check and the part-time drivers in cash. Petitioner retained canceled checks totaling \$36,205 and \$47,265 for tax years 2016 and 2017, respectively, to serve as proof of amounts paid to the full-time drivers. Petitioner paid the part-time drivers approximately \$300 to \$400 per week for the approximately three to six months per year when they drove for Home Comfort but did not retain records of these payments. Petitioner also retained records of payments to Marques Spencer in 2016 totaling \$13,000 for work of an unidentified nature.

Petitioner retained receipts for two car rentals from Enterprise Rent-A-Car (Enterprise) rented to petitioner without additional authorized drivers. The expense for the car rental from January 2017 was billed to "USAA TAMPA PD-SE." Petitioner also retained receipts for vehicle purchases and tolls, invoices from repairs, an insurance statement, and vehicle registration records.

² Petitioner did not challenge respondent's adjustments for the tax years 2016 and 2017 except for the three issues addressed herein.

II. *Internal Revenue Service Examination*

Petitioner timely filed federal income tax returns for tax years 2016 and 2017 and claimed Schedule C deductions for Home Comfort's expenses, including some for contract labor, repairs and maintenance, and car and truck. Respondent selected petitioner's returns for examination and issued a notice of deficiency on September 5, 2019. After petitioner timely filed the Petition, respondent conceded additional car and truck expenses of \$706 and \$716 for tax years 2016 and 2017, respectively. The issues remaining at trial were as follows:

<i>Item</i>	<i>Year</i>	<i>Deduction per return</i>	<i>Allowed per exam</i>	<i>Allowed pretrial</i>	<i>Adjustment</i>
Contract labor expenses	2016	\$112,800	\$36,205	—	\$76,595
	2017	72,000	47,265	—	24,735
Car and truck expenses	2016	80,664	28,565	\$706	51,393
	2017	161,163	44,072	716	116,375
Repairs and maintenance expenses	2017	104,000	97,211	—	6,789

Discussion

I. *Burden of Proof*

The Commissioner's determinations in a notice of deficiency are generally presumed correct, and the taxpayer bears the burden of proving by a preponderance of the evidence that the determinations are in error. Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). Pursuant to section 7491(a), the burden of proof may shift to the Commissioner with respect to factual matters if the taxpayer meets certain requirements. Petitioner neither alleged that section 7491(a) applies nor established compliance with its requirements. Petitioner bears the burden of proving entitlement to any deduction claimed. See Rule 142(a); *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992).

II. *Adjustments to the Schedule C Business Expense Deductions*

A. *In General*

Section 162(a) allows a taxpayer to deduct the ordinary and necessary expenses paid or incurred during the taxable year in carrying

on a trade or business. *See Commissioner v. Lincoln Sav. & Loan Ass'n*, 403 U.S. 345, 352 (1971).

Taxpayers are required to maintain books and records sufficient to establish income and deductions. § 6001; Treas. Reg. § 1.6001-1(a), (e). If the taxpayer establishes that an expense is deductible but is unable to substantiate the precise amount, we may estimate the allowable amount (*Cohan* rule). *See Cohan v. Commissioner*, 39 F.2d 540, 543–44 (2d Cir. 1930). In estimating, we bear heavily against the taxpayer “whose inexactitude is of his own making.” *Id.* at 544. The taxpayer must present sufficient evidence to permit the Court to make an estimate. *Williams v. United States*, 245 F.2d 559, 560–61 (5th Cir. 1957); *Vanicek v. Commissioner*, 85 T.C. 731, 742–43 (1985).

Section 274(d) overrides the *Cohan* rule for certain expenses. *See Sanford v. Commissioner*, 50 T.C. 823, 827–28 (1968), *aff'd per curiam*, 412 F.2d 201 (2d Cir. 1969); Treas. Reg. § 1.274-5(c)(2)(iii); Temp. Treas. Reg. § 1.274-5T(a). Under section 274(d), the taxpayer must meet stricter substantiation requirements to deduct certain expenses under section 162, including expenses for the use of listed property (as defined in section 280F(d)(4)) such as passenger automobiles.

In order to meet the heightened substantiation requirements, the taxpayer must substantiate by adequate records or by sufficient evidence corroborating the taxpayer’s own statement: (1) the amount of the expense, (2) the time and place of the expense or use of listed property, (3) the business purpose of the expense or use, and (4) the business relationship. § 274(d). Even if such an expense would otherwise be deductible, section 274(d) may still preclude a deduction if the taxpayer does not present sufficient substantiation. Temp. Treas. Reg. § 1.274-5T(a).

B. *Contract Labor Expenses*

Petitioner deducted contract labor expenses of \$112,800 and \$72,000 on Schedules C of his federal income tax returns for tax years 2016 and 2017, respectively. To substantiate the contract labor expenses, petitioner submitted canceled checks for his two full-time drivers totaling \$36,205 and \$47,265 for tax years 2016 and 2017, respectively; respondent allowed these amounts in the examination. Petitioner asserts that the remaining contract labor expenses were paid in cash to part-time drivers. Petitioner’s expense lists identify contract

labor and employee expenses of \$56,205 and \$67,265 for tax years 2016 and 2017, respectively.

For 2016 the parties stipulated, and we admitted into evidence, a list of Home Comfort's 12 part-time drivers, showing total payments to them of \$61,500. The parties also stipulated, and we admitted into evidence, a list of payments to Marques Spencer in 2016 totaling \$13,000, but petitioner did not identify the work performed or the purpose of the payments to him. Petitioner testified at trial that he paid the 12 part-time drivers, on average, \$300 to \$400 per week, and each person worked approximately three to six months per year. Although petitioner did not have records of the dates and amounts of payments, he did provide bank records showing \$67,000 of cash withdrawals in tax year 2016. He also provided a list of 12 vehicles used by Home Comfort in tax year 2016.

For 2017 petitioner provided a list of 11 vehicles used by Home Comfort as well as bank records showing over \$130,000 of cash withdrawals. Petitioner did not identify the part-time drivers or the amounts paid to them in 2017. Petitioner's records showed payments to Marques Spencer totaling \$13,000, but petitioner again did not identify the work performed or the purpose of the payments to him. Petitioner's testimony generally suggested that his business use of part-time drivers in tax year 2017 was similar to tax year 2016.

We find petitioner's documentation to be lacking but his testimony to be credible. Applying the *Cohan* rule and bearing heavily against petitioner, "whose inexactitude is of his own making," we conclude that he is entitled to deduct an additional \$46,800 for tax year 2016 for contract labor expenses on the basis of his paying 12 drivers each \$300 per week for 13 weeks. See *Cohan v. Commissioner*, 39 F.2d at 543-44. For 2017 petitioner did not provide a list of drivers and the payments made to them. Given his general testimony, list of vehicles, and bank records showing cash withdrawals, we conclude that petitioner did incur contract labor expenses for part-time workers in 2017. Bearing heavily against petitioner, we conclude that he is entitled to deduct an additional \$19,500 for tax year 2017 for contract labor expenses on the basis of his paying five drivers each \$300 per week for 13 weeks.

C. *Car and Truck Expenses*

Petitioner deducted car and truck expenses of \$80,664 and \$161,163 on the Schedules C of his federal income tax returns for tax years 2016 and 2017, respectively. To substantiate the car and truck expenses, petitioner submitted a medley of receipts, invoices, credit card statements, and other documents relating to car purchases, vehicle registrations, insurance, excise taxes, rental cars, and tolls. During the examination, respondent allowed deductions for 90% of the reported fuel expenses, which amounted to \$28,565 and \$44,072 for tax years 2016 and 2017, respectively. Respondent accepted petitioner's vehicle purchase contracts and applied the relevant amounts to increase petitioner's bases in the vehicles, thereby increasing his depreciation. Shortly before trial, respondent conceded that petitioner was entitled to deduct additional car and truck expenses of \$706 and \$716 for tax years 2016 and 2017, respectively. At the time of trial, \$51,393 and \$116,375 of car and truck expenses remained at issue for tax years 2016 and 2017, respectively.

Petitioner broadly testified that all of the claimed car and truck expenses were incurred in support of Home Comfort. The passenger automobiles used by Home Comfort are listed property under section 280F(d)(4), and the expenses incurred in their use are therefore subject to the strict substantiation requirements under section 274(d).³ Upon careful review of petitioner's car and truck expense documentation for tax years 2016 and 2017, after taking into account amounts respondent already allowed, we conclude that the receipts do not support additional deductions with one possible exception. Excluding two receipts from Enterprise, we find that the documentation either supports deductions other than car and truck expenses or supports car and truck expenses that respondent has already allowed.

³ Petitioner did not argue that the passenger automobiles should be excepted from the heightened substantiation requirements of section 274(d), and the parties did not address section 280F(d)(5)(B)(ii) and (4)(B). Other than petitioner's broad statement that there was no personal use of the Home Comfort vehicles, there is no evidence that "substantially all" of the vehicles' use was connected to Home Comfort. See *Nurumbi v. Commissioner*, T.C. Memo. 2021-79, at *15-17; *Hatte v. Commissioner*, T.C. Memo. 2019-109, at *6-7. For example, petitioner did not testify whether he owned a personal vehicle or whether the drivers of the vehicles in his fleet were restricted from using the vehicles for personal purposes between appointments. Although we found petitioner to be credible, his broad and general testimony does not convince us that the vehicles satisfy an exception to section 274(d). We conclude that the vehicles are listed property subject to heightened substantiation requirements.

Petitioner provided two receipts for car rentals from Enterprise. The January 2017 receipt from Enterprise shows that a car was rented to petitioner and does not list any additional authorized drivers; it specifies that the amount of the vehicle expense would be billed to “USAA TAMPA PD-SE.” Respondent disallowed the deduction of the January 2017 car rental because it appeared to be a rental based on an insurance claim and paid by USAA insurance company. At trial, petitioner did not address whether the January 2017 rental was paid by an insurer. We conclude that petitioner may not deduct the January 2017 car rental expense.

The December 2017 receipt from Enterprise also shows that a car was rented to petitioner and does not list any additional authorized drivers. Respondent disallowed a deduction for the December 2017 car rental, stating that it appeared to be personal. Petitioner testified that “any vehicles were rented or used for business purposes” and there was “no personal usage.” This rental expense is also subject to the strict substantiation requirements of section 274(d), however, because a car is listed property under section 280F(d)(4). *Phillips v. Commissioner*, T.C. Memo. 2013-215, at *29. Petitioner’s broad statements were insufficient for purposes of section 274(d), as he offered no specific information about the times and places that the rental car was used. We hold accordingly that petitioner may not deduct car and truck expenses in an amount greater than respondent allowed.

D. *Repairs and Maintenance Expenses*

Petitioner deducted repairs and maintenance expenses of \$104,000 on the Schedule C of his federal income tax return for tax year 2017. To substantiate the repairs and maintenance expenses, petitioner submitted invoices and receipts from dealerships and car service centers. During the examination, respondent allowed deductions of \$97,211 for repairs and maintenance expenses for tax year 2017 and denied the remaining \$6,789. In the parties’ first stipulation of facts they provided a “listing prepared by petitioner showing his alleged total expenses and relevant expense categories for taxable year 2017.” Petitioner’s listing stated that he had incurred \$97,211.30 of expenses for repairs and maintenance in tax year 2017, conceding all but \$0.30 of the remaining amount at issue. At trial petitioner introduced as evidence receipts for vehicle repairs and maintenance but did not identify any receipts that respondent had not taken into account. When the Court further inquired about the repairs and maintenance expenses, petitioner’s testimony was very broad and did not explain why he would

be entitled to deduct an amount greater than the amount respondent allowed. We hold that petitioner is not entitled to deduct repair and maintenance expenses in an amount exceeding the deduction respondent allowed.

In reaching the holdings herein, we have considered all arguments put forth by the parties, and to the extent they are not discussed above, we consider them moot, irrelevant, or without merit.

To reflect the foregoing,

Decision will be entered under Rule 155.