



United States Tax Court

Washington, DC 20217

Frederica S. Brown,)	
)	
Petitioner)	
)	
v.)	Docket No. 16604-19.
)	
Commissioner of Internal Revenue,)	
)	
Respondent)	

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is hereby

ORDERED that the Clerk of the Court shall transmit to petitioner and respondent a copy of the pages of the transcript of the trial in the above-referenced case before Judge Emin Toro in Washington, D.C., on January 28, 2021 (remote proceeding), containing the Court's Oral Findings of Fact and Opinion, rendered at the trial session at which this case was heard.

In accordance with the Oral Findings of Fact and Opinion, a Decision will be entered for respondent.

(Signed) Emin Toro
Judge

Served 03/18/21

RECEIVED

Revised

3/15/21

IN THE UNITED STATES TAX COURT

In the Matter of:

FREDERICA S. BROWN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

)

)

)

) Docket No. 16604-19

)

)

)

)

)

)

)

)

Pages: 1 through 17

Place: Washington, DC (Remote Proceeding)

Date: January 28, 2021



P R O C E E D I N G S

(1:03 p.m.)

THE CLERK: Calling from the calendar docket
number 16604-19, Frederica S. Brown.

(Whereupon, a bench opinion was rendered.)



1 Bench Opinion by Judge Emin Toro
2 January 28, 2021
3 Frederica S. Brown v. Commissioner
4 Docket No. 16604-19

5 THE COURT: THE COURT HAS DECIDED TO RENDER ORAL
6 FINDINGS OF FACT AND OPINION IN THIS CASE AND THE
7 FOLLOWING REPRESENTS THE COURT'S ORAL FINDINGS OF FACT AND
8 OPINION. THE ORAL FINDINGS OF FACT AND OPINION SHALL NOT
9 BE RELIED UPON AS PRECEDENT IN ANY OTHER CASE.

10 This Bench Opinion is made pursuant to the
11 authority granted by section 7459(b) of the Internal
12 Revenue Code of 1986, as amended, and Rule 152 of the Tax
13 Court Rules of Practice and Procedure. Unless otherwise
14 noted, all section references in the opinion are to the
15 Internal Revenue Code, as amended and in effect at all
16 relevant times, and all Rule references are to the Tax
17 Court Rules of Practice and Procedure. We round all
18 monetary amounts to the nearest dollar.

19 The Commissioner of Internal Revenue determined
20 a deficiency in the Federal income tax of petitioner,
21 Frederica S. Brown, in the amount of \$3,981 for the 2016
22 taxable year. The sole issue for decision is whether
23 Ms. Brown has substantiated her entitlement to a deduction
24 for car and truck expenses that she claimed on Schedule C,
25 Profit or Loss From Business, of her 2016 return. For the

1 reasons set forth below, we find that Ms. Brown has failed
2 to carry her burden of substantiating the expenses at
3 issue and therefore uphold the Commissioner's
4 determination.

5 FINDINGS OF FACT

6 Some of the facts have been stipulated and are
7 so found. The parties' joint stipulation of facts and all
8 attached exhibits are incorporated herein by this
9 reference. Trial of this case was held on January 25,
10 2021, during the Court's remote trial session for
11 Washington, D.C. Ms. Brown resided in North Carolina at
12 the time the petition was filed.

13 In 2016, Ms. Brown earned \$47,351 in wages. The
14 record does not disclose Ms. Brown's time or place of
15 employment with respect to these wages.

16 In the same year, Ms. Brown prepared U.S.
17 Federal income tax returns for third parties under the
18 business name "Gomillion Tax Service." Ms. Brown
19 maintained an office in Charlotte, North Carolina, but
20 conducted a significant portion of her return-preparation
21 business from her car. Ms. Brown had a practice of
22 visiting clients and prospective clients in person, and
23 would sometimes drive long distances to facilitate those
24 meetings. Ms. Brown was also capable of operating
25 remotely through a web portal that allowed clients to send



1 her electronic versions of their tax documents.

2 On Schedule C of her 2016 Federal income tax
3 return, Ms. Brown reported \$5,659 in income and \$18,831 in
4 deductible car and truck expenses related to the return-
5 preparation business. The parties have stipulated that
6 the deductible expenses "consisted of a deduction for
7 34,560 miles of travel at the standard mileage rate for
8 2016." The standard mileage rate for 2016 was 54 cents
9 per mile, as set forth in IRS Notice 2016-1, 2016-2 I.R.B.
10 265. The product of 34,560 miles and 54 cents per mile is
11 \$18,662, not \$18,831 as stipulated by the parties. The
12 record does not explain the reason for this disparity, but
13 in light of our disposition we need not address it
14 further.

15 The Commissioner audited Ms. Brown's 2016
16 return and disallowed the entire deduction for car and
17 truck expenses reflected on Schedule C. In a notice of
18 deficiency, dated June 3, 2019, the Commissioner
19 determined that Ms. Brown owed additional tax of \$3,981.

20 In response, Ms. Brown submitted to the Internal
21 Revenue Service (the "IRS") a log, titled "Mileage
22 Tracker--Gomillion Tax & Bookkeeping Service 2016." The
23 log reflected daily entries for the period from January 1,
24 2016, through March 31, 2016 (except for January 31,
25 2016), and included columns titled "Date," "Start

1 Location," "End Location," "Reason," "Start Odometer,"
2 "Stop Odometer," and "Total Miles." For each day, the log
3 included two entries--one indicating that Ms. Brown
4 traveled from "Office" to "Client" and another reflecting
5 return travel from "Client" to "Office." The entries
6 reflected total daily mileage ranging from 50 miles to
7 1,380 miles. In 64 out of the 90 days, the daily mileage
8 was more (and frequently substantially more) than 200
9 miles. None of the entries included a client name,
10 address, or other identifying information with respect to
11 the location of the meeting. The only "Reason" given for
12 each entry was "Business," and Ms. Brown did not provide
13 any e-mails, calendar entries, or other documentation to
14 corroborate or supplement the log. The starting odometer
15 reading for the first day of the log (January 1, 2016) was
16 78,452. The ending odometer reading for the last day of
17 the log (March 31, 2016) was 113,011.

18 After receiving Ms. Brown's documentation, the
19 IRS explained by letter that the log was insufficient to
20 substantiate Ms. Brown's claimed expenses. In September
21 2019, Ms. Brown timely petitioned our Court for review.
22 As noted, we held a trial on January 25, 2021.

23 At the trial, the parties introduced into
24 evidence the mileage log previously submitted to the IRS.
25 Although Ms. Brown testified on how the log was prepared,

1 she was unable to provide additional documentation or
2 testimony to supplement the information in the log. Ms.
3 Brown was also unable to recall which clients were
4 serviced on any of the days in the log.

5 In addition, the Commissioner introduced into
6 evidence a schedule of Ms. Brown's clients and their
7 addresses. The schedule listed 143 total clients, with 99
8 located in North Carolina (83 in Charlotte), 17 in
9 Washington, D.C., 5 in Maryland, 4 in South Carolina, 4 in
10 New York, 3 in Georgia, 3 in Florida, and 1 each in
11 Pennsylvania, Virginia, Texas, Arizona, New Mexico, Idaho,
12 and California.

13 OPINION

14 I. Burden of Proof

15 As a general rule, the Commissioner's
16 determinations in a notice of deficiency are presumed
17 correct, and the taxpayer bears the burden of proving that
18 the determinations are erroneous. Rule 142(a); Welch v.
19 Helvering, 290 U.S. 111, 115 (1933). Typically, the
20 taxpayer also bears the burden of proving her entitlement
21 to any deductions claimed. INDOPCO, Inc. v. Commissioner,
22 503 U.S. 79, 84 (1992); New Colonial Ice Co. v. Helvering,
23 292 U.S. 435, 440 (1934).

24 II. Car and Truck Expense Deduction

25 Section 162(a) allows a taxpayer to deduct all



1 ordinary and necessary expenses paid or incurred in
2 carrying on a trade or business. A trade or business
3 expense is ordinary if it is normal or customary within a
4 particular trade, business, or industry. Welch v.
5 Helvering, 290 U.S. at 114. A trade or business expense
6 is necessary if it is appropriate and helpful for the
7 development of the business. Commissioner v. Heininger,
8 320 U.S. 467, 471 (1943); Welch v. Helvering, 290 U.S. at
9 113.

10 The taxpayer must generally maintain records
11 sufficient to substantiate the amounts of her income and
12 entitlement to any deduction or credits claimed.
13 Sec. 6001; sec. 1.6001-1(a), (e), Income Tax Regs. If,
14 however, a taxpayer can prove that she paid or incurred a
15 deductible business expense but is unable to prove the
16 amount of the expense, we may estimate the amount
17 allowable in some circumstances under the Cohan rule. See
18 Cohan v. Commissioner, 39 F.2d 540 (2d Cir. 1930).

19 For certain kinds of business expenses,
20 including automobile expenses, section 274(d) overrides
21 the Cohan rule and instead requires strict substantiation.
22 For the 2016 taxable year, section 274(d)(4) provided,
23 among other things, that no deduction would be allowed
24 with respect to any property listed in section 280F(d)(4)
25 unless the taxpayer established the following: (A) the

1 amount of the expense or other item, (B) the time and
2 place of the use of the property, (C) the business purpose
3 of the expense, and (D) the business relationship to the
4 taxpayer of the person using the property. Sec. 274(d)
5 (flush language); sec. 1.274-5T(b) (6), Temporary Income
6 Tax Regs.; cf. Berkley Mach. Works & Foundry Co. v.
7 Commissioner, 623 F.2d 898, 901 (4th Cir. 1980)
8 (discussing the relationship between section 162 and
9 section 274), rev'g T.C. Memo. 1977-177; Boyd v.
10 Commissioner, 122 T.C. 305, 313, 319-322 (2004) (same).
11 Passenger automobiles are among the listed property
12 included in section 280F(d) (4), see sec. 280F(d) (4) (A) (i),
13 and the strict substantiation requirements of section
14 274(d) must be met for automobile expenses even where the
15 optional standard mileage rate is used, see sec. 1.274-
16 5(j) (2), Income Tax Regs.

17 Deductions arising from property subject to the
18 strict substantiation requirements of section 274(d) are
19 disallowed in full unless the taxpayer establishes each
20 element of the requirements. Sanford v. Commissioner, 50
21 T.C. 823, 827-828 (1968), aff'd, 412 F.2d 201 (2d Cir.
22 1969); Fleming v. Commissioner, T.C. Memo. 2010-60; see
23 also sec. 1.274-5T(a), Temporary Income Tax Regs.; cf.
24 Berkley Mach. Works & Foundry Co., 623 F.2d at 906
25 (discussing the substantiation requirements of a prior

1 version of the regulations under section 274 and observing
2 that "[t]he requirement of substantiation allows the
3 Government to double-check the amount and the true
4 business character of the deduction, instead of being
5 forced to rely on the taxpayer's 'own unsupported, self-
6 serving testimony'" (quoting S. Rept. No. 1881, at 37
7 (1962))).

8 To satisfy strict substantiation, a taxpayer may
9 substantiate her expenses either (1) by adequate records
10 or (2) by sufficient evidence that corroborates her own
11 statements. Sec. 274(d) (flush language); sec. 1.274-
12 5T(c)(1), Temporary Income Tax Regs. For purposes of this
13 analysis, written evidence generally has considerably more
14 probative value than oral evidence. Sec. 1.274-5T(c)(1),
15 Temporary Income Tax Regs. While a contemporaneous log is
16 not required, "the probative value of written evidence is
17 greater the closer in time it relates to the expenditure
18 or use." Id.; see also Larson v. Commissioner, T.C. Memo.
19 2008-187. Taken alone, a taxpayer's unsupported testimony
20 is insufficient to substantiate her entitlement to the
21 deduction. See sec. 1.274-5T(a)(4), Temporary Income Tax
22 Regs.

23 To meet the "adequate records" test under
24 section 274(d) and the relevant regulations, the taxpayer
25 must maintain an account book, diary, log, statement of

1 expense, trip sheets, or similar records, as well as, in
2 certain cases, documentary evidence such as receipts or
3 bills. See sec. 1.274-5T(c)(2)(i), Temporary Income Tax
4 Regs. In combination, these items must be sufficient to
5 establish each element of an expenditure or
6 use--specifically, the amount, time, and business use or
7 purpose. See id.; sec. 1.274-5T(b)(6), Temporary Income
8 Tax Regs.

9 To qualify as an adequate record, an account
10 book, diary, log, or similar record must be prepared and
11 maintained in such a manner that each entry is made at or
12 near the time of the expenditure or use. Sec. 1.274-
13 5T(c)(2)(ii)(B), Temporary Income Tax Regs. In order to
14 establish business use, the record must contain sufficient
15 information as to each element of every business use, but
16 the level of detail required may vary depending on the
17 facts and circumstances. Sec. 1.274-5T(c)(2)(ii)(C),
18 Temporary Income Tax Regs. For example, a taxpayer who
19 uses a truck to make deliveries on an established route
20 may satisfy the adequate records requirement by recording
21 the total number of miles driven during the taxable year,
22 the length of the delivery route, and the date of each
23 trip at or near the time of the trip. Id.

24 In the absence of adequate records to establish
25 each element of an expense under section 274(d), a

1 taxpayer may alternatively establish an element "(A) [b]y
2 his own statement, whether written or oral, containing
3 specific information in detail as to such element; and (B)
4 [b]y other corroborative evidence sufficient to establish
5 such element." Sec. 1.274-5T(c)(3)(i), Temporary Income
6 Tax Regs. If the element the taxpayer seeks to establish
7 is "the cost or amount, time, place, or date of an
8 expenditure or use, the corroborative evidence shall be
9 direct evidence, such as a statement in writing or the
10 oral testimony of persons entertained or other witnesses
11 setting forth detailed information about such element, or
12 the documentary evidence described in paragraph (c)(2) of
13 this section," which includes an account book, diary, log,
14 statement of expense, trip sheets, or similar records.
15 Sec. 1.274-5T(c)(3)(i) (flush language), Temporary Income
16 Tax Regs. By contrast, circumstantial evidence may be
17 sufficient to establish the business purpose of an
18 expenditure. Id.

19 III. Application to Ms. Brown

20 To substantiate her entitlement to a deduction
21 for miles driven, two paths were available to Ms. Brown
22 under the strict substantiation rules. First, Ms. Brown
23 could provide adequate records--e.g., a log--together with
24 any other documentary evidence sufficient to substantiate
25 the following elements for each use of her car: the

1 amount (mileage based on the origin and destination of the
2 trip), the date, and the business purpose. Sec. 274(d)
3 (flush language); sec. 1.274-5T(b)(6), Temporary Income
4 Tax Regs. Second, if adequate records were unavailable,
5 Ms. Brown could establish the same elements using other
6 sufficient evidence--namely, testimony containing
7 specific, detailed information with respect to each
8 element, together with other corroborative evidence. See
9 id.; sec. 1.274-5T(c)(3)(i), Temporary Income Tax Regs.
10 For example, Ms. Brown could have called as witnesses
11 clients with whom she met.

12 The Court has no doubt that Ms. Brown worked
13 hard and sometimes drove long distances to support her
14 return-preparation business. But Ms. Brown has not
15 offered sufficient evidence to satisfy the strict
16 substantiation standard with respect to her mileage
17 deduction.

18 To begin with, Ms. Brown's log does not
19 constitute an adequate record within the meaning of the
20 regulations. The log lists the mileage Ms. Brown traveled
21 each day, but does not indicate the name or location of
22 the clients or prospective clients that she visited. We
23 therefore have no means of verifying the distance Ms.
24 Brown traveled or whether the trips were ordinary and
25 necessary for her business. Indeed, the log does not

1 elaborate on business purpose at all other than to say
2 that each trip was for "Business." And Ms. Brown was
3 unable to provide any other evidence to corroborate or
4 supplement the information listed in the log. Nor did she
5 have an "established route" for her business travel.
6 Sec. 1.274-5T(c)(2)(ii)(C), Temporary Income Tax Regs.

7 Certain aspects of the log also cast doubt on
8 its reliability. For example, several entries represent
9 that Ms. Brown drove more than 1,200 miles on a single
10 day. At an average speed of 60 miles per hour with no
11 breaks, a 1,200-mile trip would take 20 hours, leaving
12 little time for meals or rest, let alone client meetings.
13 And the log contains entries for long round trips (ranging
14 from 50 miles to 1,380 miles) every day but one from
15 January 1 to March 31. According to the log, in 64 out of
16 the 90 days reflected in the log, Ms. Brown drove more
17 (and frequently substantially more) than 200 miles. This
18 strikes the Court as odd given that nearly 60% of the
19 clients on Ms. Brown's list have addresses in Charlotte,
20 North Carolina, where Ms. Brown lives and maintains her
21 office.

22 In addition, Ms. Brown appears to have
23 calculated the total mileage (34,560) underlying the
24 deduction reflected on the Schedule C by subtracting the
25 log's initial "start" odometer reading (78,452) from its

1 final "stop" odometer reading (113,011) and rounding. But
2 this method of calculating the total miles traveled fails
3 to account for certain gaps in mileage reflected in the
4 log. For example, Ms. Brown's first trip on January 1,
5 2016, ended with an odometer reading of 78,491 miles, and
6 her next trip started with an odometer reading of 78,499
7 miles, leaving a gap of 8 miles. Similar gaps are present
8 throughout the log. As a result, on its face, the log
9 fails to document all of the 34,560 miles claimed by
10 Ms. Brown.

11 Finally, apart from the log, Ms. Brown offered
12 no additional evidence that might satisfy the second path
13 under the strict substantiation rules. For example, she
14 was unable to testify regarding the details of any
15 particular trip, and she submitted no corroborating
16 records such as e-mails, texts, or calendar entries.
17 Therefore, we are unable conclude that Ms. Brown provided
18 "other sufficient evidence" to substantiate her expenses.
19 It was Ms. Brown's burden to establish her entitlement to
20 the deduction she claimed, and she has failed to carry it.

21 IV. Conclusion

22 Ms. Brown has failed to carry her burden of
23 substantiating the car and truck expenses she deducted on
24 her 2016 return, and we will therefore uphold the
25 Commissioner's determination disallowing that deduction.

1 To reflect the forgoing, decision will be
2 entered for respondent.

3 This concludes the Court's oral Findings of Fact
4 and Opinion in this case.

5 (Whereupon, at 1:28 p.m., the above-entitled
6 matter was concluded.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF TRANSCRIBER AND PROOFREADER

CASE NAME: Frederica S. Brown v. Commissioner

DOCKET NO.: 16604-19

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 17 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by James Shank on January 28, 2021 before the United States Tax Court at its remote session in Washington, DC, in accordance with the applicable provisions of the current verbatim reporting contract of the Court and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.



Meribeth Ashley, CET-507

2/9/21

Transcriber

Date



Lori Rahtes, CDLT-108

2/9/21

Proofreader

Date

