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T.C. Summary Opinion 1998-150

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UNITED STATES TAX COURT

ARNOLD ROY AND NORA BUSHEY, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 2877-96S. Filed July 28, 1998.

Arnold Roy Bushey, pro se.

Jason M. Silver, for respondent.

NAMEROFF, Special Trial Judge: This case was heard pursuant to the provisions of section 7463.[1] The decision to be entered is not reviewable by any other court, and this opinion should not be cited as authority. Respondent determined deficiencies in petitioners' 1992 and 1993 Federal income taxes in the amounts of $7,177 and $7,180, respectively.

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years at issue. All Rule references are to the Tax Court Rules of Practice and Procedure.

The issues for decision are: (1) Whether petitioners' dog-breeding activity during 1992 and 1993 was engaged in for profit; (2) whether petitioners' television and electronic repair activity (the repair activity) during 1992 and 1993 was engaged in for profit; and if either was engaged in for profit, (3) whether petitioners substantiated ordinary and necessary expenses relating to that activity.[2]

Some of the facts have been stipulated, and they are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference. At the time they filed their petition, petitioners resided in Riverside, California.

Mr. Bushey is an industrial electrician, specializing in troubleshooting. He attended Pacific State University National Technical School for electronics. During 1992 and 1993, Mr. Bushey worked for L.A. Die Casting, earning around $65,000 per year. He worked about 10 hours per day Mondays through Fridays and 8 hours on Saturdays and spent about 2 hours' traveltime commuting about 100 miles to and from work. During 1992 and 1993, Mrs. Bushey had no wage income.

Mr. Bushey testified at trial. He had spent about 3 to 5 hours per week maintaining and handling the dogs for breeding, and he spent about 8 to 12 hours per week in the repair activity.

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[2] In the notice of deficiency, respondent effectively conceded cost of goods sold as claimed on the tax returns as not being subject to the substantiation requirement.
Schedule A adjustments made by respondent are computational and depend on the results of the primary issues.

Mrs. Bushey was more involved than Mr. Bushey in the dog-breeding activity, but she had no involvement in the repair activity. Her poor health prevented her from testifying.

Dog-Breeding Activity

Petitioners first became involved in dog-breeding activities in 1985 or 1986. At first, petitioners bred and raised collies. Petitioners became interested in collie breeding after they met the owner and trainer of the dog "Lassie".

By 1989, petitioners, either through purchase or breeding, owned about eight or nine collies. They soon found out, however, that collies were not good investments for breeding; the difficulty of maintaining their long hair made collies a less popular breed of dog. Petitioners sold one collie for $1,100 in 1992 and one for about $900 in 1993. By 1993, petitioners had sold all the collies, with the exception of two that they kept as pets. The costs of upkeep for the pet collies included food and veterinarian bills.

Beginning in 1989 or 1990, petitioners considered breeding Rottweilers. Petitioners believed that Rottweilers were more profitable than collies because Rottweilers were more popular and because their short hair made them easier to maintain. Petitioners observed at dog shows that show-quality Rottweiler puppies (i.e., descendants of champions) were selling for $1,500 to $2,500, while ordinary purebred Rottweiler puppies (i.e., Rottweilers with papers) were selling for $100 to $200.

In 1990, petitioners bought two Rottweiler puppies for about $1,500 each for breeding. Petitioners did not breed the Rottweilers until they were 2 years old in order to test them for hip dysplasia, a common genetic problem for the breed. Petitioners' dogs tested negative for hip dysplasia and were registered as such with the Dysplasia Control Registry of the Orthopedic Foundation for Animals, Inc.[3] Petitioners also registered their dogs with the American Kennel Club (AKC), which keeps track of pedigrees. In 1993, petitioners' Rottweilers had their first litter, which was registered with the AKC.

On average, it was necessary for petitioners to initially keep the Rottweilers for about 3 or 4 years before selling them. During this time the dogs were shown at dog shows in order to earn points towards becoming champions. The higher the number of points, the higher the price for the dogs when sold. Petitioners took their dogs to the shows, but it was not apparent (from the record) whether their dogs earned any points towards becoming champions. Mr. Bushey estimated that it cost about $5,000 to maintain one Rottweiler for that period of time and acknowledged that he would not be able to sell a Rottweiler for that much.[4]

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[3] A certificate submitted into evidence for a black rottweiler named "Nora's Abagail Von Asta" shows that an inspection was performed on Oct. 2, 1989 for the dog born Aug. 1, 1987. We note that this document is inconsistent with Mr. Bushey's testimony regarding the years relating to the Rottweiler he testified about.

[4] Petitioners' veterinarian bills were higher for the Rottweilers than for the collies.

He believed, however, that a litter could be sold (at birth) for at least $5,000. Petitioners did not sell any Rottweilers during 1992 or 1993. Mr. Bushey did not know how many dogs petitioners had for sale during those years.

In 1995, petitioners sold all their Rottweilers, and they are now breeding Pekingese, a smaller breed, because both petitioners have heart conditions that make working with larger and more aggressive dogs difficult. We note that Pekingese, while smaller, tend to be long haired.

At the time petitioners began their dog-breeding activity, they were renting a house in Long Beach, California. To accommodate the dogs, they built runs in their backyard. At some point, the City of Long Beach sanctioned petitioners for having too many pets, and they were required to move. Petitioners were required to move several more times before they ended up at their present location in Riverside.

Petitioners did not have many records pertaining to their dog-breeding activity, purportedly because their records were lost or destroyed during their many moves. The record contains stipulated documents of this activity as follows:

A county dog permit for the "owning, keeping, maintaining, or harboring" of 10 dogs, issued for the period of September 15, 1995 through 1996, at a cost of $160; a county kennel license enabling petitioners to maintain a kennel at a particular location, valid from September 15, 1993 through 1995; certificates of pedigree for their Rottweilers; some invoices and receipts reflecting veterinarian bills (although it is not clear to which dogs the invoices related); some receipts relating to automobile repairs; and a smattering of canceled checks reflecting a portion of the expenses claimed for the dog-breeding activity (i.e., automobile, veterinarian, and utilities). Petitioners did not maintain a separate checking account or a mileage log for this activity. Petitioners did, however, advertise their dogs for sale in local newspapers, such as the Los Angeles Times and the Recycler, and at dog shows.

For the 1986 through 1995 tax years, petitioners reported the following Schedule C income and expenses for their dog-breeding activity:

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Gross receipts	$300	$650	-0-	$400	$900	$1,600	$1,100	$950	$1,450	$8,300
Cost of goods sold	-0-	-0-	-0-	-0-	-0-	800	875	775	520	155
Gross income	300	650	-0-	400	900	800	225	175	930	8,145
Expenses:										
Advertising	-0-	-0-	$200	210	255	260	280	310	280	55
Automobile	858	865	3,199	2,205	3,213	2,815	1,727	1,790	1,357	625
Depreciation	-0-	-0-	510	916	725	750	519	157	1,114	1,584
Dog food	1,892	1,987	1,345	1,560	2,100	2,450	2,573	3,650	4,340	3,100
Dues & publication	90	110	150	140	175	225	236	245	250	125
Equip.	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	845	510
Fences	-0-	-0-	-0-	1,050	400	600	300	850	-0-	-0-
Labor	-0-	-0-	450	500	550	-0-	-0-	-0-	-0-	-0-
Legal & prof.	-0-	-0-	550	-0-	-0-	-0-	-0-	-0-	-0-	-0-
License	-0-	-0-	70	70	70	409	353	358	490	433
Meals & ent.	-0-	-0-	240	272	680	640	544	624	310	80
Office	-0-	-0-	200	250	285	300	310	290	310	78
Rent	1,668	1,668	1,668	2,076	2,307	-0-	-0-	-0-	290	-0-
Show fees	60	75	200	210	225	260	276	325	-0-	105
Stud fees	-0-	-0-	250	250	1,000	250	-0-	-0-	-0-	-0-
Supplies	-0-	-0-	2,747	3,120	3,500	1,000	1,250	1,345	1,360	255
Travel	-0-	-0-	-0-	-0-	1,350	3,530	3,705	5,950	1,575	220
Util. & tel.	360	380	789	800	889	944	427	465	540	215
Vet.	600	1,400	2,738	1,500	2,860	4,100	6,500	6,500	2,800	280
Total expenses	(5,528)	(6,485)	(15,306)	(15,129)	(20,584)	(18,533)	(19,000)	(22,859)	(15,861)	(7,665)
Net profit/(loss)	(5,228)	(5,835)	(15,306)	(14,729)	(19,684)	(17,733)	(18,775)	(22,684)	(14,931)	480

In the notice of deficiency, respondent disallowed the net losses for 1992 and 1993 on the basis of the determination that petitioners' activity was not "entered into for profit". In the alternative, respondent determined that petitioners have not substantiated that they incurred the claimed expenses in excess of their dog-breeding income or that the expenditures were ordinary and necessary.

Initially, we must decide whether petitioners' dog-breeding activity was engaged in for profit. Section 183(a) generally provides that if an activity engaged in by an individual is not entered into for profit, no deduction attributable to the activity shall be allowed, except as otherwise provided in section 183(b).[5] An "activity not engaged in for profit" means any activity other than one for which deductions are allowable under section 162 or under paragraphs (1) and (2) of section 212. Sec. 183(c).

Section 162(a) allows a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. To be engaged in a trade or business within the meaning of section 162, "the taxpayer must be involved in the activity with continuity and regularity and * * * the taxpayer's primary purpose for engaging in the activity must be for income or profit." Commissioner v. Groetzinger, 480 U.S. 23, 35 (1987).

In order for petitioners to deduct expenses of an activity pursuant to section 162, profit must be their primary or dominant

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[5] Sec. 183(b) allows deductions for ordinary and necessary expenses arising from an activity not engaged in for profit only to the extent of gross income from the activity, less the amount of those deductions which are allowable regardless of whether or not the activity is engaged in for profit.

purpose for engaging in the activity. Wolf v. Commissioner, 4 F.3d 709, 713 (9th Cir. 1993), affg. T.C. Memo. 1991-212; Polakof v. Commissioner, 820 F.2d 321 (9th Cir. 1987), affg. per curiam T.C. Memo. 1985-197; Independent Elec. Supply, Inc. v. Commissioner, 781 F.2d 724, 726 (9th Cir. 1986), affg. Lahr v. Commissioner, T.C. Memo. 1984-472; Carter v. Commissioner, 645 F.2d 784, 786 (9th Cir. 1981), affg. T.C. Memo. 1978-202; Hirsch v. Commissioner, 315 F.2d 731, 736 (9th Cir. 1963), affg. T.C. Memo. 1961-256. Whether petitioners had the requisite profit objective is a question of fact to be resolved from all relevant facts and circumstances. E.g., Drobny v. Commissioner, 86 T.C. 1326, 1341 (1986), affd. 113 F.3d 670 (7th Cir. 1997); sec. 1.183-2(b), Income Tax Regs. Profit in this context means economic profit independent of tax savings. E.g., Antonides v. Commissioner, 91 T.C. 686, 694 (1988), affd. 893 F.2d 656 (4th Cir. 1990).

Section 1.183-2(b), Income Tax Regs., provides a non-exclusive list of factors we consider to determine whether the taxpayers are engaged in the venture with a profit objective. They include: (1) The manner in which the taxpayers carried on the activity; (2) the expertise of the taxpayers or their advisers; (3) the time and effort expended by the taxpayers in carrying on the activity; (4) the expectation that the assets used in the activity may appreciate in value; (5) the success of the taxpayers in carrying on other similar or dissimilar activities; (6) the taxpayers' history of income or loss with respect to the activity; (7) the amount of occasional profits that are earned; (8) the financial status of the taxpayers; and (9) whether elements of personal pleasure or recreation are involved. No single factor is controlling, and we do not reach our decision by merely counting the factors that support each party's position. Dunn v. Commissioner, 70 T.C. 715, 720 (1978), affd. 615 F.2d 578 (2d Cir. 1980); sec. 1.183-2(b), Income Tax Regs. Certain elements are given more weight than others because they are more meaningfully applied to the facts in our case.

Upon reviewing the entire record, we conclude that, during the years at issue, petitioners did not engage in the dog-breeding activity with the requisite profit objective.

We first look to the manner in which petitioners carried on the dog-breeding activity. Mr. Bushey offered no evidence that petitioners maintained books and records in a businesslike manner. See sec. 1.183-2(b)(1), Income Tax Regs. Petitioners did not maintain expense ledgers, logs, or journals to support the expenses claimed on their Schedules C. Petitioners did not keep a written account of the income they received from the sale of their dogs. In fact, Mr. Bushey did not know how many dogs he had for sale during 1992 and 1993. While Mr. Bushey asserted that many records were lost or destroyed as petitioners frequently moved, the record does not indicate what records were maintained but lost, and whether petitioners attempted to reconstruct them.

Petitioners did not change their operations to improve profitability. See sec. 1.183-2(b)(1), Income Tax Regs. Petitioners did not have a business plan, nor does it appear that they investigated the basic factors that affect profitability. While it is true petitioners changed from breeding and raising collies to breeding and raising Rottweilers (a purportedly more profitable breed), petitioners, nevertheless, experienced 9 consecutive years of net losses totaling over $120,000, as compared to 1995, the one year where they experienced a net gain of $480 by selling their stock. By the beginning of 1992, petitioners had incurred nearly $70,000 of losses, which were not recoverable in the future, given petitioners' age, health, and financial circumstances.

Lastly, petitioners had sufficient wage income to use the tax benefits created from their dog-breeding activity. See sec. 1.183-2(b)(8), Income Tax Regs. While we do not believe that petitioners' income was so high as to make tax savings their primary objective, we recognize that they may have sought after-tax savings as a way to subsidize their affection for dog-breeding, although the presence of personal enjoyment from an activity does not, by itself, indicate a lack of profit objective. See sec. 1.183-2(b)(9), Income Tax Regs.

We recognize that petitioners advertised their dogs for sale in two local papers and at dog shows, and they did obtain some of the necessary licenses, registration, and permits to breed dogs. On balance, however, we are persuaded by those many factors favoring respondent's position. In sum, although petitioners would have liked to earn a profit from their dog-breeding activity, we find that they were not engaged in the activity with the objective of making a profit. Accordingly, petitioners are not entitled to the dog-breeding expense deductions in excess of their reported dog-breeding income.

As respondent has already prevailed on the primary issue, we need not address the substantiation issues pertaining to this activity.

Television and Electrical Repair Activity

Mr. Bushey began repairing radios and black and white televisions in the late 1950's and early 1960's. Originally, Mr. Bushey called his proprietorship Arnold's Radio. He later changed the name several more times to reflect changes in technology and the repairs he performed (i.e., Arnold's TV & Radio, Arnold's Color TV, and Arnold's TV & Electronics). Presently, the name of the proprietorship is Arnold's Electronics, and Mr. Bushey takes in any electronic items that are brought to him.

Over the years, Mr. Bushey's activity of repairing small electronic equipment began to slow because of a combination of factors, including the lower cost associated with manufacturing electronic products and the increased number of in-house repairs performed by manufacturers under their warranties. By 1992 and 1993, Mr. Bushey had wound down the small appliance portion of his activity, and he performed only one or two repairs on small electronic items during that time. He has since donated the remaining obsolete small appliance electronic equipment, such as tubes, transistors, and capacitors, to the Salvation Army.

In more recent years including the ones at issue, Mr. Bushey's activity focused more on industrial electronics. He would repair and consult on industrial machines used in small businesses. Mr. Bushey made service calls and consulted over the phone on Saturday afternoons and Sundays.[6] Mr. Bushey charged between $30 and $200 per hour for his services, depending on the job and customer.

Mr. Bushey filed a Fictitious Business Name Statement for the name Arnold's Electronics in May 1992. He also obtained a business license from the City of Ontario Licensing Division for calendar year 1992. He submitted few documents relating to his activity, purportedly because they were destroyed when vandals broke into his house. He did submit, however, invoices and receipts reflecting some of the claimed expenditures for tools, uniforms, automobile repairs, and utilities.[7] Mr. Bushey had a separate checking account for a short period of time in the name

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[6] For example, Mr. Bushey consulted by telephone with customers about how to repair a particular machine. On average, the calls would last between 10 and 20 minutes. Mr. Bushey would send a bill to the client for his time.

[7] We note that some of the invoices were made out to L.A. Die Casting. Mr. Bushey explained that he ordered tools from the Sears industrial tool catalog through an account L.A. Die Casting had. Mr. Bushey, however, reimbursed L.A. Die Casting for all his purchases.

of Arnold's Electronics, although only 10 canceled checks were submitted into the record.

Petitioners live in a four-bedroom house that has a family room, a living room, a dining room, and a kitchen. Mr. Bushey conducted his repair activity out of one of the bedrooms and in the two-car garage. One bedroom was set aside for the dog-breeding activity, and another was used as a computer room.

For the 1986 through 1995 tax years, petitioners reported the following Schedule C income and expenses for the repair activity:

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Gross receipts	$4,960	$2,570	$4,060	$6,800	$4,600	$4,800	$2,000	$1,900	$1,500	$3,500
Cost of goods sold	(4,180)	(2,350)	(3,100)	(5,100)	(3,500)	(3,000)	(2,700)	(1,300)	(1,070)	(2,068)
Gross income	780	220	960	1,700	1,100	1,800	(700)	600	430	1,432
Expenses										
Advertising	220	98	105	145	185	150	50	175	-0-	-0-
Automobile	1,600	825	4,025	2,577	3,992	4,166	3,325	3,258	3,916	4,981
Depreciation	-0-	-0-	800	1,280	768	1,741	1,229	691	861	1,370
Donations	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	5,000	4,400
Dues & pub.	510	248	255	268	275	200	210	250	350	370
Meals & ent.	-0-	-0-	200	288	240	240	240	224	-0-	145
Moving	-0-	-0-	-0-	-0-	-0-	2,500	-0-	-0-	-0-	-0-
Subscrip.	-0-	380	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Office	485	-0-	150	200	245	250	350	400	600	620
Rent on prop.	3,336	1,668	1,668	2,076	2,307	-0-	-0-	-0-	-0-	-0-
Supplies	5,080	2,400	3,150	2,900	1,800	2,000	2,050	1,920	3,050	2,430
Tax & License	-0-	-0-	-0-	-0-	-0-	334	52	35	-0-	5
Telephone	-0-	-0-	-0-	-0-	530	550	320	335	510	560
Tools	-0-	510	1,900	1,470	1,150	3,248	6,002	4,050	5,015	5,600
Travel	-0-	-0-	-0-	-0-	-0-	1,980	1,675	1,375	52	-0-
Uniforms	-0-	-0-	513	530	540	620	536	565	585	605
Utilities	1,120	580	1,153	1,180	344	334	-0-	-0-	132	-0-
Total Expenses	(12,351)	(6,709)	(13,919)	(12,914)	(12,376)	(18,313)	(16,039)	(13,278)	(20,071)	(21,086)
Net Profit/(Loss)	(11,571)	(6,489)	(12,959)	(11,214)	(11,276)	(16,513)	(16,739)	(12,678)	(19,641)	(19,654)

In the notice of deficiency, respondent disallowed the net losses for 1992 and 1993 on the basis of the determination that Mr. Bushey's activity was not "entered into for profit". In the alternative, respondent determined that petitioners have not substantiated that they incurred the above expenses in excess of their repair activity income, if any, or that the expenses were ordinary and necessary.

As before, we initially must decide whether petitioners' repair activity was engaged in for profit. Upon reviewing the entire record, we conclude that, during 1992 and 1993, Mr. Bushey was engaged in the repair activity with the requisite profit objective.

We first look to the manner in which Mr. Bushey carried on the repair activity. Mr. Bushey managed some aspects of this activity in a businesslike fashion. He obtained a Fictitious Business Name Statement, a business license, and a separate bank account (albeit for a short period). Moreover, Mr. Bushey had a 30-year history of engaging in the repairing and troubleshooting activity and was very knowledgeable about the type of services he performed. Lastly, Mr. Bushey devoted much personal time and energy (his free weekend days) in carrying on this activity, an endeavor that did not have significant recreational aspects. See sec. 1.183-2(b)(3), Income Tax Regs.

Although Mr. Bushey's efforts were not successful in producing net profits, this may be the result of at least three factors: (1) The inability to adapt over time to changes in the electronics industry; (2) the increasing costs to maintain adequate tools; and (3) the claiming of expenses not properly allocable to the repair activity. We do not believe that the lack of reported net income, in this situation, negates the presence of a profit objective. We hold that Mr. Bushey engaged in the repair activity with a profit objective.

Nevertheless, petitioners are entitled only to deductions for ordinary and necessary expenses which are adequately substantiated.

Section 162(a) allows the deduction of "ordinary and necessary" expenses paid or incurred during the taxable year in carrying on any trade or business. Whether an expenditure is ordinary and necessary is a question of fact. Commissioner v. Heininger, 320 U.S. 467, 475 (1943). An ordinary and necessary expense is one which is appropriate and helpful to the taxpayer's business and which results from an activity which is a common and accepted practice. Boser v. Commissioner, 77 T.C. 1124, 1132 (1981), affd. without published opinion (9th Cir. 1983).

Deductions are a matter of legislative grace, and taxpayers must prove that they are entitled to the claimed deductions. Rule 142(a); INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992). They must keep sufficient records to establish deduction amounts. Sec. 6001; Meneguzzo v. Commissioner, 43 T.C. 824, 831-832 (1965). Generally, except as provided by section 274(d), when evidence shows that a taxpayer incurred a deductible expense, but the exact amount cannot be determined, the Court may approximate the amount. Cohan v. Commissioner, 39 F.2d 540, 543-544 (2d Cir. 1930). The Court, however, must have some basis upon which an estimate may be made. Vanicek v. Commissioner, 85 T.C. 731, 742-743 (1985).

A strict substantiation requirement exists under section 274(d)(4) for certain items listed under section 280F(d)(4) such as passenger automobiles. Taxpayers must substantiate by adequate records the following items in order to claim automobile deductions: The amount of each automobile expenditure, the automobile's business and total usage, the date of the automobile's use, and the automobile's business purpose. Sec. 274(d); sec. 1.274-5T(b)(6) and (c)(1), Temporary Income Tax Regs., 50 Fed. Reg. 46016 (Nov. 6, 1985).

To substantiate a deduction by means of adequate records, a taxpayer must maintain an account book, diary, log, statement of expense, trip sheets, and/or other documentary evidence which, in combination, are sufficient to establish each element of expenditure or use. Sec. 1.274-5T(c)(2)(i), Temporary Income Tax Regs., 50 Fed. Reg. 46017 (Nov. 6, 1985). Section 274(d) is an exception to the Cohan rule and prohibits the estimation of these expenses. Sanford v. Commissioner, 50 T.C. 823, 827-828 (1968), affd. per curiam 412 F.2d 201 (2d Cir. 1969); sec. 1.274-5T(a), Temporary Income Tax Regs., 50 Fed. Reg. 46014 (Nov. 6, 1985).

For the advertising, depreciation, dues and publications, and office expense deductions, petitioners did not submit documentary or testimonial evidence to adequately substantiate the amounts claimed on their returns. While Mr. Bushey did provide some canceled checks in the amount of $150.68 for payments to two newspapers, petitioners did not establish that these expenses pertained to the repair activity, as opposed to the dog-breeding activity or personal use. No other documentation was provided for any of the other items.

For the travel and meals and entertainment expenses, Mr. Bushey failed to present any documentary or testimonial evidence to satisfy the stringent requirements of section 274.

For the telephone expenses, while Mr. Bushey did submit what appears to be canceled checks to support his telephone expense deductions, petitioners are, nevertheless, not entitled to a home office deduction. The deductibility of this expense item is guided by sections 162 and 262, rather than section 280A. Green v. Commissioner, T.C. Memo. 1989-599. To the extent the disputed deductions represent the cost of residential basic local telephone service, section 262(b) prohibits the deductibility of that expenditure regardless of any business use. Moreover, to the extent petitioners incurred any toll charges for long distance service, they are required to identify these charges as personal or business calls. Mr. Bushey has failed to reveal what portion, if any, of those calls were business related. Hence, no telephone expense deduction will be allowed.

To support the supplies and tools deductions, Mr. Bushey submitted invoices for various tools and supplies in the amount of $2,595.90 for 1992 and $6,620.22 for 1993. He also submitted canceled checks in partial support of those invoices. To support the uniform deductions, Mr. Bushey submitted canceled checks written to the payees U.R.S. and Knapp Shoes in the amounts of $540.98 for 1992 and $152.57 for 1993. To support the tax and license deduction, Mr. Bushey submitted the application for a Fictitious Business Name Statement showing that $10 was paid in 1992 for that item. We hold that the above documentation is sufficient to entitle petitioners to deductions for those items for the years and amounts specified. We also find that those items are ordinary and necessary expenditures of the repair activity.

We note that Mr. Bushey presented receipts in the amount of $1,430 for various tools and equipment that were purchased at a 1992 auction, such as an air purifier, a refrigerator, a transformer, carts, and benches. Mr. Bushey testified that he sold many of these items at a profit to L.A. Die Casting soon after he purchased them. It is unclear whether these items are nondeductible capital assets having a useful life extending beyond the taxable year, see Ryman v. Commissioner, 51 T.C. 799, 802 (1969), or whether Mr. Bushey recouped his cost basis when the items were sold. Accordingly, no deduction will be allowed for these items.

Reviewed and adopted as the report of the Small Tax Case Division.

To reflect the foregoing,

Decision will be entered
under Rule 155.