

1 Bench Opinion by Special Trial Judge Larry L. Nameroff
2 Docket No. 5152-99S January 21, 2000

3 THE COURT: The Court has decided to render oral
4 findings of fact and opinion in this case and the following
5 represents the Court's oral findings of fact and opinion.

6 This case was heard pursuant to provisions of
7 section 7463 of the Internal Revenue Code in effect at the
8 time the petition was filed. The decision to be entered is
9 not reviewable by any other court and this opinion should
10 not be cited as authority.

11 Hereinafter in this bench opinion, and unless
12 otherwise indicated, all subsequent section references are
13 to the Internal Revenue Code in effect for the taxable year
14 in issue, and all rule numbers refer to the Tax Court Rules
15 of Practice and Procedure.

16 This bench opinion is made pursuant to the
17 authority granted by section 7459(b) and Rule 152.

18 Petitioner Leopold Marinov appeared pro se, and Ric
19 D. Hulshoff appeared on behalf of respondent.

20 Respondent determined a deficiency in petitioners'
21 1994 federal income tax in the amount of \$2,456.

22 The issue for decision is whether petitioners are
23 entitled to a mileage deduction greater than that allowed by
24 respondent in the notice of deficiency.

25 Some of the facts have been stipulated and they are

1 so found. Petitioners' mailing address was in Palos Verdes,
2 California, at the time of the filing of their petition.

3 During the year at issue Leopold Marinov,
4 hereinafter petitioner, was employed as a courier for
5 Kastelan Courier Service, hereinafter Kastelan. According
6 to petitioner he was paid an hourly wage of \$7, he provided
7 his own automobile, paid for his own automobile expenses,
8 and was not reimbursed for his expenses.

9 Kastelan closed its offices and ceased doing
10 business in February 1995, and subsequently filed for
11 bankruptcy. Petitioner stated that one day he went to work,
12 the doors were locked, and he has had no further contact
13 with anyone at Kastelan.

14 On their 1994 tax return petitioners claimed that
15 petitioner drove 95,000 business miles in 1994. Using the
16 standard mileage rate of 29 cents per mile petitioners
17 claimed a mileage deduction of \$27,550, plus \$400 for
18 parking fees and tolls, for a total of \$27,950 claimed as an
19 unreimbursed employee business expense on Schedule A,
20 Itemized Deductions.

21 In the notice of deficiency respondent allowed a
22 mileage deduction of \$9,720. Petitioner provided three
23 repair receipts for his vehicle which provide the odometer
24 readings on specific dates. The first receipt, dated
25 January 8, 1994, shows an odometer reading of 46,670, the

1 second receipt, dated April 20, 1994, shows an odometer
2 reading of 63,073, and the third receipt, dated July 9,
3 1994, shows an odometer reading of 70,629. Extrapolating
4 from these receipts respondent determined that petitioner
5 drove 33,517 miles in 1994, resulting in the allowed
6 deduction of \$9,720. The balance of 18,230 is in dispute.
7 (We note that paragraph 8 of the stipulation of facts
8 provides that the respondent allowed a mileage deduction of
9 \$9,107, which is lower than the amount allowed in the notice
10 of deficiency. We believe the stipulation of facts is in
11 error and we rely on the mileage deduction allowed in the
12 notice of deficiency.)

13 Section 162(a) allows the deduction of ordinary and
14 necessary business expenses paid or incurred during the
15 taxable year in carrying on any trade or business.
16 Taxpayers must keep sufficient records to establish
17 deduction amounts. See section 6001; Meneguzzo v.
18 Commissioner, 43 T.C. 824, 831-832, a 1965 decision.

19 Section 274(d) imposes stringent substantiation
20 requirements with respect to any listed property, as defined
21 in section 280F(d)(4), unless the taxpayer substantiates by
22 adequate records or sufficient evidence to corroborate the
23 taxpayer's own testimony: (1) The amount of the
24 expenditure or use based upon the appropriate measure,
25)mileage may be used in the case of automobiles); (2) the

1 time and place of the expenditure or use; (3) business
2 purpose of the expenditure or use, and (4) the business
3 relationship of the taxpayer to each expenditure or use.

4 Listed property includes any passenger automobile.
5 See section 280F(d)(4)(A)(i). To substantiate a deduction
6 by means of adequate records a taxpayer must maintain an
7 account book, diary, log, statement of expense, trip sheets,
8 and/or other documentary evidence which, in combination, are
9 sufficient to establish each element of expenditure or use.
10 See section 1.274-5T(c)(2)(i), Temporary Income Tax Regs.,
11 50 Fed. Reg. 46017 (November 6, 1985).

12 Petitioner contends that he was required by
13 Kastelan to maintain a daily trip log which he submitted
14 along with all gas receipts to the Kastelan office. When
15 the office was closed in February 1995 all of petitioner's
16 records were allegedly in the office and he alleges that he
17 has been unable to retrieve them.

18 If a taxpayer can establish that at one time he or
19 she possessed adequate records and these records were lost
20 or destroyed through circumstances beyond his or her control
21 the taxpayer is entitled to substantiate the deductions by
22 reconstructing the expenditures through other credible
23 evidence. See section 1.274-5(c)(5), Income Tax Regs.

24 Petitioner did not attempt to contact the attorney
25 or the trustee handling Kastelan's bankruptcy proceeding

1 with respect to recovering his records. We are skeptical as
2 to petitioner's contention that Kastelan required employees
3 to submit daily trip logs, and particularly gas receipts,
4 when there was no reimbursement for automobile expenses.

5 Petitioner did not have his records in order to
6 prepare the 1994 return and claims that he figured that in
7 1994 he drove about 330 miles 6 days a week, which is in
8 excess of 100,000 miles for the year. Petitioner states
9 that his return preparer would only claim 95,000 miles for
10 1994. Petitioner has not attempted to reconstruct his
11 records nor has petitioner offered any documentation in
12 support of his position. On the other hand, the repair
13 receipts on petitioner's automobile indicate that it was
14 used between January 8, 1994 and July 9, 1994, for 23,959
15 miles. If we considered a consistent use throughout the
16 year the total use would be about 48,000 miles, without
17 taking into account any nonbusiness usage. Thus,
18 respondent's determination appears reasonable.

19 We therefore find that petitioner has not satisfied
20 the strict substantiation requirements of section 274(d) and
21 respondent is sustained on this issue.

22 Additionally, petitioner has not offered any
23 evidence or testimony on the \$400 claimed deduction for
24 parking fees and tolls. Accordingly, we assume that
25 petitioners concede that amount.

1 To give effect to the foregoing, 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 10:35 a.m., the hearing in the
6 above-entitled matter was adjourned.)

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UNITED STATES TAX COURT
Los Angeles, CA 90012

February 10, 2000

LEOPOLD & SYLVIA MARINOV,)	
)	
Petitioners,)	
)	
v.)	Docket No. 5152-99S
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

NOTICE OF SERVICE OF TRANSCRIPT

Pursuant to Rule 152(b), Rules of Practice and Procedure of this Court, there is transmitted herewith to petitioners and to respondent a copy of the pages of the transcript of the trial of the above case before Special Trial Judge Larry L. Nameroff, at Los Angeles, California, on Friday, January 21, 2000, containing his oral findings of fact and opinion rendered at the conclusion of the trial.

In accordance with the oral findings of fact and opinion, decision will be entered for respondent.

/s/ Charles S. Casazza
Charles S. Casazza
Clerk of the Court

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L.A. DISTRICT COUNSEL

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