

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Lori Michelle Patitz - n/k/a Lori Michelle Moody
_____ — PETITIONER

vs.

The Commissioner of the Internal Revenue Service
_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals for the Eleventh Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Lori Michelle Patitz (n/k/a Lori Michelle Moody)

(Your Name)

7709 Paradise Drive

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APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12440

Non-Argument Calendar

LORI MICHELLE PATITZ,
ANDREW ROBERT MOODY,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 2784-19

Before ROSENBAUM, ABUDU, and WILSON, Circuit Judges.

PER CURIAM:

Petitioners-Appellants Lori Patitz and Andrew Moody, proceeding pro se, appeal the Tax Court's opinion disallowing certain deductions for tax years 2015 and 2016 and its order assessing deficiencies for both years and a penalty for 2016 against them. After careful review, we affirm.

I. BACKGROUND

In November 2018, the Internal Revenue Service (IRS) mailed a Notice of Deficiency to Appellants, explaining that they owed income tax for tax years 2015 and 2016, based on deductions claimed on their jointly filed tax return. As relevant, in 2015, Patitz claimed \$36,251 in Schedule A deductions. Patitz also claimed \$23,046 in Schedule C deductions for personal business expenses in 2015. In 2016, Patitz claimed \$37,921 in Schedule A deductions, including \$28,074 in medical expenses. Patitz claimed \$41,642 in Schedule C deductions for personal business expenses in 2016.

The IRS disallowed all Appellants' itemized Schedule A deductions for 2015, instead crediting them with the standard deduction, and disallowed all Appellants' itemized Schedule A deductions for 2016 except a home interest deduction. It disallowed all Appellants' Schedule C deductions for both years. It determined that Appellants failed to substantiate the Schedule C deductions because they did not establish that the expenses occurred or were

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paid during the tax year toward ordinary and necessary business purposes. It concluded that Appellants owed income tax deficiencies for 2015 and 2016 of \$7,495 and \$15,366, respectively, and penalties under 26 U.S.C. § 6662(a) for 2015 and 2016 of \$1,499 and \$3,073.20, respectively. Appellants challenged the deficiency judgment and associated penalties.

The Tax Court held a hearing. The Commissioner conceded that Appellants substantiated \$18,598.15 in Schedule A medical expenses but insisted that Appellants failed to substantiate the remaining medical expenses, the alleged Schedule A unreimbursed employee expenses, and the alleged Schedule C expenses. At the hearing, the Commissioner submitted records from Patitz's employer, Ricoh USA, Inc. (RicoH), showing that it reimbursed Patitz in 2015 and 2016 for an unspecified number of business miles on twenty-nine occasions, personal meals on many occasions, parking on five occasions, business meals with clients on five unspecified occasions, lodging on fifteen occasions, and several miscellaneous promotional expenses. Many receipts submitted to substantiate Patitz's tax deductions matched transactions listed in the RicoH expense reports as reimbursed.

Appellants submitted dated and handwritten receipts for several \$2,000 payments with no stated purpose; several hotel receipts; medical and dental bills, some of which indicated payment; receipts for medical supplies; and receipts for postage, parking, office supplies, meals, a laptop computer, and small gifts from various stores. Some medical and dental bills had handwritten notes

indicating the method and date of payment. The exhibits included Patitz's mileage logs from 2015 and 2016. For each entry, Patitz listed the date and miles driven and identified the generic business purpose as "Sales Calls/Customer Visits" but did not specify whether the business was Ricoh or Patitz's insurance business. Patitz testified that she "combined the mileage on those logs" for her Ricoh work and the insurance business in 2015. Patitz was reimbursed for a small portion of the 55,461 business miles in 2015 and 41,480 business miles in 2016.

Patitz testified that Appellants lost about six boxes of records documenting their deductible expenses because of water damage during Hurricane Matthew. When she was reimbursed for a Ricoh expense, she noted the reimbursement on the receipt, then referenced handwritten notes on receipts in evidence.

Patitz further testified about her claimed Schedule C deductions. She operated her insurance business out of her home and claimed a \$536 use-of-home deduction. She deducted \$1,789 in meals and entertainment for providing food when she met with clients to sell insurance plans. She deducted an additional \$987 that she attributed to brochures, pamphlets, and handouts; \$192 for LegalShield; \$1,487 for repairs and maintenance, but she did "not remember where that came from or what that was"; \$365 for errors-and-omissions insurance; \$3,650 for the portion of internet use she attributed to the insurance business; \$3,345 in office expenses, including gifts to prospective clients; \$10,695 in car and truck

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expenses, incorporating 12,732 miles attributable to the insurance business and expenses related to roadside assistance and parking.

Despite initially claiming \$28,074 in medical expenses, Patitz testified that her deductible medical expenses in tax year 2016 were \$41,647.78, and she moved to submit additional medical receipts. She explained that she claimed only expenses related to her father (her dependent), but she did not claim expenses for her three surgeries that year or Moody's children's medical care. She stated that her father's assisted living center charged \$3,800 a month, with \$1,800 due in a monthly check and \$2,000 due in cash. But the IRS only credited her for the check payments. Patitz submitted the handwritten receipts she received for her cash payments into the record. Appellants filed a copy of a letter from Patitz's Aunt Shirley stating that she enclosed \$3,000 in cash for Patitz's father's care, with a postscript asking Patitz to "[p]lease pay [her] back" when possible. She offered a spreadsheet summarizing medical receipts with the amounts, dates, vendors, patients, and fees for a total of \$16,602.17. But in her post-trial brief, Patitz claimed \$48,000 in medical expenses.

Patitz also testified about her Ricoh expenses in 2016. She acknowledged that she "screwed up big time" by claiming deductions for all her mileage, including Ricoh miles and insurance miles, under Schedule C. She stated that, of the total 41,480 miles she claimed for 2016, 31,110 miles resulted from her position with Ricoh and 10,370 miles resulted from her insurance business. She stated that she claimed \$4,770 in meals and entertainment based on

credit card statements, even though the receipts on file reflected only \$407 in charges. Patitz testified that the credit cards were shut down for fraud so she could not provide more payment information. She claimed \$985 in supplies, including postage, marketing materials, and a computer; \$2,843 to repair her roof after the hurricane; \$386 for an online legal services company; an unspecified amount for errors and omissions insurance, which “went up drastically” because she was courting businesses and not individuals; \$3,792 in utilities for faxing, internet, and cloud storage; \$16,165 in car and truck expenses; an unspecified amount for travel-related expenses; and a home interest deduction that she withdrew.

The Tax Court issued an opinion finding that Appellants had substantiated some, but not all, of their disputed deductions for 2015 and 2016. Specifically, the Tax Court found that Appellants were credible at the hearing about the claimed deductions for unreimbursed mileage on behalf of their employers. It allowed Patitz to deduct her Ricoh miles in tax year 2015. But it found that Appellants did not substantiate any meal and entertainment costs or business costs for 2015 or 2016, stating that it was not convinced that Appellants could not access any bank statements, credit card statements, or other evidence to substantiate their claims in place of the receipts allegedly destroyed by Hurricane Matthew.

It also determined that Appellants did not substantiate their claimed medical expenses deductions for tax year 2016. It stated that Appellants did not establish how much they paid of the bills they submitted into evidence because they failed to show they

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were not reimbursed by insurance for any expenses and Patitz received money from her family without testifying about repaying the alleged loans. It also stressed, again, that it was “not persuaded” that bank statements, credit card statements, or other evidence could not have substantiated the medical expenditures. The Tax Court found that Appellants did not substantiate any Schedule C deductions for 2015 or 2016 with business records, accounting records, bank statements, or credit card statements.

Finally, the Tax Court determined that Appellants were “liable for accuracy-related penalties under § 6662(a) to the extent Rule 155 computations show there [we]re underpayments and substantial understatements of income tax for 2015 and 2016.” After receiving the computations, the Tax Court issued its deficiency order. For 2015, it determined that Appellants owed a deficiency of \$5,238 but were not liable for any penalty. For 2016, it determined that Appellants owed a deficiency of \$14,241 and were liable for a penalty of \$2,848.20. Appellants timely appealed.

II. STANDARD OF REVIEW

We review the Tax Court’s factual findings for clear error and its legal conclusions de novo. *Creel v. Comm’r*, 419 F.3d 1135, 1139 (11th Cir. 2005). The Tax Court’s factual findings based on credibility assessments are entitled to particular deference. *Greenberg v. Comm’r*, 10 F.4th 1136, 1155 (11th Cir. 2021). “A finding of fact is clearly erroneous if the record lacks substantial evidence to support it, so that our review of the entire evidence leaves us with the definite and firm conviction that a mistake has been

committed.” *Creel*, 419 F.3d at 1139 (quotation marks omitted). The Commissioner’s determination of a deficiency is presumed correct, and the taxpayer has the burden of proving by a preponderance of the evidence that it is incorrect. *Bone v. Comm’r*, 324 F.3d 1289, 1293 (11th Cir. 2003). Whether an amount is deductible as an ordinary and necessary business expense is a factual finding reviewed for clear error. *See id.*

III. ANALYSIS

Appellants argue that the Tax Court erred in disallowing Patitz’s claimed Schedule A mileage deduction for 2016 because she provided sufficient evidence to substantiate the unreimbursed miles she drove for her employer. They also argue that the Tax Court erred in disallowing a portion of their claimed medical-expenses deduction for 2016 because they provided sufficient evidence to substantiate their total unreimbursed expenditures. Finally, they claim that the Tax Court erred in disallowing Patitz’s claimed Schedule C deductions related to her insurance business because they provided sufficient evidence for the Tax Court to estimate Patitz’s business expenses in 2015 and 2016. We address each argument in turn.

A.

A taxpayer bears the burden of submitting evidence that supports her claim of entitlement to a deduction and the amount of that entitlement. *Gatlin v. Comm’r*, 754 F.2d 921, 923–24 (11th Cir. 1985). “Because the taxpayer is privy to the facts that substantiate a deduction, he must bear the burden of proving his right to,

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and amount of, a claimed deduction.” *Id.* at 924. Every taxpayer must keep sufficient records to file an accurate tax return and establish claimed deductions. *See* 26 U.S.C. § 6001.

A taxpayer is generally allowed to deduct “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.” 26 U.S.C. § 162(a); *see also* Treas. Reg. § 1.162-1(a). “The term ‘trade or business’, when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162,” with some exceptions for public officials and religious employees. 26 U.S.C. § 1402(c). Deductions for employee business expenses are considered “miscellaneous itemized deductions,” which means they are deductible only to the extent that in aggregate they exceed two percent of adjusted gross income. *See id.* § 67. Most deductions fall under Schedule A, including those related to working for another party, while self-employment deductions fall under Schedule C.¹

A taxpayer cannot take a deduction related to property listed in 26 U.S.C. § 280F(d)(4), which includes personal vehicles used for business purposes, without substantiation. 26 U.S.C. § 274(d). A

¹ Internal Revenue Serv., 2015 Instructions for Schedule A (2015), <https://www.irs.gov/pub/irs-prior/i1040sca--2015.pdf>; Internal Revenue Serv., 2016 Instructions for Schedule A (2016), <https://www.irs.gov/pub/irs-prior/i1040sca--2016.pdf>; Internal Revenue Service, 2015 instructions for Schedule C (2015), <https://www.irs.gov/pub/irs-prior/i1040sc--2015.pdf>; Internal Revenue Service, 2016 instructions for Schedule C (2016), <https://www.irs.gov/pub/irs-prior/i1040sc--2016.pdf>.

taxpayer claiming a deduction with respect to a personal vehicle must explain the use of the vehicle, including total mileage and mileage figures for business, commuting, and personal use. Treas. Reg. § 1.274-5T(d)(2)(i).

Appellants argue that because the Tax Court found Patitz credible and allowed the Schedule A mileage deduction for tax year 2015, the Tax Court should have granted the same deduction for tax year 2016. But this argument lacks merit. The IRS and Tax Court had to review each tax year and the requested deductions individually. While the Tax Court found Patitz credible on the mileage deductions, that does not alleviate Patitz's requirement to substantiate the deduction, which she did for tax year 2015 but not 2016. And as Patitz testified at the hearing, she combined mileage for her employment with Ricoh and her self-employment; she could not specify what percentage was used for which employment.² Even if Patitz had specified the number of miles attributable to Ricoh, she did not say how many went unreimbursed. And despite Patitz testifying that Ricoh did not reimburse her for mileage in 2016, Ricoh's records showed that she received reimbursement through 2017.

The Tax Court did not clearly err in denying Patitz a deduction for her unreimbursed mileage for Ricoh in 2016 because she did not claim a mileage deduction under Schedule A in 2016 and

² As the Commissioner correctly notes, at the hearing, Patitz testified that 75 percent of her mileage was for Ricoh, but then in post-trial brief, she asserted 65 percent followed by 75 percent in the post-trial reply brief.

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her evidence and testimony did not substantiate the number of miles she wished to deduct or whether those miles were unreimbursed.

B.

Appellants argue that the Tax Court erred by failing to allow Patitz to deduct her full medical expenses for 2016. They claim she substantiated the claimed expenses with receipts reflecting the names and addresses of the relevant patient and the amount and date of the payment. The Commissioner conceded \$18,598 in deductible medical expenses, the amount for which it received documentation showing the amount actually paid by Patitz, as required by the Treasury Regulations. But the Tax Court concluded that Patitz did not show that the other medical bills were paid in full and without insurance reimbursement.

A taxpayer is generally allowed to deduct medical expenses “paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent.” 26 U.S.C. § 213(a). To prove she is entitled to a deduction under 26 U.S.C. § 213, a taxpayer must substantiate her medical expenses with “the name and address of each person to whom payment for medical expenses was made and the amount and date of the payment thereof in each case.” Treas. Reg. § 1.213-1(h). And the taxpayer must satisfy the general substantiation requirements of 26 U.S.C. § 6001.

Despite testifying that she paid the larger medical bills, Patitz failed to substantiate the remaining amounts with payment

information, including dates, amounts, and “the name and address of each party to whom the payment was made.” Treas. Reg. § 1.213-1(h). Patitz substantiated most of the other medical expenses using bills, but many of which did not come with payment information, only Patitz’s handwritten notes indicating she paid using “one-time use credit cards.” Thus, Patitz has failed to show her entitlement to the deduction. *Gatlin*, 754 F.2d at 924. The Tax Court did not clearly err in finding Appellants failed to substantiate their claimed medical expenses for 2016.

C.

Appellants argue that the Tax Court erred in disallowing Patitz’s claimed Schedule C deductions related to her insurance business because they provided sufficient evidence for the Tax Court to estimate Patitz’s business expenses in 2015 and 2016.³

³ Patitz asked the Tax Court to apply the *Cohan* rule established in *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930) and later codified in the Department of Treasury’s regulations, to estimate the appropriate Schedule C deductions for 2015 and 2016 from the information she provided because she lost many records of her business expenses in Hurricane Matthew. If a taxpayer shows that “failure to produce adequate records is due to the loss of such records through circumstances beyond the taxpayer’s control, such as destruction by fire, flood, earthquake, or other casualty, the taxpayer shall have a right to substantiate a deduction by reasonable reconstruction of his expenditures or use.” Treas. Reg. § 1.274-5T(c)(5). If records are lost in this way, the Tax Court may rely on “secondary evidence,” including “credible testimony” by the taxpayer, to substantiate claimed deductions. *Boyd v. Comm’r*, 122 T.C. 305, 320-21 (2004). But the Tax Court is “not bound to accept unverified, undocumented testimony of a taxpayer.” *Villarreal v. Comm’r*, 76 T.C.M. (CCH) 920 (1998). Here, the Tax Court recognized that Hurricane Matthew caused

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First, Appellants argue that Patitz was entitled to a home office deduction. A taxpayer is generally allowed to deduct an expense connected with the use of the taxpayer's home for business "to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis . . . as the principal place of business for any trade or business of the taxpayer." 26 U.S.C. § 280A(c)(1)(A). Like all deductions, Patitz must substantiate the deduction. *Gatlin*, 754 F.2d at 924. Patitz failed to do so because she admitted that she used the home office for both her Ricoh work and her insurance business, meaning the use of her home office would be partially deductible under Schedule A and partially deductible under Schedule C. But she could not explain what portion of time was spent for Ricoh and for her insurance business to substantiate either deduction.

Next, Appellants assert that Patitz was entitled to a deduction for her errors and omissions insurance and business expense such as postage, parking, office supplies, and customer gifts. A taxpayer is generally allowed to deduct "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." 26 U.S.C. § 162(a). But like Patitz's other deductions, she has failed to substantiate these. Patitz identified a cost of \$365 for the errors and omissions insurance in 2015 but did not provide any information for 2016. Despite providing the cost

Appellants to lose some records, but it was not required to accept Patitz's testimony at face value because she did not estimate many of the business expenses that factor into those deductions. *See id.*

for 2015, Patitz did not submit any evidence of payment. As for the other business expenses, Patitz provided receipts for some miscellaneous transactions, but the receipts alone did not establish if the associated expenses were personal or related to her insurance business.

Accordingly, the Tax Court did not err in determining that Appellants did not show that Patitz was entitled to Schedule C deductions related to her insurance business in 2015 or 2016 because they asked the Tax Court to estimate an appropriate deduction from records they provided, but those records did not substantiate any expenses or provide a basis to extrapolate annual deductions.⁴

IV. CONCLUSION

Thus, we affirm the Tax Court's opinion and deficiency order.

AFFIRMED.

⁴ To the extent that Appellants argue that the Tax Court erred in assessing an accuracy-related penalty against them under 6 U.S.C. § 6662(d)(1)(A), we find that the Tax Court did not err in doing so. The Tax Court did not find that the 2016 penalty was excused by good faith, noting specifically that it did not believe that Patitz could not locate any credit card statements, bank statements, or other evidence to corroborate actual medical and business expenditures. And this court regards the Tax Court's credibility findings with even more deference than other factual findings. *Greenberg v. Comm'r*, 10 F.4th 1136, 1155 (11th Cir. 2021).

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 23, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-12440-CC
Case Style: Lori Patitz, et al v. Commissioner of Internal Revenue
Agency Docket Number: 2784-19

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing. Among other things, **a petition for rehearing must include a Certificate of Interested Persons.** See 11th Cir. R. 40-3.

Costs

No costs are taxed.

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information: 404-335-6100

Case Administration: 404-335-6135

CM/ECF Help Desk: 404-335-6125

Attorney Admissions: 404-335-6122

Capital Cases: 404-335-6200

Cases Set for Oral Argument: 404-335-6141

OPIN-1 Ntc of Issuance of Opinion

APPENDIX B



United States Tax Court

Washington, DC 20217

LORI MICHELLE PATITZ & ANDREW
ROBERT MOODY,
PETITIONERS

v.

Docket No. 2784-19.

COMMISSIONER OF INTERNAL
REVENUE,

RESPONDENT

DECISION

On September 27, 2022, this Court served our Opinion in this case, T.C. Memo. 2022-99, stating at the end thereof, “[d]ecision will be entered under Rule 155.”¹ Pursuant to Rule 155 the parties were required to file their agreed or unagreed computations within 90 days of service of our Opinion.

On October 7, 2022, respondent filed his Computation for Entry of Decision (Computation). On November 7, 2022, petitioners filed a Motion for Leave to File Computation for Entry of Decision seeking to file their computation pursuant to Rule 155. On November 10, 2022, we granted petitioners’ Motion and ordered that on or before January 6, 2023, petitioners file their agreed or unagreed computation. On January 6, 2023, petitioners filed their Opposition to Computation for Entry of Decision (Opposition).

Upon review, this Court noted discrepancies in respondent’s Computation. Additionally, this Court noted that petitioners failed to submit separately or include with their Opposition an alternate computation in compliance with Rule 155(b), which requires that petitioners submit “the amount believed by such party to be in accordance with the Court’s findings and conclusions.”

On February 8, 2023, this Court ordered: (1) on or before March 10, 2023, respondent shall file a supplement to his Computation explaining the discrepancies between his Computation and the Court’s Opinion, and if necessary, include a revised computation, and (2) on or before April 10, 2023, petitioners may file a supplement to their Opposition in compliance with Rule 155. The Court’s February 8, 2023, Order advised petitioners that we may enter our decision in accordance with the submitted

¹ Unless otherwise indicated all Rule references are to the Tax Court Rules of Practice and Procedure. All dollar amounts are rounded to the nearest dollar.

Entered and Served 04/21/23

computation if petitioners fail to file an objection or an alternative computation.

On March 1, 2023, respondent timely filed a supplement to his Computation (Revised Computation) correcting the discrepancies.

Petitioners did not file a supplement to their Opposition.

Upon due consideration, it is

ORDERED AND DECIDED that there are income tax deficiencies and a penalty due from petitioners as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Penalty/I.R.C. § 6662</u>
2015	\$5,238	-
2016	\$14,241	\$2,848.20

(Signed) Christian N. Weiler
Judge

United States Tax Court

T.C. Memo. 2022-99

LORI MICHELLE PATITZ AND ANDREW ROBERT MOODY,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 2784-19.

Filed September 27, 2022.

Lori Michelle Patitz and Andrew Robert Moody, pro se.

Jeremy D. Cameron, A. Gary Begun, and Mark J. Tober, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

WEILER, *Judge*: Respondent determined that petitioners, Mrs. Patitz and Mr. Moody, are liable for federal income tax deficiencies of \$7,495 and \$15,366 and accuracy-related penalties pursuant to section 6662(a)¹ of \$1,499 and \$3,073 for 2015 and 2016, respectively. Petitioners invoked the Court's jurisdiction by timely filing a Petition for redetermination. Petitioners resided in Florida when the Petition was filed.

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. All dollar amounts are rounded to the nearest dollar.

Served 09/27/22

[*2] After concessions,² the issues for decision are whether petitioners are (1) entitled to Schedule A deductions for 2015 and 2016, (2) entitled to Schedule C deductions for 2015 and 2016, and (3) liable for accuracy-related penalties under section 6662(a) for 2015 and 2016.

FINDINGS OF FACT

I. *Petitioners' Backgrounds*

A. *Mrs. Patitz*

During 2015 and 2016 Mrs. Patitz was employed by Ricoh USA, Inc. (Ricoh), in various roles. During this same period she also worked as a self-employed contractor selling life insurance policies.

As a Ricoh account executive, Mrs. Patitz was responsible for reaching out to all current and potential customers in Broward County, Florida. As a Ricoh major account executive, she was responsible for calling on all current and potential customers in Miami-Dade County, Florida. Additionally, as a Ricoh employee, she was given "activity standards" that outlined what was expected of her in her roles as an account executive and a major account executive. The activity standards required her to meet weekly sales goals with potential customers. As an account executive and a major account executive, she received \$200 and \$350 monthly business expense stipends, respectively, to offset her business expenses.

In 2016 Mrs. Patitz continued to work for Ricoh in her role as a major account executive, and beginning in or around June 2016 she transitioned to a digital imaging specialist position. This position required her to travel between Jacksonville, Orlando, and Tampa, Florida. As a digital imaging specialist her responsibilities included traveling to and from Ricoh client sites to scan and digitize client records. Since Ricoh would reimburse her for travel expenses incurred outside of Jacksonville, Mrs. Patitz's weekly mileage expenses accounted only for her local trips in Jacksonville.

² Respondent concedes that petitioners are entitled to partial deductions for expenses reported on their 2016 Schedule A, Itemized Deductions, for medical expenses of \$18,598. Petitioners concede they are not entitled to deductions claimed on Schedule C, Profit or Loss From Business, for a mortgage interest expense for 2016 or partial car and truck expenses for 2015 and 2016.

[*3] While still working full time for Ricoh, Mrs. Patitz obtained her insurance license and in 2015 began expanding her insurance business, selling supplemental insurance policies through PMA USA. She traveled to various company worksites with the goal of selling policies to the employees. When she was not traveling between worksites, Mrs. Patitz conducted business from her home office. She continued to sell life insurance policies during 2016. However, she ultimately transitioned from direct-to-individual sales to selling packaged insurance plans to various employers.

B. *Mr. Moody*

During 2015 and part of 2016 Mr. Moody was employed by Blue Streak Courier (Blue Streak) as an area manager responsible for managing the south Florida region. Specifically, he served the area spanning Vero Beach to Key West, Florida.

Mr. Moody's duties included the delivery of "on-demand" packages as well as packages that other delivery couriers either left behind or were unable to deliver. His duties also included ensuring that the couriers were working in a professional and efficient manner and that the warehouses were properly maintained. He was required to travel to Blue Streak's warehouses weekly and occasionally would have to stay overnight in hotels. Blue Streak paid hotel expenses while he was traveling.

Mr. Moody continued to work for Blue Streak until petitioners moved from Fort Lauderdale, Florida, to Jacksonville where he began a new career as a teacher and was employed during the latter half of 2016.

II. *Petitioners' 2015 Tax Return*

Using married filing jointly status petitioners timely filed their joint 2015 Form 1040, U.S. Individual Income Tax Return (2015 joint return), reporting income of \$103,107 from Forms W-2, Wage and Tax Statement. Petitioners attached Schedule A to their 2015 joint return (2015 Schedule A) and reported unreimbursed employee expenses of \$37,906.

Petitioners also attached Schedule C to their 2015 joint return for Mrs. Patitz's insurance business, reporting gross receipts of \$3,736 and expenses totaling \$23,046, which resulted in a business loss of \$19,310.

[*4] A. *Schedule A Expenses*

Petitioners attached to their 2015 joint return Forms 2106, Employee Business Expenses, reporting expenses deducted as Schedule A unreimbursed employee expenses, which are detailed below.

1. *Vehicle Expenses*

Mrs. Patitz reported 37,250 business miles and claimed a vehicle expense deduction of \$21,419. Mr. Moody reported business miles of 19,970 and claimed a vehicle expense deduction of \$11,483.³

Petitioners each kept handwritten contemporaneous mileage logs while traveling and subsequently transferred the entries into electronic logbooks.

2. *Meals and Entertainment Expenses*

Mrs. Patitz and Mr. Moody reported meals and entertainment expenses of \$7,322 and \$3,546, respectively.

Mrs. Patitz provided a single Denny's restaurant receipt; however, petitioners did not otherwise produce any documentation such as bank statements, itemized receipts, or credit card statements to substantiate their meals and entertainment expenses.

3. *Tool and Supply Expenses*

Mr. Moody reported tool and supply expenses of \$1,455. He did not provide any bank statements, itemized receipts, or credit card statements related to his tool and supply expenses, nor did he provide any documentation indicating that Blue Streak employees were required to purchase their own tools or supplies to perform their duties.

4. *Uniform Expenses*

Mr. Moody reported uniform expenses of \$355. He did not provide any bank statements, itemized receipts, or credit card statements related to his uniform expenses, nor did he provide any documentation indicating that Blue Streak employees were required to purchase uniforms.

³ Mr. Moody's 2015 vehicle expenses after reimbursement are \$8,568.

[*5] 5. *Other Business Expenses*⁴

Mrs. Patitz reported other business expenses of \$675. Included in these expenses are \$500 for an iPad used for work presentations and \$150 for a keylike device Ricoh account executives use to unlock and read Ricoh machine data. She paid for the keylike device in cash. She did not explicitly identify her remaining other business expenses.

Mr. Moody reported other business expenses of \$245 but did not identify what they comprised.

Petitioners did not provide any bank statements, itemized receipts, or credit card statements regarding their other business expenses.

B. *Schedule C Expenses*

Mrs. Patitz reported the following Schedule C expenses for 2015:

⁴ For purposes of this Report, other business expenses are employee business expenses reported on Forms 2106 other than vehicle expenses, parking fees, tolls, transportation expenses, travel expenses while away from home overnight, and meals and entertainment expenses. Though the other business expenses were not specified on Forms 2106, petitioners ultimately disclosed at trial what some of these other expenses comprised.

[*6]

<i>Expense</i>	<i>Amount</i>
Business Use of Home	\$536
Meals and Entertainment	1,789
Supplies	987
Repairs and Maintenance	1,487
Legal and Professional Services	192
Insurance (Other than Health)	365
Utilities	3,650
Office	3,345
Car and Truck	10,695
Total	\$23,046

Mrs. Patitz did not provide any records, bank statements, itemized receipts, or credit card statements substantiating her 2015 Schedule C expenses.

III. *Petitioners' 2016 Tax Return*

Using married filing jointly status, petitioners timely filed their joint 2016 Form 1040 (2016 joint return) reporting Form W-2 income of \$163,927. They attached Schedule A claiming deductions for medical expenses of \$28,074 and unreimbursed employee expenses of \$5,716.⁵

Petitioners also attached Schedule C to their 2016 joint return for Mrs. Patitz's insurance business, reporting gross receipts of \$955 and expenses totaling \$39,350, which resulted in a business loss of \$38,395.

⁵ On their 2016 Schedule A petitioners also claimed deductions for home mortgage interest of \$10,753, state and local tax of \$3,224, and charitable contributions of \$3,800; however, none of these amounts is in dispute. Petitioners' claimed 2016 Schedule A deductions total \$37,921.

[*7] A. *Schedule A Expenses*

1. *Employee Business Expenses*

Petitioners attached to their 2016 joint return Forms 2106 reporting expenses deducted as Schedule A unreimbursed employee expenses, which are detailed below.

a. *Vehicle Expenses*

Mr. Moody reported 8,230 business miles and claimed a vehicle expense deduction of \$4,444.⁶ He maintained a handwritten contemporaneous mileage log while traveling and subsequently transferred the entries into an electronic logbook.

b. *Meals and Entertainment Expenses*

Mr. Moody reported meals and entertainment expenses of \$675. He did not provide any bank statements, itemized receipts, or credit card statements to substantiate these expenses. Moreover, he did not provide documentation indicating that his employment as a Blue Streak area manager required him to incur meals and entertainment expenses.

c. *Other Business Expenses*

Mrs. Patitz reported other business expenses of \$79 but did not identify what they comprised. Mr. Moody reported other business expenses of \$855. While this amount includes teaching expenses of \$524, Mr. Moody did not otherwise identify the remainder.

Petitioners produced bank statements and itemized receipts relating to Mr. Moody's teaching expenses but did not otherwise provide any documentation to substantiate their other business expenses.

2. *Medical Expenses*

Petitioners deducted medical expenses of \$28,074.⁷ They provided receipts indicating medical expenses on behalf of Mrs. Patitz's father, as well as medical expenses they incurred on behalf of themselves and their

⁶ In 2016 Mr. Moody did not receive reimbursement from his employer for his vehicle expenses.

⁷ At trial Mrs. Patitz testified that the actual deduction should be \$41,648. This amount was further increased on brief to \$48,000.

[*8] dependent children. Petitioners did not provide accompanying bank statements or credit card statements substantiating these expenses.⁸

B. *Schedule C Expenses*

Mrs. Patitz reported the following Schedule C expenses for the 2016 tax year:

<i>Expense</i>	<i>Amount</i>
Business Use of Home	\$2,292
Meals and Entertainment	4,770
Supplies	985
Repairs and Maintenance	2,483
Legal and Professional Services	386
Insurance (Other than Health)	2,220
Utilities	3,792
Office	1,679
Car and Truck	16,165
Travel	1,563
Mortgage Interest	5,307
Total	\$41,642

Mrs. Patitz did not provide any records, bank statements, itemized receipts, or credit card statements substantiating her 2016 Schedule C expenses.

⁸ At trial Mrs. Patitz admitted receiving financial assistance from family members to offset the cost of some of the medical expenses she incurred on behalf of her father. There is no indication in the record that Mrs. Patitz paid back any of the money she received to offset these expenses.

[*9] IV. *Notice of Deficiency*

In a civil penalty approval form dated August 6, 2018, Sarah Muchow made the initial determination to assert accuracy-related penalties for 2015 and 2016. Ms. Muchow's then-immediate supervisor, Morgan Grieco, signed the civil approval penalty form on August 7, 2018.

On November 7, 2018, respondent issued petitioners a notice of deficiency based on a finding of petitioners' lack of substantiation for certain claimed deductions and failure to establish ordinary and necessary business purposes for certain claimed deductions. Respondent disallowed deductions for all Schedule A expenses reported on petitioners' Forms 2106 for 2015 and applied the standard deduction to petitioners' 2015 joint return. Respondent also disallowed \$19,354 of deductions petitioners claimed on their 2016 Schedule A. Lastly, respondent disallowed all deductions claimed on Schedules C for 2015 and 2016. Respondent determined that petitioners are liable for tax deficiencies of \$7,495 and \$15,366 for 2015 and 2016, respectively. The notice of deficiency determined accuracy-related penalties for substantial understatements of income tax under section 6662(a) and (b)(2) of \$1,499 and \$3,073 for 2015 and 2016, respectively.

OPINION

I. *General Legal Principles*

Generally, the Commissioner's determination of a taxpayer's liability in a notice of deficiency is presumed correct, and the taxpayer bears the burden of proving that the determination is incorrect. Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933).⁹ Deductions are a matter of legislative grace, and the taxpayer generally bears the burden of proving entitlement to any deduction claimed. Rule 142(a); *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934).

Under section 162(a), a deduction is allowed for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. However, a deduction normally is not available for personal, living, or family expenses. I.R.C. § 262(a). Whether an

⁹ Section 7491(a)(1) shifts the burden of proof to the Commissioner in certain defined circumstances. Petitioners do not contend, nor does the record suggest, that it does so here. Therefore, the burden remains with petitioners.

[*10] expenditure satisfies the requirements for deductibility under section 162 is a question of fact. See *Commissioner v. Heininger*, 320 U.S. 467, 475 (1943). An ordinary expense is one that commonly or frequently occurs in the taxpayer's business, *Deputy v. du Pont*, 308 U.S. 488, 495 (1940), and a necessary expense is one that is appropriate and helpful in carrying on the taxpayer's business, *Commissioner v. Heininger*, 320 U.S. at 471; Treas. Reg. § 1.162-1(a).

A taxpayer claiming a deduction on a federal income tax return must demonstrate that the deduction is allowable pursuant to a statutory provision and must further substantiate that the expense to which the deduction relates has been paid or incurred. I.R.C. § 6001; *Hradesky v. Commissioner*, 65 T.C. 87, 89-90 (1975), *aff'd per curiam*, 540 F.2d 821 (5th Cir. 1976). A taxpayer must substantiate deductions claimed by keeping and producing adequate records that enable the Commissioner to determine the taxpayer's correct tax liability. I.R.C. § 6001; *Hradesky*, 65 T.C. at 89-90.

When a taxpayer establishes that he or she paid or incurred a deductible expense but fails to establish the amount of the deduction, the Court may sometimes estimate the amount allowable as a deduction. *Cohan v. Commissioner*, 39 F.2d 540, 543-44 (2d Cir. 1930); *Vanicek v. Commissioner*, 85 T.C. 731, 742-43 (1985). However, there must be sufficient evidence in the record to permit the Court to conclude that a deductible expense was paid or incurred in at least the amount allowed. *Williams v. United States*, 245 F.2d 559, 560 (5th Cir. 1957).

Section 274(d) prescribes more stringent substantiation requirements to be met before a taxpayer may deduct certain categories of expenses, including travel expenses, meals and lodging while away from home, and expenses with respect to listed property as defined in section 280F(d)(4), which includes passenger automobiles.¹⁰ See *Sanford v. Commissioner*, 50 T.C. 823, 827 (1968), *aff'd per curiam*, 412 F.2d 201 (2d Cir. 1969). Consequently, even if such an expense would otherwise be deductible, section 274(d) may still preclude a deduction if the

¹⁰ "Listed property" as defined in section 280F(d)(4) includes passenger automobiles, which are defined as four-wheeled vehicles weighing under 6,000 pounds and manufactured primarily for use on public streets and highways. I.R.C. § 280F(d)(5)(A). A passenger automobile does not include any ambulance, hearse, or vehicle used by the taxpayer directly in a trade or business of transporting persons or property for compensation or hire. See I.R.C. § 280F(d)(5)(B); *Hatte v. Commissioner*, T.C. Memo. 2019-109, at *7 n.3.

[*11] taxpayer does not present sufficient substantiation. Temp. Treas. Reg. § 1.274-5T(a).¹¹

Temporary Treasury Regulation § 1.274-5T(c)(2) provides in relevant part that “adequate records” generally consist of an account book, diary, log, statement of expenses, trip sheet, or similar record made at or near the time of the expenditure or use, along with supporting documentary evidence. The Court may not use the rule established in *Cohan* to estimate expenses covered by section 274(d). *Sanford*, 50 T.C. at 827; Temp. Treas. Reg. § 1.274-5T(a).¹²

If a taxpayer’s records are lost or destroyed through circumstances beyond his or her control, he or she may substantiate expenses through reasonable reconstruction. *See Boyd v. Commissioner*, 122 T.C. 305, 320 (2004); Temp. Treas. Reg. § 1.274-5T(c)(5). While “the inability to produce a record which is unintentionally lost, whether by . . . [the taxpayer] or by a third party, alters the type of evidence which may be offered to establish a fact,” it does not affect the burden of proving a fact. *Malinowski v. Commissioner*, 71 T.C. 1120, 1125 (1979). Crucial to this reconstruction is that the secondary evidence be credible. *See, e.g., Boyd*, 122 T.C. at 320. If no other documentation is available, the Court may, but is not required to, accept a taxpayer’s credible testimony to substantiate an expense. *Id.*

Ex parte statements in posttrial briefs do not constitute evidence. Rule 143(c); *Evans v. Commissioner*, 48 T.C. 704, 709 (1967), *aff’d per curiam*, 413 F.2d 1047 (9th Cir. 1969); *Leith v. Commissioner*, T.C. Memo. 2020-149, at *15; *Chapman v. Commissioner*, T.C. Memo. 1997-147, 73 T.C.M. (CCH) 2405, 2408.

¹¹ To deduct these expenses 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; and (3) the business purpose of the expense. Temp. Treas. Reg. § 1.274-5T(a), (b), and (c).

¹² Taxpayers lacking a contemporaneous log are expected to maintain a record created as near in time as possible to the particular expenditure (including the elements outlined above), supported by corroborative documentary evidence that carries with it a high degree of probative value. Temp. Treas. Reg. § 1.274-5T(c)(1). If a taxpayer does not satisfy the adequate records requirements with respect to one or more elements, he or she may substantiate those elements with his or her own detailed statement and with other corroborative evidence. *Id.* subpara. (3).

[*12] II. *Schedule A Deductions*

On petitioners' 2015 joint return Mrs. Patitz claimed a deduction for unreimbursed employee expenses for vehicle mileage, meals and entertainment, and other business expenses, and Mr. Moody claimed a deduction for unreimbursed employee expenses for vehicle mileage, meals and entertainment, tools and supplies, uniforms, and other business expenses. On petitioners' 2016 joint return, Mrs. Patitz claimed a deduction for unreimbursed employee expenses for other business expenses, and Mr. Moody claimed a deduction for unreimbursed employee expenses for vehicle mileage, meals and entertainment, and other business expenses.

A. *Employee Expenses*

Generally, a taxpayer may deduct unreimbursed employee business expenses as an ordinary and necessary business expense under section 162. *Lucas v. Commissioner*, 79 T.C. 1, 6 (1982); *Primuth v. Commissioner*, 54 T.C. 374, 377 (1970). Miscellaneous itemized deductions are allowed only to the extent that, in the aggregate, they exceed 2% of adjusted gross income. I.R.C. § 67(a). Deductible expenses allowed under section 67(a) include unreimbursed employee expenses such as expenses for transportation, travel fares and lodging while away from home, business meals and entertainment, and professional uniforms. See Treas. Reg. § 1.67-1T(a)(1)(i).

To the extent that a taxpayer is entitled to (but does not claim) reimbursement from his or her employer for expenditures related to his or her status as an employee, a deduction for an expense under section 162(a) is not allowed. *Lucas*, 79 T.C. at 7. Such expenses are not considered "necessary." *Orvis v. Commissioner*, 788 F.2d 1406, 1408 (9th Cir. 1986), *aff'g* T.C. Memo. 1984-533; *Podems v. Commissioner*, 24 T.C. 21, 22-23 (1955). Moreover, certain business expenses may not be estimated because of the strict substantiation requirements of section 274(d). See I.R.C. § 280F(d)(4)(A); *Sanford*, 50 T.C. at 827-28. For such expenses, only certain types of documentary evidence will suffice. *Sanford*, 50 T.C. at 827-28.

At trial petitioners testified that they were unable to provide documentation, such as receipts and financial statements, that could have substantiated their Schedule A expenses for multiple reasons, including that the correlating credit card accounts had been closed because of fraud, the boxes containing potential statements were left

[*13] behind from moving three times since 2015, or the documents were destroyed from Hurricane Matthew water damage.¹³

The Court carefully reviewed the documents that petitioners did submit into the record, and except for vehicle expenses, we do not find adequate substantiation for any of the Schedule A unreimbursed employee expense deductions at issue. Consequently, respondent's disallowance of these deductions is sustained.

We will discuss each of the claimed deductions for unreimbursed employee expenses in turn below.

1. *Vehicle Expenses*

Respondent disallowed a deduction for vehicle expense of \$32,902 for 2015 and \$4,444 for 2016, contending that petitioners did not meet the strict substantiation requirements under section 274(d). Petitioners disagree.

In general, the cost of daily commuting to and from work is a nondeductible personal expense. *See Commissioner v. Flowers*, 326 U.S. 465, 473-74 (1946); Treas. Reg. § 1.162-2(e). However, "[u]nreimbursable transportation expenses incurred between two places of business are deductible." *Gilliam v. Commissioner*, T.C. Memo. 1986-90, 51 T.C.M. (CCH) 567, 572 (citing *Steinhort v. Commissioner*, 335 F.2d 496, 503-05 (5th Cir. 1964), *aff'd and remanding* T.C. Memo. 1962-233).

To prevail petitioners must first prove that their vehicle mileage arises from deductible business-related travel rather than nondeductible commuting. At trial Mrs. Patitz testified that while a Ricoh account executive she was obligated to drive to meet with customers. Mr. Moody testified that his area manager duties required him to visit and inspect warehouses and often make deliveries.

Any deduction claimed with respect to the use of a passenger automobile, like petitioners' vehicles, will be disallowed unless the taxpayer can substantiate specified elements of the use by adequate records or by sufficient evidence corroborating the taxpayer's own statement. *See* I.R.C. § 274(d); Temp. Treas. Reg. § 1.274-5T(c)(1). The elements that must be substantiated to deduct the business use of an automobile are (i) the amount of the expenditure, (ii) the mileage for

¹³ Hurricane Matthew affected Florida's east coast during October 2016.

[*14] each business use of the automobile and the total mileage for all uses of the automobile during the taxable period, (iii) the date of the business use, and (iv) the business purpose of the use of the automobile. See Temp. Treas. Reg. § 1.274-5T(b)(6).

In lieu of substantiating the actual amount of expenditure relating to the business use of a passenger automobile, a taxpayer may use the standard mileage rate established by the Internal Revenue Service. See Treas. Reg. § 1.274-5(j)(2). Use of the standard mileage rate establishes the amount deemed expended with respect to the business use of a passenger automobile, but such use does not relieve a taxpayer of the burden of substantiating the other elements required by section 274 and the regulations thereunder. Treas. Reg. § 1.274-5(j)(2).

Petitioners presented the Court with contemporaneous travel logs necessary to meet the strict substantiation requirements of section 274(d). Specifically, Mrs. Patitz testified to handwritten mileage logs she created when she visited clients and would subsequently transfer this information to electronic logbooks. The electronic logbooks Mrs. Patitz provided documented her weekly total mileage, her weekly business mileage, and her weekly commuting mileage. However, she also testified that while the mileage log was written contemporaneously, she inadvertently commingled her business mileage between Ricoh and her insurance business activities. During trial Mrs. Patitz conceded that her insurance business miles should be excluded, and we agree.

Mr. Moody also testified that he would transfer the handwritten travel logs that he created to an electronic logbook. Mr. Moody's electronic logbooks documented the total miles he drove each week and the business purpose of the drive.

Having observed petitioners' appearance and demeanor at trial, we find their testimony to be credible with respect to their claimed deductions for vehicle mileage on behalf of their respective employers. Consequently, respondent's disallowance is overruled, and the Court finds that petitioners are entitled to their claimed deductions for Schedule A vehicle expenses for Mr. Moody's 2015 and 2016 vehicle mileage expenses to the extent he was not reimbursed by Blue Streak and for Mrs. Patitz's 2015 vehicle expenses to the extent of her Ricoh business miles.

[*17] taxpayer was not reimbursed. *See id.* (finding that the taxpayer's burden was met where the taxpayer testified that no claim for reimbursement was filed and the record contained no evidence to the contrary). The medical expense deduction is allowed only to the extent it exceeds 10% of adjusted gross income. I.R.C. § 213(a); Treas. Reg. § 1.213-1(a)(3). The taxpayer must substantiate medical expense deductions with "the name and address of each person to whom payment for medical expenses was made and the amount and date of the payment thereof in each case." Treas. Reg. § 1.213-1(h).

At trial Mrs. Patitz testified to receiving loans from family members to offset medical expenses incurred on behalf of her father, as well as paying health insurance premiums on behalf of her family. Yet, there was no testimony whether these alleged loans were paid back or if health insurance covered any of the reported expenses for her father, herself, or her immediate family.

We find there is insufficient evidence in the record to reasonably determine that petitioners paid these expenses. We are not persuaded that bank statements, credit card statements, or other evidence that could demonstrate these expenses were paid could have been attained or provided.

Accordingly, we conclude there is insufficient evidence in the record to substantiate medical expense deductions in excess of the amount respondent already conceded.

III. *Schedule C Deductions*

Respondent disallowed petitioners' abovementioned claimed Schedule C deductions for 2015 and 2016.

Mrs. Patitz contends that she is entitled to deduct Schedule C expenses related to her insurance business activities for 2015 and 2016. Moreover, she testified at trial that some of her Schedule C business records for 2015 and 2016 were not introduced into the record for the same reasons as her Schedule A expense records—they were lost when moving or destroyed by Hurricane Matthew, or the associated credit card accounts were closed because of fraud.

While Mrs. Patitz furnished some receipts indicating costs for postage, shipping, and customer gifts, no other receipts or other evidence were provided. She failed to present any business records,

[*18] accounting records, bank statements, or credit card statements to substantiate her reported expenses.

Accordingly, we find that Mrs. Patitz has not met her burden with respect to her Schedule C deductions for 2015 and 2016; thus, respondent's disallowance of her Schedule C deductions is sustained.

IV. *Accuracy-Related Penalties*

Respondent determined that petitioners are liable for accuracy-related penalties for substantial understatements of income tax under section 6662(a) and (b)(2) for 2015 and 2016.

Section 6662(a) and (b)(2) imposes a penalty equal to 20% of the portion of an underpayment of tax required to be shown on a taxpayer's return that is attributable to a "substantial understatement of income tax." An understatement of income tax is a "substantial understatement" if it exceeds the greater of 10% of the tax required to be shown on the return or \$5,000. I.R.C. § 6662(d)(1)(A).

The Commissioner bears the burden of production with respect to a penalty imposed by section 6662(a) and is required to present sufficient evidence showing that the penalty is appropriate. *See* I.R.C. § 7491(c); *Higbee v. Commissioner*, 116 T.C. 438, 446–47 (2001). Respondent must also show compliance with the procedural requirements of section 6751(b)(1). *See* I.R.C. § 7491(c); *Graev v. Commissioner*, 149 T.C. 485, 493 (2017), *supplementing and overruling in part* 147 T.C. 460 (2016).

Section 6751(b)(1) provides that no penalty shall be assessed unless "the initial determination" of such assessment was "personally approved (in writing) by the immediate supervisor of the individual making such determination." The initial penalty determination was made by Ms. Muchow on August 6, 2018, and approved in writing by her then-immediate supervisor, Ms. Grieco, on August 7, 2018. Petitioners did not assert that respondent failed to meet his burden under section 6751. We find that respondent complied with all procedural requirements to assert the accuracy-related penalties under section 6662 for 2015 and 2016.

A taxpayer may avoid a section 6662(a) penalty by showing that there was reasonable cause for the underpayment and that the taxpayer acted in good faith. I.R.C. § 6664(c)(1); *Higbee*, 116 T.C. at 446–47. The determination of whether a taxpayer acted with reasonable cause and

[*19] in good faith is made on a case-by-case basis, taking into account all of the pertinent facts and circumstances, including the taxpayer's efforts to assess the proper tax liability and the taxpayer's knowledge, experience, and education. Treas. Reg. § 1.6664-4(b)(1).

Respondent contends that petitioners "failed to meet their burden to show reasonable cause." We agree. Petitioners have offered no corroborating evidence to substantiate expenses, nor are we convinced that they were unable to account for their alleged lost and inaccessible documents. No documentation or detailed accounts of the water damage from Hurricane Matthew were provided, nor were any documents provided to substantiate petitioners' claim of credit card fraud prohibiting the recovery of their statements. Lastly, petitioners admitted leaving boxes of information and records behind when moving.

Consequently, we conclude that petitioners have failed to establish reasonable cause, and we therefore find that petitioners are liable for accuracy-related penalties under section 6662(a) to the extent Rule 155 computations show there are underpayments and substantial understatements of income tax for 2015 and 2016.

We have considered all of the arguments that the parties made, and to the extent they are not addressed herein, we find the arguments to be moot, irrelevant, or without merit.

To reflect the foregoing,

Decision will be entered under Rule 155.

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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June 25, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-12440-CC
Case Style: Lori Patitz, et al v. Commissioner of Internal Revenue
Agency Docket Number: 2784-19

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12440

LORI MICHELLE PATITZ,
ANDREW ROBERT MOODY,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 2784-19

Before ROSENBAUM, ABUDU, and Wilson, Circuit Judges.

2

Order of the Court

23-12440

PER CURIAM:

The Petition for Panel Rehearing filed by Appellants Lori Patitz and Andrew Moody is DENIED.