

*Background*

During 2002, petitioner, a welder, was employed by Mendon Pipeline, Inc. (Mendon Pipeline), located in Ghent, West Virginia. At all relevant times, Mendon Pipeline's policy was (1) to pay directly to the lodging provider lodging expenses incurred by an employee because the employee resided so far from the location of the job site (job site location) as to preclude such employee from safely making a daily round-trip drive from such employee's residence to the job site location and (2) not to pay any other expenses incurred by an employee, such as expenses for meals and automobile usage.

Petitioner timely filed electronically a tax return for his taxable year 2002 (petitioner's 2002 return). In Schedule A-Itemized Deductions included as part of that return (2002 Schedule A), petitioner claimed "Job Expenses and Most Other Miscellaneous Deductions" totaling \$13,384 prior to the application of the two-percent floor imposed by section 67(a). Of that total, petitioner claimed \$12,734 as "Unreimbursed employee expenses", \$50 as "Tax preparation fees", and \$600 as "Other expenses" for clothes, boots, and gloves.

As required by section 67(a), petitioner reduced the \$13,384 of total "Job Expenses and Most Other Miscellaneous Deductions" claimed in the 2002 Schedule A by two percent of his adjusted gross income (i.e., by \$1,091). In determining the taxable income reported in petitioner's 2002 return, petitioner deducted the balance (i.e., \$12,293), as well as the other itemized deductions claimed in the 2002 Schedule A that were not subject to the two-percent floor imposed by section 67(a).

*Discussion*

Petitioner claims that, prior to the application of the two-percent floor imposed by section 67(a), he is entitled to deductions for \$8,782 of automobile expenses, \$3,952 of meal expenses,<sup>1</sup> a \$50 tax preparation fee, and \$600 of expenses for certain unidentified clothes and gloves and *Rocky Wolverine* boots. Respondent counters that petitioner has failed to carry his burden of establishing his entitlement to deduct any of those claimed expenses.

A taxpayer is entitled to deduct all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business,"including \* \* \* traveling expenses (including amounts expended for meals \* \* \* other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business". Sec. 162(a). For certain kinds of expenses otherwise deductible under section 162(a), a taxpayer must satisfy certain substantiation requirements set forth in section 274(d) before such expenses will be allowed as deductions.

In order for petitioner's claimed expenses for the use of his automobile and for meals to be deductible, such expenses must satisfy the requirements of not only section 162(a) but also section 274(d). To the extent that petitioner carries his burden of showing that the expenses at issue for the use of his automobile and for meals satisfy the requirements of section 162(a) but fails to satisfy his

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<sup>1</sup>In the 2002 Form 2106-EZ, petitioner claimed total meal expenses of \$7,904, which he reduced by 50 percent, as required by sec. 274(n).

burden of showing that such expenses satisfy the recordkeeping requirements of section 274(d), petitioner will have failed to carry his burden of establishing that he is entitled to deduct such expenses, regardless of any equities involved. *See* sec. 274(d); sec. 1.274-5T(a), Temporary Income Tax Regs., 50 Fed. Reg. 46014 (Nov. 6, 1985).

The elements that a taxpayer must prove with respect to an expenditure for traveling away from home on business, including a meal, are: (1) The amount of each such expenditure for traveling away from home, except that the daily cost of the traveler's own breakfast, lunch, and dinner may be aggregated; (2) the time of each such expenditure, i.e., the dates of departure and return for each trip away from home and the number of days away from home spent on business; (3) the place of each such expenditure, i.e., the destinations or locality of travel, described by name of city or town or other similar designation; and (4) the business purpose of each such expenditure, i.e., the business reason for the travel or the nature of the business benefit derived or expected to be derived as a result of travel. Sec. 1.274-5T(b)(2), Temporary Income Tax Regs., 50 Fed. Reg. 46014 (Nov. 6, 1985).

In lieu of substantiating the actual amount of any expenditure relating to the business use of a passenger automobile, a taxpayer may use a standard mileage rate established by the Internal Revenue Service (standard mileage rate). *See* sec. 1.274-5(j)(2), Income Tax Regs.; Rev. Proc. 2001-54, sec. 5.02, 2001-2 C.B. 530, 532. The standard mileage rate is to be multiplied by the number of business miles traveled. *Id.* The use of the standard mileage rate establishes only the amount deemed expended with respect to the business use of a passenger automobile. Sec. 1.274-5(j)(2), Income Tax Regs. The taxpayer must still establish the amount (i.e., the business mileage), the time, and the business purpose of each such use. *Id.*

In lieu of substantiating the actual amount spent for a meal while traveling away from home on business, a taxpayer may use an amount computed at the Federal meal and incidental expense (M&IE) rate set forth in appendix A of 41 C.F.R. chapter 301 (appendix A) for the locality of travel for each calendar day that the taxpayer is traveling away from home on business. *See* sec. 1.274-5(j)(1), Income Tax Regs.; Rev. Proc. 2001-47, secs. 3.02(1)(a), 4.03, 2001-2 C.B. 332, 333-334 (applicable to, *inter alia*, Jan. 1 through Sept. 30, 2002); Rev. Proc. 2002-63, secs. 3.02(1)(a), 4.03, 2002-2 C.B. 691, 693-694 (applicable to, *inter alia*, Oct. 1 through Dec. 31, 2002). The use of the M&IE establishes only the daily amount deemed spent for meals while traveling away from home on business. Sec. 1.274-5(j)(1), Income Tax Regs. The taxpayer must still establish the time, the place, and the business purpose of the daily expenditures for meals. *Id.*

With respect to the deductions that petitioner claims for 2002 with respect to the use of his automobile and for meals, petitioner testified that during that year he worked in Rocky Mount, Virginia, Wiley Ford, West Virginia, Hamilton, Pennsylvania, Warren, Pennsylvania, and Elk Garden, West Virginia. In support of that testimony, petitioner relies on a document (document one) that he prepared sometime shortly before the trial in this case in January 2006. Document one purports to show all the job site locations at which petitioner claims he worked during 2002, the respective time periods during which he claims he worked at such locations, and the respective round-trip mileages from his home in Ridgeley [West Virginia] to such locations. Petitioner testified that in preparing document one he relied on his recollection and a telephone call to "the main office" of Mendon Pipeline, his employer during 2002.

In addition to document one, petitioner relies on two other documents to support his position with respect to the deductions that he is claiming for the use of his automobile and for meals. It is not clear from the record when one (document two) of those two other documents was prepared. Moreover, document two does not list all of the job site locations at which petitioner testified he

worked during 2002 and which are shown on document one. Instead, document two lists only the following three job site locations: Warren, Pennsylvania, Morris Run, Pennsylvania, and Elk Garden, West Virginia. The Morris Run, Pennsylvania, job site location at which petitioner claims he worked for three months during 2002 is not even listed on document one, which is the document that purports to show all of the job site locations where petitioner worked during that year.

The other document (document three) on which petitioner relies contains handwritten notations on a letter dated May 6, 2004, from Mendon Pipeline, petitioner's employer during 2002. As was true of document two, it is not clear when those handwritten notations were made on that letter. Moreover, as was also true of document two, such handwritten notations do not list all of the job site locations at which petitioner testified he worked during 2002 and which are shown on document one. Instead, like document two, such handwritten notations list only the following three job site locations: Warren, Pennsylvania, Morris Run, Pennsylvania, and Elk Garden, West Virginia. As was true of document two, the Morris Run, Pennsylvania, job site location at which petitioner claims he worked for three months during 2002 is not even listed on document one, which is the document that purports to show all of the job site locations where petitioner worked during that year.

Petitioner concedes that he did not prepare document one at or near the time in 2002 of the use of his automobile or the expenditures for meals that are at issue in this case. Petitioner failed to establish when document two was prepared and when the handwritten notations on document three were made. Moreover, we found the three documents on which petitioner relies to be inconsistent and not credible in certain material respects. By way of illustration, in addition to the inconsistencies in such documents discussed above regarding the job site locations at which petitioner claims he worked during 2002, in document two and document three petitioner indicated that during 2002 he worked in Elk Garden, West Virginia, for four months, whereas in document one petitioner indicated that during 2002 he worked in Elk Garden, West Virginia, for six weeks. By way of further illustration, in document two and document three petitioner indicated that the one-way mileage between his home in Ridgeley and Warren, Pennsylvania, is 178 miles, whereas in document one petitioner indicated that such one-way mileage is 245 miles. We are unwilling to rely on document one, document two, or document three. Petitioner admitted at trial that he has no other documents or records establishing (1) that during 2002 he worked at each of the different job site locations at which he claims he worked for the period of time during that year that he claims he spent at each such location and (2) that during 2002 he drove the respective round-trip mileages that he claims he drove from his home in Ridgeley to such locations.

On the record before us, we find that petitioner has failed to carry his burden of showing the amount of each business use of his automobile based on mileage and the time of each such use (i.e., the date of each such use). On that record, we further find that petitioner has failed to carry his burden of establishing that he is entitled for his taxable year 2002 to the deduction that he claims for the use of his automobile.<sup>3</sup>

On the record before us, we also find that petitioner has failed to carry his burden of establishing that he is entitled for his taxable year 2002 to the deduction that he claims for meals. The record is devoid of reliable evidence relating to the amount, the time, and the place of the meal

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<sup>2</sup>The May 6, 2004 Mendon Pipeline letter describes that company's policy regarding the payment of the lodging expenses of its employees in certain circumstances and the nonpayment of any other expenses of its employees.

<sup>3</sup>At trial, petitioner conceded that he "overclaimed 3,000 some odd miles".

expenses that petitioner contends he is entitled to deduct. Petitioner acknowledged at trial that he has no receipts for any of the meal expenses at issue because “I was told that meals \* \* \* that was the one thing you could claim without receipt.” Moreover, it is not clear whether petitioner used the M&IE rate set forth in appendix A of 41 C.F.R. chapter 301 in claiming such meal expenses. If he did use such a rate, he did not use the correct rate set forth in appendix A. In document two, which is the only document in the record detailing petitioner’s claimed total meal expenses of \$7,904 shown in his 2002 Form 2106-EZ, petitioner indicated that he incurred a daily meal expense of \$42 for the period January through May 2002, \$38 for the period June through August 2002, and \$34 for the period September through December 2002.<sup>10</sup> The applicable M&IE for all of the job site locations to which petitioner claims he traveled during 2002 is \$30 a day. 41 C.F.R. ch. 301, app. A (2002).

With respect to the deduction that petitioner claims for 2002 for certain unidentified clothes and gloves and *Rocky Wolverine* boots, petitioner admitted at trial that he does not have any receipts for those items. Moreover, articles of clothing, including shoes or boots, are deductible under section 162(a) only if the clothing is required in the taxpayer’s employment, is not suitable for general or personal wear, and is not worn for general or personal purposes. *Yeomans v. Commissioner*, 30 T.C. 757, 767-768 (1958). The record is devoid of evidence that the unidentified clothes and gloves and the *Rocky Wolverine* boots were required in petitioner’s employment, were not suitable for general or personal wear, and were not worn for general or personal purposes. In fact, petitioner acknowledged at trial that he was wearing *Rocky Wolverine* boots.

On the record before us, we find that petitioner has failed to carry his burden of establishing that he is entitled for his taxable year 2002 to the deduction that he claims for clothes, boots, and gloves.

*Decision will be entered for respondent.*