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Brown v. Commissioner, T.C. Memo. 2019-30, is a U.S. Tax Court case issued on April 8, 2019. This case involved the IRC §162 business deduction for travel expense, where the couple were denied a deduction for the husband's weekly travel expenses from his residence to an out-of-state business location, as he failed to prove that his residence was his "tax home." An interesting fact is that the husband, who prepared the tax return, was a CPA with years of experience and training; likely indicating that these travel rules can be complex in some situations.

Deductible Travel Expenses for Business

IRC Section 162 allows a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." Ordinary and necessary business expenses include "traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business." For example, travel fares, meals and lodging, and expenses incident to travel are treated as qualified business expenses. In order to determine whether a taxpayer is "away from home," the "tax home" must first be determined.[1]

Tax Home

Generally, a taxpayer's "home" for purposes of section 162(a)(2), means the vicinity of his principal place of employment rather than his personal residence.[2] If a taxpayer has more than one place of business, the tax home is the principal place of business. Principal place of business is determined based on total time ordinarily spent in each place, level of business activity, and the significance of income. If the principal place of business is temporary, rather than indefinite, a taxpayer's personal residence may be the "tax home."[3] A taxpayer who works at a temporary place of employment away from his residence may be considered "away from home" for purposes of section 162(a)(2). When a taxpayer accepts employment either permanently or for an indefinite time away from the place of his usual abode, the taxpayer's tax home will shift to the new location, the vicinity of the taxpayer's new principal place of business.[4] In such circumstances, the decision to retain a former residence is a personal choice.

[1] IRC Section 162

[2] *Mitchell v. Commissioner*, 74 T.C. 578, 581 (1980)

[3] *Peurifoy v. Commissioner,* 358 U.S. 59 (1958). The *Peurifoy* case was not addressed in the *Brown* case.

[4] *Markey v. Commissioner*, 490 F.2d 1249 (6th Cir. 1974). The *Markey* case was not addressed in the *Brown* case.

Accordingly, expenses incurred in commuting from a taxpayer's personal residence to a taxpayer's business or place of employment are generally nondeductible personal expenses.[5]

Background of the Case

Michael E. Brown (H) and Miriam L. Mercado-Brown (W), Georgia residents, were denied the husband's business deductions for weekly travel expenses incurred in 2012 and 2013 between his residence in Georgia and the workplace in New Jersey. H is a CPA with an undergraduate degree in accounting and a master's degree in finance. He provides finance related services to his clients and operates a "concierge CFO business." For tax years 2012 and 2013, Mr. Brown filed returns as married filing jointly. For each of those years, he had three forms Schedule C each showing his home address in Atlanta as the business address with H as the proprietor. H did not claim any home-office deduction in any of those years.

From April 2011 to April 2012, H worked for Parkmobile USA, Inc. in Atlanta. H reported substantial gross income from Parkmobile, and a deduction of travel expense of $7 was allowed by the IRS. During 2012 and 2013 tax year, he worked for Project Next, Inc. But, he reported no income from this source and did not claim any travel expense. He also worked for Pango USA, an Israeli technical company from 2012 to 2014 via online and reported no income for that.

H's main source of income during 2012 and 2013 was from American Furniture Rental, Inc. (AFR) where he worked as an independent contractor under a three-year consulting agreement. According to the agreement, he started working for AFR from October 2, 2012, and would continue until October 2, 2015, unless terminated. The agreement provided that AFR would reimburse H for certain business expenses, but it specifically excluded reimbursing him for any travel expense to and from Pennsauken, NJ (the business location). He worked for AFR four days a week in Pennsauken. On the 2012 and 2013 Schedule C, H reported $37,500 and $159,759, respectively, of compensation received from AFR and claimed deductions of $10,065 and $52,617, respectively, as deductions for travel expenses for the cost of his weekly travel from Atlanta to Pennsauken. H worked for AFR until August, 2014. H reported $25,000 of income and no expense on W's 2013 Schedule C, and that income was part of his income received from AFR. The issue in this case was whether the Browns could claim a deduction for travel expenses. The answer depends on what H's tax home was during those two tax years.

The Brown's Position

The Browns claimed that during 2012 and 2013, H had worked at multiple locations and had no principal place of business. Therefore, his tax home would be his permanent residence in Atlanta. His testimony supported that he worked for three different companies: "one

[5] *Zbylut v. Commissioner*, T.C. Memo. 2008-44.

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exclusively from Atlanta (Park Mobile)", another predominantly from Atlanta (AFR), and a third from wherever he was at the time, which more often than not was Atlanta (Pango USA)". He also testified that most of the administrative and marketing work was performed in Atlanta.

The IRS's Position

Mr. Brown's tax home became Pennsauken when he executed the consulting agreement with AFR. As a result, H cannot deduct his weekly travel expenses from Atlanta to Pennsauken. For tax years 2012 and 2013, the IRS determined deficiencies of $3,669 and $17,905, respectively in the Brown's federal income tax, and accuracy-related penalties of $734 and $3,581 for those years, respectively.

Findings of the Tax Court

Although much of the H's work did not require him to be physically present at the business location. In the case of AFR, he had to work in Pennsauken four days a week and travel between Atlanta and Pennsauken every week keeping his residence in Atlanta. He suggested that his engagement with AFR was temporary as the agreement could be terminated by either party. But, as the agreement with AFR was for three years, he could not expect it to be concluded within a short period. Similar facts were present in *Giesbrecht v. Commissioner,* where the court decided that the "taxpayer's contract employment was indefinite, entitling him to no deduction for traveling expenditures because contract-employment location became tax home."[6]

From October 2012 through 2013, H's sole source of income was AFR and he spent most of his time (four days a week) in Pennsauken working for AFR. Although he performed some work for AFR while back home in Atlanta during long weekends. He performed most of the marketing and administrative work from Atlanta. However, he performed marketing for his concierge CFO business using computer applications that could be done from anywhere. Also, he did not describe anything about the administrative work performed form Atlanta and the total time spent on it. H did not provide any evidence that the work necessitated him being in Atlanta to accomplish it. As a result, Pennsauken was H's principal place of business as well as tax home. Mr. Brown testified that "in mid-2013, he negotiated with AFR's CEO a change in arrangement that allowed him to work alternate two-week periods in Pennsauken and in AFR's Atlanta office." He also said earlier that when he first joined AFR, he was in a hotel room weekly for 17 months. The court found that these two statements contradicted each other. H failed to prove that beginning in mid-2013, he worked alternate two-week periods in Pennsauken and in AFR's Atlanta office. He also failed to prove that in 2013 he worked less than four days a week every week in Pennsauken.

[6] *Giesbrecht v. Commissioner*, TC Memo 1995-118

As Pennsauken was found to be H's tax home, to get a deduction for the travel expense H would have to prove that he traveled to Atlanta from his tax home for trade or business purposes. He did not claim a home-office deduction for the business use of his Georgia residence. Also, he did not describe any client meetings, or work assignments, or business-related tasks that necessitated him being in Atlanta. Thus, he failed to prove that his travel was for trade or business purposes and therefore, was disallowed for the deduction.[7]

Accuracy-Related Penalties

Since, Pennsauken was his tax home, H would not get any deduction for the expenses incurred for weekly travel from Atlanta to Pennsauken. As those expenses were not deductible, accuracy-related negligence penalties were upheld against the taxpayers for year 2012 and 2013.

For the "negligence or disregard of rules or regulations", there is an accuracy-related penalty of 20 percent of the amount of an underpayment of tax under IRC §6662.[8] The term "negligence" means any failure to make a reasonable attempt to comply with the Internal Revenue Code and any failure to keep adequate books and records or to substantiate items properly.[9] Negligence is also defined under *Marcello v. Commissioner,* as "lack of due care or failure to do what a reasonable and ordinarily prudent person would do under the circumstances." [10]

As a CPA with an undergraduate degree in accounting, a master's degree in finance and years of experience and training, the court found that H should have been aware of "the dubiousness of [his] reporting position." The IRS satisfied the burden of production regarding the Browns' negligence about the tax home and produced a completed penalty approval form and declaration of the examiner that established timely supervisory approval. The court sustained the IRS's imposition of the accuracy-related penalties for the examination years.

Conclusion

[7] The court referred to *Mazzotta v. Commissioner*, 57 T.C. 427 (1971), where a taxpayer could not deduct travel expenses from his place of major employment to his residence, a place of minor employment, because "the primary motivation for the taxpayer's trips from his major place of employment to his residence was personal." The court also cited *Karp v. Commissioner*, T.C. Memo. 1976-325, where the court noted that "even though a taxpayer performs some business of a minor nature at his residence, he may not deduct the expense of travel to this place of business if his travel to the place is principally motivated by a desire to return to his residence, a purely personal motive, and only incidentally by business reasons."

[8] IRC §6662(a) and IRC §6662 (b)(1)

[9] IRC §6662(c)

[10] *Marcello v. Commissioner,* 380 F.2d 499 (5th Cir. 1967). The *Marcello* case was not addressed in the *Brown* case.

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This case is a good example of “principal place of business” and “tax home” regarding §162. It’s important to determine where the business owner’s “tax home” and have supporting records to claim a business deduction “while away from home.” If a taxpayer fails to prove his/her tax home for the year in which a business deduction for travel expense is claimed, accuracy-related penalties may be imposed. Also, it’s important to determine which expenses are “ordinary and necessary business expenses” and if there is any personal interest relevant to the expenses.