United States Tax Court

T.C. Summary Opinion 2026-8

PETER J. JANANGELO, JR. AND MARY ANN JANANGELO,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket Nos. 13300-22S, 7232-23S, 14695-23S, 11844-24S. — Filed August 27, 2026.

Peter J. Janangelo, Jr., for petitioners.

Gretchen W. Altenburger, *Andre T. Andoyan*, *Michael T. Garrett*,[1] *Michael R. Harrel*, and *Samantha N. Winter McAlpin*, for respondent.

SUMMARY OPINION

SIEGEL, *Special Trial Judge*: These cases were heard pursuant to the provisions of section 7463[2] of the Internal Revenue Code in effect when the Petitions were filed. Pursuant to section 7463(b), the decisions to be entered are not reviewable by any other court, and this Opinion shall not be treated as precedent for any other case.

We find that petitioners are not entitled to any of the deductions at issue, that Mr. Janangelo is liable for the civil fraud penalty for each

[1] Mr. Garrett appeared only in Docket Nos. 13300-22S, 7232-23S, and 14695-23S.

[2] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times, regulation references are to the *Code of Federal Regulations*, Title 26 (Treas. Reg.), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure.

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year before us, and that Mrs. Janangelo is not liable for the negligence penalties determined against her.

Background

The simplest version of this small tax case Opinion is that petitioners are liable for the deficiencies determined by the Internal Revenue Service (IRS) for each of the four years before us because they failed to meet their burden of proof and establish entitlement to any of the deductions claimed. If that were the whole story, however, this Opinion would not be 32 pages long. There is also a fraud penalty at issue for each year, and that requires a few more pages to discuss what petitioners claimed on their tax returns and to make clear how the IRS proved fraud by clear and convincing evidence. But really, this Opinion is long because one of the factors we consider in evaluating fraud is the sophistication of the taxpayer. And Mr. Janangelo is a pretty sophisticated taxpayer; Mr. Janangelo is an auditor at the IRS.

I. *Petitioners*

Peter J. Janangelo, Jr., and Mary Ann Janangelo (Janangelos or petitioners) are a married couple. Although they jointly filed their federal income tax returns for 2018,[3] 2019,[4] 2020,[5] and 2021[6] (years at issue), all of the disallowed deductions are related to Mr. Janangelo's activities.[7] The Janangelos lived in Nevada when they timely filed the Petition in each of these cases.

Mr. Janangelo was employed full time at the IRS during the years at issue and, at the time of trial, had been for almost 20 years.[8] In his capacity as a revenue agent for the IRS, Mr. Janangelo conducts audits and reviews tax returns. He belongs to the National Treasury Employees Union (NTEU) and has been a union steward.

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[3] Docket No. 13300-22S.

[4] Docket No. 7232-23S.

[5] Docket No. 14695-23S.

[6] Docket No. 11844-24S.

[7] We note that both petitioners signed their income tax returns under penalty of perjury. *See* § 6065.

[8] Mr. Janangelo is employed by the IRS, not the IRS Office of Chief Counsel.

Before working for the IRS, Mr. Janangelo operated a tax and estate planning practice in the New York City metropolitan area and held auditor positions with multiple government entities. He is an attorney licensed to practice in New York and admitted to practice before this Court.[9] He is also a certified public accountant (CPA) licensed in Nevada and New York, and he holds undergraduate and graduate degrees in business administration.

Although neither credential is required for his employment as a revenue agent, Mr. Janangelo is required to earn continuing legal education and continuing professional education (CPE) credits to maintain his professional licenses as an attorney and a CPA. The IRS offers in-house and online educational programs that would provide the necessary CPE, but Mr. Janangelo routinely attended outside seminars, explaining that he preferred to keep his training "separate from his employment with the IRS."

Mrs. Janangelo was employed as a registered nurse during the years at issue but has since retired. She suffers from some long-term health challenges.

The Janangelos married in 2013 and continued to keep separate bank accounts. Mr. Janangelo manages the household finances. At least during the years at issue, the couple's practice was to split living expenses. Mrs. Janangelo would give Mr. Janangelo a check for half of her share of the monthly household expenses every two weeks. For example, during 2018, Mrs. Janangelo's monthly share of the household expenses was about $1,800.[10] She typically wrote her husband a $900 check every two weeks, except for the month of December. In December 2018 she wrote him three checks totaling $1,812: $900, $812, and $100. Each check was made out to Mr. Janangelo personally.

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[9] Mr. Janangelo appeared on his own behalf and for Mrs. Janangelo as her attorney of record. We call Mr. Janangelo's attention to Rule 33(b) (stating that a signed pleading signifies that "to the best of the signer's knowledge, information, and belief formed after reasonable inquiry" it is "well grounded in fact" and "warranted by existing law"). *See also* Fed. R. Civ. P. 11(b); Model Rules of Pro. Conduct r. 3.3(a) (A.B.A. 2026). Mrs. Janangelo waived any conflict of interest. *See* Rule 24(g)(1); Model Rules of Pro. Conduct r. 1.7, 1.8.

[10] Monetary amounts are sometimes rounded to the nearest whole dollar.

II. *Mr. Janangelo's Other Litigation*

Mr. Janangelo was involved in more than one legal dispute with the IRS outside of these cases. Those proceedings are discussed briefly here because of their relationship with some of the claimed deductions at issue.

A. *MSPB Litigation*

Mr. Janangelo was a party to Merit Systems Protection Board (MSPB) litigation concerning his employment. This litigation arose from Mr. Janangelo's managers' proposing to terminate his employment at the IRS because of multiple instances of unprofessional conduct.[11] The case settled in 2017, and Mr. Janangelo kept his job. He also had his performance reviews retroactively revised upward and was awarded $7,500 in attorney's fees. The fees were paid directly to his attorney, James P. Kemp. Mr. Kemp's legal practice focuses in three areas: employment law, workers' compensation, and bankruptcy law.

B. *FOIA Lawsuit*

Mr. Janangelo was party to a Freedom of Information Act (FOIA) suit for personnel documents from the Treasury Inspector General for Tax Administration (TIGTA) pertaining to at least one of the managers

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[11] According to the record, Mr. Janangelo's unprofessional conduct at work included using ethnic slurs, claiming that a particular coworker was providing sexual favors in exchange for career advancement opportunities, and failing to follow proper procedures. There was also an incident in which Mr. Janangelo was alleged to have assisted a colleague in faking a medical emergency. Because none of that is before us, we can only note that Mr. Janangelo exhibited multiple instances of unprofessional conduct here in this Court. Examples include filing frivolous motions, failing to appear for a scheduled hearing, and disparaging a multilingual witness for having been educated in another country. In addition, Mr. Janangelo violated the order of another court when he filed in the record of these cases a document sealed by that other court and involving an unrelated taxpayer.

The sealed document was accompanied by email correspondence between the Department of Justice and Mr. Janangelo in his professional capacity concerning a case he was working on. The sealed document and the emails were filed, without explanation, as the only "substantive" pages of petitioners' Motion for Continuance. Respondent raised a concern about a potential section 6103 violation, and Mr. Janangelo responded as follows: "In determining compliance with IRC# 6103, on balance the rights of the Petitioners in seeking a continuance outweighed the disclosure issue." It did not, and we sealed his motion.

Mr. Janangelo's attention is called to Rule 201(a), 31 C.F.R. §§ 10.50 and 10.51 (2026), and rule 1.6(a) of the *Model Rules of Professional Conduct*.

that tried to have him fired. TIGTA refused to provide the records because they pertained to a third party. Mr. Janangelo filed suit with the U.S. District Court for the District of Nevada in an effort to compel TIGTA to release the documents he had requested. Mr. Janangelo lost. *See Janangelo v. Treasury Inspector Gen. for Tax Admin.*, No. 16-cv-906, 2017 U.S. Dist. LEXIS 46505 (Mar. 29, 2017). Mr. Janangelo appealed to the U.S. Court of Appeals for the Ninth Circuit; the appellate court affirmed. *See Janangelo v. Treasury Inspector Gen. for Tax Admin.*, 726 F. App'x 660 (9th Cir. 2018). Mr. Janangelo's FOIA litigation ended when the Supreme Court of the United States denied his petition for writ of certiorari. *See Janangelo v. Treasury Inspector Gen. for Tax Admin.*, 586 U.S. 999 (2018).

C. *Age Discrimination Lawsuit*

The next dispute was an age discrimination claim. Both Mr. Kemp and another attorney, Gary M. Gilbert, represented Mr. Janangelo in that case.

In 2019 Mr. Janangelo applied for an Appeals officer position within the IRS's Independent Office of Appeals. When he was not selected, Mr. Janangelo filed a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) alleging employment discrimination in violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621–634. In August 2021 the EEOC granted the IRS's motion for summary judgment, finding that there were nondiscriminatory reasons for which Mr. Janangelo was not selected for the job. Mr. Janangelo's appeal of that decision was denied on March 14, 2022.

Mr. Janangelo received no award of any kind from the lawsuit, and he did not get the promotion. Although nothing in the record suggests that this is so, Mr. Janangelo argued before us that the only reason he lost his age discrimination case was because an IRS employee lied during a deposition.

D. *HSA Collection Action*

Petitioners were enrolled in the American Postal Workers Union High Option Health Plan (APWUHP) through Mr. Janangelo's IRS employment. They were not enrolled in a high-deductible health plan for 2018 or any of the years at issue. Despite not being in a high-deductible plan, petitioners reported a $7,900 health savings account (HSA) contribution on their 2018 federal income tax return. Mr. Janangelo claimed that his high option health plan qualified for treatment under the Code permitting certain non-high-deductible health plans to qualify for an HSA deduction. After a lawsuit, the matter resolved in the Government's favor for payroll taxes owed on the erroneous contribution.[12]

III. *Miscellaneous Itemized Expense Deductions*

Before 2018 section 67 allowed taxpayers to deduct employee business expenses. Those expenses, along with certain miscellaneous deductions, were reported on Schedule A, Itemized Deductions, attached to Form 1040, U.S. Individual Income Tax Return. The "Job Expenses and Certain Miscellaneous Deductions" reported on that schedule were ostensibly related to employment (for example, union dues and training costs) that met certain requirements. *See* §§ 67(a), 162(a) (permitting the deduction of ordinary and necessary expenses incurred in carrying on a trade or business); *see also Boyd v. Commissioner*, 122 T.C. 305, 313 (2004); *Deputy v. duPont*, 308 U.S. 488, 495 (1940) (explaining that an ordinary expense is one that commonly or frequently occurs in the taxpayer's business); *Commissioner v. Heininger*, 320 U.S. 467, 471 (1943) (explaining that a necessary expense is one that is appropriate and helpful in carrying on the taxpayer's business); Treas. Reg. § 1.162-1(a). Generally, the performance of services as an employee constitutes a trade or business. *Primuth v. Commissioner*, 54 T.C. 374, 377 (1970).

The Tax Cuts and Jobs Act of 2017 (TCJA), Pub. L. No. 115-97, § 11045, 131 Stat. 2054, 2088, amended section 67 by suspending miscellaneous itemized deductions for any taxable year beginning after December 31, 2017, and before January 1, 2026. *See* § 67(g).[13] All of the years before us fall into that suspension period.

The Janangelos claimed miscellaneous itemized deductions for the years before the Court in the same manner as before the enactment of the TCJA. A copy of the Janangelos' 2016 Form 1040 was made part of the record. The schedules and attachments to that return show unreimbursed employee business expenses, as well as "IRC 212" expenses.[14] Section 212 permits the deduction of certain expenses that

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[12] A copy of *Janangelo v. Internal Revenue Service*, No. IRS 23-530 (U.S.P.S. July 9, 2024), was included with the parties' stipulations.

[13] As of July 4, 2025, this subsection was redesignated subsection (h).

[14] We make no determination as to whether any of the Janangelos' 2016 deductions were proper because that year is not before us.

are not part of a trade or business but are related to generating taxable income. Most, if not all, of the miscellaneous itemized deductions petitioners claimed for 2016 are the same as the expenses they claimed for the years at issue, as shown in the following chart:

Expense	*2016*	*2018*	*2019*	*2020*	*2021*
Drake Tax Software[15]	X	X	X	X	X
IRS Tax Forum CPE[16]	X	X	X	X	X
Legal Fees	X	X	X	X	X
National Association of Tax Practitioners (NATP) Dues	X	X	X	X	X
Nevada State Board of Accountancy Dues	X	X	X	X	X
NTEU Dues	X	X	X	X	X
Periodicals	X	X	X	X	X
U.S. Postal Service	X	X	X	X	X

IV. *2018: Peter J. Janangelo, Jr., SSA Disability Claim Services*

The Notice of Deficiency issued to the Janangelos for 2018 determined a deficiency of $5,590 and a section 6663 penalty of $4,193. A section 6662 penalty was approved in the alternative. Respondent conceded the section 6663 penalty as to Mrs. Janangelo but maintains that a section 6662 penalty is still appropriate. The biggest adjustment to petitioners' 2018 return relates to an activity reported on Schedule C,

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[15] Although respondent alleged in the Answer filed at Docket No. 13300-22S that Mr. Janangelo admitted to sometimes preparing tax returns "for friends," nothing in the record suggests that Mr. Janangelo used tax preparation software as part of his work for the IRS or in any other professional capacity. The Janangelos did not report income attributable to return preparation, although Mr. Janangelo listed himself as a paid preparer on his own returns.

[16] It is unclear from the record whether Mr. Janangelo attended this IRS tax conference as part of his employment with the IRS, or for other reasons. The answer would not change the result.

Profit or Loss From Business, called Peter J. Janangelo, Jr., SSA Disability Claim Services (SSA DCS).

Mr. Janangelo reported income and expenses allegedly attributable to SSA DCS in 2018 on Schedule C. The articulated purpose of SSA DCS was to have Mr. Janangelo represent Mrs. Janangelo before the Social Security Administration (SSA) in a "possible application for social security disability benefits" related to her long-term health challenges.

Because Mr. Janangelo was expressly prohibited by his employment with the IRS from performing legal work for anyone other than the IRS, he needed to get permission to represent his wife. In an email to the IRS sent September 4, 2018, Mr. Janangelo asked for permission to do that, writing that he should not be prohibited from "representing [his] wife as an attorney before the Social Security Administration concerning [her] disability claim, because this claim does not concern any 'tax matters'." The copy of Form 7995, Outside Employment or Business Activity Request, in the record from September 18, 2018, is incomplete. It is unclear whether Mr. Janangelo ever obtained permission to represent his wife. It is also unclear whether the IRS was under the impression that there was an active case pending before the SSA. Regardless, no application for SSA disability benefits for Mrs. Janangelo was filed.

The record contains a document styled as a retainer agreement entered into between Mr. and Mrs. Janangelo. It is dated December 28, 2018. According to this document, Mr. Janangelo agreed to spend 2.5 hours (at $325 per hour) "review[ing] the applicable portions of the Social Security Administration ('SSA') website concerning the federal law applicable to submitting an application for social security disability benefits" and providing "a written analysis . . . concerning the applicable law and requirements, regarding the prospective application." Accompanying the so-called retainer agreement was a check for $812 Mrs. Janangelo wrote to Mr. Janangelo dated December 28, 2018.

The "client memo" in the file is dated December 30, 2018, signed by Mr. Janangelo, and labeled as "Hand-Delivered" to Mrs. Janangelo at their shared residence. In this document, Mr. Janangelo reported that, after a review of the SSA website, he had determined that it would be too time consuming for Mrs. Janangelo to apply for benefits and the likelihood of easy success would be small.

The Janangelos reported on their 2018 return that SSA DCS had $812 in gross receipts against which Mr. Janangelo claimed $23,354 in expenses:

2018 Expense	*Amount*
Insurance (other than health)	$617
Legal and Professional Services	16,844
Supplies	347
Other Expenses (including Drake Tax software, CPE expenses, bar and union dues, license renewals, and periodicals)	5,546

V. *2019, 2020, and 2021: Other Adjustments Affecting AGI*

A. *2019*

The Notice of Deficiency issued to the Janangelos for 2019 determined a deficiency of $6,090 and a section 6663 penalty of $4,568. Section 6662 penalties were approved in the alternative. Respondent has conceded the section 6663 penalty as to Mrs. Janangelo but maintains that a negligence or substantial understatement penalty is still appropriate. The deficiency stems from respondent's disallowance of a $25,374 deduction from petitioners' 2019 income.

According to Mr. Janangelo, the disallowed deductions were all for expenses incurred in litigating his age discrimination lawsuit, but other than for the legal fees, he never provided an explanation detailing how they were connected. The expenses included the following:

2019 Expense	*Amount*
Drake Tax Software	$330
IRS Tax Forum CPE	2,139
Legal Fees (Kemp & Kemp Attorneys at Law)	10,000
NATP Dues	195
NATP Tax Course CPE	1,578
Nevada State Board of Accountancy (NSBOA) Dues	120
NTEU Dues	360
NTEU Steward Training	1,502
Periodicals (Reason Magazine)	25
Supplies (Office Max, Nevada Legal Forms)	46
United States Postal Service	7
Unreimbursed Mileage	74
"Disagreed Amount – re: IRC # 223(c)(2)"	8,998

1. *Conferences*

Incorporated into Mr. Janangelo's age discrimination lawsuit tally were expenses stemming from Mr. Janangelo's attendance at conferences. These expenses included car washes, kenneling expenses for the family dogs, and toiletries. For example, Mr. Janangelo provided the expense information below identifying expenditures allegedly related to his attendance at the 2019 IRS Tax Forum, all labeled as "IRC# 162 expenses." Section 162 permits the deduction of expenses that were incurred as "traveling expenses . . . while away from home in the pursuit of a trade or business." § 162(a)(2).

2019 Tax Forum Expense	*Amount*
Business Mileage (9/15/2019 to 9/20/2019)	$594
Car Wash (cash, 9/14/2019)	36
Hotel and Parking Expense (8/9/2015 to 8/14/2015)[sic]	610
Kennel Expense (9/14/2019 to 9/20/2019)	295
Meals (reduced by 50%, 9/15/2019 to 9/20/2019)	192
Office Supplies (cash, 9/16/2019)	16
Registration Fee for Tax Forum (4/30/2019)	235
Tips for Hotel Chambermaid (cash, 9/15/2019 and 9/20/2019)	10
Toiletries (9/16/2019)	115
Wall Street Journal and NY Times (8/9/2015 to 8/15/2015)[sic]	36

Another example is the list of expenses identified by Mr. Janangelo as stemming from his 2019 NTEU steward training in Arizona. They were labeled "IRC# 162 expenses – adjustment to AGI," and included with his age discrimination lawsuit tally:

NTEU Training Expense	*Amount*
Business Miles (5/19/2019 to 5/24/2019)	$520
Car Wash (cash, 5/19/2019)	40
Hotel (5/19/2019 to 5/24/2019)	525
Meals (reduced by 50%, 5/19/2019 to 5/24/2019)	182
Tips for Hotel Chambermaid (cash, 5/19/2019 to 5/24/2019)	8
Toiletries/Incidentals/Office Supplies (5/19/2019 to 5/24/2019)	185
Wall Street Journal and NY Times (cash, 5/19/2019 to 5/24/2019)	41

2. *"IRC #223(c)(2)"*

The Janangelos were not enrolled in an eligible high-deductible health plan in 2019, and thus they were not eligible for an HSA contribution deduction. But Mr. Janangelo's position—which he maintained even after the HSA collection action had been decided—is that the $8,998 listed as "Disagreed Amount – re: IRC # 223(c)(2)" on the materials he presented to the IRS qualified as an exception of some sort. He testified:

> I didn't take a deduction for an HSA. I took a deduction in 2019, . . . , for an exception which treats it for income tax purposes--because of the change in the amount of deductibles, it treats it for income tax purposes as essentially a high-deductible health plan, but it's not a high-deductible health plan. It's a carve-out, I think because Congress keeps changing the rules on the amount of the deductible.[17]

B. *2020*

The Notice of Deficiency issued to the Janangelos for 2020 determined a deficiency of $4,797 and a section 6663 penalty of $3,598. Section 6662(c) negligence penalties were approved in the alternative. Respondent has conceded the section 6663 penalty as to Mrs. Janangelo but maintains that a negligence penalty is appropriate. This Notice also concerned the same "other adjustments affecting AGI" as did the Notice of Deficiency issued for 2019.

The Janangelos claimed a deduction of $19,987, which, like the one claimed for the previous year, was comprised of expenses purportedly related to Mr. Janangelo's age discrimination case: $10,000 in payments to Gary Gilbert, Esq., and $6,356 in payments to court reporter Gregory Edwards, LLC, with the remainder being the same mix of deductions as Mr. Janangelo had claimed for the other years: Drake Tax software, photocopies, conference-related travel, subscriptions to periodicals (e.g., *The Wall Street Journal*, *Barron's*), and professional licensing and dues (e.g., the New York State Bar Association, NATP). As with 2019, Mr. Janangelo provided no clear explanation detailing how

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[17] To the extent Mr. Janangelo is referring to section 223(c)(2)(H), added to the Code for years beginning in 2025, that change would not apply for the years before us and it was not in place at the time he filed his 2019 return. He did not cite, and we were unable to identify, a provision that would support his claim.

the nonlegal expenses may have related to his age discrimination lawsuit for 2020.

C. *2021*

The Notice of Deficiency issued to the Janangelos for 2021 determined a deficiency of $17,867. It also determined a section 6663 penalty of $13,400 against Mr. Janangelo, with a section 6662 penalty in the alternative. Respondent determined (and continues to maintain) that a section 6662 penalty is appropriate as to Mrs. Janangelo for 2021. Once again, the deficiency stemmed from the disallowance of the claimed expense deductions—$74,447—purportedly related to Mr. Janangelo's age discrimination lawsuit.

In addition to the $68,008 Mr. Janangelo claims to have paid Mr. Gilbert's firm, Gilbert Employment Law, in 2021, the expenses Mr. Janangelo attributed to his age discrimination lawsuit for 2021 included Drake Tax software, trips to conferences, dues, office supplies, and periodicals. Mr. Janangelo also included the cost of a multiday trip to Los Angeles that he claimed was to find out where a particular courthouse used by the EEOC was located, just in case his age discrimination case had gone to trial.

Discussion

The Janangelos' primary argument in opposition to each of the Notices of Deficiency is that the audits leading to their issuance were all performed in retaliation for Mr. Janangelo's MSPB litigation, including his TIGTA complaint giving rise to the FOIA lawsuit. The record does not support this argument. Moreover, we may not look behind a Notice of Deficiency. *Greenberg's Express, Inc. v. Commissioner*, 62 T.C. 324, 328 (1974) ("[A] determination as to a [taxpayer's] tax liability must be based on the merits of the case and not on any previous record developed at the administrative level.").

We also note that witness credibility is an important consideration in trial matters. As a trier of fact, it is our duty to listen to the testimony, observe the demeanor of the witnesses, weigh the evidence, and determine what we believe. *Diaz v. Commissioner*, 58 T.C. 560, 564 (1972). Aside from the record's patently contradicting many of Mr. Janangelo's claims, some of his arguments can only be described as outlandish, more so in light of his professional background. He persisted in making arguments based on demonstrably false representations, even after intervening events made it clear that he was in the wrong.

Even when his testimony was unopposed, we are not required to accept it at face value. *See, e.g.*, *Neonatology Assocs., P.A. v. Commissioner*, 115 T.C. 43, 84 (2000), *aff'd*, 299 F.3d 221 (3d Cir. 2002). We did not find Mr. Janangelo to be a reliable or credible witness.

I. *Burden of Proof; Substantiation*

As a general rule, 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). The Janangelos do not contend that the burden of proof should shift to respondent pursuant to section 7491(a). In any event, there is no support in the record for shifting the burden of proof in accordance with that provision.

Deductions are a matter of legislative grace, and the taxpayer's burden requires him to establish entitlement to any claimed deduction. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934). A taxpayer claiming a deduction must demonstrate both that the deduction is allowable pursuant to some statutory provision and that the expense to which the deduction relates has been paid or incurred. *See* § 6001; *Hradesky v. Commissioner*, 65 T.C. 87, 89–90 (1975), *aff'd per curiam*, 540 F.2d 821 (5th Cir. 1976); Treas. Reg. § 1.6001-1(a). This is true whether the deductions from income are for miscellaneous itemized deductions under section 67(a); ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business under section 162(a); expenses incurred for the production of income under section 212(1); or traveling expenses, including meals and lodging, incurred by a taxpayer while traveling away from home in the pursuit of a trade or business under sections 162(a)(2) and 274(d).

Substantiation of an expense requires taxpayers to keep and provide books of accounts or records sufficient to establish "matters required to be shown by such person in any return of such tax or information." Treas. Reg. § 1.6001-1(a); *see also* § 6001; *INDOPCO, Inc. v. Commissioner*, 503 U.S. at 84.

For some types of expenses, a lack of substantiation can be overcome. *See, e.g.*, *Phillips v. Commissioner*, T.C. Memo. 2013-215, at *22–23. For these expenses, "if a taxpayer establishes that a deductible expense has been paid but cannot establish the precise amount of the deductible expense, the Court may estimate the amount." *Id.* at *23 (citing *Cohan v. Commissioner*, 39 F.2d 540, 543–44 (2d Cir. 1930)). "In making the estimate, the Court bears heavily against the taxpayer who failed to more precisely substantiate the expense." *Id.* (citing *Cohan v. Commissioner*, 39 F.2d at 544). "The Court will not estimate a deductible expense unless the taxpayer presents a sufficient evidentiary basis on which an estimate can be made." *Id.* (citing *Vanicek v. Commissioner*, 85 T.C. 731, 742–43 (1985)); *see also Rodriguez v. Commissioner*, T.C. Memo. 2009-22, slip op. at 11 (stating, with respect to the *Cohan* rule, that "we can't just guess").

Other types of expenses, however, may not be estimated because of the strict substantiation requirements applicable to them. *See* § 274(d); *Sanford v. Commissioner*, 50 T.C. 823, 827–28 (1968), *aff'd per curiam*, 412 F.2d 201 (2d Cir. 1969). Section 274(d) provides that no deduction shall be allowed for, among other things, traveling expenses and expenses with respect to listed property (including passenger automobiles) "unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement" (1) the amount of the expenditure or use; (2) the time and place of the expenditure or use; and (3) the business purpose of the expenditure or use. *Sanford*, 50 T.C. at 827; Temp. Treas. Reg. § 1.274-5T(a). Substantiation for this purpose requires the taxpayer to maintain an account book, a diary, a log, a statement of expenses, trip sheets, or a similar record prepared contemporaneously with the expenditure and documentary evidence (e.g., receipts or bills). Temp. Treas. Reg. § 1.274-5T(c)(2)(i) and (ii).

Instead of receipts or other source documents, Mr. Janangelo relied heavily on his own prepared lists of expenses he called "workschedules" to support his claimed deductions. He described these lists as follows: "For each expense, the workschedule states the (1) date the expense was incurred[,] (2) description of the expense[,] (3) method [of] payment of the expense (i.e. – check number, debit)[,] and (4) the payee of the expense." Notably absent was the business purpose of the expenditure or use. *See Sanford*, 50 T.C. at 827; *see also* § 274(d). Despite Mr. Janangelo's testimony that these lists "fully explain" all of his claimed deductions, they are not proper substantiation for most business expenses, and they clearly do not meet the heightened requirements for travel expenses as imposed by the Code.

Mr. Janangelo argues that he is not required to substantiate any expense under $75, no matter what the category. He cites no authority for this proposition. His insistence that we accept his position relying only on his say-so is not reasonable. Nor does his say-so provide authority for his return position. *See Tokarski v. Commissioner*, 87 T.C. 74, 77 (1986) (stating that we are not required to accept a taxpayer's self-serving testimony).

Even for those few instances where the record included a receipt or where *Cohan* might have permitted the Court to infer the amount of an expense, Mr. Janangelo did not establish that the deductions were allowable pursuant to the Code. He was unable to credibly articulate how the reported expenses might have been appropriate and helpful in carrying on a business, or how they might have been legitimately related to the production of income. We note in particular the considerable overlap among all of his years' expenses; for each year before us he claimed the same set of expenses, notwithstanding that his alleged income-producing activity changed. His claims are simply not credible. But because the deficiencies alone are not the only issues for resolution, it is important that we provide additional detail.

II. *2018: SSA DCS*

Mr. Janangelo asserts that SSA DCS was a bona fide business established to represent Mrs. Janangelo in pursuit of an SSA disability claim, and thus expenses related to the operation of that business should be deductible as reported. Aside from questions as to whether the expenses were paid or incurred, there are also questions about whether the so-called business was an activity engaged in for profit. *See generally* § 183. At trial, Mr. Janangelo stated: "I used to my advantage the tax laws which were afforded to me to properly and legally operate a Schedule C business for the 2018 year." But we remind him that a transaction is a sham if it has no purpose other than the creation of tax deductions. *See, e.g.*, *Neely v. United States*, 775 F.2d 1092, 1094 (9th Cir. 1985); *Zmuda v. Commissioner*, 731 F.2d 1417, 1421 (9th Cir. 1984), *aff'g* 79 T.C. 714 (1982); *see also Falsetti v. Commissioner*, 85 T.C. 332, 347 (1985) ("We define 'sham in substance' as the expedient of drawing up papers to characterize transactions contrary to objective economic realities and which have no economic significance beyond expected tax benefits.").

A. *SSA DCS Was Not a Trade or Business.*

The record does not support petitioners' contention that the so-called business was anything other than a sham, and for the reasons discussed below we find that SSA DCS was not a trade or business.

1. *Inaccurate Reporting of Income*

The couple shared household expenses, and Mrs. Janangelo wrote bimonthly checks to Mr. Janangelo for that purpose. For most of 2018 she paid him $1,800 per month in installments of $900. In December of 2018, however, Mrs. Janangelo wrote three checks to her husband instead of two: one for $900, one for $812, and one for $100. The Janangelos contend that the $812 check dated December 28, 2018, was payment for professional services pursuant to the "retainer agreement." Respondent contends that it represents payment for household expenses. We do not find Mr. Janangelo's contention to be credible.

The checks given to Mr. Janangelo in December 2018 produce nearly the same amount Mrs. Janangelo would have paid her husband that month regardless of any legal services provided ($1,812 instead of $1,800). Additionally, the $812 check, like the others, was made payable to Mr. Janangelo, not to SSA DCS. It is clear that the check represented Mrs. Janangelo's share of routine household expenses rather than a genuine payment for services. Under the circumstances surrounding SSA DCS, this check did not represent legitimate income.

2. *Inaccurate Reporting of Expenses*

All of the SSA DCS activity, from the "engagement agreement" to the "client memorandum," spanned only a handful of hours in the waning days of 2018. Yet Mr. Janangelo claimed deductions for expenses incurred throughout the year, the same expenses he had deducted before the TCJA took effect. The so-called business appears to be an attempt to continue to claim the same deductions from income he had previously claimed and not a bona fide trade or business.

Additionally, there are instances where the record demonstrates that certain expenses were inaccurate as reported. The claim for "Legal and Professional Services" is particularly illustrative.

The Janangelos reported that SSA DCS had paid one of Mr. Janangelo's attorneys, Mr. Kemp, $16,844 for "Legal and Professional Services" in 2018. Mr. Janangelo contended, even through trial, that

$14,500 of that amount represented legal fees paid to Mr. Kemp to assist with Mrs. Janangelo's potential disability benefits application, SSA-related matters, and SSA-related litigation.

In an effort to support this claim Mr. Janangelo provided copies of checks made out to J.P. Kemp, Esq. For example, Mr. Janangelo provided a copy of a $500 check dated May 12, 2018. However, the memo line on that check reads "Oral hearing – 6/11/2018." There was never a hearing related to Mrs. Janangelo's disability claim because she never made one.

Another check, this one dated September 26, 2018, was marked "IRC Number 212, SCOTUS litigation costs." The only Supreme Court activity in the record was undertaken with respect to Mr. Janangelo's FOIA litigation. Despite this fact, Mr. Janangelo unreasonably insisted that the check supported his claim for deductible legal services attributable to SSA DCS. The mere fact that Mr. Janangelo may have paid Mr. Kemp for legal work does not make the expense attributable to SSA DCS.

Mr. Janangelo also provided a billing statement dated March 25, 2019, purporting to show that he had paid Kemp & Kemp Attorneys at Law $14,500 for legal work in 2018. After being issued an IRS summons, however, Mr. Kemp provided a corrected billing statement dated September 28, 2021, showing that the amount Mr. Janangelo paid him for legal services in 2018 was actually $4,500. At trial Mr. Kemp clarified that the $14,500 reflected on the March 25, 2019, statement was inaccurate. He had prepared the original statement relying on figures provided to him by Mr. Janangelo rather than from his own billing records. Mr. Kemp identified the discrepancy when he reviewed his own records after receiving the summons.

Mr. Janangelo attempted to explain the $10,000 discrepancy by saying that he paid Mr. Kemp so much money over the years that it did not matter. But that is not how deductions work. § 446; *see, e.g.*, *Gregory v. Commissioner*, 149 T.C. 43, 46 (2017) (explaining that a cash method taxpayer may deduct expenses only for the year the expenses are paid); Treas. Reg. § 1.446-1(c)(1)(i). Mr. Janangelo argued that the IRS should have been more flexible during his audits, explaining that his own audit practice working for the IRS is to allow a deduction, even if claimed for the wrong year. Mr. Janangelo's practice as a revenue agent may be to allow such deductions, but the Court's role is to apply the law as written to the facts put in evidence. The Janangelos find support in neither.

Further, Mr. Kemp's legal practice does not include SSA disability claims. Mr. Kemp testified under oath that, although he maintained an ongoing attorney-client relationship with Mr. Janangelo, he did not know what SSA DCS was. He also credibly testified that he did not provide any legal services at all to Mrs. Janangelo or to SSA DCS.

B. *The Expenses Were Not Reasonable, Ordinary, or Necessary.*

Even if all of the expenditures claimed for SSA DCS had been properly documented, the expenses Mr. Janangelo claimed as part of the Schedule C filed for 2018 were not reasonable, not ordinary, and not necessary under the circumstances. For example, Mr. Janangelo claimed 25% of his annual life and disability insurance policy cost on the SSA DCS Schedule C. He argued that the deduction was an SSA DCS expense because, if something had happened to him, his wife would have had to hire alternate counsel to investigate her potential disability claim. But that would be a benefit for Mrs. Janangelo, not for SSA DCS. Mr. Janangelo provided no better explanation.[18]

Similarly, Mr. Janangelo allocated 33% of his NTEU dues to SSA DCS because, as he explained it, had the IRS denied his request to represent his wife before the SSA, he would have filed a grievance against IRS management and that grievance process would have been facilitated by his membership in the union. We find this to be neither a valid reason for the expense here nor a reasonable percentage.

Mr. Janangelo claimed that the Drake Tax software (the same professional tax preparation software he also had a subscription for in 2016, 2019, 2020, and 2021) was necessary for SSA DCS so that he could run projections for his wife about the tax impact of Social Security Disability payments. The record does not suggest that any such projections were run. He also told the IRS that his representation of Mrs. Janangelo would not "concern any 'tax matters.'"

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[18] Equally unsatisfactory was his explanation of how he arrived at the amount to claim. He explained his calculation by saying that he "went for a reasonable approximation of what [he] could allocate to a tax-deductible expense. . . . [taking] 25 percent of an expense that is in a gray area, partially personal, could be business. . . . You take a reasonable percentage, everybody's happy." As previously noted, what Mr. Janangelo may have allowed as a revenue agent is irrelevant.

Mr. Janangelo listed expenses related to travel for conferences on the SSA DCS Schedule C. The trips included attendance at an IRS conference in early August 2018. Mr. Janangelo argues that attendance at conferences such as that one allowed him to earn CPE credits to keep his professional licenses, which in turn would have allowed him to represent his wife if she needed to file a disability claim. On this record, we are not convinced.[19]

C. *SSA DCS Was Not an Activity Engaged In for Profit.*

Mr. Janangelo's expenses—even if they had been accurately reported, adequately substantiated, and otherwise reasonable—would still not be deductible because SSA DCS was not an activity engaged in for profit. Mr. Janangelo declared, repeatedly, that SSA DCS "was a business in full compliance with IRC# 162 and Treas. Reg. 1.183-2(a) and (b)." Declaring that does not make it so.

Section 162(a) permits the deduction of ordinary and necessary expenses incurred in carrying on a trade or business. Even if an activity is not a fully fledged business, it might be an activity engaged in for profit. If an activity is not engaged in for profit, deductions are limited. Section 183(a) provides that, if an activity is not engaged in for profit, "no deduction attributable to such activity shall be allowed," except to the extent of income from the activity as provided in section 183(b). *See also* Treas. Reg. § 1.183-2(a). In pertinent part section 183(b) allows those deductions that would have been allowable had the activity been engaged in for profit only to the extent of gross income derived from the activity (reduced by deductions attributable to the activity that are allowable without regard to whether the activity was engaged in for profit). SSA DCS had no real income, so it had nothing to offset.

An activity not engaged in for profit is "any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212." § 183(c). Deductions are allowable under section 162 or under section 212(1) or (2) if the taxpayer is engaged in the activity with the actual and honest objective of making a profit. *Dreicer v. Commissioner*, 78 T.C. 642, 645 (1982), *aff'd*, 702 F.2d 1205 (D.C. Cir. 1983) (unpublished table decision); *Golanty v. Commissioner*, 72 T.C. 411, 425–26 (1979), *aff'd*,

[19] We direct Mr. Janangelo's attention to Treasury Regulation § 1.212-1(f): "Among expenditures not allowable as deductions under section 212 are the following: . . . fees and expenses paid or incurred by physicians, dentists, accountants, and other taxpayers for securing the right to practice their respective professions."

647 F.2d 170 (9th Cir. 1981) (unpublished table decision). The profit standard applicable to section 212 is the same as that applied to section 162. *See Antonides v. Commissioner*, 893 F.2d 656, 659 (4th Cir. 1990), *aff'g* 91 T.C. 686 (1988); *Allen v. Commissioner*, 72 T.C. 28, 33 (1979).

Mr. Janangelo insists that "[t]here is no requirement under federal tax law that in practicing law on behalf of [his] wife, [he] had to earn a profit in the first year of business." The taxpayer's expectation of making a profit need not be reasonable, but it must be bona fide. *Golanty*, 72 T.C. at 425–26. Mr. Janangelo's was neither. It appears that his primary objective was to avoid paying the correct amount of tax.

The Tax Court and the U.S. Court of Appeals for the Ninth Circuit have consistently held that a taxpayer must establish that he engaged in an activity in good faith with the predominant, primary, or principal objective and intent of realizing an economic profit, independent of tax savings, in order to deduct expenses under section 162 or 212.[20] *Wolf v. Commissioner*, 4 F.3d 709, 713 (9th Cir. 1993), *aff'g* T.C. Memo. 1991-212; *Indep. Elec. Supply, Inc. v. Commissioner*, 781 F.2d 724, 726 (9th Cir. 1986), *aff'g Lahr v. Commissioner*, T.C. Memo. 1984-472; *Sherman v. Commissioner*, T.C. Memo. 2023-63, at *9, *aff'd*, No. 23-70161, 2025 U.S. App. LEXIS 12600 (9th Cir. May 23, 2025). The existence of the requisite profit objective is a question of fact that must be decided on the basis of the entire record. *Commissioner v. Groetzinger*, 480 U.S. 23, 35–36 (1987); Treas. Reg. § 1.183-2(b). In resolving this factual question, greater weight is given to objective facts than to a taxpayer's statement of intent. *See Indep. Elec. Supply, Inc. v. Commissioner*, 781 F.2d at 726; Treas. Reg. § 1.183-2(a).

The regulations provide a nonexclusive list of factors to consider in evaluating a taxpayer's profit objective. Treas. Reg. § 1.183-2(b). The complete set of factors is (1) the manner in which the taxpayer carried on the activity, (2) the expertise of the taxpayer or his or her advisors, (3) the time and effort spent by the taxpayer in carrying on the activity, (4) the expectation that the assets used in the activity may appreciate in value, (5) the success of the taxpayer in carrying on other similar or dissimilar activities, (6) the taxpayer's history of income or loss with respect to the activity, (7) the amount of occasional profits earned, if any, (8) the financial status of the taxpayer, and (9) whether elements of personal pleasure or recreation were involved. Here, some of the factors

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[20] *See* § 7463(b); Rule 170; *Golsen v. Commissioner*, 54 T.C. 742, 757 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

do not apply or are neutral. No single factor or group of factors is dispositive, and more weight may be given to some factors than others. *Golanty*, 72 T.C. at 426; *see also Surridge v. Commissioner*, T.C. Memo. 1998-304, slip op. at 6 (noting that a profit objective does not turn on the number of factors satisfied); Treas. Reg. § 1.183-2(b). We discuss a few of the relevant factors below.

Mr. Janangelo spent 2.5 hours in 2018 working on SSA DCS and none in any of the other years before us. The record makes clear that the "activity" was reviewing a website and writing a short memo about it. If this even occurred, 2.5 hours is not a significant amount of time or effort.

Even if we could treat the $812 check Mrs. Janangelo gave to Mr. Janangelo as revenue, a deduction of $22,542 in expenses provides a questionable income-to-expense ratio for an enterprise that could not take other clients.

The timing of petitioner's business expenses is similarly questionable. Mr. Janangelo appears to have asked the IRS for permission to represent his wife on or about September 12, 2018. The engagement agreement was signed December 28, 2018. The client memo was dated December 30, 2018. Despite a generous reading of a maximum 3.5 months of operations, Mr. Janangelo claimed deductions for expenses incurred throughout the year as "business expenses."

It is worth noting again the similarities among Mr. Janangelo's claims for expenses in other years and his claimed SSA DCS expenses for 2018. Those similarities provide additional support for respondent's argument that SSA DCS was not an activity engaged in for profit but merely Mr. Janangelo's attempt to reduce his taxable income after the TCJA. The record before us does not support a different conclusion.

III. *The Age Discrimination Lawsuit Expenses for 2019, 2020, and 2021 Are Not Deductible.*

Aside from the issues relating to substantiation that apply across all of the expenses and all of the years at issue, Mr. Janangelo's claims that any of his 2019, 2020, or 2021 expenses are properly deductible as related to his age discrimination lawsuit are without merit.

A. *Most Expenses Appear Unconnected to the Lawsuit.*

As a threshold matter, the record does not address how the nonlegal expenses Mr. Janangelo claimed (CPE and conference travel, bar and union dues, etc.) are related to his age discrimination lawsuit. Similarly, neither his revenue agent position nor the Appeals officer role he had applied for required that he be a CPA or an attorney. We can also see that these expenses are the same types of expenses that he claimed as deductions for each year in the record, but Mr. Janangelo never attempted to explain any connection to the lawsuit.

B. *Mr. Janangelo Received No Award.*

The legal expenses themselves (attorney's fees, court reporter fees), even though arguably related to the lawsuit, are not deductible either. Section 62 allows individual taxpayers certain deductions against gross income to arrive at "Adjusted Gross Income." § 62(a). Included among these are deductions for costs involving discrimination suits. § 62(a)(20). However, those deductions are available only for legal expenses (attorney's fees and costs) up to the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement) resulting from such a claim. *Id.* Mr. Janangelo's case was resolved by motion for summary judgment in the Government's favor. There was no settlement, he received no monetary award, and he did not get the promotion. Mr. Janangelo had no amount awarded to him from which to deduct anything.

Despite his loss, and without pointing the Court to any supporting authority, Mr. Janangelo claimed that the section 62(a)(20) limitation did not apply to him. He based this claim on his allegation that he would have won his case but for the "lies" told by the IRS during the related depositions. This unsupported allegation does not change the result. None of the expenses Mr. Janangelo reported as part of his age discrimination suit are deductible.

IV. *Other Expense Deductions for 2019, 2020, and 2021*

A. *Section 212*

Section 212 generally permits individuals to deduct ordinary and necessary expenses paid or incurred during the taxable year for the production of income. § 212(1). The taxpayer bears the burden of proving that an expense was incurred for business, rather than personal reasons. *See, e.g.*, *Walliser v. Commissioner*, 72 T.C. 433, 437 (1979). Petitioners claim they were entitled to deductions specifically pursuant to section 212 for 2019, 2020, and 2021, but they failed to address how those expenses might have been tied to the production of income.[21]

For example, Mr. Janangelo claimed deductions for travel expenses relating to attendance at conferences for CPE in 2019, 2020, and 2021. The travel expenses typically included mileage, parking, lodging, a registration fee, and meals. With respect to amounts deducted for meals, Mr. Janangelo testified:

> When you go to a tax conference to obtain CPE credits and the tax conference is out of town, the general habit is that people eat meals three times a day. That would be "business," though it's not a business in a Schedule C sense. It's a 212 deduction.

We don't see how his meals might be a section "212 deduction" here, even if he had met the requirements for substantiating these types of expenses. Mr. Janangelo acknowledged that he was not required by his employer to attend these conferences for CPE. More importantly, the IRS did not require that Mr. Janangelo be a licensed attorney or CPA, and he was not permitted to perform outside work because of his employment with the IRS. Mr. Janangelo never drew a legitimate connection between his attendance at conferences and the production of income.

Similarly, Mr. Janangelo claimed a deduction for the cost of toiletries if he bought them while he was out of town:

> When I'm out of town attending CPE, if I buy shaving cream, hand sanitizer. . . . I consider those to be related to my getting . . . CPE credits. I'm not going to drive home from San Diego to pick up my toothpaste, as opposed to just buying it in CVS.

Generally, personal items purchased while away from home are still personal, and Mr. Janangelo directs us to no provision permitting deductions for them. *See* § 262(a) (establishing that, except as specifically provided elsewhere in the Code, personal expenses are not deductible); § 213 (explaining that deductions for medical care are limited to an amount exceeding a percentage of gross income); Treas.

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[21] Nor did petitioners ever address how the TCJA's suspension of miscellaneous itemized deductions for 2019, 2020, or 2021 would have limited their ability to properly claim deductions for these expenses.

Reg. § 1.213-1(e)(2) (disallowing deductions for toothpaste, shaving cream, and similar toiletries as medical expenses); *see also Fred W. Amend Co. v. Commissioner*, 55 T.C. 320, 325–26 (1970) (explaining that some expenditures are so "inherently personal" that they are not deductible), *aff'd*, 454 F.2d 399 (7th Cir. 1971). Kenneling the Janangelos' dogs likewise is a personal expense, not a business one. Petitioners did not provide an explanation that would lead us to determine otherwise.

B. *HSA Deduction*

Petitioners claimed an $8,998 deduction from their 2019 income, identifying it as a "disagreed amt. – re: IRC# 223(c)[sic](2)". This deduction was not reported on Form 8889, Health Savings Accounts (HSAs). Instead, it was listed with their section 162 deductions on one of the "workschedules." Mr. Janangelo claims that the deduction was permitted pursuant to section 223(c) and section 212. Neither supports his argument.

Section 223(c)(1)(A) provides that to have a deductible contribution to an HSA, the taxpayer must be an "eligible individual," meaning someone enrolled in a "high deductible health plan" (HDHP) and not covered by a health plan that is not a disqualifying health plan, or a non-HDHP. § 223(c)(1)(A), (2)(A) (discussing what qualifies as an HDHP). The Janangelos were covered by a disqualifying plan in 2019, the APWUHP. And, as the HSA collection action had already made clear, the plan that the Janangelos were enrolled in "does not include HDHPs."

Mr. Janangelo insists that section 223(c)(2) permits the deduction regardless, arguing that "under the per se HSA rules, it wouldn't have qualified, but it qualified as an exception." Mr. Janangelo claimed at trial that the "exception" was that his HSA amount was deductible pursuant to section 212. We fail to see how section 212 would apply.

Moreover, even if he had not understood the difference between a high option plan and a high deductible plan at the time he filed petitioners' 2019 tax return, Mr. Janangelo was well aware of the difference by the time of trial because the trial took place after his HSA collection action had been decided. He continued to make the argument anyway.

V. *Penalties*

Respondent determined penalties against both Janangelos in each of the Notices of Deficiency. As discussed more fully below, we find Mr. Janangelo liable for the civil fraud penalty. Mrs. Janangelo, however, had reasonable cause for signing the returns that Mr. Janangelo prepared, and we find that she is not liable for the accuracy-related penalties determined against her related to her husband's activities.

A. *Burden of Production*

The Commissioner bears the burden of production with respect to an individual taxpayer's liability for any penalty, requiring the Commissioner to come forward with sufficient evidence indicating that the imposition of the penalty is appropriate. *See* § 7491(c); *Higbee v. Commissioner*, 116 T.C. 438, 446–47 (2001).

It is clear from the record and the parties' Stipulation that the initial determination of penalties was timely approved as required under section 6751(b).

B. *Civil Fraud Penalties*

The Notices of Deficiency determined a fraud penalty pursuant to section 6663 against Mr. Janangelo for each of the years at issue. It is no longer an issue for resolution with respect to Mrs. Janangelo. *See also* § 6663(c).

1. *Section 6663 Generally*

Section 6663(a) imposes a penalty of 75% of the portion of any underpayment of tax required to be shown on a return that is attributable to fraud. Fraud is never imputed or presumed. *See Parks v. Commissioner*, 94 T.C. 654, 660 (1990). Rather, "[t]he existence of fraud is a question of fact to be resolved upon consideration of the entire record." *Petzoldt v. Commissioner*, 92 T.C. 661, 699 (1989). The Commissioner bears the burden of proof by clear and convincing evidence. § 7454(a); Rule 142(b); *see Petzoldt*, 92 T.C. at 699; *Castillo v. Commissioner*, 84 T.C. 405, 408 (1985).

Disagreeing with the IRS does not, by itself, equate to fraud. Rather, fraud is an intentional wrongdoing on the part of the taxpayer with the specific purpose of evading a tax believed to be owing. *Bradford* *v. Commissioner*, 796 F.2d 303, 307 (9th Cir. 1986), *aff'g* T.C. Memo. 1984-601; *Edelson v. Commissioner*, 829 F.2d 828, 833 (9th Cir. 1987), *aff'g* T.C. Memo. 1986-223; *Petzoldt*, 92 T.C. at 698. To establish fraud, the Commissioner must prove that (1) an underpayment of tax exists for the relevant year and (2) the taxpayer "intended to evade taxes known to be owing by conduct intended to conceal, mislead, or otherwise prevent the collection of taxes." *DiLeo v. Commissioner*, 96 T.C. 858, 874 (1991), *aff'd*, 959 F.2d 16 (2d Cir. 1992); *see also Langille v. Commissioner*, 447 F. App'x 130, 134 (11th Cir. 2011), *aff'g* T.C. Memo. 2010-49.

To sustain his burden, the Commissioner need not prove the precise amount of any deficiency attributable to fraud, but only that a part of the deficiency is attributable to fraud. § 6663(b); *see Estate of Beck v. Commissioner*, 56 T.C. 297, 362 (1971). We have already determined that underpayments exist. Therefore, the Court must now determine whether any portion of any underpayment is attributable to fraudulent intent. *See DiLeo*, 96 T.C. at 872.

Because direct evidence of a taxpayer's intent is rarely available, fraudulent intent may be established by circumstantial evidence, and reasonable inferences may be drawn from the relevant facts. *See Bradford v. Commissioner*, 796 F.2d at 307. The taxpayer's entire course of conduct may be examined to establish the requisite intent. *See Niedringhaus v. Commissioner*, 99 T.C. 202, 210 (1992); *Stone v. Commissioner*, 56 T.C. 213, 224 (1971); *Otsuki v. Commissioner*, 53 T.C. 96, 106 (1969); *Romer v. Commissioner*, T.C. Memo. 2001-168, slip op. at 44.

Courts usually rely on several nonexclusive indicia or "badges" of fraud to find circumstantial evidence of fraud. *See Niedringhaus*, 99 T.C. at 211; *DiLeo*, 96 T.C. at 875. These badges of fraud include, as potentially relevant here, understating income; failing to maintain adequate records; offering implausible or inconsistent explanations of behavior; failing to cooperate with tax authorities; offering false testimony or testimony that lacks credibility; and filing false documents. *See Vanover v. Commissioner*, T.C. Memo. 2012-79, slip op. at 11; *see also Bradford v. Commissioner*, 796 F.2d at 307; *Recklitis v. Commissioner*, 91 T.C. 874, 910 (1988). The existence of any one badge is not dispositive, but the existence of several badges may be persuasive circumstantial evidence of fraud. *Niedringhaus*, 99 T.C. at 211.

If the Commissioner establishes that any portion of an underpayment is attributable to fraud, then the entire underpayment is treated as due to fraud unless the taxpayer can establish by a preponderance of the evidence that some portion of it is not attributable to fraud. § 6663(b); *see Estate of Beck*, 56 T.C. at 362. In addition, no fraud penalty may be imposed with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion. § 6664(c)(1).

2. *Fraud Analysis*

Respondent argues that Mr. Janangelo's fraudulent intent is evident on the record before us, and we agree. The Court does not impose a fraud penalty lightly. In fact, we often decide against its application. *See, e.g.*, *Di Ricco v. Commissioner*, T.C. Memo. 2009-300, slip op. at 9 (finding that the Commissioner did not establish fraudulent intent by clear and convincing evidence); *Carter v. Commissioner*, T.C. Memo. 2003-235, slip op. at 4 (relying on the taxpayer's having affirmatively established that he was negligent in his recordkeeping and therefore lacked the requisite intent to defraud). Here, however, its application is clear. Mr. Janangelo did not "utilize the advantages of the tax law" as he alleges; he intentionally and improperly attempted to reduce his taxable income by claiming deductions to which he knew he was not entitled and submitted documents that he knew were not accurate, thereby engaging in fraud on the tax system.

The first indicium of fraud, understatement of income, can be shown by an overstatement of deductions. *See, e.g.*, *Hicks Co. v. Commissioner*, 56 T.C. 982, 1019 (1971), *aff'd*, 470 F.2d 87 (1st Cir. 1972). Although mere underreporting of income is insufficient to support a finding of fraud, "repeated understatements in successive years when coupled with other circumstances showing an intent to conceal or misstate taxable income present a basis on which the Tax Court may properly infer fraud." *Furnish v. Commissioner*, 262 F.2d 727, 728–29 (9th Cir. 1958), *aff'g in part, remanding in part Funk v. Commissioner,* 29 T.C. 279 (1957). Mr. Janangelo overstated deductions for each year at issue, and we have already found that respondent has clearly and convincingly demonstrated that an underpayment of tax exists for each of those years.

Taxpayers must maintain records sufficient for the Commissioner to determine their tax liabilities. Failing "to keep or produce adequate records to support . . . tax return positions" can be an indicator of fraud. *See Scott v. Commissioner*, T.C. Memo. 2012-65, slip op. at 32. *See generally* § 6001. The Janangelos failed to present adequate records to support the deductions claimed on their tax returns for the years at issue. Given Mr. Janangelo's audit background, this factor is indicative of fraud.

A taxpayer's implausible or inconsistent explanations for his actions may also constitute circumstantial evidence of fraudulent intent. *See Di Giorgio v. Commissioner*, T.C. Memo. 2023-44, at *25; *Vanover v. Commissioner*, T.C. Memo. 2012-79, slip op. at 22. Mr. Janangelo misreported petitioners' income for every year at issue through the use of deductions he was expressly not entitled to under any theory presented. His explanations, when he provided them, were at best merely wrong. For the most part, they were not remotely credible. Mr. Janangelo's misapplication of the tax laws cannot be fairly read as anything other than intentional.

Mr. Janangelo provided false documents to the IRS and to the Court. *See Stephenson v. Commissioner*, 79 T.C. 995, 1007 (1982) (explaining that filing false documents is another factor that supports a finding of fraudulent intent), *aff'd per curiam*, 748 F.2d 331 (6th Cir. 1984). He created a sham "business" for 2018 to try to get around changes to the tax laws that went into effect that year. He blatantly disregarded facts and the Code for 2019, 2020, and 2021 in an effort to claim deductions from gross income to which he was not entitled, and he did so without reason, legal support, or plausible explanation.

He failed to cooperate with the IRS. He was combative and hostile with IRS representatives during both the audits and the Court proceedings.

We consider all of these factors in light of Mr. Janangelo's particular background. "A taxpayer's intelligence, education, and tax expertise are relevant in determining fraudulent intent." *Cole v. Commissioner*, T.C. Memo. 2010-31, slip op. at 21 (citing *Stephenson*, 79 T.C. at 1006), *aff'd*, 637 F.3d 767 (7th Cir. 2011); *see also Niedringhaus*, 99 T.C. at 211. Mr. Janangelo is a tax professional. He is a licensed attorney, a certified public accountant, and (for many years) an employee of the IRS. He possesses more tax-specific knowledge than the average taxpayer, and he relies on that knowledge for a career. And not just any career, but one that requires him to examine returns for the same types of tax avoidance he himself engaged in. It is clear that he is liable for the fraud penalty for each year at issue.

Although section 6664(c)(1) provides that no penalty will be imposed under section 6663 with respect to any portion of an underpayment for which it is shown that there was a reasonable cause and that the taxpayer acted in good faith, this record does not suggest that Mr. Janangelo operated with either for any portions of the underpayments.

C. *Section 6662 Negligence Penalty*

Section 6662(a) imposes a 20% accuracy-related penalty on an underpayment of tax required to be shown on a return. This penalty applies to underpayments attributable, among other reasons, to "[n]egligence or disregard of rules or regulations" and "[a]ny substantial understatement of income tax." § 6662(b)(1) and (2). Section 6662(d)(2)(A) generally defines "understatement" as the excess of the tax required to be shown on the return over the amount shown on the return as filed. An understatement of income tax is "substantial" if it exceeds the greater of $5,000 or 10% of the tax required to be shown on the return. *See* § 6662(d)(1)(A).

Negligence "includes any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return." Treas. Reg. § 1.6662-3(b)(1). Negligence also includes any failure to substantiate items properly. *Id.* It is clear that petitioners were negligent in their tax filing for each year before us. And, in the years for which the section 6662(d) penalty was determined (i.e., 2018, 2019, and 2021), their understatements of income tax were "substantial."

A section 6662(a) penalty was determined against Mr. Janangelo for each year as an alternative to the fraud penalty. For the reasons set forth above, the negligence penalty would ordinarily apply. But we have already held that Mr. Janangelo is liable for the section 6663 fraud penalty; thus no section 6662(a) penalty applies. *See* § 6662(b).[22]

[22] To the extent the Janangelos argue that the "workschedules" provided with their returns adequately disclosed Mr. Janangelo's positions so as to avoid the penalty had it been applicable, we note that any disclosures were improperly made and lacked a reasonable basis. *See* Treas. Reg. §§ 1.6662-3(c), 1.6662-7.

Whether Mrs. Janangelo is liable for penalties under section 6662(a) for any of the years at issue remains before us.

Penalties under section 6662 will not be imposed if any portion of an underpayment is attributable to a taxpayer's reasonable cause and good faith attempt to comply with his tax obligations. *See* § 6664(c)(1). "The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances." Treas. Reg. § 1.6664-4(b)(1). Mrs. Janangelo bears the burden of proof regarding any reasonable cause defense. *See* Rule 142(a)(1); *Higbee*, 116 T.C. at 448–49.

One possible ground for claiming "reasonable cause" is reliance on professional advice. Treas. Reg. § 1.6664-4(b)(1). Reliance on the advice of a tax professional may establish a defense of reasonable cause and good faith, but only if (1) the adviser was a competent professional who had sufficient expertise to justify reliance; (2) the taxpayer provided necessary and accurate information to the adviser; and (3) the taxpayer actually relied in good faith on the adviser's judgment. *See Neonatology Assocs., P.A.*, 115 T.C. at 99.

Mrs. Janangelo testified that she routinely had her returns professionally prepared, even before she married Mr. Janangelo. Although Mr. Janangelo displayed (both to us and to respondent) ample bad faith and an intent to avoid tax, it was reasonable for Mrs. Janangelo under the circumstances to rely on what her husband, a tax professional who was employed by the IRS, told her in preparing and filing their returns. Her reliance on him for the years before us is especially reasonable in light of the fact that all of the deductions at issue relate to Mr. Janangelo, his alleged business, and his litigation. Therefore, we find that Mrs. Janangelo acted with reasonable cause in relying on Mr. Janangelo to prepare their joint returns. Correspondingly, we find that she is not liable for penalties under section 6662(a) for any year before us.

Conclusion

To the extent the Janangelos presented arguments not addressed above, we find them to be irrelevant, moot, or without merit.

To reflect the foregoing,

Decisions will be entered for respondent as to the deficiencies; for respondent as to the imposition of the section 6663 fraud penalty against Mr. Janangelo for each year at issue; and for Mrs. Janangelo as to the section 6662(a) penalties determined against her.