United States Tax Court

T.C. Memo. 2026-91

BRENTON E. WILLIAMS AND OCTAVIA P. WILLIAMS a.k.a. OCTAVIA PEARL,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 9422-22. Filed September 23, 2026.

Brenton E. Williams and Octavia P. Williams a.k.a. Octavia Pearl, pro sese.

Peter T. McCary, *Derek M. Schnell*, and *A. Gary Begun*, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

MARSHALL, *Judge*: In a Notice of Deficiency dated February 11, 2022 (Notice), respondent determined deficiencies and section 6662(a)[1] accuracy-related penalties for underpayments due to substantial understatements of income tax or, in the alternative, negligence for the 2018 and 2019 tax years (years in issue) in the following amounts:

Year	*Deficiency*	*§ 6662(a)*
2018	$27,488	$5,498
2019	6,764	1,353

[1] 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. Except where otherwise indicated, monetary amounts are rounded to the nearest dollar.

Served 09/23/26

[*2] On April 20, 2022, petitioners timely filed a Petition with the Court disputing the Notice. The issues for decision are whether petitioners are: (1) entitled to deduct a casualty loss of $162,075 reported on Schedule A, Itemized Deductions, for the 2018 tax year, (2) entitled to deduct noncash charitable contributions of $27,787 reported on Schedule A for the 2019 tax year, (3) entitled to deduct $5,619 of personal property taxes reported on Schedule A for the 2019 tax year, (4) entitled to deduct $4,635 of state and local general sales taxes reported on Schedule A for the 2019 tax year, (5) entitled to deduct $26,289 of expenses for serving in a reserve component of the Armed Forces of the United States for the 2019 tax year, and (6) liable for section 6662(a) accuracy-related penalties for the years in issue.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The Stipulation of Facts, the First Supplemental Stipulation of Facts, and the accompanying Exhibits are incorporated herein by this reference. Petitioners resided in Florida when the Petition was timely filed.

I. *Background*

Petitioners were married at all relevant times during the tax years in issue. After filing the Petition, petitioners separated.[2]

In 2018 and 2019, Octavia was a member of the active component of the U.S. Air Force assigned to Tyndall Air Force Base (Tyndall) near Panama City, Florida. On or about October 10, 2018, Hurricane Michael, a category 5 storm, made landfall on the Florida panhandle and "virtually levelled" Tyndall.[3] Petitioners' home was on Tyndall. It was extensively damaged by the hurricane and uninhabitable. As a result of the storm, petitioners evacuated to Debary, Florida. They established a new residence in Debary, but Octavia continued to work at Tyndall. Later, she was transferred to Patrick Air Force Base (Patrick)[4] in central Florida. Following Hurricane Michael, Octavia commuted from

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[2] For clarity, we will refer to petitioner Octavia P. Williams as Octavia.

[3] *See* Sarah McNair, *Five Years After Hurricane Michael, AFIMSC Continues Shaping Tyndall as Installation of Future*, Air Force Installation & Mission Support Center: AFIMSC Public Affairs (Oct. 18, 2023), https://www.afimsc.af.mil/News/Article-Display/Article/3560414/five-years-after-hurricane-michael-afimsc-continues-shaping-tyndall-as-installa/ (last visited July 20, 2026).

[4] Patrick is now known as Patrick Space Force Base.

[*3] petitioners' new residence in Debary to Tyndall and then after the transfer, to Patrick.

Approximately ten days after Hurricane Michael, petitioners returned to their home on Tyndall to inspect the home with a Federal Emergency Management Agency inspector, assess the damage with a U.S. Automobile Association (USAA) insurance adjuster, and salvage their undamaged possessions. Petitioners documented the extensive damage caused by Hurricane Michael with photos of the first floor of their home. They were unable to document the damage to the second floor of the home because it was too dangerous to traverse. Petitioners did not have a list of the items that were destroyed or appraisals for those items.

After sifting through the damage and salvaging what they could, petitioners submitted an insurance claim to USAA. USAA sent petitioners a claim letter dated November 3, 2020, where it documented the items that were in petitioners' living room and primary bedroom for which petitioners had claimed losses and the amounts that it would pay under the policy.[5] USAA paid petitioners the following amounts consistent with their policy limits: (1) loss of use – prohibited use of their home $4,724, (2) loss of use – additional living expenses $1,422, (3) personal property coverage $34,500,[6] (4) refrigerated products $500, (5) personal computer coverage $3,000, and (6) $10,000 under a separate valuable personal property policy for jewelry and watches. Petitioners'

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[5] According to the USAA letter, the claimed losses were:

> LIVING ROOM - sofa, lounge chair recliner, clothes rack, office chair, Honduras trunk, sensi diffuser, 65" TV, hp printer, circuit machine, apple computer, xbox, chromebook, surge protectors, desk set suite, tv rack, backpacks, down comforters 2, nbay shirts 4, abu sets, boots, nfl bucs jacket, mudcloth picnic, sheet set, clothes, picture rack, potty chair, shredder, room dividers, entertainment center, wooden furniture, new clothing to be returned to store, clean laundry for family, wall decorations, household goods
>
> MASTER BEDROOM - tempurpedic mattress California king, bedroom suite, area rug, sheet sets, pillows, shoes, clothes, lamps, tv 32 inch, hope chest, heating pad, ankle weights, barbells, fan

[6] This amount was for damages to personal property items in petitioners' living room and primary bedroom. When the USAA insurance adjuster examined the damage to petitioners' home, he assessed the damage to personal property items in only a few rooms on the first floor before declaring that the personal property policy coverage limits were reached.

[*4] claimed $61,000 personal property loss exceeded the $35,000 USAA policy limit.[7] Similarly, the replacement value for their valuable personal property loss was $29,382, or $19,382 over the $10,000 policy limit.

During the years in issue petitioners regularly donated various items to Goodwill and the Airman's Attic.[8] However, they did not have any contemporaneous written acknowledgments (CWAs) as described in section 170(f)(8) and Treasury Regulation § 1.170A-13(f) from either organization for any donations before or after Hurricane Michael. In the immediate aftermath of Hurricane Michael, petitioners also donated some items to other members of the community who were in need.

II. *Petitioners' 2018 and 2019 Tax Returns*

Petitioners timely filed their joint Forms 1040, U.S. Individual Income Tax Return, for the tax years ending December 31, 2018 and 2019. Petitioners hired tax preparer Bruce Baugh to prepare their returns. On the 2018 Form 1040, petitioners reported a casualty loss of $182,037 ($162,075 after reduction of $100 under section 165(h)(1) and 10% of petitioners' adjusted gross income) for the loss of personal use property from Hurricane Michael. The personal use property consisted of furniture, electronics, equipment, appliances, and clothes. Petitioners arrived at a casualty loss of $182,037 based on their memories of the personal property that they had accumulated and the documents that they had. For the 2018 tax year, petitioners reported $207 in tax due on their return, but their corrected tax liability in the Notice was $30,488.

On Form 8283, Noncash Charitable Contributions, attached to the 2019 Form 1040, petitioners claimed a noncash charitable contribution deduction of $27,787 for three donations to Goodwill on March 25, July 5, and August 21, 2019. They reported donating "Electronics, Computer Equip[ment]" with a fair market value (FMV) of $8,500, "High End Clothing" with an FMV of $7,600, and "Furniture and Equip[ment]" with an FMV of $11,687. Petitioners did not obtain an appraisal for any item. Also on the 2019 Form 1040, petitioners reported state and local personal property taxes of $5,619, and state and local

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[7] While the record is unclear, it appears that petitioners' USAA policy had a $500 deductible because USAA paid them $34,500 for personal property coverage but the policy limit was $35,000.

[8] The Airman's Attic is a nonprofit organization that accepts donations and provides donated goods to military members and their families.

[*5] general sales taxes of $4,635. Finally, on Line 8a of the 2019 Form 1040, petitioners reported Octavia's vehicle mileage business expenses for commuting to Tyndall as an adjustment to income. Petitioners reported Octavia's mileage cost of $26,289 on Form 2106, Employee Business Expenses. The vehicle mileage expenses were incorporated into Schedule 1, Additional Income and Adjustments to Income. For reasons that are unclear, the vehicle mileage expenses of $26,289 were reduced to $22,592 on the Schedule 1, and as reported on Line 8a of the 2019 Form 1040. For the 2019 tax year, petitioners reported $6,959 in tax due on their return, but their corrected tax liability in the Notice was $22,923.

III. *Respondent's Examination and Court Proceedings*

Respondent selected petitioners' 2018 and 2019 returns for examination. Respondent's examiner disallowed: (1) petitioners' reported casualty loss deduction of $162,075 for the 2018 tax year because they did not establish that a casualty occurred and that any deductible loss was sustained, (2) petitioners' claimed noncash charitable contribution deduction of $27,787 for the 2019 tax year because the contributions were not substantiated, (3) petitioners' reported state and local personal property taxes of $5,619 for the 2019 tax year because the expense was not substantiated, (4) $2,957 of petitioners' reported state and local general sales taxes for the 2019 tax year because the expense was not substantiated, and (5) Octavia's reported vehicle expense of $26,289 for the 2019 tax year because petitioners did not provide the information needed to support the deduction. The examiner also made the determination to impose the section 6662(a) accuracy-related penalty for underpayments due to substantial understatements of income tax or, in the alternative, negligence for the years in issue. On June 29, 2021, the examiner's supervisor, Pamela Josephson, signed a Civil Penalty Approval Form approving the examiner's determination of penalties for the years in issue.

[*6] OPINION[9]

I. *Burden of Proof*

Taxpayers are permitted deductions only as a matter of legislative grace, and only as specifically provided by statute. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992). In addition, the Commissioner's determinations in a Notice of Deficiency are generally presumed correct, and the taxpayer bears the burden of proving that those determinations are in error. *See* Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933).

Section 7491(a)(1) provides that if, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Commissioner shall have the burden of proof with respect to that issue. *See Higbee v. Commissioner*, 116 T.C. 438, 440–41 (2001). For the burden to be placed on the Commissioner under this section, however, the taxpayer must demonstrate that he has: (1) complied with the requirements under the Code to substantiate any item, (2) maintained all records required under the Code, and (3) cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews. *See* § 7491(a)(2); *Higbee*, 116 T.C. at 441. The burden of proof remains on petitioners as they have neither alleged nor otherwise shown that section 7491(a) is applicable. *See Higbee*, 116 T.C. at 440–41.

II. *Casualty Loss*

Section 165(a) allows as a deduction any loss sustained during a taxable year and not compensated for by insurance or otherwise. Section 165(c) limits the allowance of losses in the case of individuals. Section 165(c)(3) allows as a deduction to an individual certain losses commonly referred to as casualty losses. A casualty loss is allowable to a taxpayer for a loss of property not connected with a trade or business or a transaction entered into for profit if the loss results from "fire, storm, shipwreck, or other casualty." *See id.* Pursuant to section 165(h), the casualty loss deduction is allowed only to the extent that the loss from each casualty exceeds $100 and to the extent that the net casualty loss

[9] Absent a stipulation to the contrary, *see* § 7482(b)(2), this case is appealable to the U.S. Court of Appeals for the Eleventh Circuit, and we follow the precedent of that court that is squarely on point, *see* § 7482(b)(1); *Golsen v. Commissioner*, 54 T.C. 742, 757 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

[*7] for the taxable year "exceeds 10 percent of the adjusted gross income" for that taxable year. For tax years beginning after December 31, 2017, and before January 1, 2026, in the case of an individual, any personal casualty loss "shall be allowed as a deduction under [section 165(a)] only to the extent it is attributable to a Federally declared disaster (as defined in subsection (i)(5))." § 165(h)(5)(A).

The amount of the casualty loss allowed under section 165 is the lesser of: (1) the FMV of the property immediately before the casualty reduced by the FMV of the property immediately after the casualty or (2) "[t]he amount of the adjusted basis prescribed" in Treasury Regulation § 1.1011-1 "for determining the loss from the sale or other disposition of the property involved." Treas. Reg. § 1.165-7(b)(1). Treasury Regulation § 1.165-7(a)(2)(i) provides that the FMV of the property immediately before and immediately after the casualty shall generally be ascertained by a competent appraisal.

Physical damage to property caused by a hurricane is a casualty within the scope of section 165(c)(3). *See Lamphere v. Commissioner*, 70 T.C. 391, 395 (1978) (holding that damage resulting from Hurricane Agnes was a casualty); *see also* Treas. Reg. § 1.165-7(b)(3) (ex. 2). There is no longer any dispute that Tyndall suffered damages because of Hurricane Michael.[10]

However, petitioners have failed to substantiate the reported $182,037 in losses. Petitioners do not have an appraisal to establish the FMV of the property immediately before and immediately after the hurricane. Thus, we must rely on other evidence to determine whether they have substantiated the amount of the casualty loss. "In deciding whether a taxpayer has substantiated his deductions, we ordinarily look at the proof he offers in the form of documentation and testimony." *See Zilberberg v. Commissioner*, T.C. Memo. 2011-5, 2011 WL 37843, at *5 (citing *Obot v. Commissioner*, T.C. Memo. 2005-195).

Petitioners initially reported $61,000 in personal property losses to USAA, and it paid them up to the $35,000 personal property coverage

[10] On the Form 886–A, Explanation of Items, respondent's examiner stated that petitioners "did not establish that (a) a casualty or theft occurred." This statement could be interpreted as the examiner's questioning whether Hurricane Michael affected Tyndall, or whether it specifically affected petitioners' property. In either case, it is undisputed that Hurricane Michael affected Tyndall and petitioners' property. The open question is whether they can substantiate that they sustained casualty losses in the amounts reported.

[*8] limit for damages to personal property in their living room and primary bedroom. But when petitioners filed the 2018 Form 1040, they reported a casualty loss related to their loss of personal property from Hurricane Michael of $182,037. Petitioners did not address why the value of the personal property losses attributable to Hurricane Michael that were reported to USAA and to the IRS differed, but they stated that they arrived at the $182,037 figure based on their memories of the personal property that they had accumulated and the documents that they had.

However, petitioners did not provide documentary evidence or create a list of personal property items that were destroyed to reach the casualty loss that was reported on the 2018 Form 1040. They testified that they had a lot of artifacts, jewelry, and other items that they had accumulated while stationed overseas. Petitioners introduced into evidence photos of the first floor of their home that they had taken on approximately October 20, 2018, which documented the damage caused by Hurricane Michael. The photos show that Hurricane Michael caused extensive damage to their home and personal property. However, petitioners did not provide specific testimony on items in the home that were destroyed that were not compensated for by insurance, and their value. Petitioners provided receipts for some replacement items that they purchased after Hurricane Michael, but the cost of a replacement item is not indicative of the value of the original item.[11] On the record before us, we are unable to find that petitioners have substantiated their reported casualty loss.

III. *Charitable Contributions*

Section 170(a)(1) allows as a deduction any charitable contribution made within the taxable year. For noncash charitable contributions of more than $5,000 made after July 30, 2018,

> no deduction is allowed under section 170(a) [subject to certain exceptions under Treasury Regulation § 1.170A-16(d)(2) not relevant here] unless the donor—

[11] We also note that some of the receipts petitioners submitted for replacement items appear to correspond to items that were compensated for by USAA and do not qualify for a casualty loss deduction under section 165(a). For instance, petitioners introduced into evidence a receipt dated November 4, 2018, from Kalin Home Furnishings in Ormond Beach, Florida, for the purchase of sofas and an ottoman. However, the claim letter from USAA indicates that the payment for personal property items included the items in the living room, which included a sofa and recliner.

[*9]

> (i) Substantiates the contribution with a contemporaneous written acknowledgment, as described in section 170(f)(8) and § 1.170A-13(f),
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> (ii) Obtains a qualified appraisal,[12] as defined in § 1.170A-17(a)(1), prepared by a qualified appraiser, as defined in § 1.170A-17(b)(1),[13] and
>
> (iii) Completes Form 8283 (Section B), as provided in paragraph (d)(3) of this section, or a successor form, and files it with the return on which the deduction is claimed.

Treas. Reg. § 1.170A-16(d)(1). The CWA must provide the following information (1) the amount of any cash the taxpayer paid and a description of any property other than cash that the taxpayer transferred to the donee organization, (2) a statement of whether the donee organization provided any goods or services in consideration, in whole or part, for any of the cash or other property transferred to the donee organization, (3) if the donee organization provided any goods or services other than intangible religious benefits, a description and good faith estimate of the value of those goods or services, and (4) if the donee organization provided any intangible religious benefits, a statement to that effect. Treas. Reg. § 1.170A-13(f)(2). Further, no deduction is allowed for "any contribution of clothing or a household item" unless such property is "in good used condition or better." § 170(f)(16)(A).

If the taxpayer donates property other than money, the amount of the contribution is generally equal to the FMV of the property at the time of the gift. *See* Treas. Reg. § 1.170A-1(c)(1). A taxpayer claiming a noncash contribution valued in excess of $5,000 must also "attach[] to the return . . . such information regarding such property and such appraisal as the Secretary may require." § 170(f)(11)(C). The required information includes an appraisal summary (i.e., Form 8283) that must be included with the return on which the deduction is first claimed. Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 155(a)(1)(B), 98 Stat. 494, 691; *see Costello v. Commissioner*, T.C. Memo. 2015-87, at *14–15; *Jorgenson v. Commissioner*, T.C. Memo. 2000-38, 2000 WL 134332, at *8 (noting that the IRS has prescribed Form 8283 to be used as the

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[12] The qualified appraisal must be secured by the donor before the due date, including extensions, of the return on which the deduction is first claimed for the contribution. Treas. Reg. § 1.170A-17(a)(8).

[13] Treasury Regulation § 1.170A-17 applies to contributions made on or after January 1, 2019. Treas. Reg. § 1.170A-17(c).

[*10] "appraisal summary"); Treas. Reg. § 1.170A-13(c)(2). Failure to comply with these requirements generally precludes a deduction. *See* § 170(a)(1) ("A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary."); § 170(f)(11)(A)(i) (providing that "no deduction shall be allowed" unless specified substantiation requirements are met).

Petitioners claimed a noncash charitable contribution deduction of $27,787 for the 2019 tax year. On the Form 8283, they reported three donations to Goodwill on March 25, July 5, and August 21, 2019. The donations were for (1) "Electronics, Computer Equip[ment]" with an FMV of $8,500, (2) "High End Clothing" with an FMV of $7,600, and (3) "Furniture and Equip[ment]" with an FMV of $11,687. Petitioners did not (1) obtain an appraisal for any item, (2) have a list of the items donated, or (3) have a CWA from Goodwill for any of the reported donations. Additionally, petitioners were unable to provide testimony regarding the specific items that were donated or their FMV. Octavia testified that things were chaotic after Hurricane Michael and for many of the donations that she made to Goodwill or the Airman's Attic, she did not have a CWA. Similarly, she testified that there were no receipts for other items that they donated to other community members.[14]

We find credible Octavia's testimony that petitioners made donations after Hurricane Michael; however, petitioners have failed to present evidence that satisfies the requirements of law for deductions of noncash charitable contributions. The broad categories of donations and their corresponding amounts that petitioners listed on Form 8283 are not supported by any written record. Petitioners are not entitled to a $27,787 deduction for noncash charitable contributions under section 170(a) for the 2019 tax year.

IV. *Personal Property Taxes and State and Local General Sales Taxes*

Section 164(a)(2) permits deductions for state and local personal property taxes paid during the taxable year. Under section 164(b)(1), personal property tax is defined as an ad valorem tax imposed on an annual basis in respect of personal property.

[14] We note that even if petitioners had receipts for donations made to community members, any such donations would fail to qualify as charitable contributions under section 170(a) and (c).

[*11] Section 164(a)(3) allows a deduction for state and local income taxes paid during the taxable year. Section 164(b)(5)(A) permits a taxpayer to elect to deduct state and local general sales taxes in lieu of state and local income taxes. "A taxpayer may deduct the actual amount of sales taxes paid, which would require substantiation." *Figures v. Commissioner*, T.C. Memo. 2012-296, at *11–12. "Alternatively, the Commissioner, as a matter of administrative convenience, permits taxpayers to calculate the amount of the deduction by using the guidelines" the IRS publishes in the Optional State and Certain Local Sales Tax Tables. *See id.* at *12; *see also* § 164(b)(5)(H).

At trial, each of petitioners testified that they did not know what the personal property taxes that were reported on their 2019 Form 1040 related to. There is no other substantiation for personal property taxes in the record. Accordingly, petitioners are not entitled to deduct $5,619 in personal property taxes for the 2019 tax year.

Similarly, each of petitioners testified that they did not know what the State and local general sales taxes that were reported on their 2019 Form 1040 related to. There is no other substantiation for the State and local general sales taxes in the record. Accordingly, we sustain respondent's determination to reduce petitioners' reported deduction of State and local general sales taxes of $4,635 by $2,957 for the 2019 tax year.

V. *Reservist Mileage*

In the Notice, respondent's examiner denied petitioners' claimed deduction for automobile expenses and business mileage because petitioners failed to comply with the strict substantiation requirements under section 274(d). However, in respondent's Pretrial Memorandum and at trial, respondent argued that the deduction should be disallowed because Octavia was not a reservist as required under section 62(a)(2)(E) to deduct travel expenses incurred in connection with her service. During this case respondent did not pursue the original basis stated in the Notice for denying petitioners' claimed deduction.

If the Commissioner relies on a basis to support a deficiency that requires the presentation of evidence different from that which would be necessary to resolve the determinations in the Notice of Deficiency, then the Commissioner bears the burden of proof on the new basis. *See* Rule 142(a); *Shea v. Commissioner*, 112 T.C. 183, 197 (1999). Ordinarily, the burden of proof would shift to respondent because he seeks to

[*12] support the deficiency determination denying petitioners' claimed deduction for automobile expenses and business mileage on a different basis from that asserted in the Notice. Respondent's new basis for his determination that the automobile expenses and business mileage deduction should be disallowed is that Octavia was not a reservist as required under section 62(a)(2)(E). This is different from the basis set out in the Notice, which was that petitioners failed to satisfy the substantiation requirements of section 274(d). Respondent's new basis would require the presentation of different evidence from that which would have been required under the Notice. However, because petitioners have conceded that Octavia was not a reservist, only a legal issue remains, and we decide it without regard to the burden of proof. *See Estate of Morgens v. Commissioner*, 133 T.C. 402, 409 (2009), *aff'd*, 678 F.3d 769 (9th Cir. 2012); *DeCrescenzo v. Commissioner*, T.C. Memo. 2012-51, 2012 WL 612493, at *2, *aff'd*, 563 F. App'x 858 (2d Cir. 2014).

Section 62(a)(2)(E) provides that members of reserve components of the Armed Forces of the United States may deduct travel expenses incurred during "any period during which such individual is more than 100 miles away from home in connection with" their service. The reserve components of the Armed Forces of the United States include the Army Reserve, the Marine Corps Reserve, the Navy Reserve, the Air Force Reserve, the Coast Guard Reserve, the Army National Guard, and the Air National Guard. 10 U.S.C. § 10101 (defining the reserve components).

Petitioners concede that Octavia was not a member of the reserve components of the Armed Forces of the United States during the 2018 and 2019 tax years. Thus, she was not a reservist and not entitled to deduct travel expenses incurred during any period where she was more than 100 miles away from home in connection with her service, under section 62(a)(2)(E). Additionally, petitioners may not claim the travel expenses as business expenses under section 162(a) for which a miscellaneous itemized deduction may be available under section 67(a) because section 67(g) suspended miscellaneous itemized deductions for unreimbursed employee expenses, such as business travel expenses, for tax years beginning after December 31, 2017, and before January 1, 2026. Accordingly, petitioners are not entitled to deduct $26,289 in expenses for serving in a reserve component of the Armed Forces of the United States for the 2019 tax year.

[*13] VI. *Section 6662(a) Accuracy-Related Penalty*

Section 6662(a) and (b)(1) and (2) imposes a 20% penalty on the portion of an underpayment of tax required to be shown on a return that is attributable to "[n]egligence or disregard of rules or regulations" or to "[a]ny substantial understatement of income tax." Negligence includes any failure to make a reasonable attempt to comply with the provisions of the Code. § 6662(c); Treas. Reg. § 1.6662-3(b)(1). Negligence also includes any failure to keep adequate books and records or to substantiate items properly. Treas. Reg. § 1.6662-3(b)(1). Section 6662(d)(2) generally defines an "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 10% of the tax required to be shown on the return or $5,000. § 6662(d)(1)(A).

The Commissioner generally bears the burden of production with respect to the liability of an individual for any penalty. § 7491(c). To meet this burden, the Commissioner must produce sufficient evidence that it is appropriate to impose the penalty. *See Higbee*, 116 T.C. at 446–47. The Commissioner's burden of production under section 7491(c) also includes showing compliance with section 6751(b), which provides that "[n]o penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate." *See Graev v. Commissioner*, 149 T.C. 485, 492–93 (2017), *supplementing and overruling in part* 147 T.C. 460 (2016).

For the 2018 tax year, petitioners reported $207 in tax due on their return, but their corrected tax liability was $30,488. Similarly, for the 2019 tax year, petitioners reported $6,959 in tax due on their return, but their corrected tax liability was $22,923. Thus, for each of the years in issue, the understatement is substantial because it exceeded $5,000, which was greater than 10% of the tax required to be shown on the returns for the years in issue.[15]

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[15] We do not address respondent's alternative position that the section 6662(a) accuracy-related penalties apply because of negligence because the maximum accuracy-related penalty that can be imposed on a portion of an underpayment may not exceed 20 percent of such portion, and the accuracy-related penalties cannot be stacked. *See Ocampo v. Commissioner*, T.C. Memo. 2015-150, at *52 n.22 (citing Treas. Reg. § 1.6662-2(c)).

[*14] To satisfy his burden of production under section 6751(b), respondent offered into evidence a Civil Penalty Approval Form dated June 29, 2021. The Civil Penalty Approval Form shows that the penalties were approved before the issuance of the Notice. The Civil Penalty Approval Form that was signed by the examiner's supervisor, Pamela Josephson, approved the section 6662(a) accuracy-related penalties for underpayments due to substantial understatements of income tax or, in the alternative, negligence.[16] Respondent has thus "come forward with evidence of penalty approval," and therefore petitioners "must come forward with contrary evidence." *See Frost v. Commissioner*, 154 T.C. 23, 34 (2020). Petitioners have offered no contrary evidence or otherwise challenged compliance with section 6751(b). Additionally, respondent has shown that it was appropriate to impose the substantial understatement penalty because each understatement exceeded $5,000 which was greater than 10% of the tax required to be shown on the returns for the years in issue. Respondent has therefore satisfied his burden of production under section 7491(c).

Once the Commissioner satisfies his burden of production with respect to the accuracy-related penalty, the taxpayer then bears the burden of proving that the Commissioner's determination is incorrect or that he has an affirmative defense, such as reasonable cause and good faith under section 6664(c)(1). *See* Rule 142(a); *Higbee*, 116 T.C. at 448–49. Petitioners have presented no evidence that indicates that they acted with reasonable cause and in good faith with respect to any portion of the underpayment for either the 2018 or 2019 tax year. We hold that petitioners are liable for section 6662(a) accuracy-related penalties for underpayments due to substantial understatements of income tax for the years in issue.

VII. *Conclusion*

For the foregoing reasons, we will sustain respondent's deficiency and penalty determinations in the Notice. We have considered all other arguments made and facts presented in reaching our decision and, to the extent not discussed above, we conclude that they are moot, irrelevant, or without merit.

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[16] In *Kroner v. Commissioner*, 48 F.4th 1272, 1278–79 (11th Cir. 2022), *rev'g in part* T.C. Memo. 2020-73, the Eleventh Circuit held that written supervisory approval must be obtained before assessment of the penalty. Here, the supervisory approval was timely because it occurred before assessment of the penalty.

[*15] To reflect the foregoing,

Decision will be entered for respondent.