



Home is Not Where the Heart Is: §162(a)(2)

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Home is Where the Taxpayer Is

This week we look at a pair of cases from two taxpayers named Ayala who had cases decided this week on the issue of whether they would be allowed a deduction for travel away from home. The cases are *Jason Ayala v. Commissioner*, T.C. Summ. Op. 2007-59 and *Manuel Ayala, Jr. v. Commissioner*, T.C. Summ. Op. 2007-60 decided on April 23. Both taxpayers were truck drivers for a pipeline company that spent most of their time on the road. Each claimed travel expenses on their personal income tax return.

The key question to be decided was whether the taxpayers had a tax home to be away from. The court decided no, but we'll look at why the court reached that conclusion and how they applied the law's tests to the Ayala's fact pattern.

Travel Expenses

The general rule for travel expenses is found in §162, under §162(a)(2). That provision provides that:

(a) In general

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including--

...

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) *while away from home* in the pursuit of a trade or business;

The key problem is that a taxpayer must have a "home" in order to have expenses away from him. In Revenue Ruling 73-529 the IRS outlined the following basic tests to determine if a taxpayer with no regular place of business has a tax home:

All the facts and circumstances of a particular case must be considered in determining whether a taxpayer has a "home" for traveling expense deduction purposes. The fact that a taxpayer's trade or business is of such a nature that he has no regular or principal place of business will not preclude him from having a "home" for traveling expense deduction purposes, but shifts the inquiry to whether such a taxpayer has a "home" in the form of a "regular place of abode in a real and substantial sense," or whether he is an itinerant. Although such an inquiry basically is subjective, there are three objective factors that may be used to determine, with respect to the taxable year in question, the bona fide nature of a taxpayer's assertion that his claimed abode is his "regular place of abode in a real and substantial sense". They are:

(1) Whether the taxpayer performs a portion of his business in the vicinity of his claimed abode and uses such abode (for purposes of his lodging) while performing such business there;

(2) Whether the taxpayer's living expenses incurred at his claimed abode are duplicated because his business requires him to be away therefrom; and

(3) Whether the taxpayer

(a) has not abandoned the vicinity in which his historical place of lodging and his claimed abode are both located,

(b) has a member or members of his family (marital or lineal only) currently residing at his claimed abode, or

(c) uses his claimed abode frequently for purposes of his lodging.

Neither the Service nor the courts have attempted to prescribe any specific criteria delineating the dividing line between the itinerant taxpayer who has his "home" wherever he is working, and the taxpayer who because of the nature of his business, has no regular or principal place of business but does have a

"regular place of abode in a real and substantial sense." The Service will recognize that a taxpayer has a "home" for traveling expense deduction purposes if he claims an abode and, under bona fide circumstances, satisfies all three objective factors set forth in the preceding paragraph. If a taxpayer is not recognized as having a "home" by virtue of the above, but does, under bona fide circumstances, satisfy two of the three objective factors set forth in the preceding paragraph, then all the facts and circumstances of his case will be subjected to close scrutiny to determine whether he has a "home" for traveling expense deduction purposes in the form of a regular place of abode in a real and substantial sense, or whether he is an itinerant. See Rev. Rul. 71-247, cited above. *If a taxpayer fails to satisfy at least two of the three objective factors set forth in the preceding paragraph, he will be regarded as an itinerant who has his "home" wherever he happens to work, and thus cannot be "away from home" for purposes of section 162(a)(2).*

A taxpayer without a home will have no deduction allowable.

Ayala Fact Patterns

In the two cases at hand, we have two employees of a pipeline construction company that travel around the country for pipe-laying projects. One of the taxpayers was a truck driver who delivered materials to these projects, while the second taxpayer was a project safety coordinator. As each project is finished, the taxpayer would be transferred to a new project elsewhere in the country.

The taxpayers had family in Vallejo, California and would from time to time stay in or near that home in Vallejo. Jason would actually stay in the home when he was not on the road, while Manuel and his wife had a travel trailer they used while on the road. When in Vallejo, Manuel's wife would stay in the travel trailer to care for their pets, while Manuel would reside in the home in order to assist his disabled sister.

Jason did not pay any rent to stay in the family home, and while he contributed money towards food and household expenses when he stayed at the Vallejo residence, he did not have any regular household expenses to maintain that home. He did use the Vallejo residence to store many of his possessions out of convenience, since he had not other home of his own.

Manuel did provide some financial assistance to his disabled sister who lived in the Vallejo home. He would sometimes pay various bills and even from time to time the property taxes on the home. Manuel and his siblings owned the home, but his disabled sister lived there full time.

Tax Court Analysis

The Tax Court had to decide if either Jason or Manuel had a tax home that would allow a

deduction under §162(a)(2) for travel expenses incurred while away from that home, or whether they were itinerant workers in the view of Revenue Ruling 73-529 with no deduction allowed for their travel expenses.

In both cases, the Tax Court noted that generally an individual's tax home is his principal place of employment. But, in this case, neither taxpayer had such a location—they moved from job site to job site as their employer took on new projects. In that case, the court notes that a taxpayer without a principal place of business can treat a permanent place of residence at which the taxpayer incurs substantial expenses as his or her tax home, citing *Widkamp v. Commissioner*, (29 TC 16, 21). But if the taxpayer has neither a principal place of business nor a permanent residence, then there is no deduction allowed because he or she lacks a home from which to be away from, as required by §162(a)(2).

The Court goes on to point out that while the subjective intent of the taxpayer is to be considered for purposes of determining if a taxpayer has a tax home, the Courts focus much more on more objective criteria. In this case, it does appear clear that each of the taxpayers would have listed the Vallejo location as their “home” if for no other reason than it was the one place they would return to on a regular basis. But that by itself is not enough.

The Court indicated that a key point of analysis is whether the taxpayer was actually incurring both the costs of maintaining a residence and the costs of travel on the road. The Court indicates that §162(a)(2) was intended to mitigate the burden of a taxpayer that is forced to incur duplicative expenses due to having to both pay living expenses on the road and maintain a permanent home. If the taxpayer has no permanent home, then there's no duplication of expenses and therefore no “relief” is granted under §162(a)(2).

That is, the term “while away from home” implies that the intent was to deal with duplicated personal expenses, since as we know §262 generally disallows any deduction for personal or living expenses. The Tax Court views §162(a)(2) as granting a limited exception to that prohibition and, as is normally the case, provisions granting deductions are to be interpreted narrowly.

In Jason's case, the Court pointed out that he incurred no expenses in maintaining a home—certainly no duplicative living expenses. He only contributed funds to pay for expenses in Vallejo when he was there and not incurring any travel related expenses. When he was on the road, there were no expenses being paid or incurred related to the residence in Vallejo. While the Court recognized that Jason's expenses may have been substantial (it is expensive to live on the road), the fact that the expenses were not duplicative eliminated the right to claim any deduction.

While Manuel's case looks stronger, in the end the Court decided he also failed to incur duplicative expenses. He had did not pay mortgage payments or pay for utilities back in Vallejo, and those payments he did make were for the benefit of his sister and not because of Manuel's travel. The Court found that none of his expenses were duplicative

household expenses that would justify the deduction under §162(a)(2). The court noted that Manuel’s financial support of his sister was very laudable, it still did not create a tax home for him.

While the Court did not directly address the Revenue Ruling 73-529 factors, indirectly it clearly was making use of those provisions. The taxpayers failed the first test under Revenue Ruling 73-529 (performing a portion of his work in the area of the claimed residence) and passed the third test (had not abandoned the Vallejo residence as a place the taxpayers regularly returned to). So the real question to be decided was whether there were duplicated living expenses being incurred because of the taxpayer’s travel.

Note, as well, that these tests only apply if a taxpayer has no regular place of business—if there is a regular place of business, that becomes the taxpayer’s tax home.

Negligence Penalty

The IRS attempted to collect the 20% negligence penalty under §6662(a) in both cases. And, in both cases, the IRS was rebuffed by the Court on this issue. In both cases the Court indicates that it was impressed by the honest and straightforward testimony each taxpayer gave, as well as being convinced that each taxpayer was trying to comply with tax laws and all of its complexity. Given these facts, the Tax Court did not deem it appropriate to grant the IRS negligence penalties—there was reasonable cause and good faith efforts that invoked §6664(c)(1)’s exception from the penalties.

The key factor here appears to be the Court’s belief that no one was “trying to pull a fast one” and had intentionally believed an analysis that simply was too good to be true—both factors that tend to result in negligence penalties being imposed. From the facts cited, it seems that the Tax Court correctly concluded that applying penalties in this case would have been highly inappropriate and served more as an incentive to “play the audit lottery” since no credit was given for the fact the taxpayers were trying to do the right thing with an issue that involves a rather intricate of a specific provision of the IRC.

Case Text

The text of the cases in question is reproduced in the rest of these materials.

T.C. Summ. Op. 2007-59
UNITED STATES TAX COURT

Filed April 23, 2007

Jason Emanuel Ayala, pro se.

Derek W. Kaczmarek, for respondent.

ARMEN, Special Trial Judge: This case was heard pursuant to the provisions of section 7463 of the Internal Revenue Code in effect when the petition was filed.¹ Pursuant to section 7463(b), the decision to be entered is not reviewable by any other court, and this opinion shall not be treated as precedent for any other case.

Jason Emanuel Ayala (petitioner) received a notice of deficiency in which respondent determined: (1) Deficiencies in income taxes for 2002, 2003, and 2004 of \$2,079, \$3,305, and \$4,559, respectively, and (2) accuracy-related penalties under section 6662(a) for negligence or intentional disregard of rules or regulations of \$416, \$661, and \$912, respectively. The deficiencies arose from respondent's disallowance of claimed employee business expenses. We are asked to decide whether petitioner may deduct those expenses under section 162(a)(2). This requires that we decide whether petitioner was "away from home" when he incurred the expenses. If we sustain respondent's determination, we are also asked to decide whether petitioner is liable for the accuracy-related penalties.

Background

Some of the facts have been stipulated, and they are so found. We incorporate by reference the parties' stipulation of facts and accompanying exhibits.

Petitioner's mailing address at the time he filed his petition was in Las Vegas, Nevada.

Petitioner is employed by Sheehan Pipeline Construction Company (Sheehan) as a truck driver, and he travels all over the country delivering materials for Sheehan's pipe-laying projects. When one project is completed, he is usually assigned a new project immediately. Projects can last anywhere from a few weeks to several months. During the years at issue, petitioner worked on several back-to-back projects.

When he is traveling for work, petitioner tries to find hotel accommodations that offer weekly rates to keep his expenses down.²

When he is not on the road, petitioner stays with his family in Vallejo, California. He does not maintain a separate apartment or household, and he does not pay rent at his family's home. Although he does contribute money towards food and the like when staying in Vallejo, he does not have any regular household maintenance expenses. As he does not have a home of his own, petitioner keeps many of his possessions at his family's home.

Because petitioner travels frequently and has to receive mail somewhere, his mailing address is that of a mail service which forwards his mail to him wherever he happens to

be. Similarly, because he does not reside anywhere for any length of time, he is not registered to vote.³

Petitioner and respondent primarily disagree on whether the house in Vallejo, California, is petitioner's "tax home" and consequently, whether petitioner's travel expenses incurred while working for Sheehan are deductible under section 162(a)(2) as expenses incurred in pursuit of a trade or business while away from home.

Discussion⁴

A. Section 162(a)(2)

Generally, outlays for food and shelter are considered personal expenses and are not deductible. Sec. 262. However, section 162(a)(2) allows a deduction for traveling expenses, including amounts expended for meals and lodging, if the expenses are: (1) Ordinary and necessary, (2) incurred while "away from home", and (3) incurred in pursuit of a trade or business. See *Bochner v. Commissioner*, 67 T.C. 824, 827 (1977).

Respondent contends that petitioner was not "away from home" when he incurred the expenses and thus that petitioner does not satisfy the second factor for deductibility of the expenses claimed on his Federal income tax returns for the years in issue.

As a general rule, a taxpayer's principal place of employment is the taxpayer's "tax home". *Kroll v. Commissioner*, 49 T.C. 557, 561-562 (1968). An employee without a principal place of business may treat a permanent place of residence at which the employee incurs substantial continuing living expenses as his or her tax home.

Weidekamp v. Commissioner, 29 T.C. 16, 21 (1957). Where "the taxpayer has neither a principal place of business nor a permanent residence, he has no tax home from which he can be away. His home is wherever he happens to be." *Barone v. Commissioner*, 85 T.C. 462, 465 (1985), *affd.* without published opinion 807 F.2d 177 (9th Cir. 1986).

Although the subjective intent of a taxpayer is to be considered in determining whether the taxpayer has a tax home, for purposes of section 162(a)(2), this Court and others have consistently focused more on objective criteria. Section 162(a)(2) is intended to mitigate the burden of a taxpayer who, because of the travel requirements of his or her trade or business, must maintain two places of abode and, therefore, incur additional living expenses. *Brandl v. Commissioner*, 513 F.2d 697, 699 (6th Cir. 1975), *affg.* T.C. Memo. 1974-160; *Kroll v. Commissioner*, *supra* at 562. In other words, section 162(a)(2) is intended to provide relief to a taxpayer who incurs "substantial continuing expenses" of a home that are duplicated by business travel. See *James v. United States*, 308 F.2d 204, 207-208 (9th Cir. 1962); *Kroll v. Commissioner*, *supra* at 562. When a taxpayer continuously travels for work and does not have substantial, duplicative, continuous living expenses for a permanent home maintained for some business reason, the taxpayer has no tax home. *Henderson v. Commissioner*, 143 F.3d 497, 499 (9th Cir. 1998), *affg.* T.C. Memo. 1995-559; *James v. United States*, *supra*.

Most significantly in this case, petitioner bore no expenses in maintaining a home.

Notwithstanding his visits to his family's home in California and financial contributions during those periodic visits, petitioner bore no duplicative living expenses. He did not make mortgage payments, pay regular utilities costs, or regularly pay for running a household. Petitioner's costs on the road, while they may have been substantial, were not redundant, and thus petitioner was not "away from home" within the intent and meaning of section 162(a)(2) for the taxable years at issue. *Barone v. Commissioner*, supra at 465; *Wirth v. Commissioner*, 61 T.C. 855, 858-859 (1974). In short, petitioner's tax home was wherever he happened to be. See *Brandl v. Commissioner*, supra. Accordingly, petitioner is not entitled to deduct the expenses claimed on his returns for the years at issue.

B. Section 6662(a)

Section 6662(a) imposes a penalty equal to 20 percent of the amount of any underpayment attributable to negligence or disregard of the rules or regulations. Sec. 6662(b)(1). "[N]egligence' includes any failure to make a reasonable attempt to comply with the [Internal Revenue Code], and the term 'disregard' includes any careless, reckless, or intentional disregard." Sec. 6662(c).

Petitioner does not have a bank account, and his credit cards are billed to his father. Petitioner's mother assists him by handling his finances and acting as his bookkeeper. Working for Sheehan is the first job he has had, and petitioner often pays taxes in several states in addition to his Federal income tax. He strikes us as a hardworking young man who does his best to comply with his tax responsibilities.

Given the facts presented in this case, as well as petitioner's honest and straightforward testimony, we are convinced that the reasonable cause and good faith provisions of section 6664(c)(1) are applicable here. Accordingly, we decide in favor of petitioner on this issue.

C. Conclusion

We find that petitioner's family's home in Vallejo was not his tax home for Federal tax purposes during the years in issue. Rather, his tax home was wherever he happened to be, and consequently, petitioner had no home from which to be away for purposes of claiming deductions for travel expenses under section 162(a)(2).

To reflect our disposition of the disputed issues,

Decision will be entered for respondent as to the deficiencies in income taxes and for petitioner as to the accuracy-related penalties.

FOOTNOTES

¹Unless otherwise indicated, all subsequent section references are to the Internal Revenue Code in effect for the taxable years in issue.

²Petitioner did not generally receive a per diem or other expense reimbursement from Sheehan while working.

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³Further demonstrating how much ground petitioner covers is the fact that his commercial driver's license was issued by the State of Texas, and his personal automobile is registered in Nevada.

⁴Given the manner in which these issues were presented to the Court, we make our decision as to both the deficiencies and additions to tax without regard to the various burdens of proof under sec. 7491.

END OF FOOTNOTES

T.C. Summ. Op. 2007-60
UNITED STATES TAX COURT

Filed April 23, 2007.

Manuel Ayala, Jr., pro se.

Derek W. Kaczmarek, for respondent.

ARMEN, Special Trial Judge: This case was heard pursuant to the provisions of section 7463 of the Internal Revenue Code in effect when the petition was filed.¹ Pursuant to section 7463(b), the decision to be entered is not reviewable by any other court, and this opinion shall not be treated as precedent for any other case.

Manuel Ayala, Jr., and Carol A. Ayala (collectively, petitioners) received a notice of deficiency in which respondent determined: (1) Deficiencies in income taxes for 2002, 2003, and 2004 of \$2,295, \$4,050, and \$4,459, respectively, and (2) accuracy-related penalties under section 6662(a) for negligence or intentional disregard of rules or regulations of \$459, \$810, and \$891.80, respectively. The basis for the deficiency determination was the denial of deductions claimed by petitioners for travel expenses under section 162(a)(2). We are asked to decide whether petitioners may deduct those expenses. This requires that we decide whether petitioners were "away from home" when they incurred the expenses. If we sustain respondent's determination, we are also asked to decide whether petitioners are liable for the accuracy-related penalties.

BACKGROUND

Some of the facts have been stipulated, and they are so found. We incorporate by reference the parties' stipulation of facts and accompanying exhibits.

Petitioners listed their mailing address on their petition as Las Vegas, Nevada. Mr. Ayala testified at trial that petitioners' permanent mailing address is Rocklin, California.

Mr. Ayala is employed by Sheehan Pipeline Construction Company (Sheehan) as a project safety coordinator, and he travels from one project to another, all over the country, ensuring compliance with health and safety regulations. When one project is completed, he is usually assigned a new project immediately. Projects can last anywhere from a few months to a couple of years.

During the years at issue, Mr. Ayala worked on several back-to-back projects. During this period, petitioners lived in a travel trailer, and they traveled together from one job site to the next. In their own words, they were "gypsies". Although Mr. Ayala was paid a per diem while working onsite, it did not completely cover the travel expenses that were actually incurred.

Petitioners bought their home on wheels, the travel trailer, in Nevada; they registered the vehicle there out of convenience. Because they moved frequently and had to receive their mail somewhere, petitioners used a mail service in Las Vegas that provided them with a mailing address. They obtained Nevada licenses, and later, when they purchased a truck,

they registered the truck in Nevada.

As petitioners do not own a residence for their own use aside from the travel trailer, they consider Mr. Ayala's ancestral home in Vallejo, California, to be their "real" home.

The ancestral home in Vallejo was purchased by Mr. Ayala's father in 1953, and it is both the home in which Mr. Ayala grew up and the home in which his disabled sister has resided for a number of years. Mr. Ayala and his siblings own the home.

Petitioners have other ties to California. They grew up in Vallejo, and their son was born there. In addition, their daughter and grandchildren live in the Sacramento area. When petitioners are not on the road for Sheehan, they visit California, setting up their trailer near Sacramento and commuting back and forth to Vallejo as needed to assist with the care of Mr. Ayala's disabled sister.² However, petitioners do not file California State income tax returns or pay California State income tax unless Mr. Ayala has had California-source income from his employment with Sheehan. In addition, petitioners do not vote in California.³

Petitioners financially assist with the support of Mr. Ayala's disabled sister. Sometimes petitioners pay her water and trash collection bills, and sometimes they pay the property taxes on the home in Vallejo so that Mr. Ayala's sister might continue to live there without interruption of services or imposition of property-tax liens.

Petitioners and respondent primarily disagree on whether the house in Vallejo, California, is petitioners' "tax home" and consequently, whether petitioners' expenses incurred while working onsite for Sheehan are deductible under section 162(a)(2) as expenses incurred in pursuit of a trade or business while away from home.

DISCUSSION⁴

A. Section 162(a)(2)

Generally, outlays for food and shelter are considered personal expenses and are not deductible. Sec. 262. However, section 162(a)(2) allows a deduction for traveling expenses, including amounts expended for meals and lodging, if the expenses are: (1) Ordinary and necessary, (2) incurred while "away from home", and (3) incurred in pursuit of a trade or business. See *Bochner v. Commissioner*, 67 T.C. 824, 827 (1977).

Respondent contends that petitioners were not "away from home" when they incurred the expenses, and thus that petitioners do not satisfy the second factor for deductibility of the expenses claimed on their returns for the years in issue.⁵

As a general rule, a taxpayer's principal place of employment is the taxpayer's "tax home". *Kroll v. Commissioner*, 49 T.C. 557, 561-562 (1968). An employee without a principal place of business may treat a permanent place of residence at which the employee incurs substantial continuing living expenses as his or her tax home.

Weidekamp v. Commissioner, 29 T.C. 16, 21 (1957). Where "the taxpayer has neither a principal place of business nor a permanent residence, he has no tax home from which he can be away. His home is wherever he happens to be." *Barone v. Commissioner*, 85 T.C.

462, 465 (1985), *affd.* without published opinion 807 F.2d 177 (9th Cir. 1986).

Although the subjective intent of a taxpayer is to be considered in determining whether the taxpayer has a tax home, for purposes of section 162(a)(2), this Court and others have consistently focused more on objective criteria. Section 162(a)(2) is intended to mitigate the burden of a taxpayer who, because of the travel requirements of his or her trade or business, must maintain two places of abode and, therefore, incur additional living expenses. *Brandl v. Commissioner*, 513 F.2d 697, 699 (6th Cir. 1975), *affg.* T.C. Memo. 1974-160; *Kroll v. Commissioner*, *supra* at 562. In other words, section 162(a)(2) is intended to provide relief to a taxpayer who incurs "substantial continuing expenses" of a home that are duplicated by business travel. See *James v. United States*, 308 F.2d 204, 207-208 (9th Cir. 1962); *Kroll v. Commissioner*, *supra* at 562. When a taxpayer continuously travels for work and does not have substantial, duplicative, continuous living expenses for a permanent home maintained for some business reason, the taxpayer has no tax home. *Henderson v. Commissioner*, 143 F.3d 497, 499 (9th Cir. 1998), *affg.* T.C. Memo. 1995-559; *James v. United States*, *supra*.

Most significantly in this case, petitioners bore no expenses in maintaining a home in addition to their travel trailer. Notwithstanding their very real ties to California, petitioners bore no duplicative living expenses. They did not make mortgage payments, pay regular utilities costs, or regularly pay for running a household other than the one in which they resided: The travel trailer. In other words, expenses incurred in respect of the ancestral home in Vallejo were incurred for the benefit of Mr. Ayala's sister and not because of the exigencies of Mr. Ayala's business travel. Make no mistake: Petitioners' financial support of Mr. Ayala's sister was extremely laudable. However, those financial outlays were not of the type considered to be costs of maintaining a home such that the expenses related to petitioners' life on the road for Sheehan would be redundant. Petitioners were not "away from home" within the intent and meaning of section 162(a)(2) for the taxable years at issue because they had no "home" to be away from. *Barone v. Commissioner*, *supra* at 465; *Wirth v. Commissioner*, 61 T.C. 855, 858-859 (1974). In short, petitioners' tax home was wherever they happened to be. See *Brandl v. Commissioner*, *supra*. Accordingly, petitioners are not entitled to deduct the expenses claimed on their returns for the years at issue.

B. Section 6662(a)

Section 6662(a) imposes a penalty equal to 20 percent of the amount of any underpayment attributable to negligence or disregard of the rules or regulations. Sec. 6662(b)(1). "[N]egligence" includes any failure to make a reasonable attempt to comply with the [Internal Revenue Code], and the term 'disregard' includes any careless, reckless, or intentional disregard." Sec. 6662(c).

In view of the factual uncertainties presented in this case, as well as Mr. Ayala's forthright and very credible testimony, we are convinced that petitioners operated in good faith and that the reasonable cause and good faith provisions of section 6664(c)(1) are applicable

here. We therefore decide in favor of petitioners on this issue.

C. Conclusion

In closing, we think it appropriate to observe that we found petitioners to be very conscientious taxpayers who take their tax responsibilities seriously. Mr. Ayala's testimony was straightforward and credible. The Tax Court, however, is a court of limited jurisdiction and lacks general equitable powers. *Commissioner v. McCoy*, 484 U.S. 3, 7 (1987); *Hays Corp. v. Commissioner*, 40 T.C. 436, 442-443 (1963), *affd.* 331 F.2d 422 (7th Cir. 1964). Consequently, our jurisdiction to grant equitable relief is limited. *Woods v. Commissioner*, 92 T.C. 776, 784-787 (1989); *Estate of Rosenberg v. Commissioner*, 73 T.C. 1014, 1017-1018 (1980). Therefore, we must find that petitioners' ancestral home in Vallejo was not their tax home for Federal tax purposes during the years in issue. Rather, their tax home was wherever petitioners happened to be, and consequently, they had no home from which to be away for purposes of claiming deductions for travel expenses under section 162(a)(2).

To reflect our disposition of the disputed issues,

Decision will be entered for respondent as to the deficiencies in income taxes and for petitioners as to the accuracy-related penalties.

FOOTNOTES

¹ Unless otherwise indicated, all subsequent section references are to the Internal Revenue Code in effect for the taxable years in issue.

² During these periods, Mrs. Ayala usually stays in the trailer to care for petitioners' pets, and Mr. Ayala tries to stay in the house in Vallejo with his disabled sister.

³ Petitioners also do not vote in Nevada as they are not considered legal residents for voting purposes.

⁴ Given the manner in which these issues were presented to the Court, we make our decision as to both the deficiencies and additions to tax without regard to the various burdens of proof under sec. 7491.

⁵ During the years in issue, only Mr. Ayala was employed by Sheehan, so only his travel expenses are potentially deductible as business expenses under sec. 162(a)(2). However, given the nature of the substantive issue presented by respondent's deficiency determination and the manner in which we decide that issue, we need not consider any allocation of expense between Mr. and Mrs. Ayala. Accordingly, for convenience, our discussion is generally cast in terms of petitioners' tax home rather than just Mr. Ayala's.

END OF FOOTNOTES