

United States Tax Court

T.C. Memo. 2026-105

ANDREW B. WEST,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 17890-19.

Filed October 7, 2026.

P engaged in various businesses of his own and was also employed to manage businesses of Q. P kept poorly organized records and intermingled his personal and business expenditures. P and Q entered into an investment partnership, PS, for which Q contributed all the capital and P did the work but contributed no capital. PS incurred losses.

P's federal income tax returns for taxable years 2015 and 2016 reported income and deductions from P's various business activities, allocated with no evident pattern among three Schedules C ("Profit or Loss From Business"). On his returns P claimed no deductions for the PS losses. R examined P's 2015 and 2016 returns. R conducted a bank deposits analysis, which disclosed unreported income for 2015, and R found that many deductions were unsubstantiated for both years. R issued to P a statutory Notice of Deficiency ("NOD") that adjusted P's income and deductions, determined deficiencies in tax, and determined that P is liable for accuracy-related penalties for both years.

P petitioned the Tax Court for redetermination of the adjustments in the NOD; and in an amended petition, P asserted that for his share of the PS losses he should be

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[*2] allowed an ordinary loss deduction for 2016 and a carryback of the unused portion of that loss to 2015, thereby eliminating the deficiencies determined in the NOD.

Held: P underreported his taxable income in the amount determined in the NOD.

Held, further, P substantiated and is entitled to deduct business expenses in amounts slightly larger than those conceded by R; but P failed to substantiate most of the expenses in dispute and is liable for the resulting tax deficiencies (in amounts slightly less than those determined in the NOD).

Held, further, P did not incur a deductible loss in 2016.

Held, further, P is liable for accuracy-related penalties for 2015 and 2016.

Andrew B. West, for himself.

Brooke N. Stan, Sheila R. Pattison, and David Sohn, for respondent.

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MEMORANDUM FINDINGS OF FACT AND OPINION

GUSTAFSON, *Judge*: Pursuant to section 6212,¹ the Internal Revenue Service (“IRS”) issued a statutory Notice of Deficiency (“NOD”) to petitioner, Andrew B. West, determining deficiencies in federal income tax and accuracy-related penalties under section 6662(a) for the years 2015 and 2016: The deficiencies determined by the IRS, which arose from its adjustments to income and deductions as reported by Mr. West on Schedules C (“Profit or Loss from Business”) attached to his returns for those years, are as follows:

<i>Tax year</i>	<i>Deficiency</i>	<i>Penalty § 6662(a)</i>
2015	\$463,827	\$92,765
2016	5,831	1,116
Total	\$469,658	\$93,881

Mr. West challenged the NOD by filing in the Tax Court a timely petition under section 6213(a) for redetermination of the deficiencies and penalties. He thereafter filed an amended petition asserting that an ordinary loss of \$6.8 million should be allowed for 2016 and carried back to 2015, thereby eliminating the deficiencies in tax determined in the NOD for those years.

After the parties’ concessions, there are four issues for decision: (1) whether the amount of Mr. West’s gross receipts in 2015 was less than the IRS determined; (2) whether Mr. West is entitled to Schedule C

¹ Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C., as in effect at the relevant times; references to regulations are to Title 26 of the *Code of Federal Regulations* (“Treas. Reg.”) as in effect at the relevant times, and references to Rules are to the Tax Court Rules of Practice and Procedure. Some monetary amounts are rounded.

[*5] deductions in amounts greater than the IRS has conceded; (3) whether Mr. West incurred in 2016 an ordinary loss from an investment partnership, which can be carried back to 2015; and (4) whether Mr. West is liable for the section 6662(a) accuracy-related penalties. We largely sustain the IRS’s position as to each of these issues.

On the evidence before us,² and using the burden-of-proof principles explained below in Part I.A, we find the following facts.

FINDINGS OF FACT

At the time he filed his petition, Mr. West resided in Texas.

Mr. West’s business activities

During the years at issue, Mr. West owned three limited liability companies (“LLCs”)—MPC Equipment, LLC, ABW Equipment Rentals, LLC, and Tilden Operating Management, LLC—for which he filed Schedules C with his federal income tax returns. Mr. West also owned interests in other entities, the income and deductions of which are not in dispute here, including BL Aviation, LLC, and Prime Materials, LLC (both of which were owned 50% by Mr. West and 50% by Oscar Leo Quintanilla). On another Schedule C Mr. West reported an activity labeled “Management Services”.

Bristol Green

Through MPC Equipment Mr. West purchased a house on Bristol Green in San Antonio, and he intended “to fix it up and lease it out or sell it.” The alleged costs for these improvements included more than \$100,000 paid to designer Erin Shirah, additional invoices that the Quintanilla business billed to MPC totaling \$77,000 (Doc. 73 at 001103–001108) and, according to attachments to Mr. West’s reply brief (Doc. 89 at 50–51), almost \$170,000 for “repairs and upgrades”. We find that

² The evidence consists of a Stipulation of Facts, First Supplemental Stipulation of Facts and Second Supplemental Stipulation of Facts with paragraphs 1 through 47 and Exhibits 1-J through 36-J admitted at trial, and trial testimony. The parties also filed a First Stipulation of Settled Issues on August 18, 2022. Mr. West complicated the record by making voluminous submissions and resubmissions of exhibits. To his opening brief and his reply brief, Mr. West attached several hundred pages of documents, not all of which were admitted at trial. As we explain below in Part I.B, we do not rely on these unadmitted documents.

[*6] these expenditures were for capital improvements and not for incidental repairs.

Mr. West's activities with Mr. Quintanilla

Mr. Quintanilla owned (in whole or in part) and operated various businesses and assisted in the management of other businesses which included oil and gas operations, cattle operations, and commercial and residential real estate projects. Mr. West began working for Mr. Quintanilla and his entities in August 2010. As of January 1, 2011, Mr. West entered into an employment agreement with an entity called Paloma Cattle Co. Ltd., which provided for Mr. West to work for the "Quintanilla businesses" generally.³ Mr. West owned an interest in several of these businesses and served as chief executive officer and president of several of these businesses. One feature of the employment agreement was an "Operating Bonus" (which Mr. West refers to as his "entitlements") "equal to 6% of the aggregate of" the profits of the Quintanilla businesses.⁴

As part of his employment, Mr. West began managing Mr. Quintanilla's stock trading accounts. During the time Mr. West managed them, the Quintanilla Accounts had several years of trading profits. Mr. West's compensation included a salary, benefits, and the operating bonus. The 2011 employment agreement, as amended, provided:

Employer shall reimburse Employee for all actual out-of-pocket expenses incurred and documented by Employee in connection with the performance of his duties under this Agreement or in connection with business development activities on behalf of Employer or its affiliated entities.

³ The stipulation includes three versions of the agreement: the apparent original, "dated effective as of January 1, 2011" (Ex. 11-J); a "First Amendment", also "entered into and effective as of January 1, 2011" (Ex. 12-J); and a "Second Amendment", "made and entered into as of January 1, 2015" (Ex. 7-J).

⁴ Paragraph 4.4(a) of the agreement provided: "To the extent all Participating Quintanilla Businesses have Profits, in aggregate, during the term of this Agreement, Employee is to receive a bonus equal to the amount of 6% of the aggregate of those Profits (the "Operating Bonus")" Ex. 11-J (Doc. 44 at 00221.) An amendment to the Employment Agreement provided: "any use of the word 'aggregate' or aggregation of Profits under this Section 4.4 shall be disregarded, so that the calculation of 'Profits' may be done on an entity by entity basis." (Doc. 44 at 00235.)

[*7] The expenses incurred by Mr. Quintanilla's businesses were aggregated by Mr. Quintanilla's accountants, paid centrally, and then allocated and billed to the responsible entity. Those accountants also paid expenses that were incurred not for Quintanilla businesses but rather for Mr. West personally or for his own businesses. In those instances the accountants prepared invoices from Mr. Quintanilla or one of his entities to Mr. West, which were then paid by Mr. West (or his entity). Invoices for Mr. West's personal expenses were billed directly to him. Invoices billed to a company that was owned, in whole or part, by Mr. West were for expenses related to that business. Mr. West advised Mr. Quintanilla's accountants whether an expense was personal to himself or was related to one of his businesses. Mr. Quintanilla's accountants prepared Mr. West's checks to pay for those allocated and billed expenses, and the checks were signed by Mr. West or by authorized Quintanilla personnel.⁵

We find that this procedure for paying expenses assured that any expenses for which Mr. West would have been entitled to reimbursement under his employment contract were paid by the Quintanilla businesses and do not appear among the expenses for which he now claims deductions.

Commodities Trading Partnership

In order to make a new arrangement for one significant aspect of Mr. West's work, Mr. Quintanilla and Mr. West formed an entity to which we refer as the "Commodities Trading Partnership". On January 1, 2014, they created the partnership by executing three documents: a "Commodity Trading Allocation Agreement" ("CTA"), a "Secured Promissory Note" ("CTA Note"), and an "All-Assets Security Agreement" ("CTA Security Agreement").⁶ The CTA details Mr. West's

⁵ The Jefferson Bank account ending in 1887 was held in the name of MPC Equipment LLC for the period December 31, 2014, through January 29, 2016. The Jefferson Bank account ending in 8203 was held in the name of ABW Equipment Rentals, LLC, for the period December 31, 2014, through January 29, 2016. The Jefferson Bank account ending in 8882 was held in the name of Mr. West for the period December 31, 2014, through January 29, 2016. Mr. West, Mr. Quintanilla, and Paul Perry had signature authority for account 1887, account 8203, and account 8882 during taxable years 2015 and 2016.

⁶ The parties expressly stipulated that Mr. West and Mr. Quintanilla "formed a partnership for federal income tax purposes, pursuant to section 761(a) of the Internal Revenue Code, in taxable year 2014 when they signed" the CTA, the CTA Note, and the CTA Security Agreement, thereby "creating a new joint venture".

[*8] responsibilities regarding the commodity trading accounts and his share of profits and losses. Mr. Quintanilla contributed to that partnership certain commodities trading accounts, and Mr. West contributed his work called for by the CTA. The CTA provided for a settlement date on December 31 of each calendar year, at which time Mr. Quintanilla was required to pay Mr. West 50% of any profits, and Mr. West became liable to Mr. Quintanilla for 50% of any losses up to \$5 million. Under the CTA, Mr. West's share of the losses incurred in the commodities trading accounts were automatically deemed borrowed from Mr. Quintanilla under the CTA Note and secured by the CTA Security Agreement. The CTA Note had a maximum loan amount of \$5 million.

All of the capital contributed to the Commodities Trading Partnership in 2014 was contributed by Mr. Quintanilla. Mr. West contributed no capital at any time. The Commodities Trading Partnership terminated on February 26, 2016. Over the 26 months of its existence, the Commodities Trading Partnership suffered a net loss. The annual gains and losses of the partnership were as follows:

<i>Year</i>	<i>Gain (loss)</i>
Jan. 1–Dec. 31, 2014	(\$13,729,319) ⁷
Jan. 1–Dec. 31, 2015	2,563,150
Jan. 1–Feb. 26, 2016	(148,902)
Total	(\$11,315,071)

Thus, the overall net loss was \$11,315,071, of which each partner's 50% share was \$5,657,536. Under the CTA terms described above, the amount of Mr. West's 50% share was deemed borrowed by Mr. West from Mr. Quintanilla, and the debt was secured by the CTA Note and

Mr. West seems to agree that the gains and losses from the trading accounts would be partnership gains and losses. However, as we discuss in Part IV, *infra*, Mr. West's ability to claim losses from the partnership is limited by his zero basis in the partnership.

⁷ Mr. Quintanilla claimed the entire amount of the 2014 losses on his federal income tax return for taxable year 2014. This loss was not disallowed by the IRS.

[*9] the CTA Security Agreement, with the collateral consisting of all of Mr. West's assets.

2015 Asset Purchase Agreement

Mr. West had creditors in addition to Mr. Quintanilla and debts in addition to that which arose under the CTA. In 2015 Mr. West owned (either directly or through his entities) various assets. He and Mr. Quintanilla entered into a "Purchase Agreement" ("the 2015 Asset Purchase Agreement"), dated March 1, 2015, by which Mr. West sold assets to Mr. Quintanilla for a stated purchase price of around \$4.5 million. In lieu of direct payment of that \$4.5 million to Mr. West, the agreement provided that Mr. Quintanilla would make payments for Mr. West's benefit to various creditors of Mr. West and his entities (including debts to Mr. Quintanilla and his entities). One of Mr. West's creditors listed in the 2015 Asset Purchase Agreement to whom payment was to be made was his former wife Carey West, to whom he owed \$2.2 million plus interest under a post-nuptial Promissory Note.⁸

The assets that Mr. West sold under the 2015 Asset Purchase Agreement were assets that had been collateral under the CTA Note and the CTA Security Agreement. However, the 2015 Asset Purchase Agreement does not mention the commodities trading accounts, the CTA, the CTA Note, or the CTA Security Agreement. We find that the 2015 asset purchase was unrelated to the CTA and did not affect or alter the parties' rights and obligations under the CTA (except that Mr. Quintanilla gave up his security interest in those assets when he agreed to purchase them).

Mr. West's 2015 and 2016 federal income tax returns

Mr. West filed his federal income tax return for taxable year 2015 in October 2016 and for taxable year 2016 in October 2017. (The returns were apparently filed on extensions, since the Commissioner does not contend that they were untimely.) Those returns reported income and deductions ostensibly related to three Schedule C activities: the Schedule C-1 is for "management services," Schedule C-2 is for "MPC

⁸ Also pursuant to the 2015 Asset Sale, Mr. Quintanilla paid obligations of MPC Equipment, LLC. and a loan from Jefferson State Bank.

[*10] Equipment LLC,” and Schedule C-3 is for “ABW Equipment Rentals LLC.”⁹

For 2015 Mr. West reported on those three Schedules C an aggregate “Gross income” of about \$1.5 million and an aggregate “Total expenses” of under \$1.4 million. The return reported “total tax” of \$689,666 on line 63. For 2016 Mr. West reported an aggregate “Gross income” of \$70,000 and an aggregate “Total expenses” of \$270,347. The return reported “total tax” of \$33,836 on line 63.

We conclude that income and deductions were not consistently allocated to the appropriate Schedules C on these returns. For the reasons explained and to the extent set out below in Parts II and III, we find that Mr. West underreported his 2015 income and overstated his 2015 and 2016 deductions on Schedules C to those returns.

These 2015 and 2016 returns (like the return previously filed for 2014) were complicated, with numerous attached schedules and forms reporting information for numerous entities.¹⁰ Mr. West hired

⁹ As we explain below, Mr. West makes no organized contention as to deductions on the Schedule C-3 for ABW Equipment Rentals, so we do not discuss in detail that entity or Schedule C-3. Mr. West’s 2015 and 2016 returns also include a Schedule C4 for “Tilden Operating Management LLC.” However, the amounts reported thereon were de minimis, and the IRS made no adjustments to this Schedule C4. We do not further discuss Tilden or Schedule C4. As for the 2015 asset purchase, Mr. West’s 2015 income tax return did include Schedule D (“Capital Gains and Losses”), Form 8949 (“Sales and Other Dispositions of Capital Assets”), and Form 4797 (“Sales of Business Property”). The NOD did not determine, and the Commissioner does not contend, that Mr. West failed to properly report gains from the 2015 asset sale, so we give that question no further consideration.

¹⁰ Attached to his 2015 return (filed in October 2016) was Schedule E (“Supplemental Income and Loss”) reporting “Royalties received” (totaling \$268,389) and related expenses (totaling \$50,989) generated by a trust, an estate, and 33 partnerships, S corporations, and LLCs, including BL Aviation, LLC, and Q2BW Aviation, LLC, and Form 8949 (“Sales and Other Dispositions of Capital Assets”), which listed seven LLCs (including Q2BW Aviation LLC) that he reported having disposed of by 04/01/15. The Schedule E attached to his 2016 return reported fewer entities and “Royalties received” totaling \$101,619. For 2014 (the year preceding the years at issue, but for which the return was filed in October 2015), Mr. West’s return as originally filed (Ex. 4-J) included three Schedules C and on Schedule E reported “Royalties received” of \$87,304 from 24 entities. (The NOD did not make adjustments to the Schedules E.) The evidence does not include Forms W-2, “Wage and Tax Statement”, supporting the “Wages, salaries, tips, etc.” on Line 7 of Mr. West’s 2014 and 2015 Forms 1040, “U.S. Individual Income Tax Return”, which report \$962,577 for 2014 and \$390,966 for 2015. For tax year 2016, Mr. West did attach Form W-2 to his

[*11] accountant Timothy Braden to advise him in the 2015 Asset Purchase Sale and to prepare the returns.

Bexar County cases

Mr. Quintanilla decided in January 2016 to terminate Mr. West's employment. Extensive litigation ensued, beginning in 2016 when Mr. West filed a state court suit against Mr. Quintanilla in the District Court of Texas, Bexar County, dealing with slander-of-title and fraudulent-lien claims stemming from the 2014 loss and the 2015 Asset Purchase Agreement. Thereafter multiple suits ("the Bexar County cases") were filed between Mr. West and Mr. Quintanilla, which were consolidated under case Nos. 2016-CI-6247, 2016-CI-06259 and 2016-CI-14070, in the District Court of Bexar County, Texas, 224th Judicial District.

The Bexar County cases and their subsequent appeal to the Supreme Court of Texas deal with issues largely outside the scope of this Tax Court case, but they did address Mr. West and Mr. Quintanilla's business dealings conducted in 2014 to 2016. In the Supreme Court of Texas appeal, Mr. West argued that he fully satisfied his 2014 debt to Mr. Quintanilla under the CTA through the 2015 Asset Purchase Agreement to Mr. Quintanilla and Mr. West's agreement that Mr. Quintanilla could claim the entire \$14 million loss on his 2014 tax return. That argument failed on remand from the Supreme Court of Texas, when the District Court found that "Andrew Bradford West is liable for a portion of the debts incurred as a result of the commodities trading activity undertaken pursuant to a CTA between West and Mr. Quintanilla dated January 1, 2014, and that the debt has not been released or otherwise satisfied."

The court for the Bexar County cases determined that the CTA agreement was terminated on February 26, 2016, the date that Mr. Quintanilla terminated Mr. West's employment and effectively terminated the joint venture formed by Mr. West and Mr. Quintanilla. On December 8, 2021, in the Bexar County cases, the district court found

return, reflecting only \$22,600 in Box 1 ("Wages, tips, and other compensation") from Quintanilla Management Company.

[*12] that Mr. West was liable to Mr. Quintanilla for \$5,878,127¹¹ as of February 26, 2016.

Mr. West has not paid Mr. Quintanilla any of the liability determined in 2021 by the Texas court.

Tax refund claim and suit for 2014

On October 9, 2018, Mr. West filed an amended federal income tax return for taxable year 2014 (the year preceding the years at issue in the instant case) to claim a refund of an asserted tax overpayment resulting from deduction of a loss of \$6,894,774 for “Hedging—Futures Trading.”

In February 2021 Mr. West filed a complaint in the U.S. District Court for the Western District of Texas requesting a refund for taxable year 2014. *West v. United States*, No. 21-cv-00156 (W.D. Tex. Feb. 19, 2021). After the United States filed a motion for summary judgment in that case, arguing that Mr. West is not entitled to claim any loss for 2014, the parties voluntarily dismissed the case by filing on April 21, 2023, a Stipulation of Dismissal Without Prejudice. *Id.*, ECF No. 31.

Audit and NOD

The IRS examiners performed a bank deposits analysis (“BDA”) of Mr. West’s three Jefferson Bank accounts, and they concluded that Mr. West had unreported taxable deposits of \$162,091 that resulted in an increase to his gross receipts in 2015. The IRS examination of his business expense deductions resulted in no adjustment to many of Mr. West’s claimed Schedule C deductions but did result in disallowances of nearly \$1 million in 16 categories of those deductions for 2015 and 2016.

The revenue agent, RA Carmona, assigned to Mr. West’s case recommended the assertion of an accuracy-related underpayment penalty under section 6662(a), with a substantial understatement of income tax under section 6662(b)(2) as her primary position, and

¹¹ We need not resolve the discrepancy between this \$5.8 million determined in the litigation and the \$5,657,536 set out above as Mr. West’s 50% share of the partnership loss or the \$6,894,774 set out below as Mr. West’s supposed hedging loss in 2014. They all reflect some measuring of Mr. West’s share of the commodities losses.

[*13] negligence under section 6662(b)(1) as her alternative position. The agent’s supervisor approved the penalty assertion.

The Commissioner issued an NOD to Mr. West on July 10, 2019, determining deficiencies in federal income tax and accuracy-related penalties under section 6662 for both years in the amounts set out above.¹² (For the reasons explained below in Parts II and III, we largely sustain the examiner’s determinations.)

Continuances and trial

On October 8, 2020, this case was set for trial during a January 2021 calendar session in San Antonio, Texas—more than a year after the petition had been filed in September 2019. The case was then continued on five occasions—from sessions in January 2021,¹³ September 2021, October 2022, January 2023, and December 2023. Mr. West moved for that fifth continuance, and the Commissioner objected. At a calendar call on December 11, 2023, Mr. West stated that he needed to hire an attorney and that he expected “to have my house sold in the next 30 days. As soon as I have my house sold, I can hire a good lawyer.” The Court observed that “you’ve had over a year to get an attorney”; and the Court ordered the filing of status reports in 30 days. Respondent filed a status report, but Mr. West did not. On February 6, 2024, the Court restored the case to the General Docket so that it could be set for trial.

On May 6, 2024, this case was set for trial at the Tax Court’s session in San Antonio beginning September 30, 2024. In pretrial orders of May 8 and September 26, 2024, we warned Mr. West that the case would not be further continued and that he should prepare to present his case at the September 30, 2024, trial session.

¹² Mr. West argues (Doc. 89 at 5) that IRS counsel, Mr. Sohn, conceded that “the Notice of Deficiency does not clearly state the Government’s position. And the Notice of Deficiency is defective on this case, should be thrown out until such time the Government can clearly state their position”. (Doc. 82, Tr. 8.) The transcript does purport to recount Mr. Sohn’s so stating, but its identification of the speaker as “MR. SOHN” is an error by the court reporter. In fact, the speaker at that point was Mr. West himself. His critique of the “defective[ness]” of the NOD is unwarranted.

¹³ On November 5, 2020, the parties filed a joint motion for continuance. At the time, the case was being considered by the Independent Office of Appeals. The parties both agreed that the case would benefit from additional time for consideration. We granted the continuance on the same day it was requested.

[*14] At that session the case finally proceeded to trial on October 1, 2024. The parties had stipulated all of their exhibits, and the documents bore sequential Bates numbers. Mr. West testified and called three additional witnesses. At the conclusion of trial, we gave instructions about the proper contents of a post-trial brief. We explained that “the facts that you assert in your brief must be facts that are supportable by the evidence that was given here today. You’re not allowed to think of, oh, more facts I should have proved and just throw them into the brief.” (Doc. 82, Tr. 188; *see also id.* at 189 (“you are allowed to cite and rely on and invite me to rely on information in the record”)). Nonetheless, Mr. West thereafter attached to his briefs documents that were not admitted into evidence (and on which we will not rely, as explained below in Part I.B).¹⁴

OPINION

I. *Basic legal principles*

A. *Burden of proof*

As a general rule, the Commissioner’s determinations in a notice of deficiency are presumed to be correct, and a taxpayer bears the burden to prove his entitlement to any deductions he claims. Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). A taxpayer must satisfy the specific requirements for any deduction claimed. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992). (In certain circumstances section 7491(a) may shift to the Commissioner the burden of proof on factual issues, but Mr. West does not contend that section 7491(a)

¹⁴ Mr. West attached to his briefs some documents that lacked the Bates numbering that showed their presence in the stipulation (and, as a result, their admission into evidence). In a few instances those documents lacking Bates numbers in his briefs do appear in the stipulated exhibits bearing Bates numbers, but in such instances Mr. West seems to have attached to his brief a copy of a version of the document that he possessed before the Bates numbers were applied. For example, a 10/19/2015 invoice from Timothy Braden as attached to Mr. West’s opening brief (Doc. 85 at 71) does not bear a sequential Bates number. (Confusingly, it does bear a numbering from a different series—“RB004636”—presumably as used in some of Mr. West’s previous litigation; but that “RB” number does not signal that this document appears among the stipulated exhibits that were admitted into evidence in this case.) However, we find a copy of this invoice numbered 001582 in Exhibit 27-J in Doc. 73 at 1129. Mr. West’s use of a version lacking that number was not at all helpful, and we have not undertaken the needle-in-a-haystack chore of determining which of the unnumbered pages attached to Mr. West’s briefs might similarly appear in the stipulated exhibits. Only the Bates-numbered stipulated exhibits are in evidence, and we disregard the unnumbered documents attached to his briefs.

[*15] applies here.) With respect to unreported income, the Commissioner must establish an evidentiary foundation connecting the taxpayer with the income-producing activity, *see Llorente v. Commissioner*, 649 F.2d 152, 156 (2d Cir. 1981), *aff'g in part, rev'g and remanding in part* 74 T.C. 260 (1980), or demonstrate that the taxpayer actually received income, *Edwards v. Commissioner*, 680 F.2d 1268, 1270–71 (9th Cir. 1982) (per curiam). Once the Commissioner connects the taxpayer with the unreported income, the taxpayer then bears the burden of proving that he did not receive the income and that the Commissioner's determination of a deficiency is incorrect. *See Walker v. Commissioner*, 757 F.2d 36, 38 (3d Cir. 1985), *rev'g and remanding* T.C. Memo. 1983-538; *see also* Rule 142(a).

B. *Offering evidence at trial*

To meet his burden of proof, the taxpayer must offer his evidence at trial; and after the trial is concluded, he may not attempt to submit in his brief additional evidence not admitted at trial. *See Niedringhaus v. Commissioner*, 99 T.C. 202, 214 n.7 (1992). Notwithstanding our instructions to that effect at the close of trial, Mr. West's opening brief (Doc. 85) with its 200-plus pages of attachments and his reply brief (Doc. 89) with its 200-plus pages of attachments included three classes of materials that were not admitted into evidence at trial. We will sometimes consider them in order to discern Mr. West's contentions, but we will not rely on these materials to find facts in this case.

1. *Post-trial affidavit*

Attached to Mr. West's reply brief is an unsigned and undated "Post-trial Affidavit of CPA Jennifer Flume" (Doc. 89 at 35–36). We will not rely on it.

2. *Additional bank statements, invoices, and canceled checks*

The parties stipulated the authenticity of 36 exhibits contained in three filings (i.e., Doc. 44 (Exs. 1-J to 21-J); Doc. 73 (Exs. 22-J to 28-J); and Doc. 74 (Exs. 29-J to 36-J)); and the Court admitted them into evidence at the beginning of the trial. (*See* Doc. 82, Tr. 6–15.) These stipulated exhibits include many bank statements, invoices, and canceled checks. The pages of all these exhibits in all of these filings are sequentially numbered by Bates stamping as pages 000001 to 000458 in Doc. 44, pages 000459 to 001827 in Doc. 73, and pages 001828 to 002057 in Doc. 74. At trial neither party offered additional exhibits into

[*16] evidence, so every page of every exhibit admitted into evidence bears a unique number in this sequence.

To his briefs Mr. West attached hundreds of pages of documents, including bank statements, invoices, and canceled checks, but some of the attached pages do not bear Bates numbers from this sequential numbering, and these therefore appear to be extraneous pages not admitted into evidence. We will not rely on them.

3. *Supplementation of trial testimony*

At the beginning of trial, it was made clear that one of the Commissioner's primary contentions about Mr. West's Schedule C deductions was that they should be disallowed because "business purpose is lacking". (Doc. 82 at 30, 32.)¹⁵ But during the trial, Mr. West gave little testimony explicitly corroborating the business purpose of individual expenditures or even classes of expenditures; and the Commissioner's answering brief contended that "petitioner has not provided the business purpose for the expenses he is attempting to deduct." (Doc. 87 at 28.) Mr. West's reply brief noted this contention (*see* Doc. 85 at 4) and responded with the complaint that he "was cut-off in his efforts to testify about each of these deductions." (*Id.* at 26.)¹⁶ His reply brief "request[ed] now that I be allowed fully to present all my testimony for each deficiency claim." (*Id.* at 5). His reply brief reflected two attempted means of doing so:

¹⁵ To the same effect, the Commissioner's pretrial memorandum stated, as the first issue in the case, whether the disallowed expenses "were ordinary and necessary for petitioner's Schedule C businesses". (Doc. 68 at 2.)

¹⁶ We infer that Mr. West contends that he was "cut-off in his efforts to testify" by the Commissioner's pretrial dealings with him, and not at trial by the Court, which did not cut off any testimony on the business purpose of Mr. West's expenditures. It was Mr. West who concluded the testimony of his witness Jennifer Flume. (*See* Tr. 67 ("I don't want to sit here all day").) Although the Court expressed concern that Mr. West's testimony had taken substantially longer than he had predicted, the Court did not cut him off; instead, when Mr. West proposed to rest, the Court prompted him to give testimony on an issue he had not addressed (Doc. 82, Tr. 170–172); and when Mr. West had been cross-examined, the Court informed him of his prerogative to give redirect testimony (Tr. 178). The Court expressly asked Mr. West whether he would be "offering some additional documents into evidence today other than what is in the Stipulations we've put on the record?" (Tr. 95; *see also* Tr. 180 ("it was always your prerogative to offer [additional documents] into evidence unilaterally on your own behalf")). A string of continuances gave Mr. West an extra three-and-a-half years to prepare for trial. We are confident that he was given an ample opportunity to present his case.

[*17] a. *Narrative*

Portions of Mr. West’s reply brief consist of narrative discussions of his business activities and transactions. (See Doc. 89 at 8–10, 13–15, 21–22, 27–33.) He does not cite the trial transcript to substantiate these assertions, and he does not claim that his narrative was given during the trial. Rather, he explains that “in this brief I seek to provide the required specifics (trial standards) now.” (Doc. 89 at 26.) We will not rely on these statements in his brief.

b. *“Testimony” and “Explanation”*

Attached to Mr. West’s reply brief is a new five-part, seven-page spreadsheet (Doc. 89 at 44–51) that lists many¹⁷ of the expenditures that are on his eight original spreadsheets discussed below in Part III.B. The new spreadsheet includes separately, for each expenditure (in a column entitled “Testimony”), a statement to the effect that—

I testify that this expense was an ordinary and necessary business expense to pay for the operations of my partnership interest in the different business [sic] with Leo Quintilla [sic].

Another column entitled “Explanation” includes information for each entry. Beside each of these columns is a column entitled “Signature”, and in these two “Signature” columns appears for each entry a digital rendering of illegible handwriting, presumably the signature or initials of Mr. West. The information in the “Testimony” and “Explanation”

¹⁷ The original spreadsheets entitled “C-1 Pro. Fees [2015]” (totaling \$227,847; Doc. 85:51) and “C-2 Pro Fees [2015]” (totaling \$28,706; Doc. 85 at 157) do correspond to the similarly titled first and second parts of the new spreadsheet (Doc. 89 at 45–47). Otherwise, this new spreadsheet corresponds only approximately to the other spreadsheets that Mr. West attached to his opening brief. The entries on the original spreadsheet entitled “Travel C-2 [2015]” (totaling \$46,324.10; Doc. 85 at 179) appear in the third part of the new spreadsheet (Doc. 89 at 48) under the very dissimilar title “Repairs and Maintenance C-2 [2015]”. The original “C-1 Repairs and Maintenance (2015)” (with six entries totaling \$17,086; Doc. 85 at 199) corresponds to the identically titled fourth part of the new spreadsheet (Doc. 89 at 49), except that the new one has a seventh entry for \$112,000 paid to Q-Haul, bringing the total to \$129,086. (That seventh entry, supported on the new spreadsheet by a citation of page 001841 (i.e., the 2015 Asset Purchase Agreement) is the Q-Haul claim discussed below in Part III.D.) Four of the eight original spreadsheets (“C-1 Commissions [2015]”, C-1 Pro. Fees [2016]”, “C-2 Pro Fees [2015]”, and “C-1 Travel [2015]”; Doc. 85 at 5, 29, 95, 157) seem to be entirely missing from the new spreadsheet.

[*18] columns is not equivalent to actual testimony, and we will not rely on it.

C. *Record-keeping*

Taxpayers bear the burden of substantiating the amounts of their deductions by keeping and producing records sufficient to enable the IRS to determine the correct tax liability. *See* § 6001; Treas. Reg. § 1.6001-1(a); *see also* Treas. Reg. § 1.6001-1(e) (“The books or records . . . shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.”). Adequate substantiation must establish the nature, amount, and purpose of a claimed deduction. *See, e.g., Higbee v. Commissioner*, 116 T.C. 438, 440 (2001); *Hradesky v. Commissioner*, 65 T.C. 87, 89–90 (1975), *aff’d per curiam*, 540 F.2d 821 (5th Cir. 1976).

For some types of expenses, lack of substantiation can be overcome. *See, e.g., Phillips v. Commissioner*, T.C. Memo. 2013-215, at *22–23. 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. *See 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. *See id.* at 544; *see also Rogers v. Commissioner*, T.C. Memo. 2014-141, at *17. The Court will not estimate a deductible expense unless the taxpayer presents a sufficient evidentiary basis on which an estimate can be made. *See Vanicek v. Commissioner*, 85 T.C. 731, 742–43 (1985); *Rodriguez v. Commissioner*, T.C. Memo. 2009-22, 2009 WL 211430, at *4 (stating, with respect to the *Cohan* rule, that “we can’t just guess”).

II. *Unreported taxable income*

RA Carmona performed a BDA of accounts 8882, 8203, and 1887—all connected with Mr. West—and determined Mr. West had unreported taxable deposits of \$162,091 in taxable year 2015. We sustain this determination.

A. *Bank deposits method*

Bank deposits constitute prima facie evidence of income, *see Tokarski v. Commissioner*, 87 T.C. 74, 77 (1986), and under section 446(b) the bank deposits method is a permissible method of reconstructing income, *see Clayton v. Commissioner*, 102 T.C. 632, 645

[*19] (1994); *Langille v. Commissioner*, T.C. Memo. 2010-49, 99 T.C.M. (CCH) 1197, *aff'd*, 447 F. App'x 130 (11th Cir. 2011). The Commissioner need not show the likely source of a deposit treated as income but, in using this method to reconstruct income, he “must take into account any nontaxable source or deductible expense of which [he] has knowledge.” *Clayton*, 102 T.C. at 645–46. The Commissioner need not follow any “leads” suggesting that a taxpayer has deductible expenses. *DiLeo v. Commissioner*, 96 T.C. 858, 872 (1991), *aff'd*, 959 F.2d 16 (2d Cir. 1992). After the Commissioner reconstructs the taxpayer’s income and determines a deficiency, the taxpayer bears the burden of proving that the BDA is unfair or inaccurate. *See Clayton*, 102 T.C. at 645; *DiLeo*, 96 T.C. at 883. The taxpayer must prove that the reconstruction is in error, and he may do so by proving that all or part of a deposit is not taxable. *See Clayton*, 102 T.C. at 645. Mr. West could resist this conclusion by showing that one or more of the items that the BDA treated as taxable income were in fact not taxable.

B. *Mr. West’s two disputes*

Mr. West alleges two corrections of the BDA—a \$50,000 payment that was not income but instead was a refund of an overpayment (Doc. 82 at 172–73) and a \$115,000 payment that was a reimbursement for a car purchase (Doc. 89 at 27). In each instance, however, Mr. West can show his own payments (which he says repay deposited items that therefore should not be treated as income), but he cannot show that the IRS included those deposited items in its calculation of gross receipts:

1. *Reimbursement from Mr. Quintanilla*

Mr. West’s bank statements do indeed show that he wrote a check for \$115,870.52 on August 14, 2015. (Doc. 44 at 00346). The check itself is apparently not in the record, but we assume that it was spent to buy a car for Mr. Quintanilla to give to his son. Shortly thereafter, the bank statement also shows a deposit of the same amount on August 19, 2015 (Doc. 44 at 00344); and the deposit slip bears the notation: “Leo & Ptnrs reimb for ck to Porsche of S[an] A[ntonio] for Conner’s Cayman.” It thus appears, as Mr. West argues, that the check for \$115,870.52 and the deposit for \$115,870.52 offset each other, so that the deposit was not taxable gain. We agree.

However, on audit the IRS had already come to the same conclusion. On its BDA, an item of \$115,870.52 on the bank statement

[*20] dated 9/11/2015 is placed in the column “Non-Taxable” (Doc. 44 at 00250). This item therefore does not support any correction to the BDA.

2. *Reimbursement from Water Well*

Likewise, the evidence concerning the \$50,000 item does not support a correction to the BDA. At trial Mr. West testified:

THE WITNESS: There’s a check in somewhere in all of our mess that is a reimbursement of overpayment to Waterwell (ph.) on one of my bonuses. And so I believe it’s 50,000 (indiscernible).

THE COURT: You want to point to that particular item?

THE WITNESS: I would love to. . . . I’ll have to find it.
[Doc. 82 at 172–73.]

Mr. West’s opening brief noted that the trial had included “the issue of unreported income based on a bank deposit analysis, with a specific focus on a \$50,000 check that West claimed was a reimbursement” (Doc. 85 at 3, para. 7), but that brief made no further reference to the issue. The Commissioner’s answering brief observed that Mr. West had “failed to explain with any particularity why the deposit is nontaxable and or point to a specific document to substantiate this assertion.” (Doc. 87 at 8.) Mr. West’s reply brief (Doc. 89 at 11) quoted his trial testimony on the subject and explained (*id.* at 27):

At trial the Petitioner testified that a \$50,000 deposit was really a refund of a water company’s billing that I had overpaid previously (Attachment). That expenditure was to supply water that serviced our oil drilling operations.

Among the numerous attachments to Mr. West’s reply brief is a check No. 1227 dated 5-27-2015 for \$50,000 payable to Water Well Services (Doc. 89 at 00150; Doc. 73 at 001176), which appears on the bank statement dated 6/10/15 (Doc. 89 at 0336; *see also* Doc. 44 at 0334–0336). We assume this is the check that Mr. West says is “Attached”. However, the check is stated to be “For Loan pmt”, not any refund. Water Well Services is a Quintanilla entity that regularly billed Mr. West for MPC Equipment’s share of various expenses (including health insurance premiums). We are unable to find in the evidence any

[*21] invoice for this payment,¹⁸ and—more important—we do not recognize in the BDA nor in the available bank records any deposit into Mr. West’s accounts for any payment by Water Well. We cannot say that Mr. West has proved any \$50,000 error in the BDA.

III. *Schedule C deductions*

A. *Legal standard*

Section 162 generally allows a taxpayer to deduct all ordinary and necessary expenses paid or incurred by the taxpayer in carrying on a trade or business. An individual may be in the trade or business of being an employee, *see Primuth v. Commissioner*, 54 T.C. 374, 377 (1970), and may deduct ordinary and necessary business expenses incurred as part of the trade or business, *see Barnes v. Commissioner*, T.C. Memo. 2016-79, at *7, but we have found that any such expenses attributable to Mr. West were paid by the Quintanilla businesses and are not at issue here. An expense counts as “ordinary” if it is normal or customary within a particular trade, business, or industry and “necessary” if it is appropriate and helpful for the development of the business. *See, e.g., Commissioner v. Heininger*, 320 U.S. 467, 471 (1943); *Welch v. Helvering*, 290 U.S. at 113–14. Personal, living, and family expenses, however, are not deductible. § 262(a).

Also not deductible are capital expenditures. Section 263(a) provides that “[n]o deduction shall be allowed for . . . (1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate”, nor for “(2) Any amount expended in restoring property”.

Mr. West’s contentions as to Schedule C deductions for which he seeks allowance can be considered in three groups: (A) deductions presented on spreadsheets (which we allow in part); (B) two specific additional deductions for which some documentation is given (which we do not allow); and (C) generalized contentions not linking claimed deductions to documentation (which we do not allow).

¹⁸ A 3/24/2015 invoice 45 from Water Well Services (Doc. 73 at 1037), which Mr. West did not cite, billed him for “Refund on pre-payment of Bonus”, but we cannot relate this description to any known issue in the case, and other than the coincidence of its amount, this invoice bears no apparent relation to check No. 1227, written two months later.

[*22] B. *Mr. West's spreadsheets*

Mr. West attached eight spreadsheets to his opening brief to present the evidence he relies on to prove his disputed Schedule C deductions.¹⁹ The spreadsheets are entitled:

“C-1 Commissions [2015]” totaling \$89,625 (Doc. 85 at 5);
 “C-1 Travel [2015]” totaling \$149,531 (Doc. 85 at 95);
 “C-1 Repairs and Maintenance (2015)” totaling \$17,086
 (Doc. 85 at 199);
 “C-1 Pro. Fees [2015]” totaling \$227,847 (Doc. 85 at 51);
 “C-1 Pro. Fees (2016)” totaling \$74,718 (Doc. 85 at 29);
 “C-2 Pro Fees [2015]” totaling \$28,706 (Doc. 85 at 157);
 “C-2 Pro. Fees (2016)” totaling \$50,000 (Doc. 85 at 160); and
 “Travel C-2 [2015]” totaling \$46,324 (Doc. 85 at 179).

Before evaluating Mr. West's spreadsheets individually, we note several overall problems that undermine their probative value.

1. *Mr. West submitted no spreadsheets for eight categories of deductions.*

Mr. West did not submit spreadsheets to itemize his position as to eight of the categories of deductions that are adjusted in the IRS's NOD. As to three of the omitted categories he explicitly admits his omission (acknowledging that “Insurance and Office Expenses were not included” in his presentation, Doc. 89 at 32), so that we have no spreadsheets for—

¹⁹ In principle we heartily approve of the use of such spreadsheets in a brief to present evidence taken from voluminous exhibits. In fact, at the conclusion of trial, we suggested spreadsheets, warning Mr. West that his exhibits—almost 2,000 pages showing thousands of photocopied checks, invoices, and the like—were of such volume and apparent disorganization that, by themselves and without explication by him, they would be insufficient to prove his case. We emphasized that, for every specific fact that Mr. West wanted us to find, he should point either to a page and line of transcript or to an exhibit that proves the fact. We suggested that he could undertake to support his claimed deductions by preparing and attaching to his opening brief a spreadsheet for each category of deduction for each year. We explained that a given spreadsheet should point to where in the record we could find, for each deductible amount, evidence that substantiates the nature and amount of that expenditure with citations of the exhibit numbers, Bates numbers, and testimony that was given on that subject. We noted that while it might sometimes be appropriate to deal with some expenses in bulk, the citations of individual expenditures would be essential to his prevailing. Mr. West followed our suggestion imperfectly.

- [*23]** (1) “Insurance” expense on Schedule C-1 for 2015 , as to which the NOD made an adjustment of \$99,879;
- (2) “Insurance” expense on Schedule C-2 for 2015, as to which the NOD made an adjustment of \$4,728; and
- (3) “Office” expense on Schedule C-2 for 2015, as to which the NOD made an adjustment of \$37,592.

These adjustments are unanswered by Mr. West, and we will sustain them without further consideration.

Additional categories for which Mr. West did not present spreadsheets listing his deductions (though he did not confess these omissions, as he did with Insurance and Office Expenses) were:

- (4) “Other” expenses on Schedule C-1 for 2015, as to which the NOD made an adjustment totaling \$81,752 for “Consulting” and “Auto”;
- (5) “Travel” expense on Schedule C-1 for 2016, as to which the NOD made an adjustment of \$65,023;
- (6) “Legal and professional services” on Schedule C-3²⁰ for 2015, as to which the NOD made adjustments of \$30,112;
- (7) “Legal and professional services” on Schedule C-3 for 2016, as to which the NOD made adjustments of \$65,676; and
- (8) “Travel” on Schedule C-3 for 2015, as to which the NOD made an adjustment of \$7,179.

These adjustments are unanswered by Mr. West, and we will sustain them without further consideration.

2. *One spreadsheet is moot.*

One of Mr. West’s eight spreadsheets addresses “C-1 Pro. Fees (2016)” (Doc. 85 at 29), purporting to substantiate deductions of \$74,718, but we find we need not resolve any dispute: On his Schedule C-1 for 2016 Mr. West had claimed only \$41,447 for “Legal and professional services”, but the NOD made a *favorable* adjustment, allowing an additional amount of \$90,283, thus yielding a total deduction of \$131,730. The IRS thereby gave Mr. West a better deal than he would

²⁰ None of the IRS’s adjustments to the deductions that Mr. West claimed on his Schedules C-3 (for ABW Equipment Rentals) are addressed on Mr. West’s spreadsheets.

[*24] get from his own spreadsheet, which showed only \$74,718. We will not disturb the IRS's bigger deduction.

Accepting the IRS's concession that exceeds this spreadsheet leaves us to consider the remaining seven of Mr. West's eight spreadsheets.

3. *Mr. West's spreadsheets do not correspond to his tax returns.*

Mr. West claimed deductions on his tax returns, and the IRS disallowed some of those deductions, sometimes in part and sometimes in full. In general, we would therefore expect to see that Mr. West would be defending in this case the amounts that he had reported on his return. But it is not so:

- Mr. West's Schedule C-2 attached to his return for 2015 claimed no deduction at all for Travel expenses. However, the spreadsheet entitled "Travel C-2" (Doc. 85 at 179; Doc. 89 at 218) asserts Travel expenses of \$46,324 for 2015.
- Mr. West's Schedule C-1 for 2015 claimed a deduction for Travel expenses of only \$71,179 (which the NOD disallowed in part), but his spreadsheet now claims a substantially greater \$149,531.
- The Schedule C-1 for 2015 claimed a deduction for Legal and professional services of only \$169,084 (which the NOD disallowed in large part), but his spreadsheet now claims a substantially greater \$227,847.
- The Schedule C-2 for 2015 claimed a deduction for Legal and professional services of only \$3,998 (which the NOD did not disallow), but his spreadsheet claims a substantially greater \$28,706.
- The Schedule C-2 for 2016 claimed a deduction for Legal and professional services of only \$19,530 (which the NOD disallowed in full), but his spreadsheet claims a substantially greater \$50,000.

In a deficiency case in the Tax Court, the taxpayer is not necessarily bound by the position he reported on his tax return. If at trial he proves a greater deduction than he originally claimed, then he may get the benefit of that greater deduction. He is not estopped from

[*25] claiming a deduction he did not claim on his return, nor from claiming deductions larger than the amounts he did claim. In fact, a taxpayer who self-reported a liability on his return might even prove that he had no liability and that he is instead entitled to a refund under section 6512(b). But before we can say that Mr. West has in fact proved deductions greater than those he claimed on his returns, we will consider the extent to which the discrepancy undermines the credibility of the revised contention.

Generally speaking, a claim made closer in time to the actual events (i.e., when the expenses were incurred in 2015 and 2016 or when the returns were prepared in 2016 and 2017) is more likely to be correct than a claim made later in an adversary context (i.e., when Mr. West made his contentions and disclosed his evidence seven years later in 2024 in compliance with our standing pretrial order, Doc. 65). That generality does not necessarily resolve this issue, but it does heighten our scrutiny of his later position. Amounts claimed, for the first time, seven years after the returns were filed prompt the question why, if they were deductible expenses that were really incurred in the years now claimed, they were not claimed originally on the returns. Mr. West does not attempt to reconcile his earlier tax return position with his later litigating position nor to explain why his current contentions differ from his tax returns. It seems instead that he simply started from scratch when preparing for trial. We find that the discrepancies undermine the credibility of his position.

4. *The invoices cited on the spreadsheets are problematic.*

Mr. West's spreadsheets are well conceived: Each spreadsheet presents a certain category of expenditure, and the entries are listed in columns that call for a "Company" (evidently meaning a payee), an amount, a date, a check number, a Bates number at which that check may be located, an invoice number, and a Bates number at which that invoice can be located. However, there are problems with the invoice citations:

a. *Missing invoices*

Four of the seven spreadsheets under consideration lack altogether any citation of Bates pages of the invoices, thereby making it virtually impossible to find the invoices in the record (if they exist). The four spreadsheets that bear this wholesale omission are:

[*26] “C-1 Commissions [2015]”,
 “C-2 Pro Fees [2015]”,
 “C-2 Pro Fees (2016)”, and
 “C-1 Repairs and Maintenance (2015)”.

On two other spreadsheets, which do cite invoices, Bates numbers are missing for some of the invoices: On “C-1 Pro. Fees [2015]”, 11 of 19 entries lack invoice Bates numbers;²¹ and on “C-1 Travel [2015]”, 6 of 21 entries lack invoice Bates numbers. These omissions undermine Mr. West’s contentions.

b. *Self-dealing invoices*

Most of the invoices on which Mr. West relies are prepared from the same template and have an identical format. As we have explained, trial testimony established that the Quintanilla businesses had a centralized bill-paying function and that its personnel were authorized to sign checks for Mr. West to pay, from his bank accounts, bills for expenses that originated not from Quintanilla businesses but from Mr. West’s own business *or personal* activities. That is, these invoices were prepared by Quintanilla personnel according to Mr. West’s direction.²² Generally speaking, the invoices were not issued by the

²¹ As to three missing invoices, Mr. West attached to his opening brief three purported invoices (Doc. 85 at 203 (Prime), 58 (Ford Murray), 101 (S.A. Auto)) that, as far as we can tell, are not among those that were admitted into evidence at the trial. We therefore do not consider them here. However, it is sometimes difficult to conclude definitively whether the documents on which Mr. West relies are in evidence. For example, on “C-1 Pro. Fees [2015]” (Doc. 85 at 51), Mr. West lists no Bates number for Hornberger’s invoice dated May 18, 2015; and to his briefs he attached a copy of such an invoice that bears no Bates number (*see* Docs. 85 at 64, 89 at 109); but in fact the invoice appears as part of Exhibit 27-J (Doc. 73 at 001227). Thus, we cannot be certain that, where Mr. West failed to cite a valid Bates page number, there is no Bates page number.

²² To his reply brief, Mr. West attached a purported invoice from San Antonio Auto Title (Doc.89 at 101), which was not offered into evidence at the trial. The bill reflected on that invoice was paid by Mr. West’s check No. 1173, and the invoice has the same number—1173. It seems that the invoice was prepared at the same time as, and by the same person who wrote, the related check. We do not sense fraud in this process. Rather, we assume that the preparation of the invoice had a real utility for QMC in its dealings internally and with Mr. West. But we think these invoices do not offer the probative value that might arise from their being issued by a third-party payee.

[*27] payee (unless the payee was Quintanilla related).²³ These invoices (when backed up by a check) show payment by Mr. West to the Quintanilla businesses, but they do not necessarily show a payment by Mr. West to a third party. As the Commissioner pointed out:

[A] lot of the invoices are from entities that are owned in whole or part by Petitioner. So you see a check going from Petitioner . . . the individual to an entity that he has partial ownership in and invoice from a related entity to Mr. West. And there are no third-party corroborating records to show how this money was actually used. There's nothing showing it actually went to a third-party or was incurred for the purpose put on this invoice because he is related to the entity for a lot of these expenses.

Doc. 82, Tr. 30–31.

These general defects undermine Mr. West's attempted proof of his Schedule C deductions, as we now show.

C. *Discussion of Mr. West's individual spreadsheets*

1. *Commissions expense*

On Schedule C-1 (for "Management Services") to his 2015 tax return, Mr. West claimed a deduction of \$147,500 on line 10 ("Commissions and fees"), which the IRS disallowed in full; and Mr. West's spreadsheet "C-1 Commissions" for 2015 (Doc. 85 at 5) claims total commissions of \$89,625. At trial Mr. West gave no testimony about commissions, and in his post-trial briefs "commissions" appears only on the spreadsheets and in unexplained general references. Given the nature of Mr. West's employment performing management services for the Quintanilla businesses, it is far from obvious how that activity could have incurred an obligation for Mr. West to pay commissions to anyone.

The spreadsheet lists nine entries totaling \$89,625. Three of those nine entries show payments to "Joseph Michael"²⁴ totaling

²³ Exceptional instances in which it appears that the payee actually prepared an invoice that prompted the preparation of a check include Doc. 73 at 001227 (Hornberger), and Doc. 73 at 001582 (Braden).

²⁴ On check No. 1177 for \$25,000 dated 3-12-2015, on check No. 1180 for \$20,000 dated 3-29-2015, and on check No. 1198 for \$15,000 dated 4-21-2015, the payee

[*28] \$60,000, and one of those nine entries shows payment of \$23,000 to “Burdeen Young”.²⁵ No evidence convinces us that these were payments of commissions.

The remaining five checks listed on the “commissions” spreadsheet—

- Check No. 1190 for \$2,000 payable to Emur Kast for “Antique cars” (Doc. 73 at 001165, 001370);
- Check No. 1189 for \$3,000 payable to Tony Jones for “Antique cars” (Doc. 73 at 001165, 001370);
- Check Nos. 1251 (for \$125) and 1266 (for \$500) payable to 200 Patterson Condominium Association (with the “For” lines blank); and

is “Joseph Michael and the “For” line is blank. (See Ex. 27-J; Doc. 73 at 001162.) The second of those (No 1198) is also included, in Ex. 26-J—a list “of expenses provided by petitioner for 2015” (Doc. 73, para. 36)—as one of three payable to “Joey Michael *Investments*” (emphasis added), along with a 3-12-2015 payment of \$75,000 by check No. 1117 (a check we cannot find in the record) and an 8-6-2015 payment of \$25,000 by check No. 1294. (See also Doc. 73 at 001036). Given the information available to us, it seems more likely that if \$60,000 was paid to Joseph Michael, it was paid as an investment rather than as commissions.

²⁵ A bank statement shows a wire transfer of \$23,000 on 12-21-2015 to “Burdeen Young & Company”. (Doc. 44 at 000360.) An email directing the wire transfer states no purpose for the transfer. (The email attached to Mr. West’s opening brief, Doc. 85 at 22, did not bear the Bates stamp numbering of admitted exhibits and therefore seemed not to have been offered into evidence at trial. However, we were able to locate the document in Ex. 27-J; see Doc. 73 at 001556.) Our unaided search through the record for more information about the \$23,000 “commission” supposedly paid to Burdeen Young turned up transactions that seem to bear no relation to possible commissions: An invoice from “B. Young & Company” to Mr. West dated 9/4/2015 lists “One Rolex GMT white gold factory diamond serial #V440789” for \$52,500 and “One Rolex platinum diamond marker daytona serial #5L30V5l9” for \$47,500 (Doc. 73 at 001032), totaling \$100,000 (see also Doc. 73 at 001030). An invoice No. 233 from “B. Young & Company” to Mr. West dated 10/15/2015 lists “One mens 18k white gold Rolex Daytona with Pave’ factory diamond dial. / Slylo: # II 6509 / Serial:# V455039” for \$33,000 (Doc. 73 at 001021); and a \$33,000 invoice from QMC to A. Brad West dated 10/22/2015 states it is for “Reimbursement for B. Young & Company Invoice #233”. (Doc. 73 at 00118.) A bank statement shows a \$9,000 wire transfer to Burdeen Young & Company on 6/29/2015. (Doc. 44 at 000338.) A bank statement shows a \$51,000 wire transfer B. Young & Company on 9-24-2015. (Doc. 73 at 001085.) Given only the information available to us, it seems more likely that if \$23,000 was wired to Burdeen Young on 12-21-2015, then it was wired to pay for a watch rather than to pay commissions.

[*29]

- Check No. 1225 for \$1,000 to Utopia Ranch Rodeo for “Ranch Rodeo Paloma West”

—likewise lack any visible relation to commissions. They do not substantiate any Schedule C-1 deduction. None of the expenses listed as “Commissions” on Mr. West’s spreadsheet is deductible.

2. *Travel expenses*

a. *Substantiation standards under section 274(d)*

Certain deductions are subject to heightened substantiation requirements under section 274(d). Such expenses include those relating to travel and “listed property” under section 280F(d)(4). § 274(d). Listed property is defined in section 280F(d)(4) and, for the years in issue, it included passenger automobiles and any other property used as a means of transportation, such as an airplane or helicopter. *Lysford v. Commissioner*, T.C. Memo. 2012-41; Treas. Reg. § 1.274-5T(a). Where the “business purpose” of a flight has not been “corroborated”, see § 274(d), no deduction is allowed for expenses attributable thereto, *Engstrom, Lipscomb & Lack, APC v. Commissioner*, T.C. Memo. 2014-221, at *15, *aff’d*, 674 F. App’x 617 (9th Cir. 2016).

To comply with the strict substantiation rules, the taxpayer must have adequate records or sufficient evidence to corroborate the taxpayer’s own testimony as to (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. See § 274(d); Temp. Treas. Reg. § 1.274-5T(b).

For some types of expenses, lack of substantiation can be overcome. If the taxpayer establishes that a deductible expense has been paid but cannot establish the precise amount of the deductible expense, then the Court may estimate the amount. See *Cohan v. Commissioner*, 39 F.2d at 543–44. However, a court may not invoke the *Cohan* doctrine to estimate the amount of a deductible expense—such as travel and “listed property”—that is subject to the strict substantiation requirements in section 274(d), since those requirements supersede the *Cohan* doctrine. See *Sanford v. Commissioner*, 50 T.C. 823, 827–28 (1968), *aff’d per curiam*, 412 F.2d 201 (2d Cir. 1969). The travel

[*30] expenses that Mr. West is attempting to deduct are subject to the heightened substantiation requirements of section 274(d). Mr. West's evidence to support his claimed deductions is insufficient to substantiate any expenditure subject to the section 274 requirements.

b. *Mr. West's claims*

Mr. West's spreadsheets claim travel expense deductions for 2015 only, for Schedule C-1 ("Management services") and Schedule C-2 ("MPC Equipment LLC"):

- The Schedule C-1 for 2015 claimed travel expenses of \$71,179 on line 24a, of which the NOD disallowed \$33,621; and the corresponding spreadsheet ("C-1 Travel"; Doc. 85 at 95) now claims \$149,531. The spreadsheet lists invoices²⁶ from and twenty-one payments to four vendors: Q2BW (three payments totaling \$9,633); QMC Aviation (three payments totaling \$26,151); BL Aviation (thirteen payments totaling \$112,468); and Todd Weems²⁷ (two non-invoiced payments of \$726 and \$553).
- The Schedule C-2 for 2015 claimed no travel expenses on line 24a; but the corresponding spreadsheet ("Travel C-2", Doc. 85 at 179) now claims \$46,324. That is the amount of a single check (No. 1004, Doc. 73 at 001530) dated 2-23-15 and paid to BL Aviation "For 10, 11, 12, 153, 137, 146"—i.e., for invoices with those numbers, all dated in 2014, and all stamped "Paid 03/03/2015" (Doc. 73 at 001310).

²⁶ Spreadsheet "C-1 Travel (2015)" erroneously attributes invoice 194 to QMC Aviation, rather than the actual vendor, BL Aviation. In addition to the non-invoiced payments to Todd Weems discussed below, we are unable to find four cited invoices (BL Aviation 177 (misstated as 187) and 196, and Q2BW 31 and 64), but we assume that such invoices did exist.

²⁷ Mr. West's check No. 1235, payable to Todd Weems for \$725.67, states on the "For" line "Reimbursement [illegible] expenses"; and the back of the check bears the handwritten notation "Office expenses". The C-1 Travel expense spreadsheet erroneously indicates an invoice "12" as being related to this check, but we find no invoice with this amount. (There is a BL Aviation Invoice 12 that appears on the spreadsheet for C-2 travel, but this amount does not appear on that invoice.) Check No. 1369 (Doc. 73 at 001304), payable to Todd Weems for \$553.32, states "Drive services" on the "For" line, and the back of the check bears the undated handwritten notation "Driver to Houston".

[*31] That is, to the travel vendors described above are ascribed 2015 payments as follows:

<i>Vendor</i>	<i>Sched. C-1</i>	<i>Sched. C-2</i>	<i>Total</i>
BL Aviation	\$112,468	\$46,324	\$158,792
Q2BW	9,633		9,633
QMC Aviation	26,151		26,151
Todd Weems	1,279		1,279
Total	\$149,531	\$46,324	\$195,855

Those invoices all have the same format: Each is billed to “Brad West” (not MPC or any other entity). The “Description” has one, two, or three entries, and each entry generally²⁸ gives dates and the name of a city or state (presumably, a travel destination).²⁹ Some invoices include amounts for “Ramp fee”, “Hotel”, “Transport[ation]”, and/or “Meals” (and some list such charges as “Pilot Incidental” charges, with no pilot named). No invoice gives the name of any traveler, and no invoice states the purpose of any trip (except that BL Aviation invoice 11 bears the undated handwritten notation “To Hire Dale T”).

c. *Analysis*

For these travel expenses, Mr. West has not produced sufficient information to corroborate the business purpose of any specific trip. *See* § 274(d). He claims deductions for travel on a private airplane and helicopter, but he did not provide a travel log, calendar, flight log, or any other contemporaneous documentation showing the business purpose of the travel. We could end our analysis there, but we point out several other defects with his attempted proof.

First, it appears that not all of the invoiced travel was actually attributable to and borne by Mr. West. QMC invoice 54 (Doc. 73 at

²⁸ One of the two entries on BL Aviation invoice 153 (Doc. 73 at 001317) reads simply “08/23/2014-08/24/2014 Trip” with no location.

²⁹ These stated travel destination states are Colorado and North Carolina; and the stated travel destination cities are Atlanta, Charleston, Heber (Utah), Houston, Memphis, Panama City and West Palm Beach (Florida), San Diego, San Francisco, Scottsdale and Midland (Arizona), and Teterboro (NJ).

[*32] 001270) includes the notation “1/2 to Leo Quintanilla 1/2 Brad West (total 22,591.69)”; and BL Aviation invoice 148 includes the notation “Split between Leo and Brad”; but the entire amounts of both invoices appear on Mr. West’s spreadsheet for “C-1 Travel”.

Second, it seems clear that some of the invoiced travel was personal. The spreadsheet for “C-1 Travel [2015]” includes an entry for a QMC Aviation invoice 43, dated 9/30/2015 for \$4,536.32, for which a “QMC Trip Request Form” (Doc. 73 at 001265) states a “PURPOSE: PERSONAL”, and includes an entry for a QMC Aviation invoice 26, dated 7/31/2015 for \$6,851.79, for which a “QMC Trip Request Form” (Doc. 73 at 001261) states a “PURPOSE: PERSONAL” and includes a notation “Brad doctor appointment”. Mr. West’s spreadsheet thus claims these expressly personal travel expenses as Schedule C business expenses.³⁰ We conclude that we cannot rely on Mr. West’s characterization of expenses as business rather than personal.

Third, the great majority of these invoices show payment to Mr. West’s own entities—BL Aviation and Q2BW. One could say that he has proved he took money out of his left pocket and put it in his right pocket, but he has not shown that he made a deductible expenditure from his right pocket.

We conclude that Mr. West has not substantiated travel expenses beyond what the NOD allowed for 2015, and we sustain the NOD’s adjustments.

3. *Professional fees*

a. *Amounts at issue*

On his tax returns for 2015 and 2016, Mr. West claimed deductions for “Legal and professional services” expenses on line 17 of Schedules C-1 and C-2. The IRS disallowed most of those deductions, and Mr. West now claims on four spreadsheets deductions that, in the net, are greater than those he originally reported, as follows:

³⁰ See, to the same effect, Doc. 73 at 001327 (“QMC Trip Request Form” stating “PURPOSE: BUSINESS” and stating the “BUSINESS REASON” as “Sunday gun shoot”) and Doc. 73 at 001330 (“QMC Trip Request Form” stating “PURPOSE: BUSINESS” and stating the “BUSINESS REASON” as “Brad eye doctor”). We cannot link these two trip request forms to entries on Mr. West’s spreadsheet, but they contribute to our conclusion that Mr. West’s purported distinctions between business and personal expenditures do not reliably correspond to tax standards.

[*33]

	<i>Reported on Return</i>	<i>Allowed on NOD</i>	<i>Claimed on Spreadsheets</i>
2015			
Sched C-1	\$169,084	\$3,407	\$227,847
Sched C-2	3,998	3,998	28,706
2016			
Sched C-1	41,447	131,730	74,718
Sched C-2	19,530	-0-	50,000
Total	\$234,059	\$139,135	\$381,271

The “professionals” named on those four spreadsheets—along with their corresponding totals from each of the spreadsheets—are as follows:

<i>Name</i>	<i>C-1 2015</i>	<i>C-2 2015</i>	<i>C-2 2016</i>	<i>C-1 2016</i>
Erin Shirah	\$99,000	\$9,500		
Sa Auto Title	3,397			
Ford Murray	1,906			\$7,373
Hornberger ³¹	5,175			5,625
Brittina Design	3,312			
Timothy Braden	2,750	8,350		
QMC	75,306	3,356		
David Nixon	20,250		\$5,000	8,000

³¹ On “C-1 Pro. Fees [2015]” the name is given as “Hornberger” (as on the invoice); but on “C-1 Pro. Fees (2016)” the name is given as “Hardberger”, evidently a typographical error.

[*34]				
Norman Garza	3,000			
Paul Perry	13,750			
Jennifer Flume		7,500		
Cedillo			20,000	4,000
Strsberger (sic)			20,000	40,000
Smith Robertson			5,000	
Bray Chappell*				6,720
Charles Tomblin*				1,125
Kindel law firm*				1,500
Garland*				375
Total	\$227,847	\$28,706	\$50,000	\$74,718
Allowed on NOD	3,407	3,998	-0-	131,730
Allowed here	3,407 ³²	9,103 ³³	45,000 ³⁴	131,730 ³⁵

b. *Legal standard*

In order to be deductible under section 162 as a business expense, legal and other professional fees must be of a business rather than personal nature. *See United States v. Gilmore*, 372 U.S. 39 (1963). Legal

³² We leave undisturbed the NOD's allowance of \$3,407 as to Schedule C-1 for 2015. But for that concession, we would have allowed \$3,291 for Schedule C-1 in 2015, consisting of \$2,750 paid to Timothy Braden and \$541 paid to QMC, for the reasons explained below.

³³ The \$9,103 we allow for Schedule C-2 in 2015 consists of \$8,350 paid to Timothy Braden and \$753 paid to QMC, as explained below.

³⁴ The \$45,000 we allow for Schedule C-2 in 2016 consists of the amounts listed here paid to Cedillo, Strasberger, and Smith Robertson (and not David Nixon), as explained below.

³⁵ We leave undisturbed the NOD's allowance of \$131,730 as to Schedule C-1 for 2016. But for that concession, we might have allowed much less.

[*35] expenses paid as ordinary and necessary expenses may be deductible on Schedule C when the matter generating the expense arises from, or is proximately related to, a business activity other than employment. *Colvin v. Commissioner*, T.C. Memo. 2007-157, slip op. at 36–37, *aff'd*, 285 F. App'x 157 (5th Cir. 2008); *Test v. Commissioner*, T.C. Memo. 2000-362, slip op. at 12–13, *aff'd*, 49 F. App'x 96 (9th Cir. 2002); see *Bagley v. Commissioner*, 8 T.C. 130, 134 (1947). In addition, to be deductible, such fees must constitute “ordinary and necessary” expenses rather than capital expenditures. See *Commissioner v. Lincoln Sav. & Loan Ass'n*, 403 U.S. 345, 353–54 (1971) (holding that an expenditure that “serves to create or enhance . . . a separate and distinct additional asset” is capital rather than currently deductible).

c. *Analysis*

The last four payees on the above list—each of whose names is followed by an asterisk—all appear solely on Mr. West’s spreadsheet for C-1 professional services for 2016. As we have explained above, the IRS’s allowance of the deduction for professional fees on Schedule C-1 for 2016 (\$131,730) is greater than the amounts Mr. West claimed on his original return and his spreadsheet *combined* (i.e., \$41,447 + \$74,718 = \$116,165). Consequently, as we noted above, we do not resolve any dispute as to that C-1 2016 deduction, and the IRS’s favorable adjustment will stand. This leaves us to consider the following three spreadsheets—

“C-1 Pro. Fees [2015]” totaling \$227,847 (Doc. 85 at 51);
 “C-2 Pro Fees [2015]” totaling \$28,706 (Doc. 85 at 157); and
 “C-2 Pro. Fees (2016)” totaling \$50,000 (Doc. 85 at 160)

—and the 14 “professional” payees listed thereon:

Erin Shirah is the vendor to whom was paid the largest amount of the professional fees (\$108,500 in the two years at issue). Mr. West produced no testimony as to this professional,³⁶ but the invoices show that he or she was paid for “Interior Design Consultation for 43 Bristol

³⁶ In his inadmissible spread sheet submitted with his reply brief (Doc. 89 at 44), Mr. West included payments to Erin Shirah and stated that they were for: “Project management Fee for Ironwood Project Investment. Sold as part of the 3/1/15 transaction”; “PM (Project Manager) draw for Bristol Green project”; “PM draw Bristol Green”; “Material and Supplies Draw for Bristol Green Project”.

[*36] Green”. (Doc. 73 at 001035.)³⁷ These are among the Bristol Green expenditures that we find were not for incidental repairs but were instead for nondeductible “improvements” or “betterments”. Thus, any amounts paid to Erin Shirah were capital, not deductible.

San Antonio Auto Title—an unlikely name for a professional—was the subject of no testimony at trial and no mention in Mr. West’s briefs. A check for \$3,397.33 (with an illegible “For” line) is the only pertinent evidence in the record.³⁸ No evidence supports a “professional fee” deduction for this expenditure.

Ford Murray received a check for \$1,906.47 (Doc. 73 at 001459), but he was the subject of no trial testimony. No deduction for professional fees paid to him is substantiated by evidence. (An inadmissible invoice (Doc. 85 at 58) shows him to be an attorney who billed Mr. West for work *In the Matter of the Marriage of Andrew Bradford West and Carey Ann Charley West*, but legal fees incurred in a divorce proceeding are generally not deductible. *See United States v. Patrick*, 372 U.S. 53 (1963).)

Hornberger Fuller & Garza received a check for \$5,175 “For Andrew Bradford West Trust” (Doc. 73 at 001457, invoiced at 001579), but the evidence does not show, and Mr. West has not described, a non-personal business purpose for these services.

Brittina Design-Build, LLC, received one check, for an amount different from the amount listed on the spreadsheet, and with no corresponding invoice. No testimony was given as to Brittina. Even if we were to look at Mr. West’s inadmissible spreadsheet and were to accept that the check was for “Bristol Green project materials and supplies” (Doc. 89 at 46), we would have to conclude that this is a Bristol Green expenditure that was capital and not deductible.

Timothy Braden was the accountant and return preparer for Mr. West and his business entities. (See Exs. 2-J through 5-J, Doc. 44 at 0045-00192.) In 2015 he received a check for \$2,750 (Doc. 73 at 001192) for “Tax Return Preparation Fee Federal and Consulting

³⁷ See also Doc. 73 at 001103, 001107, 001108, 001522 (invoices); Doc. 73 at 001529 (check No. 1021 for \$9,500 for “Consulting”).

³⁸ An inadmissible invoice (Doc. 89 at 101) and an entry on the inadmissible spreadsheet (Doc. 89 at 45: “TTL on vehicle given as a bonus for completing Ironwood project ahead of schedule”) seem to link this payment to Erin Shirah. If so, then this deduction fails for the same reasons as those claimed for payment to Erin Shirah.

[*37] Related to Sale of Assets in 2015” (Doc. 73 at 001582) and a check for \$8,350 for “Tax [illegible]” (Doc. 73 at 001147). The heavy lifting in the preparation of Mr. West’s returns concerned the preparation of the Schedules C and E for Mr. West’s businesses and the complicated basis calculations in connection with the sale of business assets in 2015, and the evidence establishes the business purpose of that work. The Commissioner did not propose any allocation of a portion to personal expense, and we do not attempt any. The two payments to Mr. Braden, totaling \$11,100, are deductible for 2015.

QMC is a management company of the Quintanilla businesses, not a professional, but it was the recipient of almost \$80,000 of the “professional fees” claimed on Mr. West’s spreadsheets. The cited invoices for the “C-1 Pro. Fees [2015]” support only a portion of this total, and they reflect supposed charges for FedEx invoices, “Charges”, Comdata charges, reimbursement for “Sales Rep / Payroll”, \$138 for “CPA Fees”, and \$403.32 for “legal bill - Jackson Walker” (Doc. 73 at 001230, 001309; *see also* Doc. 82 at 117). There are no cited invoices to support the “C-2 Pro Fees [2015]”; and the canceled checks (Doc. 73 at 001529-531), which support only a portion of this total, reflect mostly unspecified charges by QMC. The only “C-2 Pro. Fees [2015]” that we find Mr. West paid to QMC were \$752.88 for Jackson Walker fees. Mr. West is limited to deducting the small amounts stated here (i.e., \$138 plus \$403.32 (on C-1), totaling \$541, plus \$753 (on C-2), altogether totaling \$1,294), which are deductible for 2015, to the extent they exceed the NOD’s allowances.

David Nixon was not the subject of any trial testimony. He appears as the ostensible sender of invoices to Mr. West and the recipient of checks written by Mr. West. The only clues to what services he might have provided are “Paloma Cattle Company Consulting” as a “Description” on invoices and “Cattle” or “Cattle consulting” on the checks. (Paloma Cattle Company is the entity with which Mr. West entered into an agreement for his employment by the Quintanilla businesses.) Mr. West’s inadmissible spreadsheet (Doc. 89 at 46) states that Mr. Nixon’s service was “Cattle Consulting for QV Cattle which I had a 6% ownership interest”. As far as we can tell, no entity whose name includes “QV Cattle” is mentioned in the evidence in this case. Mr. West has not substantiated a professional fee deduction for amounts paid to David Nixon.

Norman Garza was not the subject of any testimony at trial. His name appears in the evidence in this case only as a payee of a check for

[*38] \$3,000 (Doc. 73 at 001186), on which the “For” line is blank. We do not discern any basis for a professional fee deduction for the amount paid to him. (Mr. West’s inadmissible attachment to his pretrial brief gives an “Explanation” of “Personal Security Guard”, but even if we were to use that information, we could not find that the expense was not “Personal” (as Mr. West’s attachment says) rather than business.)

Paul Perry was an executive vice president of Quintanilla Management Co., and no evidence shows that he served Mr. West as a professional. Expense lists and a check bearing his name show “reimbursement” for unspecified “expenses” (*see* Doc. 73 at 00918, 00920, 001197). No Schedule C deduction is substantiated for payments to Mr. Perry.

Jennifer Flume was an employee of the Quintanilla businesses (until October 15, 2015, according to Mr. West’s brief (Doc. 85 at 35)), and in that capacity she performed services related to Mr. West’s being billed for services that had been provided for his companies at Quintanilla’s expense. A \$7,500 check to her from ABW Equipment Rentals dated 10-26-15 (Doc. 73 at 001146)—after her employment with Quintanilla had ended—is not supported by any invoice, nor by any explanation at trial or in any document admitted into evidence. The check by itself does not support a deduction for professional fees.

Ricardo Cedillo was, as to the years at issue,³⁹ the subject of the following trial testimony by Mr. West:

I think that when you look at the expenses from professional and legal, which blows my mind that Ms. Stan will not give me Shumway Van or give me Jackson Walker. I’ve shown her the invoices. And then obviously in 2016, just as another example, I think I spent 350,000 with Ricardo Sedillo (ph.), who’s a trial lawyer and who’s representing me against Quintanilla, another 25 or 50 with Strasburger (ph.) and then 5 here.

We cannot reconcile supposed fees of \$350,000 mentioned in testimony with the \$20,000 total that Mr. West itemized in the spreadsheet for “C-2 Pro. Fees (2016)”, and for which the evidence includes checks. Mr. West presumably paid attorney’s fees for *non*-deductible personal

³⁹ Mr. West testified that in 2018 he prepared a document related to easements and that “Jefferson Bank helped me put it together along with Ricardo Sedillo [sic].” (Doc. 82, Tr. 140, 154–155.)

[*39] matters, and for all we know those may be included in the \$350,000 about which he generalizes, but we find that Mr. West has substantiated a business deduction of \$20,000 paid to Mr. Cedillo.

Strasberger is mentioned in the testimony quoted above, and a check 1030 for \$20,000 is listed on “C-2 Pro. Fees (2016)”. It is entirely believable, and we find, that Mr. West, mired as he was in litigation about his business activity, paid professional fees of \$20,000 to Strasberger.

Smith Robertson was not explicitly mentioned in the trial testimony, but the evidence includes a \$5,000 Check 1036 “For Legal Fees” (Doc. 73 at 001149), and we suppose this was what Mr. West testified to when, discussing payments to lawyers, he said “and then 5 here.” (Doc. 82 at 117.) We find that Mr. West paid professional fees of \$5,000 to Smith Robertson.

In sum, we allow no more than the IRS allowed on Schedule C-1 for 2015 and 2016, but we do make additional allowances on Schedule C-2 for both years.

4. *Repairs and maintenance*

The spreadsheet “C-1 Repairs and Maintenance (2015)” itemizes expenses totaling \$17,086 (Doc. 85 at 199). The checks to Land Rover and QMC Bravo aviation involve transportation expense subject to section 274(d), and Mr. West has not submitted evidence that would meet the higher scrutiny required by that statute. However, we find that checks written to Water Well Services and Prime Materials substantiate repairs and maintenance deductions of \$15,565, which we allow (in addition to the “C-1 Repairs and Maintenance” allowed in Part III.D.2, *infra*).

D. *Two additional claimed deductions*

In one instance Mr. West’s opening brief argues for two additional deductions not stated on the spreadsheets. These two claimed deductions are derived from the \$4.5 million proceeds of his 2015 sale of assets, which proceeds (he says)—

were allocated (as outlined on 001841) in the following deductions not allowed by the IRS:

[*40] C-2 Professional Services

QMC - \$187,114.62

C-1 Repairs and Maintenance

Q-Haul - \$112,527.21

(Doc. 85 at 2–3.) That is, Mr. West cites the 2015 Asset Purchase Agreement to substantiate his entitlement to deduct these amounts of the proceeds due to him under the agreement.⁴⁰

1. *C-2 Professional Services*

The cited Bates page (i.e., 001841 within the 2015 Asset Purchase Agreement (Doc. 74, Ex. 29-J)) does indeed state that \$187,114.62 would be paid to MPC Equipment (the entity on Schedule C-2) and that MPC Equipment “shall pay such amount to Quintanilla Management Company”. By its check No. 1424, MPC Equipment LLC did pay that \$187,114.62 amount to QMC on 4-10-15.

However, this \$187,114.62 amount bears no relation to the amount he reported on his 2015 Schedule C-2 for “Legal and professional services”—i.e., \$3,998. Moreover, this amount does not appear on either of Mr. West’s spreadsheets for 2015 “Pro Fees”—i.e., neither the spreadsheet for “C-1 Pro. Fees [2015]”, which total \$227,847 (Doc. 85 at 51); nor the spreadsheet for “C-2 Pro Fees [2015]”, which total \$28,706 (Doc. 85 at 157).⁴¹ Most significantly, the 2015 Asset Purchase Agreement gives no indication of the purpose for which this amount was to be paid. It provides:

⁴⁰ The Commissioner does not contend that Mr. West failed to report on his 2015 return the \$4.5 million proceeds from the 2015 Asset Purchase Agreement, so we assume that he did report those proceeds on his return and that, if any portion of the proceeds was paid (for his benefit) to one of his creditors to satisfy an expense that was deductible, then he would have been entitled to claim that deduction on his return.

⁴¹ If the \$187,115 that MPC paid QMC was to be a portion of the amounts on the “Pro. Fees” spreadsheets, we are unable to confirm it. The spreadsheet for “C-2 Pro. Fees [2015]” lists eight entries that total \$28,706; and five of them are stated to be paid to QMC; but those five add up to only about \$3,300. If we look beyond the Schedule C-2 that Mr. West’s brief names in this connection and consider the spreadsheet for “C-1 Pro. Fees [2015]”, that spreadsheet lists nineteen entries that total \$227,487; and five of them are stated to be paid to QMC; but those five add up to only about \$75,000. The \$187,155 is not explained, and we cannot reconstruct it.

[*41] At Closing, Leo will pay . . . the following amounts on behalf of, and for the account of, Brad and MPC Equipment, as applicable, to the payees as indicated below: . . .

(ii) to MPC Equipment, the amount of \$187,114.62 for payments due to Quintanilla Management Company from MPC Equipment, provided that immediately upon MPC Equipment's receipt of such payment, MPC Equipment shall pay such amount to Quintanilla Management Company.

That is, the 2015 Asset Purchase Agreement simply characterizes the \$187,114.62 amount as the total of "payments due to Quintanilla Management Company from MPC Equipment". For all the record shows, these "payments due" could be reimbursement for QMC's payment of personal expenses of Mr. West, or capital expenditures for MPC's Bristol Green, or travel or "listed property" expenses subject to heightened proof standards.

This provision of the 2015 Asset Purchase Agreement does not substantiate any Schedule C deduction for professional services.

2. *C-1 Repairs and Maintenance*

The cited Bates page also includes the \$112,257 amount that Mr. West argues constitutes an expenditure for Repairs and Maintenance on his Schedule C-1. The 2015 Asset Purchase Agreement provides that Quintanilla would pay this portion of proceeds directly to Q-Haul, Inc. (apparently one of the Quintanilla businesses), as a creditor of Mr. West. The Commissioner acknowledges that the 2015 Asset Purchase Agreement was effectuated and that, pursuant to it, payments were made to Mr. West's creditors, so we conclude that in 2015 Q-Haul did receive (at Mr. West's expense) \$112,257 from the asset purchase proceeds. If that was in payment of a business expense, then Mr. West may be entitled to deduct it. The remaining issue is the purpose of that payment.

The agreement states that it was to be "in payment of equipment repair charges incurred by Brad"; and the Commissioner acknowledges that Mr. West's companies—MPC and ABW Equipment Rentals—"own[ed] heavy machinery used in oil field production." (Doc. 82,

[*42] Tr. 28.)⁴² It is intuitive that such a business must incur repair and maintenance expenses, and Mr. West did report such expense of \$83,506 for 2014 and \$166,826 for 2015,⁴³ the latter of which the NOD entirely disallowed without explanation (Doc. 44 at 0042).

We note the anomaly that Mr. West's brief characterizes this amount as "C-1 Repairs and Maintenance" (Doc. 85 at 3), but that he omitted this amount on his spreadsheet with the same title ("C-1 Repairs and Maintenance (2015)", Doc. 85 at 199), which totals only \$17,086 (of which we allow \$15,565 above in Part III.C.4). It appears that, because this \$112,257 item based on the asset purchase involved no invoice and no canceled check, he did not treat it with the items presented on spreadsheets. He did present this item in the same brief to which the spreadsheet was attached, so this item is evidently not an afterthought nor a contradiction of the spreadsheet. We hold that the \$112,257 deduction for repairs and maintenance is substantiated, in addition to the \$15,565 allowed above in Part III.C.4.

E. *Generalized contentions*

In his post-trial briefs (as in his trial testimony), Mr. West makes general references to his having supplied during the audit numerous documents, ignored by the IRS, that showed him to be entitled to all the deductions that the NOD disallowed. If he intends to refer to documents that are not in the trial record, they cannot be relied on. If he intends to refer to documents that are present in the record, then it was incumbent on him to cite them and to relate them to his contentions in a manner that would enable us to evaluate his proof. In his eight spreadsheets he did refer us to specific documents; and in some

⁴² Mr. West's post-trial elaboration—not supported by evidence but consistent with this admission—is that this payment was for "[p]ast due Repairs for the bulldozers, sweepers, and scrapers for MPC". (Doc. 89 at 49.)

⁴³ For 2014 the \$83,506 of "Repairs and maintenance" was reported on Schedule C-2 for MPC Equipment (Doc. 44 at 00141), while Schedule C-1 for Management Services reported zero; and for 2015 the \$166,826 was reported on Schedule C-1 for Management Services (Doc. 44 at 0048), while Schedule C-2 for MPC Equipment reported a trivial \$2,171. We consider the attribution of these 2015 repair expenses to the Schedule C-1 (for Management Services) to an immaterial mistake. The assets were sold in March 2015; and by the time the 2015 return was being prepared in October 2016, it had been a year and a half since MPC Equipment effectively ceased operations. As we have noted, Mr. West's allocation of items among his Schedule C entities was irregular. In his post-trial argument, he attributes the repair expenses to Schedule C-1 (consistent with his reporting on his 2015 return) even though he refers to the Schedule C-2 entity, MPC.

[*43] instances we were able to identify additional specific documents to which he had not referred; and our evaluation of that proof is reflected above. If he were to argue that the Court was obliged, without assistance, to comb the record further and craft arguments for the deductibility of additional expenses, then he would be mistaken. We do not undertake the task of sorting through the stipulated bank statements, invoices, and canceled checks in an attempt to see whether it could be argued that they substantiate the disputed deductions. See *Venuto v. Commissioner*, T.C. Memo. 2017-123, at *9; *Akey v. Commissioner*, T.C. Memo. 2015-227, at *21.

IV. *Partnership loss*

The parties stipulate that Mr. West and Mr. Quintanilla formed a partnership for Federal income tax purposes, pursuant to section 761(a), in taxable year 2014 when they signed the CTA, the CTA Note, and the CTA Security Agreement creating a new joint venture. Neither party disputes that gains and losses from the trading accounts would be partnership gains and losses; neither disputes that the termination of the partnership in February 2016 would have been a proper occasion for Mr. West’s recognition of such losses; and neither disputes that Mr. West received no distribution of any kind from the partnership upon its termination. However, as Mr. West seems to acknowledge, he can claim losses from the partnership only to the extent of his tax “basis” in the partnership; but it was Mr. Quintanilla who contributed all of the securities, and Mr. West was to contribute his effort; so Mr. West made no monetary contribution to the partnership that would have granted him any basis at its formation.⁴⁴ Rather, if we understand his

⁴⁴ Section 704(d) provides that a partner’s loss deduction “shall be allowed only to the extent of the adjusted basis of such partner’s interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.” Put simply, under section 722 the basis of a partner’s interest in a partnership is the amount of money and property that the partner contributed, but Mr. West contributed none. Mr. West has not argued that, under section 705(a)(1), his basis in CTA is increased by his 50% share (i.e., \$1.28 million) of CTA’s 2015 gains. Neither CTA nor Mr. West reported the gains or losses on tax returns. Section 705(a)(2) would apparently require that his basis be “*decreased . . . by . . . his distributive share for the . . . prior taxable years [i.e., \$6.86 million] of . . . losses of the partnership*” (emphasis added), which would offset any basis increase under section 705(a)(1). We give no further consideration to a basis increase under section 705(a)(1).

[*44] argument, he contends that his basis arose from other features of the arrangement.

A. *The CTA Note*

One of the three documents that created the partnership was Mr. West's CTA Note. Apparently he contends that he contributed this note to the partnership and thereby obtained a basis. This contention is factually and legally invalid. As a matter of fact, Mr. West executed the note not in favor of the partnership but rather in favor of Mr. Quintanilla personally. As a matter of law, "[w]e have long held that the contribution of a partner's own note to his partnership isn't the equivalent of a contribution of cash, and without more, it will not increase his basis in his partnership interest." *VisionMonitor Software, LLC v. Commissioner*, T.C. Memo. 2014-182, at *10 (citing cases)

Mr. West has not made any contributions to the Commodities Trading Partnership that would create a basis in the partnership. Under the CTA, when the partnership was formed, Mr. West was not required to contribute any money or property. Mr. West's only contribution to the partnership was his time and labor. Thus, when the partnership was formed in 2014, Mr. West's basis in the partnership was zero.

B. *"At risk"*

In apparent response to Mr. West's pretrial memorandum,⁴⁵ the Commissioner's answering brief observed that if "petitioner is arguing that the CTA note was an arrangement to cover petitioner's personal liability for partnership debt arising from partnership activity," and "if petitioner had an economic risk of loss in the partnership debt, it would [subject to exceptions] increase his basis to the extent of the economic risk"; but the Commissioner explained that "petitioner's promise to pay this liability was not at risk". Mr. West therefore undertook to demonstrate in his reply brief that he was at risk. This argument, too, is factually and legally invalid.

Mr. West explained that he "wore many hats and owned many different types of businesses that were also owned by Leo

⁴⁵ Mr. West's pretrial memorandum asserted: "Petitioner believes that he was 'At Risk' with regard to the commodity losses because he issued a note to Mr. Quintanilla, a[n] all asset pledge, and the CTA. On March 15, 2015 Petitioner entered into transactions to satisfy the above note and pledge." (Doc. 72 at 2.)

[*45] Quintanilla. . . . All of these were at risk for me.” (Doc. 89 at 8.) That is, “he was actively at risk in most of his activities and partnerships, the main goal of which was to make profits for himself and Mr. Quintanilla. I was an extremely active partner in the partnerships I owned. And the ones I did not own.” (Doc. 89 at 29.) Proving his basis in his interest in the Commodities Trading Partnership required proof that he had risk of loss in the partnership debt, not in his other ventures. Mr. West’s overall situation did involve economic risk, but that is a far cry from proving that the CTA Note put him “at risk” for partnership debt under the applicable rules. We look now to those rules as they apply to Mr. West’s liability under the CTA Note.

While a taxpayer can be at risk “with respect to amounts borrowed”, *see* § 465(b)(2), “amounts borrowed shall not be considered to be at risk . . . if such amounts are borrowed from any person who has an interest in such activity.” § 465(b)(3)(A). It was Mr. Quintanilla, as lender, from whom Mr. West’s liability under the CTA Note was borrowed, and Mr. Quintanilla did indeed “ha[ve] an interest in such activity”—i.e., in the partnership. Mr. Quintanilla was the other 50% general partner, and Mr. West’s guaranty of the partnership loss under the promissory note to Mr. Quintanilla would be excluded by the at-risk rules under section 465(b)(3)(A).

Treasury Regulation § 1.752-2(h) specifies circumstances in which a partner “is considered to bear economic risk”, and those circumstances include a partner’s “pledg[ing]” his own property “as security” (which, broadly speaking, Mr. West can be said to have done under the CTA Security Agreement). However, the circumstance addressed in this regulation is a partner’s pledging his assets to cover “the partnership liability”. Here, however, Mr. West pledged his assets to secure his own liability (under the CTA Note) to Mr. Quintanilla. This regulation therefore has no application to the issue we now face.

Moreover, even if this rule of Treasury Regulation § 1.752-2(h) did apply here, Treasury Regulation § 1.752-2(h)(4) provides another requirement that renders the regulation unhelpful to Mr. West: “[A] promissory note of the partner or related person that is contributed to the partnership shall not be taken into account unless the note is readily tradeable on an established securities market.” Mr. West has not shown that his CTA Note is readily tradeable on an established securities market and should be taken into account for determining his basis.

[*46] Mr. West cannot deduct any losses of the partnership when his basis in the partnership is zero. If his distributive share of the partnership loss exceeds the adjusted basis of his interest, only the amount of the loss equal to the basis of his interest may be deducted, in which case the basis of his interest is reduced to zero. *See* § 704(d). The excess of a partner’s share of the loss over the basis of his interest carries over to succeeding years to be allowed as a deduction “at the end of the partnership year in which such excess is repaid to the partnership,” *id.*, a repayment that has not happened.

C. *2015 Asset Purchase Agreement*

Mr. West’s pretrial memorandum asserts that “[o]n March 15 [sic], 2015 Petitioner entered into transactions to satisfy the above note and pledge” and seems to argue that, by transferring assets to Mr. Quintanilla, Mr. West satisfied his obligation under the CTA Security Agreement and thereby paid his obligation under the CTA Note. Had he done so, then he could argue that, under section 704(d), the loss was “repaid to the partnership.” Much could be said against such an argument, but it is sufficient to observe here that the March 2015 transfer of assets to Mr. Quintanilla was made not in satisfaction of Mr. West’s obligation under the CTA Note but rather under the 2015 Asset Purchase Agreement in return for Mr. Quintanilla’s payment of \$4.5 million. The transfer of those assets did not pay Mr. West’s liability under the CTA note and did not affect his basis in the partnership.

D. *Character of the loss*

The Commissioner makes an alternative argument to the effect that, if Mr. West is entitled to deduct the loss, the deduction is capital, rather than ordinary. Mr. West’s principal opposition to the alternative argument is that the losses were hedging losses and therefore ordinary. Since we have held that Mr. West is not entitled to deduct the losses, we need not address this ordinary-vs.-capital issue.

V. *Section 6662 accuracy-related penalties*

Section 6662(a) imposes an “accuracy-related penalty” equal to 20% of the portion of an underpayment of tax that is attributable to any substantial understatement of income tax. *See* § 6662(b)(2). The Commissioner asserts that Mr. West’s understatements of income tax

[*47] were substantial.⁴⁶ Under section 7491(c), the Commissioner bears the “burden of production” with respect to liability for the penalty. Once the Commissioner meets this burden, the taxpayer must come forward with persuasive evidence that the Commissioner’s determination is incorrect. Rule 142(a); *Higbee*, 116 T.C. at 446–47.

Section 6662(d)(1)(A) provides that an understatement⁴⁷ of income tax is “substantial” if it exceeds the greater of “10 percent of the tax required to be shown on the return” or \$5,000. In light of our holdings above, it appears that for both 2015 and 2016 Mr. West’s understatements of income tax will exceed the greater of 10% of the tax required to be shown on the return or \$5,000. (The income tax liability will be recomputed pursuant to Rule 155, and if (contrary to our expectation) the understatements prove to be not “substantial”, then this issue can be revisited.) Accordingly, respondent has met his burden to show that Mr. West’s returns reflected “substantial understatement[s].” The accuracy-related penalty is mandatory; the statute provides that it “shall be added.” § 6662(a).

The Commissioner’s burden of production under section 7491(c) includes a burden to show that the IRS complied with the supervisory approval provision of section 6751(b)(1). The parties have stipulated that the IRS complied with this requirement. The Commissioner has met his burden under section 7491(c), and we now turn to the question of “reasonable cause” and “good faith”.

Section 6664(c)(1) provides that, if the taxpayer shows, first, that there was reasonable cause for a portion of an underpayment and, second, that he acted in good faith with respect to such portion, then no accuracy-related penalty shall be imposed with respect to that portion. *See Higbee*, 116 T.C. at 446–47. Whether the taxpayer acted with reasonable cause and in good faith depends on the pertinent facts and circumstances, including the taxpayer’s knowledge and experience, and

⁴⁶ Under section 6662(b)(1), the accuracy-related penalty is also imposed where an underpayment is attributable to the taxpayer’s negligence or disregard of rules or regulations; and the Commissioner argues that Mr. West’s failure to maintain adequate records reflects negligence. However, since the Commissioner has demonstrated that Mr. West substantially understated his income tax for tax years 2015 and 2016, we need not consider whether, under section 6662(b)(1), Mr. West was negligent or disregarded rules or regulations.

⁴⁷ An “understatement” is defined as the excess of the amount of tax required to be shown on the return over the amount of tax which is shown on the return. § 6662(d)(2)(A).

[*48] on the extent to which he relied on the advice of a tax professional (an argument not developed here).⁴⁸ Treas. Reg. § 1.6664-4(b)(1). When evaluating reasonable cause, “the most important factor is the extent of the taxpayer’s effort to assess the taxpayer’s proper tax liability.” *See id.*

Mr. West’s reply brief makes broad-brush arguments that it is unfair to penalize him for any tax deficiencies because he is “owed refunds for the commodity losses for multiple reasons,” “[i]t was not possible to retrieve each and every tax document because of the failure of Mr. Quintanilla to respond sufficiently to the DOJ subpoenas [and because] [b]y 2016 he became a hostile ex-partner [and] the IRS . . . refused to subpoena the Quintanilla companies”, and because after he received supporting documents in 2024 and “tried to deliver the 27 or more boxes of new information that substantiated ownership and expense support; The Respondents refused to accept delivery of most of the hand-delivered documents”. That is, he says he should not owe the penalty because (he says) he does not really owe the tax (an assertion we do not sustain), because Mr. Quintanilla did not provide information (a proposition that he did not prove and that he did not relate to specific issues), and because the IRS refused to consider boxes of evidence (an immaterial proposition, because he had the opportunity to present those boxes on his own). We cannot say that Mr. West has shown any “reasonable cause,” *see* § 6664(c); Treas. Reg. § 1.6664-4, that would justify relief from the section 6662 accuracy-related penalties, and we hold that he is liable for the accuracy-related penalties on the deficiencies.

Conclusion

The Commissioner’s determinations are sustained in large part, to the extent set out above. To allow the parties to perform the necessary computations,

Decision will be entered under Rule 155.

⁴⁸ Mr. West did hire a professional to prepare his returns, but he did not make any showing as to the information he provided to the preparer, and as to whether the errors on his return (chiefly, the unsubstantiated deductions) resulted from his reliance on that preparer.