



United States Tax Court

Washington, DC 20217

MICHAEL ZORN,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 25974-17.

ORDER OF SERVICE OF TRANSCRIPT

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is hereby

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to the Commissioner a copy of the pages of the transcript of the trial in this case before the undersigned judge at the December 12, 2022, Baltimore, Maryland trial session containing the Court's oral findings of fact and opinion rendered at the trial session at which the case was heard. In accordance with the oral findings of fact and opinion, decision will be entered under Tax Court Rule 155 in due course. It is further

ORDERED that, on or before April 19, 2023, the parties shall submit computations under Tax Court Rule 155.

(Signed) Courtney D. Jones
Judge

Served 01/23/23

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1/13/23

IN THE UNITED STATES TAX COURT

In the Matter of:)

MICHAEL ZORN,)

Petitioner,)

v.)

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

Docket No. 25974-17

Pages: 1 through 34

Place: Baltimore, Maryland

Date: December 14, 2022



IN THE UNITED STATES TAX COURT

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In the Matter of:)
)
 MICHAEL ZORN,) Docket No. 25974-17
)
 Petitioner,)
)
 v.)
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

Garmatz United States Courthouse
Courtroom 9B
101 West Lombard Street
Baltimore, Maryland 21201

December 14, 2022

The above-entitled matter came on for bench opinion,
pursuant to notice at 1:31 p.m.

BEFORE: HONORABLE COURTNEY D. JONES
Judge

APPEARANCES:

For the Petitioner:

No Appearance

For the Respondent:

No Appearance



P R O C E E D I N G S

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(1:31 p.m.)

THE CLERK: Calling docket 25974-17, Michael

Zorn.

(Whereupon, a bench opinion was rendered.)



1 Bench Opinion by Judge Courtney D. Jones, Judge
2 December 14, 2022
3 Michael Zorn v. Commissioner of Internal Revenue
4 Docket No. 25974-17

5 THE COURT: The Court has decided to render the
6 following as its oral findings of fact and opinion in this
7 case. The oral findings of fact and opinion shall not be
8 relied upon as precedent in any other case. The oral
9 findings of fact and opinion are made pursuant to the
10 authority granted by section 7459(b) of the Internal
11 Revenue Code and Tax Court Rule 152. Unless otherwise
12 indicated, all statutory references are to the Internal
13 Revenue Code, Title 26 U.S.C., in effect at all relevant
14 times, all regulatory references are to the Code of
15 Federal Regulations, Title 26 (Treas. Reg.), in effect at
16 all relevant times, and all Rule references are to the Tax
17 Court Rules of Practice and Procedure. All monetary
18 amounts are rounded to the nearest dollar.

19 By notice of deficiency dated September 21,
20 2017, the Internal Revenue Service (IRS) determined
21 deficiencies and additions to tax pursuant to sections
22 6651(f), 6651(a)(2), and 6654 against petitioner, Michael
23 D. Zorn, for taxable years 2005, 2006, 2007, 2008, 2009,
24 2010, 2011, 2012, 2013, 2014, and 2015 (Tax Years at
25 Issue). The amount of the deficiencies and additions to



1 tax are all set forth in Exhibit 1-J, the statutory notice
2 of deficiency, and those amounts are incorporated herein
3 by this reference. In the alternative, respondent argues
4 that if Mr. Zorn is not liable for the fraudulent failure
5 to file additions to tax under section 6651(f), then he is
6 liable for failure to file additions to tax under section
7 6651(a)(1).

8 The issues for decision are: (1) whether, for
9 the Tax Years at Issue, Mr. Zorn received unreported gross
10 income in the amounts stated in the notice of deficiency,
11 or whether some of the amounts received were a non-taxable
12 loan; (2) whether Mr. Zorn is entitled to schedule C
13 business expense deductions for the Tax Years at Issue;
14 (3) whether Mr. Zorn is liable for fraudulent failure to
15 file additions to tax under section 6651(f) for the Tax
16 Years at Issue, or in the alternative, whether Mr. Zorn is
17 liable for failure to file additions to tax under section
18 6651(a)(1) for the Tax Years at Issue; (4) whether Mr.
19 Zorn is liable for failure to pay additions to tax under
20 section 6651(a)(2) for the Tax Years at Issue; and (5)
21 whether Mr. Zorn is liable for failure to pay estimated
22 income tax additions to tax for the Tax Years at Issue.

23 Trial in this case was conducted in three parts.
24 First, on November 3, 2021, the Court held a remote
25 partial trial during the Court's Baltimore, Maryland trial

1 session that began on November 1, 2021. Second, on May
2 27, 2022, the Court held a partial trial during a special
3 trial session in Washington, D.C. Third, on December 12,
4 2022, the Court held another remote partial trial during
5 the Court's Baltimore, Maryland trial session that began
6 the same day; the Court did not take additional testimony.
7 Mr. Zorn represented himself. Respondent was represented
8 by David A. Indek, Elizabeth C. Mourges, and Bradley C.
9 Plovan.

10 The parties' jointly submitted First Stipulation
11 of Facts (as amended), Second Stipulation of Facts, and
12 Third Stipulation of Facts were admitted into evidence
13 along with exhibits attached thereto. Additionally, at
14 respondent's request, the Court takes judicial notice of
15 the state and bankruptcy court records reproduced as
16 Exhibits 69-R through 73-R. See *Petzoldt v. Commissioner*,
17 92 T.C. 661, 674-75 (1989). However, the Court only takes
18 notice of Exhibit 71-R for the limited purpose of showing
19 that the Office of the Attorney General of Maryland made
20 the allegations therein, and not to establish the truth of
21 the allegations therein for the purposes of this
22 proceeding. See *Estate of Reis*, 87 T.C. 1016 (1986).

23 Additionally, the Court reserved ruling on the
24 admissibility of a number of exhibits; we will address
25 them now.

1 First, the Court reserved ruling on Exhibit 74-
2 P, the Affidavit of Patrick E. Tormey from Anne Arundel
3 County and attached "Plaintiff's Exhibit 1." The Court
4 sustains respondent's objection and rejects Exhibit 74-P
5 under Federal Rule of Evidence 802.

6 Next, the Court reserved ruling on Exhibit 77-P,
7 Letter to Mary Jewett re Loan Payments dated October 18,
8 2017. Exhibit 77-P is already included in the record as a
9 portion of jointly stipulated Exhibit 9-J, and so the
10 Court rejects Exhibit 77-P as duplicative and overrules
11 respondent's objections as moot.

12 Next, the Court reserved ruling on Exhibit 78-P,
13 Letter from Ms. Torney dated January 31, 2018. The Court
14 sustains respondent's objection and rejects Exhibit 78-P
15 under Federal Rule of Evidence 802.

16 Finally, the Court reserved ruling on Exhibit
17 82-P, Office Depot/Office Max receipt for USPS Priority
18 Mail and associated tracking information, dated October
19 15, 2021. The Court sustains respondent's objection and
20 rejects Exhibit 82-P because the exhibit was not exchanged
21 with respondent's counsel 14 days prior to the first day
22 of the trial session, which occurred on November 1, 2021,
23 in accordance with the Court's Standing Pretrial Order
24 issued on June 2, 2021. See Rule 131(b).

25 On the evidence before us, and using the burden



1 of proof principles explained below, the Court finds the
2 following facts.

3 FINDINGS OF FACT

4 Mr. Zorn resided in Maryland at the time he
5 filed his Petition for redetermination. Since 1992, Mr.
6 Zorn primarily made a career in insurance sales and
7 financial planning, although he also engaged in other
8 ventures. Mr. Zorn received his license to act as a life
9 and health insurance producer from the state of Maryland
10 on August 7, 1992. Mr. Zorn has owned and operated Value
11 Insurance Group (Value IG) since 2001. Mr. Zorn has filed
12 four separate articles of incorporation for Value IG since
13 2001, forfeiting each charter about two years after
14 formation. The stated purpose on each corporate charter
15 was the sale and marketing of financial products and
16 instruments, and Mr. Zorn served as each corporation's
17 resident agent and lone director.

18 On August 31, 2017, Mr. Zorn filed articles of
19 incorporation with the state of Maryland for Value
20 Insurance Professionals, Inc. (Value IP), and served as
21 the corporation's resident agent and lone director. It is
22 unclear whether Value IP is the successor in interest to
23 Value IG. The articles of incorporation for Value IP
24 state that its primary purpose is to "sell insurance
25 products." Value IP, as of May 20, 2019, the date the

1 First Stipulation of Facts was filed, was not in good
2 standing with the state of Maryland and had not filed its
3 annual report for 2018.

4 Additionally, Mr. Zorn also appears to have
5 operated a tour company, Value Travel Service, Inc. (Value
6 Travel). Mr. Zorn filed articles of incorporation with
7 the state of Maryland for Value Travel on November 21,
8 1990, and Mr. Zorn was listed as the company's resident
9 agent. He forfeited the Value Travel corporate charter on
10 October 5, 1992. Subsequently, on September 10, 1993,
11 Robin L. (Britt) Zorn, Mr. Zorn's former spouse, filed a
12 Trade Name Registration with the state of Maryland. The
13 Trade Name Registration lapsed on October 19, 1998. Mr.
14 Zorn's businesses have never filed federal income tax
15 returns.

16 Mr. Zorn last filed an individual federal income
17 tax return for taxable year 1996. The IRS previously
18 prepared section 6020 substitutes for returns (SFR) for
19 Mr. Zorn's taxable years 2000, 2001, 2002, and 2004; the
20 IRS did not prepare a SFR for taxable year 2003. On
21 February 14, 2006, the IRS issued Mr. Zorn a notice of
22 deficiency for taxable year 2002, and on September 11,
23 2007, the IRS issued Mr. Zorn a notice of deficiency for
24 taxable years 2000, 2001, and 2004. Mr. Zorn did not
25 petition this Court in response to these notices of



1 deficiency. Mr. Zorn had a considerable balance for each
2 of these years, but the collection period has since
3 expired and these years are not at issue in the present
4 case.

5 The IRS initiated an audit of Mr. Zorn for
6 taxable years 2005, 2006, 2007; 2008, 2009, and 2010, and
7 the audit was conducted by Revenue Agent Marilyn Zimmer
8 (RA Zimmer). On December 7, 2011, the IRS notified Mr.
9 Zorn that it had not received his tax returns for the same
10 taxable years under audit. The scope of the audit was
11 subsequently expanded to include taxable years 2011, 2012,
12 2013, 2014, and 2015.

13 Throughout the audit process, RA Zimmer issued
14 numerous information document requests pertaining to the
15 initial audit years, as well as the subsequent expansion
16 years. Mr. Zorn did not provide any books or records
17 throughout the audit, failed to appear for numerous
18 appointments with RA Zimmer, and was generally
19 uncooperative throughout the audit process. Mr. Zorn also
20 retained multiple representatives during the audit
21 process, but the representatives only provided RA Zimmer
22 with an incomplete list of the financial institutions that
23 Mr. Zorn was using, did not provide any books or records,
24 and were unable to provide any information that would
25 allow RA Zimmer to complete the audit.

1 However, Mr. Zorn unexpectedly contacted RA
2 Zimmer on one occasion. On July 16, 2012, Mr. Zorn called
3 RA Zimmer and stated that he knew he owed taxes and he was
4 delinquent in filing his returns. During the call, RA
5 Zimmer asked Mr. Zorn why he had not filed his tax
6 returns, and Mr. Zorn responded that he would come in and
7 explain everything, that he would check his schedule, and
8 that he would call back to set up an appointment within 45
9 minutes. Mr. Zorn, however, did not call back.

10 RA Zimmer summoned Mr. Zorn's bank and financial
11 records for the Tax Years at Issue and conducted the audit
12 of Mr. Zorn through a direct method of income
13 reconstruction known as the "specific-item method." Mr.
14 Zorn possessed at least 14 separate bank accounts during
15 the Tax Years at Issue, mixed personal and business funds,
16 and frequently used business accounts for personal
17 expenses.

18 During the audit, RA Zimmer also noticed a
19 number of large purchases, including a \$22,620 cashier's
20 check to Sea Gate Investors LLC for a property located in
21 Seagate Square, Chesapeake Beach, Maryland, multiple
22 cruise line tickets, an international airline ticket, a
23 vehicle purchased in cash, season tickets for a Major
24 League Baseball team, and a series of trips throughout the
25 United States, including to Disney World, New York City,

1 New Orleans, and Las Vegas.

2 RA Zimmer also noticed that Mr. Zorn engaged in
3 substantial cash dealings during the Tax Years at Issue.
4 Mr. Zorn's cash withdrawals ranged from a low of \$13,400
5 in 2006 to a high of \$148,346 in 2007, and averaged more
6 than \$50,000 per year between 2005 and 2012.

7 In 2012, the amount of income reported to the
8 IRS by third party information returns dropped
9 significantly. This appears to have been precipitated by
10 the suspension of Mr. Zorn's license to sell insurance in
11 the state of Maryland on two separate occasions. First,
12 On April 14, 2011, Mr. Zorn's license was revoked because
13 he failed to timely report an arrest to the Maryland
14 Insurance Commission. Pending resolution of the charges,
15 Mr. Zorn's license was briefly reinstated ^{from} ~~on~~ September 1,
16 2011, through October 13, 2011, the date when Mr. Zorn
17 agreed to a one-year suspension of his license by consent
18 order, retroactive to April 14, 2011, with the exception
19 of the aforementioned period of reinstatement.

20 Mr. Zorn's license was suspended a second time
21 because he conducted multiple sales appointments and
22 submitted an annuity application for a consumer during the
23 period of his first suspension, and he incorrectly
24 answered questions relating to his first suspension on
25 Value IG's application for license renewal. By consent

1 order agreed to on February 27, 2013, Mr. Zorn agreed to a
2 three-year suspension of his license, retroactive to July
3 1, 2012.

4 However, while the amount of income reported by
5 third parties dropped significantly, RA Zimmer noticed
6 that Mr. Zorn received an unusual number of large deposits
7 from Mrs. Mary Jewett, an elderly client with terminal
8 cancer and early-stage dementia. Mr. Zorn befriended Mrs.
9 Jewett in the early 2010s, earned her trust, and became
10 her friend and financial advisor.

11 Mr. Zorn persuaded Mrs. Jewett to switch her
12 investment portfolio from Merrill Lynch into an annuity
13 product sold by Value IG. Mr. Zorn never informed Mrs.
14 Jewett about his suspensions. Bank records show that
15 during the Tax Years at Issue Value IG received deposits
16 from Mrs. Jewett totaling \$437,078, including: \$5,822 in
17 2012; \$163,001 in 2013, \$96,834 in 2014; and \$171,421 in
18 2015. Value IG also received additional deposits from
19 Mrs. Jewett subsequent to the Tax Years at Issue. The
20 funds received by Value IG were not invested, but rather
21 were personally used by Mr. Zorn. Additionally, in 2015
22 Mrs. Jewett's children were removed as the beneficiaries
23 of her Allianz annuity and Mr. Zorn was substituted as the
24 sole beneficiary on the account.

25 During the audit, RA Zimmer sought to determine

1 whether Mr. Zorn's deposits from Mrs. Jewett were a loan,
2 a gift, or income. RA Zimmer thought that the amounts
3 deposited from Mrs. Jewett might be loans because many of
4 the checks had "loan" inscribed on the memo line. On
5 August 25, 2016, RA Zimmer conducted an in-home interview
6 with Mrs. Jewett, who was accompanied by Ron Smallman,
7 Mrs. Jewett's son, Ron's wife Carol, and Barbara Stevanus,
8 a friend who helped Mrs. Jewett manage her household ^{and}
9 finances, and who Mrs. Jewett subsequently authorized to
10 act on her behalf with a power of attorney. CSJ

11 RA Zimmer asked Mrs. Jewett whether she loaned
12 any money to Mr. Zorn, or whether she intended to invest
13 in Mr. Zorn's company as a partner or financial backer.
14 Mrs. Jewett emphatically explained to RA Zimmer that she
15 did not loan any money to Mr. Zorn, but rather Mr. Zorn
16 was supposed to invest the money in her Allianz annuity,
17 and she thought that Allianz and Value IG were one in the
18 same. RA Zimmer asked Mrs. Jewett why some of the checks
19 had the word "loan" inscribed on the memo line, and Mrs.
20 Jewett stated that she wrote things in accordance with Mr.
21 Zorn's directions, and she generally did what Mr. Zorn
22 told her to do because she trusted him.

23 RA Zimmer determined, based on her interview
24 with Mrs. Jewett, that the amounts Mr. Zorn received from
25 Mrs. Jewett were not loans, but rather were income that he

1 used to finance his lifestyle. Mr. Zorn did make some
2 payments described as "loan payments" to Mrs. Jewett, but
3 the payments were made in inconsistent intervals and
4 amounts; Mr. Zorn did not send any financial statements to
5 Mrs. Jewett and there was no written loan agreement or
6 documentation of any kind. The deposits received from
7 Mrs. Jewett represent in excess of 75 percent of the
8 amounts RA Zimmer determined as Mr. Zorn's taxable income
9 for taxable years 2013 through 2015.

10 On October 7, 2016, Mrs. Jewett authorized Ms.
11 Stevanus to act on her behalf with a power of attorney.
12 On December 23, 2016, Mrs. Jewett, in response to her
13 worsening financial situation, sent a letter to Mr. Zorn
14 seeking a copy of her Allianz annuity contract, annual
15 statements for her Allianz annuity, a summary of the
16 payments she made to Mr. Zorn, an explanation of where all
17 of her money was invested, copies of beneficiary
18 designations, copies of powers of attorney, and copies of
19 authorizations for Mr. Zorn to make investment decisions
20 on her behalf. Additionally, Mrs. Jewett queried whether
21 she had loaned Mr. Zorn any money over the years, and if
22 so, asked for him to summarize the date, the amount
23 loaned, whether the loan had been repaid, and to provide
24 the balance on any outstanding loans. Mr. Zorn seemingly
25 did not respond to Mrs. Jewett's letter.

1 On January 9, 2017, Mrs. Jewett and Ms. Stevanus
2 filed a complaint against Mr. Zorn with the Maryland
3 Insurance Administration. Additionally, the Consumer
4 Protection Division of the Office of the Maryland Attorney
5 General initiated an investigation into Mr. Zorn's
6 dealings with Mrs. Jewett. On November 27, 2017, Mrs.
7 Jewett authorized her daughter, Susan Torney, to act on
8 her behalf with a power of attorney. Mrs. Jewett died on
9 February 28, 2018.

10 On January 4, 2019, the Consumer Protection
11 Division of the Office of the Maryland Attorney General
12 filed a civil action on behalf of Mrs. Jewett's estate
13 against Mr. Zorn and Value IG in the Circuit Court for
14 Anne Arundel County, Maryland. The Consumer Protection
15 Division alleged that Mr. Zorn knowingly and willfully
16 obtained by deception, intimidation, or undue influence
17 the property of a vulnerable adult or a person over the
18 age of 68 years old, with the intent to deprive the
19 individual of such property, in violation of Maryland
20 Criminal Law § 8-801(b).

21 Mr. Zorn filed for chapter 7 bankruptcy in the
22 United States Bankruptcy Court for the District of
23 Maryland on February 10, 2020. By order dated February
24 11, 2020, the Circuit Court for Anne Arundel County,
25 Maryland, declined to stay the pending litigation, and on



1 February 19, 2020, that court entered a judgment against
2 Value IG. On October 14, 2020, the Circuit Court for Anne
3 Arundel County, Maryland, entered a judgment against Mr.
4 Zorn. On November 12, 2020, the United States Bankruptcy
5 Court, District of Maryland, granted a default judgment
6 against Mr. Zorn, ordering that the judgments obtained on
7 behalf of Mrs. Jewett's estate against Mr. Zorn are
8 nondischargeable under 11 U.S.C. § 523(a)(2)(A) and (a)(4)
9 as the debt resulted from money obtained as the result of
10 false pretenses, false representation, and actual fraud,
11 and fraud while acting in a fiduciary capacity.

12 Additionally, in 2021 the Maryland Insurance
13 Administration revoked both Mr. Zorn's individual license,
14 as well as the license for Value IP, due to his dealings
15 with Mrs. Jewett.

16 Mr. Zorn has not filed a Form 1040, U.S.
17 Individual Income Tax Return, for the Tax Years at Issue,
18 and he last filed a Form 1040 for taxable year 1996. On
19 May 15, 2019, when the case was recalled from the calendar
20 during the Court's Baltimore, Maryland Trial session,
21 which began on May 13, 2019, Mr. Zorn handed respondent's
22 counsel unfiled copies of tax returns for the Tax Years at
23 Issue. These unfiled returns are included in the record
24 as part of the Third Stipulation of Facts, but as
25 discussed further below, there is no evidence that these

1 returns have been properly filed with the IRS.

2 No amounts were withheld on Mr. Zorn's income,
3 he did not pay estimated taxes, and he has not made any
4 payments towards his federal liabilities for any of the
5 Tax Years at Issue, excluding a nominal refundable credit
6 for taxable year 2009.

7 Accordingly, the IRS prepared section 6020(b)
8 SFR for each of the Tax Years at Issue. Each SFR is dated
9 November 3, 2016, and the accompanying certification is
10 dated November 5, 2016. On September 21, 2017, the IRS
11 issued Mr. Zorn a statutory notice of deficiency
12 pertaining to the Tax Years at Issue. Mr. Zorn timely
13 filed a Petition for redetermination with this Court on
14 December 14, 2017.

15 Subsequent to the Tax Years at Issue, Mr. Zorn
16 has failed to file a Form 1040 for taxable years 2016,
17 2017, 2018, 2019, 2020, and 2021.

18 OPINION

19 Generally, the Commissioner's determinations in
20 a notice of deficiency are presumed correct, and the
21 taxpayer bears the burden of proving those determinations
22 erroneous. Rule 142(a)(1); *Welch v. Helvering*, 290 U.S.
23 111, 115 (1933); see also *INDOPCO, Inc. v. Commissioner*,
24 503 U.S. 79, 84 (1992). In an unreported income case,
25 such as this one, if the Commissioner introduces evidence



1 that the taxpayer received unreported income, the taxpayer
2 must show by a preponderance of the evidence that the
3 deficiency determination was arbitrary and erroneous. See
4 *Hardy v. Commissioner*, 181 F.3d 1002, 1004 (9th Cir.
5 1999), *aff'g* T.C. Memo. 1997-97.

6 In order to shift the burden of proof as to a
7 factual issue under section 7491(a), taxpayers must, among
8 other things, introduce credible evidence as to the
9 factual issue and maintain required records.
10 § 7491(a)(1), (2). Mr. Zorn has failed to do so.

11 However, with respect to the fraudulent failure
12 to file penalties under section 6651(f), respondent bears
13 the burden of proof by clear and convincing evidence.
14 § 7454(a); Rule 142(b); *Clayton v. Commissioner*, 102 T.C.
15 632, 646 (1994).

16 I. Deficiency

17 Section 61(a) provides that gross income
18 includes "all income from whatever source derived." See
19 *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955).
20 Every person liable for tax must maintain books and
21 records sufficient to establish the amount of his gross
22 income. § 6001; *Estate of Mason v. Commissioner*, 64 T.C.
23 651, 656 (1975), *aff'd*, 566 F.2d 2 (6th Cir. 1977). When
24 a taxpayer fails to keep sufficient records, the
25 Commissioner may compute taxable income through a method

1 that "does clearly reflect income." § 446(b); *Cole v.*
2 *Commissioner*, 637 F.3d 767, 774-75 (7th Cir. 2011), *aff'g*
3 T.C. Memo. 2010-31; *Flynn v. Commissioner*, T.C. Memo.
4 2021-43, at *23.

5 RA Zimmer employed the specific items method of
6 proof and the bank deposits method of proof to reconstruct
7 Mr. Zorn's income. The specific items method is a direct
8 method of proof that has been approved by this Court, and
9 the bank deposits method of proof is well established.
10 See *Price v. Commissioner*, T.C. Memo. 2004-103, 2004 WL
11 859198, at *10; see also *DiLeo v. Commissioner*, 96 T.C.
12 858, 867 (1991), *aff'd*, 959 F.2d 16 (2d Cir. 1992). Bank
13 deposits are prima facie evidence of income. *Tokarski v.*
14 *Commissioner*, 87 T.C. 74, 77 (1986); *Estate of Mason v.*
15 *Commissioner*, 64 T.C. at 656-57. When using the bank
16 deposits method, the Commissioner is not required to show
17 that each deposit or part thereof constitutes income or
18 prove a likely source. *Price v. Commissioner*, 2004 WL
19 859198, at *11. When employing the bank deposits method,
20 "the Government must take into account any non-taxable
21 source or deductible expense of which it has knowledge."
22 *Price v. United States*, 335 F.2d 671, 677 (5th Cir. 1964).
23 The taxpayer bears the burden of establishing that items
24 "should be excluded from income or allowed as deduction."
25 *Gemma v. Commissioner*, 46 T.C. 821, 833 (1966); see also

1 Clayton v. Commissioner, 102 T.C. at 634. CJT

2 Mr. Zorn argues that the deposits he received
3 from Mrs. Jewett in taxable years 2012, 2013, 2014, and
4 2015 were non-taxable loan proceeds, and RA Zimmer should
5 not have included the amounts in calculating his income.
6 In tax law, a loan is "an agreement, either express or
7 implied, whereby one person advances money to the other
8 and the other agrees to repay it upon such terms as to
9 time and rate of interest, or without interest, as the
10 parties may agree." *Welch v. Commissioner*, 204 F.3d 1228,
11 1230 (9th Cir. 2000) (quoting *Commissioner v. Valley*
12 *Morris Plan*, 305 F.2d 610, 618 (9th Cir. 1962)); *aff'g*
13 T.C. Memo. 1998-121. It is well settled that loan
14 proceeds are not included in gross income. *Commissioner*
15 *v. Tufts*, 461 U.S. 300, 307 (1983). Whether a particular
16 transaction constitutes a loan is a question of fact to be
17 determined by considering all of the pertinent facts in
18 the case. *Fisher v. Commissioner*, 54 T.C. 905, 909
19 (1970).

20 Courts consider various factors in determining
21 whether the parties intended a bona fide loan, such as:
22 (1) the ability of the borrow^{er} to repay; (2) the existence CJT
23 or nonexistence of a debt instrument; (3) security,
24 interest, a fixed repayment date, and a repayment
25 schedule; (4) how the parties' records and conduct reflect

1 the transaction; (5) whether the borrower made repayments;
2 (6) whether the lender demanded repayment; (7) the
3 likelihood the loan was disguised compensation for
4 services; and (8) the testimony of the purported borrower
5 and lender. *Welch v. Commissioner*, 204 F.3d at 1230;
6 *Friedrich v. Commissioner*, 925 F.2d 180, 182 (7th Cir.
7 1991), *aff'g* T.C. Memo. 1989-393; see also *Todd v.*
8 *Commissioner*, T.C. Memo. 2011-123, *aff'd*, 486 ~~F.3d~~ Appx. CJ
9 423 (5th Cir. 2012). These factors are "non-exclusive"
10 and provide a "general basis upon which courts may analyze
11 a transaction." *Stanley v. Commissioner*, T.C. Memo. 2016-
12 196, at *8 (quoting *Welch v. Commissioner*, 204 F.3d at
13 1230).

14 First, Mr. Zorn's ability to repay the amounts
15 of the purported loans is doubtful. Mr. Zorn's license to
16 sell insurance was suspended for nearly the entire period
17 between April 14, 2011 and July 1, 2015, with limited
18 exception, and as a consequence, Mr. Zorn's ability to
19 generate income was severely hampered. The deposits from
20 Mrs. Jewett represent a significant portion of the
21 deposits into Mr. Zorn's accounts during taxable years
22 2012 through 2015.

23 Next, during trial Mr. Zorn stated that
24 "anything I ever did with Mary, I mean, I did in writing."
25 Contrary to his statement, however, there was no note or

1 debt instrument evidencing any type of loan arrangement
2 between Mr. Zorn and Mrs. Jewett. The only
3 contemporaneous indication that the deposits from Mrs.
4 Jewett were a loan is that some of the checks had the word
5 "loan" inscribed on the memo line, but this writing is not
6 determinative. See, e.g., *Alhadi v. Commissioner*, T.C.
7 Memo. 2016-74, at *19. Further, this inscription on the
8 checks is further complicated by the fact that Mrs. Jewett
9 wrote things in accordance with Mr. Zorn's instructions.
10 Additionally, there was no security interest, stated
11 interest rate, fixed repayment date, or repayment
12 schedule.

13 Furthermore, Mrs. Jewett believed that Mr. Zorn
14 was investing all of the money she gave to him, and that
15 she did not loan any money to Mr. Zorn. This fact is
16 further confirmed by the testimony of Ms. Stevanus. Mrs.
17 Jewett's December 23, 2016 letter further evidences the
18 fact that she was unaware of the existence of any loan
19 arrangement with Mr. Zorn. The only record that Mr. Zorn
20 has produced to date is an October 18, 2017 letter to Mrs.
21 Jewett, which is of questionable authenticity, that
22 reflects his characterization of the purported arrangement
23 with Mrs. Jewett.

24 Mr. Zorn did make a number of payments described
25 as "loan payments" to Mrs. Jewett, but the payments did

1 not begin until more than 18 months after Mr. Zorn first
2 accepted money from Mrs. Jewett, were paid at inconsistent
3 intervals, and were made in inconsistent amounts.
4 Further, the payments to Mrs. Jewett frequently occurred
5 after she transferred a considerable sum of money to Mr.
6 Zorn.

7 This Court is not required to accept a
8 taxpayer's self-serving testimony. See *Tokarski v.*
9 *Commissioner*, 87 T.C. at 77. Mr. Zorn has failed to
10 corroborate his claim of bona fide loans with sufficient
11 reliable evidence. The testimony of Ms. Stevanus, Mrs.
12 Jewett's POA, was persuasive given her personal knowledge
13 of Mrs. Jewett's finances. Conversely, the testimony of
14 Raymond Jewett, Mrs. Jewett's step son, was not
15 persuasive, especially in light of his admission that he
16 did not know much about Mrs. Jewett's finances and he had
17 never looked at her financial documents.

18 Accordingly, the amounts that Mr. Zorn received
19 from Mrs. Jewett are not loans and the IRS properly
20 determined that they constitute taxable income.

21 Next, in his petition Mr. Zorn asserts that the
22 IRS erred by not permitting deductions for certain
23 business expenses. Deductions are a matter of legislative
24 grace, and the taxpayer generally bears the burden of
25 proving entitlement to any deduction claimed. Rule

1 142(a); *INDOPCO, Inc. v. Commissioner*, 503 U.S. at 84.
2 Additionally, certain deductions such as vehicle and
3 travel expenses require adherence to the strict
4 substantiation requirement of section 274^H(d)(1) and (3).
5 In short, Mr. Zorn has not substantiated his entitlement
6 to any such deductions. Mr. Zorn has not provided any
7 documentation and did not provide any testimony to
8 substantiate the existence of ordinary and necessary
9 business expenses.

10 Mr. Zorn has not met his burden of proof to show
11 that the amounts received from Mary Jewett constitute a
12 loan and has not otherwise presented evidence to show that
13 the IRS erred in determining the amounts due. Mr. Zorn
14 received numerous payments and commissions from insurance
15 companies, as well as the amounts from Mrs. Jewett, and he
16 has not substantiated any claimed expenses. Therefore, we
17 sustain the deficiencies determined in respondent's notice
18 of deficiency.

19 II. Additions to Tax

20 A. Fraudulent Failure to File under Section 6651(f)

21 The IRS determined that Mr. Zorn's failure to
22 file was fraudulent and that he is liable for additions to
23 tax under section 6651(f) for each of the Tax Years at
24 Issue. When any failure to file a return is fraudulent,
25 section 6651(f) imposes an addition to tax of up to 75

1 percent of the amount of tax required to be shown on the
2 return. A substitute for return prepared by the
3 Commissioner under section 6020(b) does not qualify as a
4 return for purposes of sections 6651(a)(1) and (f). See §
5 6651(g)(1).

6 The Commissioner bears the burden of proving
7 fraud by clear and convincing evidence, and must show
8 that: (1) the taxpayer underpaid his income tax for each
9 year at issue; and (2) at least some portion of each
10 underpayment was due to fraud. § 7454(a); Rule 142(b);
11 see also *Clayton v. Commissioner*, 102 T.C. at 646; *DiLeo*
12 *v. Commissioner*, 96 T.C. at 8⁷3. Mr. Zorn has stipulated
13 that he has not filed a Form 1040 income tax return for
14 any of the Tax Years at Issue. Respondent has met his
15 initial burden of showing that Mr. Zorn had an obligation
16 to file tax returns showing a tax liability for each of
17 the years in issue. See §§ 1; 6011(a), 6012(a)(1)(A);
18 *Clayton v. Commissioner*, 102 T.C. at 653.

19 The existence of fraud is a question of fact to
20 be determined from the entire record. See *DiLeo v.*
21 *Commissioner*, 96 T.C. at 874. Because direct evidence of
22 a taxpayer's fraudulent intent is seldom available, fraud
23 may be shown through circumstantial evidence, including
24 the well-established "badges of fraud" on which Courts
25 often rely. See *Petzoldt v. Commissioner*, 92 T.C. at 699;

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1 Porter v. Commissioner, T.C. Memo. 2015-122. A taxpayer's
 2 entire course of conduct may establish the requisite
 3 fraudulent intent. Stone v. Commissioner, 56 T.C. 223,
 4 224 (1971).

5 The Court looks to the following badges of fraud
 6 to determine fraudulent intent: (1) failure to file tax
 7 returns; (2) maintenance of inadequate books and records;
 8 (3) understatement of income; (4) implausible or
 9 inconsistent explanations of behavior; (5) concealment of
 10 income or assets; (6) failure to cooperate with tax
 11 authorities during the audit; (7) engaging in illegal
 12 activities; (8) an intent to mislead which may be inferred
 13 from a pattern of conduct; (9) lack of credibility of the
 14 taxpayer's testimony; (10) filing false documents; and
 15 (11) dealing in cash.

16 The additions to tax for fraud have frequently
 17 been imposed on taxpayers "who were knowledgeable about
 18 their taxpaying responsibilities *** [and] consciously
 19 decided to unilaterally opt out of our system of
 20 taxation." Miller v. Commissioner, 94 T.C. 316, 335
 21 (1990); see also Niedringhaus v. Commissioner, 99 T.C.^{202,}
 22 212, 217-19 (1992).

CJT

23 While the mere failure to file a return,
 24 standing alone, is not sufficient to support a finding of
 25 fraud, an extended pattern of failing to file returns is a



1 badge of fraud and may provide persuasive circumstantial
2 evidence of the intent to evade tax. *Porter v.*
3 *Commissioner*, T.C. Memo. 2015-²²~~195~~, at *53-54 (citing CJT
4 *Bradford v. Commissioner*, 796 F.2d 303, 308 (9th Cir.
5 1986)). Mr. Zorn has not filed an individual tax return
6 since taxable year 1996, he has not filed any tax return
7 for the Tax Years at Issue, and subsequently he has not
8 filed a tax return for taxable years 2016, 2017, 2018,
9 2019, 2020, or 2021. During this case Mr. Zorn handed
10 respondent's counsel completed copies of Form 1040 for the
11 Tax Years at Issue, but "hand delivery of a return to
12 counsel for respondent does not constitute the filing of
13 that return," and there is no evidence that Mr. Zorn has
14 ever properly filed those returns with the IRS.

15 § 6091(b)(1); Treas. Reg. § 1.6091-2(d)(1), -1(c); *Smyth*
16 *v. Commissioner*, T.C. Memo. 2017-29, at *9 (quoting
17 *Quarterman v. Commissioner*, T.C. Memo. 2004-241, 2004 WL
18 2361672, at *3 n.6). Furthermore, none of Mr. Zorn's
19 businesses have ever filed a federal income tax return.

20 Mr. Zorn stated that he has "been audited by the
21 IRS every year from 1991 forward." Mr. Zorn was clearly
22 aware of his obligation to file a tax return because he
23 had done so previously; the record clearly shows that Mr.
24 Zorn filed an individual income tax return for taxable
25 years 1990 through 1996. Additionally, Mr. Zorn was aware

1 of his obligation to file a tax return because the IRS
2 issued numerous notices to Mr. Zorn, prepared SFRs, issued
3 notices of deficiency for taxable years 2000, 2001, 2002,
4 and 2004, and Mr. Zorn held himself out as a financial
5 advisor. This factor weighs against Mr. Zorn for each of
6 the Tax Years at Issue.

7 Additionally, Mr. Zorn failed to report
8 substantial sums of gross income during the Tax Years at
9 Issue. Mr. Zorn had a legal duty to report this income
10 and he has not satisfactorily explained his failure to do
11 so. See § 6012(a)(1)(A). In fact, Mr. Zorn's unfiled
12 copies of tax returns for the Tax Years at Issue reflect
13 the same amount of gross income as found on the SFRs.
14 This Court has held that "consistent understatements of
15 income in substantial amounts over a number of years by
16 knowledgeable taxpayers, standing alone, are persuasive
17 evidence of fraudulent intent to evade taxes." *Asbury v.*
18 *Commissioner*, T.C. Memo. 2011-107, 2011 WL 1990541, at *8
19 (quoting *Otsuki v. Commissioner*, 53 T.C. 96, 10⁸ (1969)).
20 This factor weighs against Mr. Zorn for each Tax Year at
21 Issue.

22 Further, Mr. Zorn failed to cooperate with RA
23 Zimmer during the audit. The relevant inquiry is Mr.
24 Zorn's level of compliance, or lack thereof, during the
25 audit process. *Porter v. Commissioner*, T.C. Memo. 2015-

1 122, at *55-56. In his Reply to Answer, Mr. Zorn admitted
2 that he did not provide any records to the IRS for any of
3 the Tax Years at Issue, and there is no evidence in the
4 record to establish that Mr. Zorn actually maintained any
5 books and records. Additionally, Mr. Zorn did not meet
6 with RA Zimmer and he failed to appear for multiple
7 appointments with her. Mr. Zorn failed to cooperate
8 during the audit and this factor weighs against him for
9 each of the Tax Years at Issue.

10 Further, the Circuit Court of Anne Arundel
11 County, Maryland, entered judgments against Mr. Zorn and
12 Value IG for his dealings with Mrs. Jewett, finding that
13 Mr. Zorn obtained Mrs. Jewett's money through deception,
14 intimidation, or undue influence, in violation of Maryland
15 Criminal Law § 8-801(b). Additionally, the United States
16 Bankruptcy Court, District of Maryland, held that Mr.
17 Zorn's debt to Mrs. Jewett's estate was non-dischargeable
18 because the debt resulted from money obtained as the
19 result of false pretenses, false representation, and
20 actual fraud, and fraud while acting in a fiduciary
21 capacity. This factor weighs against Mr. Zorn with
22 respect to taxable years 2012, 2013, 2014, and 2015.

23 Additionally, Mr. Zorn regularly dealt in large
24 sums of cash, averaging more than \$50,000 per year from
25 taxable years 2005 through 2012. Dealing in cash to avoid

1 the Commissioner's scrutiny is another badge of fraud, and
2 this factor weighs against Mr. Zorn with respect to
3 taxable years 2005 through 2012. See, e.g., *Reynoso v.*
4 *Commissioner*, T.C. Memo. 2016-185, at *26. CF

5 On this record, respondent has clearly and
6 convincingly established Mr. Zorn's fraudulent intent
7 under section 6651(f). Accordingly, we will sustain the
8 additions to tax pursuant to section 6651(f), and we need
9 not address respondent's alternative argument under
10 section 6651(a)(1).

11 B. Failure to Pay Under Section 6651(a)(2)

12 Next, the IRS determined that Mr. Zorn is liable
13 for the failure to pay additions to tax under section
14 6651(a)(2) for each of the Tax Years at Issue. Section
15 6651(a)(2) imposes an addition to tax on taxpayers for
16 their failure to timely pay the amount of tax shown on a
17 return. See also § 6651(g)(2). When a taxpayer has not
18 filed a valid return, the section 6651(a)(2) addition to
19 tax may not be imposed unless the ^Ssecretary has prepared a CF
20 substitute for return. See *Wheeler v. Commissioner*, 127
21 T.C. 200, 210 (2006), *aff'd*, 521 F.3d 1289 (10th Cir.
22 2008).

23 The addition to tax is calculated as 0.5 percent
24 of the amount shown as tax on the return but not paid,
25 with an additional 0.5 percent for each month or fraction

1 thereof during which the failure to pay continues up to a
2 maximum of 25 percent. § 6651(a)(2). With regard to
3 taxable years 2012, 2013, 2014, and 2015, the notice of
4 deficiency provides that the additions to tax under
5 section 6651(a)(2) will "be computed later." The notice
6 of deficiency did not calculate the amounts of the section
7 6651(a)(2) additions to tax for taxable years 2012, 2013,
8 2014, and 2015 because the period necessary to support the
9 assertion of the maximum penalty amount under section
10 6651(a)(2) had not yet been attained. See, e.g., *Gardner*
11 *v. Commissioner*, T.C. Memo. 2013-67; *Good v. Commissioner*,
12 T.C. Memo. 2012-323.

13 To carry his burden that imposition of section
14 6651(a)(2) additions to tax is appropriate, the
15 Commissioner must introduce evidence that the tax was
16 shown on a federal income tax return and not paid.
17 *Cabirac v. Commissioner*, 120 T.C. 163, 170-72 (2003),
18 *aff'd without published opinion*, 94 A.F.T.R. 2d (RIA)
19 2004-5490 (3d. Cir. 2004). Respondent has met its burden
20 by showing that the IRS prepared SFRs that satisfy the
21 requirements of section 6020(b), providing Forms 4549,
22 886-A, and 13496 for each of the Tax Years at Issue. See
23 *Cabirac v. Commissioner*, 120 T.C. at 170-72. Respondent
24 has also shown that Mr. Zorn has failed to pay his federal
25 income tax obligations for the Tax Years at Issue. Mr.

1 Zorn did not argue and has not shown reasonable cause, and
2 thus we will sustain the additions to tax pursuant to
3 section 6651(a)(2). See *Lloyd v. Commissioner*, T.C. Memo.
4 2020-92.

5 C. Failure to Pay Estimated Tax Under Section 6654

6 Finally, the IRS determined that Mr. Zorn is
7 liable for failure to pay estimated tax additions to tax
8 under section 6654. The section 6654(a) addition to tax
9 is imposed on underpayments of estimated tax unless an
10 exemption applies. A taxpayer must pay estimated tax for
11 any year in which he has a "required annual payment."
12 § 6654(d). Pursuant to section 6654(d)(1)(B), a "required
13 annual payment" is defined as "the lesser of (i) 90
14 percent of the tax shown on the return for the taxable
15 year (or, if no return is filed, 90 percent of the tax for
16 such year)", or (ii) if the individual filed a return for
17 the preceding taxable year, then "100 percent of the tax
18 shown on the return of the individual for the preceding
19 taxable year."

20 Respondent has met his burden of production
21 under section 7491 by producing evidence that Mr. Zorn was
22 required to make annual payments under section 6654(d) for
23 the Tax Years at Issue. Mr. Zorn has stipulated to the
24 fact that he did not make any estimated income tax
25 payments for the Tax Years at Issue, excluding taxable

1 year 2009. With regard to taxable year 2009, Mr. Zorn
2 received a \$2 refundable credit that has been applied
3 towards his tax liability, which is substantially less
4 than the estimated payments required under section
5 6654(d)(1)(B), and Mr. Zorn has made no other payments
6 towards his tax liabilities for the Tax Years at Issue.

7 Generally, no reasonable cause exception exists
8 for the section 6654(a) addition to tax. Treas. Reg. §
9 1.6544-1(a)(1). There are exceptions to the section
10 6654(a) addition to tax, but Mr. Zorn does not meet the
11 requirements of these exceptions. See § 6654(e).
12 Accordingly, we will sustain the additions to tax pursuant
13 to section 6654(a).

14 III. Conclusion

15 We have considered the parties' remaining
16 arguments, and to the extent not discussed, conclude that
17 those arguments are irrelevant, moot, or without merit.
18 This concludes the Court's oral Findings of Fact and
19 Opinion in this case. A decision will be entered under
20 Rule 155.

21

22 (Whereupon, at 2:24 p.m., the above-entitled
23 matter was concluded.)

24

25



1 CERTIFICATE OF TRANSCRIBER AND PROOFREADER

2 CASE NAME: Michael Zorn v. Commissioner

3 DOCKET NO.: 25974-17

4 We, the undersigned, do hereby certify that the

5 foregoing pages, numbers 1 through 34 inclusive, are the

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7 verbal recording made by electronic recording by Gary

8 Baldwin on December 14, 2022 before the United States Tax

9 Court at its session in Baltimore, MD, in accordance with

10 the applicable provisions of the current verbatim

11 reporting contract of the Court and have verified the

12 accuracy of the transcript by comparing the typewritten

13 transcript against the verbal recording.

14

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Amelia Mastandrea

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Amelia Mastandrea, CDLT-210

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