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My Tax Accountant Says I Can Deduct My Hot Tub. He's the Expert - Should I Question Him?

Alan Pogroszewski

Kari Smoker

MY TAX ACCOUNTANT SAYS I CAN DEDUCT MY HOT TUB. HE'S THE EXPERT—SHOULD I QUESTION HIM?

AN OVERVIEW OF TAX DEDUCTIONS FOR PROFESSIONAL ATHLETES AND THE RESPONSIBILITY OF TAX PREPARERS WHO SIGN OFF ON THEIR RETURNS

ALAN POGROSZEWSKI[*] & KARI SMOKER[**]

I. INTRODUCTION

In November 2010, former Los Angeles Laker, Lamar Odom, sued the Internal Revenue Service (IRS) because it disallowed tax deductions of $12,000 in sports fines and another $178,000 in conditioning expenses.[1] In February 2014, Kevin Durant, the National Basketball Association's (NBA) Most Valuable Player (MVP) of the year, sued his tax accountant in a San Jose federal court for professional negligence and breach of fiduciary duty for deducting expenses for both personal travel and a personal chef on his corporate tax returns.[2]

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*The author is an Associate Professor of Sports Studies at St. John Fisher College and the President of his own tax consulting business whose clientele include over 100 professional athletes, coaches and sports administrators performing services on three separate continents. Prior to accepting his position at St. John Fisher College, Mr. Pogroszewski was the Vice President of Business Operations for Sports Consulting Group, a firm that specializes in the representation of professional hockey players. Mr. Pogroszewski received his M.B.A. from Rochester Institute of Technology in 1996 and his M.S. in Taxation from St. John Fisher in 2003.

** The author is an Assistant Professor of Accounting at the State University of New York, The College at Brockport. Ms. Smoker received her J.D. from The Ohio State University in 2000, and was admitted to the New York State Bar in 2001. She began her legal career in Rochester, New York, where she also worked for Arthur Andersen in its Tax and Business Advisory Group. She earned her M.S. in Taxation from Golden Gate University in 2010.

1. William P. Barrett, *Lamar Odom Seeks Tax Deduction for NBA Fines and Fitness Fees*, FORBES (Nov. 9, 2010), http://www.forbes.com/sites/williampbarrett/2010/11/09/lamar-odom-seeks-tax-deduction-for-nba-fines-and-fitness-fees/.

2. Nolan Clay, *Kevin Durant Sues Accountant over Tax Troubles*, NEWSOK (Feb. 18, 2014),

Odom and Durant are high profile employees in a multibillion-dollar sports industry. Playing sports is their business, and they are entitled to certain tax deductions for their business expenses. However, the kinds of expenses that are tax-deductible business expenses, the circumstances under which they are deductible, and the tax accountant's responsibility to his or her client in claiming these deductions has provided a hotbed for litigation between professional athletes claiming those deductions, their tax accountants, and the IRS.

The topic of tax-deductible business expenses for professional athletes is important for two reasons. First, with the substantial increase in the number of athletes who are performing services in the numerous professional sports leagues, as well as in individual sports such as golf, tennis, track and field, swimming, and figure skating, it is important for athletes and their advisors to understand the opportunities afforded to them under the Internal Revenue Code (I.R.C.) to lower their potential tax burden. Second, the I.R.C. gives little guidance regarding specific tax-deductible business expenses for various professions. It is critical to understand the kinds of expenses that are "ordinary" and "necessary"—as defined by United States (U.S.) tax law—in carrying out the business of professional sports so as to provide the proper guidance on tax deductible business expenses to this growing population of taxpayers.

This article will address the following questions: "Under what circumstances are expenses that are incurred by a professional athlete considered tax deductible business expenses?" and "What is the responsibility of the tax return preparer with respect to the client's deduction of expenses?" To answer these questions, we examine in Section II not only the guidelines provided by the I.R.C. and the Treasury Regulations (Regulations), but, just as importantly, the decisions issued by the U.S. Supreme Court, the U.S. Federal Courts, and the U.S. Tax Court, as well as the IRS's own publications and revenue rulings. This is followed by Section III, which examines specific expenses commonly incurred by athletes, and Section IV, which focuses on travel and moving expenses. In some cases, it may surprise you to find out what is—and what is not—tax deductible. Finally, this article considers the allegations made by Kevin Durant against his tax advisor and outlines the obligation of the tax return preparer in claiming these deductions.

II. BUSINESS DEDUCTIONS GENERALLY

The I.R.C. entitles taxpayers to deduct trade or business expenses they pay or incur during the taxable year, so long as the expenses are "ordinary and necessary" in carrying out a "trade or business."[3] For professional athletes, playing

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http://newsok.com/kevin-durant-sues-accountant-over-tax-troubles/article/3935000.

3. I.R.C. § 162(a) (2012).

professional sports is a business. Thus, they are entitled to deduct the expenses they incur that are "ordinary" and "necessary" in carrying out the business of playing professional sports.[4]

Since the 1960s, the IRS has litigated more than 200 cases in the U.S. Court of Federal Claims referred to, collectively, as the "hockey player tax refund cases."[5] Charles L. Abrahams from La Mesa, California, the same attorney who represented more than 200 professional athletes—most, if not all of them, hockey players—in the U.S. Tax Court, represented the taxpayers in these cases.[6] These cases took considerable time to litigate and drew much attention because of the dilatory tactics employed by Mr. Abrahams.[7] Because of the

4. *See id.* If a professional athlete is under contract to play for a team, he is considered an employee and his unreimbursed trade or business expenses, if claimed, must be taken as itemized deductions on Schedule A of Form 1040 and can be further itemized on Form 2106. They are miscellaneous deductions. *See* I.R.C. § 67(b) (2012). The aggregate amount of miscellaneous deductions may be taken only to the extent that they exceed 2% of the taxpayer's adjusted gross income. I.R.C. § 67(a) (2012). An overall limitation on itemized deductions may be applicable under I.R.C. section 68, depending on the taxpayer's adjusted gross income. *See* I.R.C. § 68 (2012).

Note that resident aliens, like U.S. citizens, are subject to U.S. income tax on their worldwide income. *See* Treas. Reg. § 1.1-1 (2014). Like U.S. citizens, they must file a Form 1040 U.S. Income Tax Return. *See Topic 851 - Resident or Nonresident Aliens*, IRS, http://www.irs.gov/taxtopics/tc851.html (last updated Dec. 22, 2014). They are subject to the same tax laws and are, therefore, entitled to claim the same deductions as U.S. citizens. *Taxation of U.S. Resident Aliens*, IRS, http://www.irs.gov/businesses/small/international/article/0,,id=96493,00.html (last updated May 30,_2014); *see also* Treas. Reg. §1.1-1(2)(1) (2014). The taxes nonresident aliens pay on their U.S.-source income includes income that is effectively connected with the conduct of a trade or business in the U.S. I.R.C. §§ 871(b)(1), 864(b) (2012). Nonresident aliens are required to file a Form 1040NR, the U.S. Nonresident Alien Income Tax Return. *Taxation of Nonresident Aliens*, IRS, http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Nonresident-Aliens (last updated Dec. 13, 2014). In determining his taxable income, a nonresident alien is allowed the same trade or business deductions relating to his U.S.-source income that are available to U.S. citizens and residents. *See* Stemkowski v. Comm'r, 690 F.2d 40, 44 (2d Cir. 1982). However, as a general rule, nonresident aliens are allowed to deduct expenses only to the extent that the expenses are properly allocable and apportioned to income from sources within the U.S., and only if such income is subject to the regular tax as provided in section 871(b). I.R.C. § 873(a) (2012). Section 873(b) provides exceptions to this general rule. I.R.C. § 873(b) (2012).

For a more in-depth discussion of international tax issues for professional athletes, *see generally* Alan Pogroszewski & Kari Smoker, *Cross-Checking: An Overview of the International Tax Issues for Professional Hockey Players*, 22 MARQ. SPORTS L. REV. 187 (2011).

5. *See* Speck v. U.S., 28 Fed. Cl. 254, 260–71 (1993) (discussing the procedural history of the 231 "hockey player tax refund cases," so called because a disproportionate number of the taxpayers in these cases were professional hockey players).

6. *Id.* at 266 n.12. Some of the plaintiffs had not heard from Abrahams in many years, and others did not even know that they had a case pending before the court. *Id.* at 263.

7. *Id.* at 266 n.12. Referring to the line of cases litigated in the U.S. Tax Court, the U.S. Court of Federal Claims noted that Abrahams "appears to have employed a number of the same delaying tactics and unfounded legal arguments in those cases," and cited *Stemkowski v. Commissioner*, 82 T.C. 854 (1984), and *Hanna v. Commissioner*, 63 T.C. (CCH) 3178 (1992), as examples. *Id.* The cases were delayed because,

number of cases involved and the complexity of the issues presented, each of the courts took great pains in analyzing the questions before it.[8] These cases, thus, constitute an important body of tax law for professional athletes.

One of the issues litigated was whether the IRS properly disallowed certain business deductions, claiming that the expenses were not "ordinary" and "necessary" in carrying out the business of playing professional sports.[9] Another issue was whether the IRS properly disallowed certain deductions based on the taxpayers' failure to properly substantiate the expenses they allegedly incurred.[10]

So, what is required in order for an expense to be considered "ordinary" and "necessary" in carrying out the business of playing professional sports, and what must professional athletes do in order to properly substantiate their expenses so as to entitle them to a deduction?

A. What Constitutes an "Ordinary" and "Necessary" Trade or Business Expense?

Peter Stemkowski was a Canadian citizen who signed a two-year contract to play for the National Hockey League's (NHL) Detroit Red Wings for the 1970 and 1971 NHL seasons.[11] However, in 1970, he was traded to the NHL's New York Rangers.[12] Stemkowski's 1971 U.S. income tax return raised a number of issues regarding the deductibility of trade or business expenses that he had claimed, and he retained Abrahams to represent him in an action in the U.S. Tax Court.[13]

> the complexity of the issues, the large number of plaintiffs, the protracted pretrial proceedings, the plethora of supporting documents filed in the cases, the need for successive judges to become familiar with the filing, the sporadic compliance of plaintiffs' counsel with pretrial orders to exchange exhibits and identify witnesses, and at least twenty-eight requests, principally by the plaintiff, for extensions of time to file motions and to prepare for the trials.

Id. at 269.

8. *See id.* at 261. In addition to the U.S. Court of Federal Claims and the U.S. Tax Court, these courts included the various federal circuit courts to which these cases were appealed. *See generally* Hanna v. Comm'r, 763 F.2d 171 (4th Cir. 1985) (per curiam); Stemkowski v. Comm'r, 690 F.2d 40 (2d Cir. 1982).

9. *See, e.g.*, Stemkowski v. Comm'r, 76 T.C. 252, 254, 299, 302 (1981).

10. *See id.* at 254, 306–07.

11. *See id.* at 254.

12. *Id.* at 262.

13. *Id.* at 254.

John Hanna was another hockey player represented by Abrahams.[14] Hanna began his career with the NHL's Montreal Canadians and was playing in the U.S. in 1971 for the Western Hockey League's Seattle Totems.[15] Like Stemkowski, Hanna's 1971 U.S. income tax return raised a number of issues regarding the deductibility of trade or business expenses.[16] Because the issues were virtually identical, his case was consolidated with Peter Stemkowski's[17] and, together, their action was to serve as a "'test' case" to dispose of all of the issues in forty-one other cases docketed in the U.S. Tax Court.[18]

On their returns, Stemkowski and Hanna claimed various trade and business deductions, including travel expenses, the cost of trade publications, promotional expenses, such as entertainment expenses, haircuts, and, in Stemkowski's case, the expense of answering fan mail.[19] They also claimed home telephone charges, the cost of a home television (with which they watched NHL broadcasts), trainers' gifts, and various conditioning expenses, including gym membership dues, green fees, and the cost of golf shoes, golf clubs, running shoes, tennis balls, tennis shoes, tennis racquets, sweat suits/apparel, therapeutic treatments, bowling, swim suits, and trainer fees.[20]

The U.S. Tax Court initially denied Stemkowski and Hanna their deductions for magazines, newspapers, promotional activities, trainers' gifts, telephone charges, and the cost of a television, holding that these expenses were not ordinary and necessary business expenses under I.R.C. section 162 because they were not required by the players' contracts.[21] On appeal, however, the Second

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14. *Id.* at 268.

15. *Id.* at 268.

16. *Id.* at 253–54.

17. The consolidated action is *Stemkowski v. Commissioner*, 76 T.C. 252 (1981).

18. *Stemkowski*, 76 T.C. at 254. Notwithstanding the intent of the "'test' case," Abrahams appealed the decision in *Hanna* to the Fourth Circuit Court of Appeals and appealed the decision in *Stemkowski* to the Second Circuit Court of Appeals, with the distinct possibility that the two circuit courts could rule differently on one or more issues. *See* Stemkowski v. Comm'r, 690 F.2d 40, 42 n.1 (2d Cir. 1982). The Second Circuit Court of Appeals explained,

> [i]t is not clear from the record whether the consolidation agreement was intended to apply only to disposition in the Tax Court, or to proceedings beyond the Tax Court as well. In any event, the Tax Court entered an order suspending decisions in the 41 other cases until the decisions in the instant case and *Hanna* have become final.

Id.

19. *See Stemkowski*, 76 T.C. at 267–68, 280–81.

20. *Id.*

21. *Id.* at 306–07. The court noted further that, to the extent any specific promotional activities were required by the players' contracts, they were reimbursable by their respective teams and, thus, were not deductible. *Id.* at 307.

Circuit held that an employer need not require his employee to incur an expense in order for the expense to be deductible.[22] Rather, "I.R.C. [section] 162(a) requires only that the expense be a necessary and ordinary expense paid or incurred during the taxable year in carrying on a trade or business."[23]

The Second Circuit then proceeded to evaluate the deductibility of specific expenses, distinguishing those that were personal and, thus, non-deductible[24] from those that had a business purpose and required further evaluation under section 162's "'ordinary and necessary' business expense standard."[25] The court disallowed the deductions for Stemkowski's subscription to general newspapers, the cost of haircuts, and his telephone and television expenses—his telephone charges were for long-distance telephone calls to his mother, and he used the television to watch NHL games only "when he had a chance"—because these expenses were personal in nature.[26] However, it remanded the case back down to the U.S. Tax Court to determine, among other issues, the deductibility of his business-related costs under section 162, including his "'hockey news'" subscription and the costs he incurred in answering fan mail.[27]

The Second Circuit did not provide any guidance, however, as to the meaning of "ordinary" and "necessary" for purposes of a trade or business deduction under section 162. In reaching a final determination of the issues, the U.S. Tax Court ruled that these costs were "ordinary" and "necessary" trade or business expenses and allowed the deduction.[28] Like the Second Circuit, the U.S. Tax Court neglected to expand on the meaning of "ordinary" and "necessary."[29]

The I.R.C. and the Regulations also give little guidance as to the meaning of "ordinary" and "necessary" for purposes of a trade or business deduction under section 162. Regulation section 1.162-17 simply states that "[t]he term 'ordinary and necessary business expenses' means only those expenses which are ordinary and necessary in the conduct of the taxpayer's business and are directly

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22. *Stemkowski*, 690 F.2d at 47.

23. *Id.*

24. *See* I.R.C. § 262 (2012); *see also* Treas. Reg. § 1.162-17(a) (2014) (discussing the deductibility of trade or business expenses, which provides in relevant part, "[t]he term does not include nondeductible personal, living or family expenses.").

25. *See Stemkowski*, 690 F.2d at 47–48.

26. *Id.*

27. *Id.* at 47.

28. Stemkowski v. Comm'r, 82 T.C. 854, 868–69 (1984). Specific to the hockey news subscription, the court allowed the deduction under section 162 based on (i) an allowance of a deduction under Treas. Reg. section 1.162-6 (2011) for trade publications; and (ii) an allowance of a deduction to a corporate executive, as upheld in *Noland v. Commissioner*, 269 F.2d 108, 110–11 (4th Cir. 1959), for a subscription to the *Wall Street Journal*. *Id.* at 869.

29. *Id.* at 868.

attributable to such business."[30]

The meaning of "ordinary" and "necessary" was addressed by the U.S. Supreme Court, however, in 1933 in the case of *Welch v. Helvering*.[31] There, the Supreme Court defined "ordinary" as "common and accepted" for the group or community of whom the taxpayer is a part, and "necessary" as "appropriate and helpful."[32] In Publication 334, "*Tax Guide for Small Business*," the IRS, thus, defines "ordinary" as "common and accepted in [the taxpayer's] field of business" and "necessary" as "helpful and appropriate for [the taxpayer's] business."[33] It concedes that "[a]n expense does not have to be indispensable to be considered necessary."[34] An additional requirement imposed by the courts is that the expense be reasonable in amount.[35]

If a professional athlete can establish that an expense he paid or incurred during the tax year was related to the business of playing professional sports, that it is common, accepted, helpful, and appropriate in that business, and that the amount is reasonable, he may be entitled to a trade or business deduction under section 162. This general rule presents some interesting issues in the context of an athlete's conditioning expenses, which is discussed in detail, along with other potential deductions in Section III. In Section III, this Article discusses special considerations that must be made for expenses that are considered entertainment, amusement, or recreational in nature.

In addition to determining whether business expenses are ordinary and necessary, special consideration must be given to the substantiation rules. The substantiation rules require taxpayers to properly *establish* that certain expenses are ordinary and necessary business expenses, and that they were paid or incurred during the taxable year. We turn to the substantiation rules next.

B. What Is Required in Order to Properly Substantiate an Athlete's Trade or Business Expenses?

Regulation section 1.162-17 sets forth the recordkeeping requirements for taxpayers to prove, other than for amounts that are considered incidental, that their expenses are ordinary and necessary trade or business expenses.[36] Although the regulation states that only certain taxpayers will ordinarily be called

30. Treas. Reg. § 1.162-17(a) (2014).

31. 290 U.S. 111, 113–14 (1933).

32. *Id.*

33. IRS, TAX GUIDE FOR SMALL BUSINESS 30 (2014), *available at* http://www.irs.gov/pub/irs-pdf/p334.pdf.

34. *Id.*

35. *See, e.g.*, Comm'r v. Lincoln Elec. Co., 176 F.2d 815, 817 (6th Cir. 1949).

36. Treas. Reg. § 1.162-17(a) (2014).

upon to substantiate their trade or business expenses, it nevertheless forewarns that "the Commissioner may require *any* taxpayer to substantiate such information concerning expense accounts as may appear to be pertinent in determining tax liability."[37] When it came to the more than 400 hockey players represented by Abrahams in the U.S. Tax Court and the U.S. Federal Court of Claims, the IRS compelled them to substantiate many of their expenses, asserting their failure to do so was a basis for denial of at least some of their trade or business deductions.[38]

Taxpayers may, thus, be called upon to properly substantiate the amount and purpose of their business expenses, that they are ordinary and necessary, and that they were paid or incurred during the taxable year.39 The regulation suggests that, as one method of proof, the taxpayer maintains, in sufficient detail, "a daily diary or record" from which he can "readily identify the amount and nature of [each of his] expenditure[s]," and that he keep supporting documents.[40] The regulation concedes, however, that "it is often difficult for an employee to maintain detailed records or to preserve supporting documents for all his expenses" given "the nature of certain expenses or the circumstances under which they are incurred."[41] Therefore, "[d]etailed records of small expenditures incurred in traveling or for transportation, as for example, tips, will not be required,"[42] and may be reasonably approximated using an appropriate method, for purposes of a deduction.[43]

When a taxpayer cannot substantiate all of his expenditures as prescribed under section 1.162-17(d)(2) because it is impracticable under the circumstances to keep complete records or proper documentation of particular expenditures, section 1.162-17(d)(3) allows the taxpayer to establish such expenditures by providing approximations that are appropriate "based on reliable secondary sources of information and collateral evidence."[44] In that case, the reasonableness of the amounts claimed will be determined in light of all of the facts and circumstances.[45]

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37. Treas. Reg. § 1.162-17(d)(1) (2014) (emphasis added).

38. *See generally* Stemkowski v. Commissioner, 76 T.C. 252 (1981); Speck v. U.S., 28 Fed. Cl. 254 (1993).

39. *See* Treas. Reg. § 1.162-17(d)(1) (2014).

40. Treas. Reg. § 1.162-17(d)(2) (2014).

41. *Id.*

42. *Id.*

43. *See* Treas. Reg. § 1.162-17(d)(3) (2014).

44. *Id.*

45. *Id.* For example, if a taxpayer uses his automobile for business travel, he is permitted to deduct his actual costs for gas and depreciation, in which case, he must substantiate those expenses with ap-

Notwithstanding Regulation section 1.162-17(d)(2)'s general substantiation requirements, I.R.C. section 274 imposes additional requirements and, thus, a heavier burden as a condition for deducting certain expenses.[46] While Regulation section 1.162-17 forewarns that a taxpayer *may* be called upon to substantiate their business expenses, section 274(d) affirmatively requires them to substantiate their business travel, entertainment, amusement, recreation, and gift expenses as a pre-condition for deducting them.[47]

"The substantiation requirements [set forth] in section 274(d) are designed to encourage taxpayers to maintain [adequate] records" and documentation to support their deductions.[48] In fact, it penalizes them by disallowing these deductions if they do not.[49] Thus, taxpayers have an affirmative duty to substantiate the amount, time, place, and business purpose of their expenditures, as well as their business relationship with each person who is entertained, uses an entertainment facility, or receives a gift from the taxpayer.[50]

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propriate records and documentation. This would include receipts for gas and a mileage log to determine business use versus personal use of the vehicle for purposes of the depreciation deduction. Alternatively, gas and depreciation expenses can be approximated if the taxpayer has sufficient evidence of the business mileage traveled. He is entitled to deduct a certain allowance per mile in lieu of the exact expense for gas and depreciation. While this may result in a smaller deduction than deducting the actual costs, it eliminates the need for record-keeping other than for the business mileage traveled.

Another example is the taxpayer's expense for meals while traveling away from home on business. Under I.R.C. § 274(n)(1), he may deduct 50% of his actual meals expense, in which case he must substantiate his expense with actual receipts. I.R.C. § 274(n)(1) (2012). Alternatively, under Regulation section 1.162–17(d)(3), the amount that the taxpayer may deduct for meals and incidentals can be approximated based on a federal per diem rate that varies depending on the location of the meals and lodging, so long as the taxpayer has sufficient evidence of the days and location of travel. Treas. Reg. § 1.162-17(d)(3) (2014). To find applicable per diem rates for specific cities in the U.S., taxpayers may use www.gsa.gov. *Per Diem Rates*, U.S. GEN. SERVICES ADMIN., http://www.gsa.gov/portal/content/104877 (last updated Nov. 17, 2014).

46. *See* I.R.C. § 274 (2012); *see also* Treas. Reg. § 1.274-1 (2014).

47. Treas. Reg. §§ 1.162–17, 1.274–5(T)(c)(1) (2014).

48. Treas. Reg. § 1.274-5(T)(c)(1) (2014).

49. I.R.C. § 274(d) (2012). Regulation section 1.274-1 provides, in part, that

> [t]he requirements imposed by section 274 are in addition to the requirements for deductibility imposed by other provisions of the Code. If a deduction is claimed for an expenditure for entertainment, gifts, or travel, the taxpayer must first establish that it is otherwise allowable as a deduction under Chapter 1 of the Code before the provisions of section 274 become applicable. . . . The taxpayer should then substantiate such an expenditure in accordance with the rules under section 274(d). . . . Section 274 is a disallowance provision exclusively, and does not make deductible any expense which is disallowed under any other provision of the Code.

Treas. Reg. § 1.274-1 (2014).

50. *See* Treas. Reg. § 1.274-5T(b) (2014).

What specific records are considered adequate for purposes of substantiating these business expenses? The Regulations specify that "a taxpayer shall maintain an account book, diary, log, statement of expense, trip sheets, or similar record . . . and documentary evidence . . . which, in combination, are sufficient to establish each element of an expenditure or use," but that information does not have to be recorded if it "duplicates information reflected on a receipt so long as the account book [or other record] and receipt complement each other in an orderly manner."[51]

If the taxpayer does not have "'adequate records'" to substantiate any element of the expense, he may provide an oral or written statement with "other corroborative evidence sufficient to establish the element."[52] "Written evidence has considerably more probative value than oral evidence," and it has greater probative value "the closer in time it relates to the expenditure."[53]

Whether or not deductions were properly substantiated was one of the issues addressed by the U.S. Court of Federal Claims in the "hockey player tax refund cases."[54] One of the plaintiffs was Andre Marcel "Cannon" Gill, who played for the Hershey Bears in the American Hockey League and claimed many of the same promotional and conditioning expenses as Stemkowski and Hanna.[55] However, the IRS disallowed every one of his trade or business deductions, claiming that Gill failed to provide adequate proof of "the amount, time, place, and business purpose" of the expenses he deducted.[56]

The court agreed with the IRS: It held that Gill's "vague and unspecific testimony," which was unsupported by records or other corroborative testimony, did not meet the applicable substantiation requirements, and did not provide the court with sufficient evidence "to make an expenditure-by-expenditure determination of the deductibility of each of the expense items claimed."[57] It stated flatly, "[c]ourts have rejected claims for deductions with far more supportive corroboration than was offered in the instant . . . case."[58]

Another plaintiff, Frederick Speck, who had played with the Detroit Red Wings, ran into similar problems in the U.S. Court of Federal Claims.[59] The

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51. Treas. Reg. § 1.274-5T(c)(2)(i) (2014).

52. Treas. Reg. § 1.274-5T(c)(3)(i)(A) (2014).

53. Treas. Reg. § 1.274-5T(c)(1) (2014).

54. *See, e.g.*, Gill v. U.S., No. 296–81T, 1997 WL 820963, at *1, 13 (Fd. Cl. Oct. 9, 1997).

55. *See id.* at *13, 32.

56. *See id.* at *20.

57. *Id.*

58. *Id.* at *40.

59. *See* Speck v. U.S., 28 Fed. Cl. 254, 271–72 (1993).

court noted that he was the only witness to appear at trial—his wife, also a plaintiff, failed to appear and to testify—and he provided only general testimony about the expenses he had claimed.[60] It also noted that he "did not have clear, independent recollections" of individual expenses (only categories of expenses), that he needed "to refresh his recollection" by consulting trial exhibits, and that he "consistently failed to provide documentation to substantiate [his] claims."[61] Speck even admitted "that most of the amounts he claimed . . . were merely 'guesstimates' and 'approximations,' and "that the records he had kept . . . would not have been very good."[62]

III. BUSINESS DEDUCTIONS SPECIFIC TO PROFESSIONAL ATHLETES

In the previous section, we discussed the general rules for determining the deductibility of an athlete's trade or business expenses, and what is required to substantiate those deductions. If a professional athlete can substantiate that an expense he paid or incurred during the taxable year was related to the business of playing professional sports; that it is common, accepted, helpful and appropriate in that business; and that the amount is reasonable, he may be entitled to a trade or business deduction under section 162. We now explore some of the more common expenses professional athletes incur and some of the special considerations that must be made in order to properly determine their deductibility as trade or business expenses under the I.R.C.

A. Union Dues and Agent Fees

Over the course of a year, a professional athlete may incur fees or dues from a variety of sources. Agents generally charge either an hourly, flat, or percentage rate that is tied to the athlete's salary as a fee to negotiate his contract. Financial and tax advisors' fees may be included in the agent's fees or they may be separate. Unions generally charge dues that are deducted directly from the player's paycheck. In general, fees for agents, financial and tax advisors, as well as union dues, are deductible as "ordinary" and "necessary" trade or business expenses under section 162, and they are subject to the general substantiation requirements under Regulation section 1.162-17.[63]

B. Conditioning Expenses

In late 2011, the IRS and Lamar Odom settled their lawsuit prior to it being

60. *Id.* at 279.

61. *Id.*

62. *Id.* at 300.

63. I.R.C. § 1.162–17(a) (2014).

heard in a Los Angeles Tax Court.[64] The dispute centered on the IRS's disallowance of a deduction for Odom's professional fitness and conditioning fees, which totaled $178,000, because it deemed the expenses to be personal in nature rather than related to the business of being a professional athlete.[65] However, Odom successfully defended his position that, as a professional athlete, his employment contract required him to "be in sufficient physical condition that allow[ed] him to perform as a professional basketball player throughout the basketball season."[66]

Considering the amount of conditioning expenses that athletes can incur, it is critical to understand the circumstances under which conditioning expenses, including the cost of trainer fees and tips, club or gym memberships, training equipment, nutritional supplements, and hot tubs, can be deducted. We turn to these issues next.

1. Trainer Fees, Tips, and Gifts

There is a distinction between fees paid to a personal trainer, whose job it is to maintain or improve an athlete's physical condition, and a tip paid by the athlete as gratuity to an equipment manager, physical trainer, or massage therapist who is an employee of the team for which the athlete plays.

Both fees and tips are generally deductible under section 162, and they are subject to the general substantiation requirements under Regulation section 1.162-17.[67] To the extent that a tip to a trainer may be properly classified as a gift, especially if given at the holidays and not in immediate proximity to receiving a service, the deduction is limited under section 274(b) to $25.[68] In addition, recall that section 274(d) affirmatively requires taxpayers to substantiate their business travel, entertainment, amusement, recreation, and gift expenses as a condition for deducting them.[69]

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64. William P. Barrett, *Lamar Odom Stuffs IRS in Tax Case over Fines*, FORBES (Jan. 3, 2012), http://www.forbes.com/sites/williampbarrett/2012/01/03/lamar-odom-stuffs-irs-in-tax-case-over-fines-fitness-fees/.

65. Barrett, *supra* note 1.

66. Barrett, *supra* note 64 (internal quotations omitted). While Lamar Odom's settlement does not serve as precedent, it does indicate the IRS's willingness to ultimately accept Odom's deduction of at least some of his conditioning expenses. *See id.* Currently, there is little precedence for the deductibility of conditioning expenses for a professional athlete, other than the case law discussed here. However, Odom's case may provide some indication that, if properly substantiated, the IRS will be willing to accept various conditioning expenses as both ordinary and necessary trade expenses for this particular population. It seems that Odom may have been able to substantiate the conditioning expenses he claimed inasmuch as the IRS did not make a claim for accuracy-related penalties.

67. Treas. Reg. § 1.162–17 (2014).

68. I.R.C. § 274(b)(1) (2012).

69. I.R.C. § 274(d) (2012).

Thus, with respect to the cash gifts ranging from $100 to $125 each that Stemkowski testified he gave to two of his trainers at Christmastime,[70] the Second Circuit Court of Appeals denied his claim for a deduction.[71] It held that "[w]hile gifts to team trainers might be deductible, there is a $25 limitation on the deduction of any such gift . . . and in any case Stemkowski did not furnish sufficient substantiation of these expenses."[72]

2. Club Memberships, Training Equipment, and Green Fees

Expenses incurred by professional athletes in purchasing training equipment are deductible so long as they relate to an activity that the individual is undertaking in order to stay in "good physical condition" as required by his contract.[73] If the expenses relate to an activity that is considered merely entertainment or recreational in nature, then they are personal and nondeductible.[74]

In *Stemkowski*, the parties disputed, among other issues, whether the plaintiff's off-season conditioning expenses were deductible trade or business expenses under I.R.C. section 162.[75] The court held,

> Not everything that is done to develop one's body, even if one is a professional athlete, is necessarily for business. For a hockey player, weight-lifting, jogging, bicycling, and other exercises to strengthen and coordinate the body may well be at the business end of the spectrum, because these activities may contribute directly to professional hockey playing ability.[76]

However, the court denied Stemkowski's deductions for golf, tennis, squash, and bowling because these activities "at least for a hockey player, may well be at the fun-and-relaxation end of the spectrum, especially in light of Stemkowski's testimony that he played golf to relax, played tennis and squash for fun, and bowled with a girlfriend."[77] The court based its decision, in part, on Stemkowski's testimony in determining whether the activities contributed more di-

70. Stemkowski v. Comm'r, 76 T.C. 252, 265 (1981).

71. *Id.* at 307.

72. Stemkowski v. Comm'r, 690 F.2d 40, 48 (2d Cir. 1982).

73. *Id.* at 46.

74. *See id.* at 46–47. I.R.C. section 262 expressly prohibits taxpayers from deducting expenses that are personal in nature. *Id.*; *see also* I.R.C. § 262(a) (2012).

75. *See Stemkowski*, 690 F.2d at 46–47.

76. *Id.* at 46.

77. *Id.* at 46–47.

rectly to his professional hockey playing ability or whether they were more directly related to having fun and relaxation.[78]

Importantly, the court will make a factual determination of the deductibility of an athlete's conditioning expenses based on the circumstances of the case rather than as a rule of law.[79] The court of appeals emphasized this point, holding that

> [t]here is no general rule that can be laid down in connection with such expenses, and we remand to the Tax Court to make a factual determination, on the basis of its familiarity with the record and the demeanor of the witnesses, as to which of these expenses were deductible.[80]

The court of appeals also remanded the case back down to the U.S. Tax Court to determine whether Stemkowski had satisfied the substantiation requirements under section 274 for certain conditioning expenses, including his athletic club membership.[81] Recall that section 274(d) affirmatively requires taxpayers to substantiate their business entertainment, amusement, and recreation expenses as a condition for deducting them.[82]

On remand, however, the Tax Court denied *all of* Stemkowski's conditioning expenses.[83] It held,

> We cannot decide the issue as framed by the Court of Appeals because petitioner has not substantiated the off-season conditioning expenses. . . . [T]o speculate on their deductibility, if substantiated, would be dicta and hypothetical. We will not decide such an important issue in this manner. Accordingly, all of petitioner's conditioning expenses (which are claimed by him for both off-season and during the season) are disallowed in full for lack of substantiation.[84]

The Tax Court's decision underscores how important it is for the athlete to

78. *Id.*
79. *See id.* at 47.
80. *Id.*
81. *Id.*
82. *See* I.R.C. § 274(d) (2012).
83. *See* Stemkowski v. Comm'r, 82 T.C. 854, 868 (1984).
84. *Id.*

substantiate all of his trade or business expenses, whether it is required generally by Regulation section 1.162-17 or is required explicitly as a condition to taking the deduction by section 274(d).

While the findings in *Stemkowski* remain relevant even today, an important change was subsequently enacted to the I.R.C. for expenditures paid or incurred after 1993: Specifically, section 274(a)(3)(B) expressly prohibits a deduction "for membership in any club organized for business, pleasure, recreation, or other social purpose."[85] This effectively denies the professional athlete a deduction for the cost of a membership to the YMCA or other athletic club, whether or not the membership is used by the athlete to stay in good physical condition as required by his contract. However, at least in the case of Lamar Odom, there is some indication that the IRS will entertain the deduction of other conditioning expenses it deems not merely entertainment or recreational in nature, but related to the business of being a professional athlete.[86]

3. Nutritional Supplements

Taxpayers "cannot include in [their deduction for] medical expenses the cost of nutritional supplements, vitamins, herbal supplements, or 'natural medicines' . . . unless they are recommended by a medical practitioner as treatment for a specific medical condition diagnosed by a physician."[87] IRS Publication 502 makes clear that these items are otherwise deemed to be taken to maintain ordinary good health and are not for medical care.[88]

The question remains, then, as to whether the cost of nutritional supplements, vitamins, and similar items constitute a conditioning expense for professional athletes and whether they can, thus, deduct the cost as an ordinary and necessary trade or business expense. While there is no case law specifically on point, there is at least one case that may be instructive. In *Green v. Commissioner*, the taxpayer had a very rare blood type and was paid by a lab to "donate" blood.[89] The payments she received were the primary source of her income.[90] Asserting that she was engaged in the business of producing blood, she claimed the cost of high protein foods and nutritional supplements as a trade or business

85. I.R.C. § 274(a)(3) (2012); *see also* Treas. Reg. § 1.274–2(a)(2)(iii)(a) (2014) ("Clubs organized for business, pleasure, recreation, or other social purpose include, but are not limited to, country clubs, golf and athletic clubs, airline clubs, hotel clubs, and clubs operated to provide meals under circumstances generally considered to be conducive to business discussion.").

86. *See* Barrett, *supra* note 64; *see also* note 66 and accompanying text.

87. I.R.S., U.S. DEP'T OF TREASURY, PUB. NO. 502, MEDICAL & DENTAL EXPENSES 16 (2014), *available at* http://www.irs.gov/pub/irs-pdf/p502.pdf.

88. *Id.*

89. 74 T.C. 1229, 1230 (1980).

90. *Id.*

deduction because they were necessary for her to maintain the quality of her blood for donation.[91] Distinguishing between food and nutritional supplements that were for her general well-being versus those that enabled her to produce blood acceptable for donation, the court disallowed a deduction for the former, but allowed a deduction for the latter.[92]

At this point in time, there is no clear-cut answer as to whether the IRS would allow professional athletes to deduct the expense of nutritional supplements. At issue is whether it could be established that the supplements enable the athlete to play a professional sport at a higher level, as opposed to just maintaining his or her general well-being.

4. Hot Tubs

There is no case law, to date, addressing the deductibility of hot tubs for professional athletes. The issue, of course, is whether the expense would pass as "ordinary" (common and accepted) and "necessary" (helpful and appropriate) in the carrying out the business of playing professional sports.[93] Arguably, if an athlete suffers an injury or a physical condition for which use of the hot tub is prescribed as therapy, he can better substantiate that the cost is a conditioning expense that is common, accepted, helpful, and appropriate in getting him back in the game.

Alternatively, the cost of the hot tub could potentially be deducted as a medical expense under section 213(a) if it is for the "diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function."[94] However, the athlete can take the deduction for his medical expenses only to the extent that the total amount exceeds 10% of his adjusted gross income.[95] This 10% "floor" may significantly reduce or, in most cases, given a professional athlete's level of income, eliminate the deduction entirely.

C. Subscriptions to Sports News Publications (Which Constitute "Trade Journals")[96]

The Tax Court allowed Stemkowski a deduction for his subscription to *Hockey News* under section 162, citing both Regulation section 1.162-6 (which allows a trade or business deduction for trade publications), as well as *Noland*

91. *Id.* at 1236.
92. *Id.* at 1235–37.
93. *See* Welch v. Comm'r, 290 U.S. 111, 113–14 (1933).
94. I.R.C. § 213(d)(1)(A) (2012).
95. I.R.C. § 213(a) (2012).
96. *See* Horton v. Comm'r, 86 TC 589, 597 (1986).

v. Commissioner[97] (which upheld a deduction for a corporate executive's subscription to the Wall Street Journal).[98] A deduction for trade journals is subject to Regulation section 1.162-17's general substantiation requirements.[99]

D. Entertainment Expenses

Because entertainment expenses can easily be construed as personal expenses—and, therefore, nondeductible[100]—section 274(a) generally disallows a deduction unless the taxpayer affirmatively establishes that the expenses were directly related to the active conduct of his trade or business as a pre-condition for taking a deduction.[101] Alternatively, with respect to an expense that "directly preced[es] or follow[s] a substantial and bona fide business discussion," the taxpayer must establish that it "was associated with[] the active conduct of [his] trade or business" in order to take a deduction.[102] Recall that the substantiation rules under section 274(d) require taxpayers to substantiate with appropriate records the amount, time, place, and business purpose of the expenditure, as well as his business relationship with each person who is entertained, uses an entertainment facility, or receives a gift from the taxpayer.[103] If a deduction is not disallowed under section 274(a), section 274(d), or both, then section 274(n) limits the amount of the deduction for any food, beverages, entertainment, amusement, or recreation to 50% of the expense paid or incurred.[104]

For instance, take the entertainment expenses claimed by Stemkowski on his 1971 tax return: He "spent approximately $1,000 . . . entertaining individuals[, including] friends, fans, team members, and newsmen," and he claimed the expense as a trade or business deduction.[105] He testified, however, that his entertainment costs included purchasing drinks for pretty women he saw out at the bars.[106] He "usually did not socialize with members of the press" and, if he did, it was not to give a personal interview or to discuss hockey specifically.[107] The Second Circuit disallowed Stemkowski's deduction for entertainment expenses,

97. 269 F.2d 108, 110–11 (4th Cir. 1959).

98. Stemkowski v. Comm'r, 82 T.C. 854, 869 (1984).

99. *See* Treas. Reg. § 1.162–17 (2014).

100. *See* I.R.C. §§ 262(a), 274 (2012).

101. *See* I.R.C. § 274(a) (2012).

102. *Id.*

103. I.R.C. § 274(d) (2012); *see also* Treas. Reg. § 1.274-5T(b) (2014).

104. *See* I.R.C. § 274 (2012).

105. *See* Stemkowski v. Comm'r, 76 T.C. 252, 265 (1981).

106. Stemkowski v. Comm'r, 690 F.2d 40, 48 (2d Cir. 1982).

107. *See Stemkowski*, 76 T.C. at 265.

holding that Stemkowski failed to establish a business purpose as generally required by section 162(a).[108] He also failed to meet the additional burden imposed by section 274(d), which required him to demonstrate that these expenses were related to the active conduct of his trade or business—playing professional hockey—as a pre-condition for deducting them.[109]

Stemkowski is instructive on the deductibility of entertainment expenses. In order to be deductible, the professional athlete must establish that the expenses are, in fact, related to the business of playing professional sports, and he must properly substantiate the amount, time, place, and business purpose of the expenditure—as well as his business relationship with each person who is entertained, uses an entertainment facility, or receives a gift from the taxpayer—with the appropriate records to convince the IRS—and potentially the court—that a deduction is allowed.[110]

E. Business Suits

While I.R.C. section 162(a) allows a deduction for ordinary and necessary trade or business expenses, I.R.C. section 262 expressly disallows a deduction for personal living expenses.[111] Thus, the deductibility of certain items—whether it is the cost of haircuts, of purchasing and maintaining equipment, of clothing worn specifically for the profession, or of business suits required by the team to be worn off the field—hinges on whether those items are deemed to be business or personal in nature.[112]

The deductibility of uniforms worn specifically for the profession is somewhat straightforward. Revenue Ruling 70–474[113] provides that the cost to acquire and maintain uniforms is deductible under I.R.C. section 162 if (i) the uniforms are "specifically required as a condition of employment;" and (ii) they are not adaptable to general use as ordinary clothing.[114] It disallows a deduction "if the uniform is suitable for ordinary wear."[115]

On the other hand, the deductibility of the cost of business suits worn at publicity events and elsewhere, in all likelihood, would be disallowed as a de-

108. *Stemkowski*, 690 F.2d at 47–48.

109. *Id.*

110. *See id.*

111. *Compare* I.R.C. § 262 (2012), *with* I.R.C. § 162(a) (2012).

112. *See id.*

113. Rev. Rul. 70–474, 1970–2 C.B. 34.

114. *Id.*

115. *Id.*

duction by the IRS because the suit is adaptable to general use as ordinary clothing.[116] If litigated, the final outcome of the case might go either way—deductible or non-deductible—and may depend, in part, on the jurisdiction in which the case is litigated.

Although there is no case law regarding this issue in the context of professional athletes, there are a few instances in which this issue has been addressed in other contexts. Consider, first, *Yeomans v. Commissioner*.[117] In that case, the Tax Court applied a more lax standard for the deductibility of "special use clothing" than the IRS's two-part test.[118] It held that, in order to be deductible, the clothing (i) must be required or essential in the taxpayer's business; (ii) must be unsuitable for general or personal wear; and (iii) must not, in fact, be so worn.[119] In determining whether the clothing was unsuitable for general or personal wear, it applied a subjective standard, considering the taxpayer's personal lifestyle to determine whether the clothing was unsuitable for the taxpayer's *own* general or personal wear.[120] It ruled that, considering Yeomans's lifestyle, the clothing was unsuitable, and it allowed the deduction.[121] The U.S. Tax Court has applied this subjective standard in other cases and has arrived at similar results.

The U.S. Court of Appeals for the Fifth Circuit, however, rejected this subjective standard in *Pevsner v Commissioner*.[122] It held that the IRS's two part test—in which no consideration is given to the taxpayer's personal lifestyle in determining whether the clothing is unsuitable for general or personal wear—is appropriate and necessary for administrative convenience.[123] It cited cases in other circuits in which the IRS's objective standard was applied.[124]

In *Pevsner*, the taxpayer managed a Yves Saint Laurent boutique and was required by her employer to purchase and wear Yves Saint Laurent fashions at work.[125] The U.S. Tax Court allowed the taxpayer a deduction for the cost of the designer wear because it did not fit the taxpayer's personal lifestyle and was too expensive to be suitable for her general or personal use.[126] On appeal, however, the court of appeals disallowed the deduction, holding that the taxpayer's

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116. *See id.*

117. *See generally* 30 T. C. 757 (1958).

118. *See id.* at 768–69.

119. *Id.* at 767–68.

120. *Id.* at 767–78.

121. *Id.* at 768.

122. *See generally* 628 F.2d 467 (5th Cir. Unit A 1980).

123. *Id.* at 469–70.

124. *Id.* at 470.

125. *Id.* at 468–69.

126. *Id.* at 471.

personal lifestyle was irrelevant and that the suitability of the clothing in question for general or personal wear should be determined using an objective standard.[127] Otherwise, "two similarly situated YSL boutique managers with identical wardrobes would be subject to disparate tax consequences depending upon the particular manager's lifestyle and 'socio-economic level.'"[128]

Although the decision cannot be cited as precedent or be appealed, it is instructive to note a summary opinion of the U.S. Tax Court that was filed in *Hamper v. Commissioner*[129] on February 24, 2011. It considered whether deductions taken by a news anchor for the cost of very conservative clothing that she was required to wear during newscasts and while appearing in public as an ambassador of the station were appropriate.[130] In his decision, the special trial judge applied the IRS's objective standard and ruled that the news anchor's clothing was suitable for everyday wear even if not so worn.[131] Therefore, she was not entitled to a deduction for costs related to clothing, shoes and accessories, "as these are inherently personal expenses."[132]

This ruling touches on an important issue for news anchors, actors and actresses, and professional athletes alike: the need to wear certain clothing—whether it is a conservative suit required by the station or the latest high-end fashion expected by society—to maintain a certain public image. The IRS speaks to this issue directly in its "Business Expenses—Entertainment Tax Tips,"[133] as follows:

> Taxpayers in the entertainment industry sometimes may incur expenses to maintain an image. These expenses are frequently related to the individual's appearance in the form of clothing, make-up, and physical fitness. Other expenses in this area include bodyguards and limousines. These are generally found to be personal expenses as the inherently personal nature of the expense and the personal benefit far outweigh any potential business benefit.
>
> No deduction is allowed for wardrobe, general make-up, or

127. *Id.*

128. *Id.* at 471.

129. *See generally* T.C. Summ. Op. 2011–17 (2011).

130. *Id.* at *3.

131. *Id.* at *4.

132. *Id.*

133. *Business Expenses—Entertainment Tax Tips*, IRS, http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Business-Expenses-Entertainment-Tax-Tips (last updated Sept. 15, 2014).

> hair styles for auditions, job interviews, or "to maintain an image."[134]

The IRS's position on this issue is, thus, clear. It is very unlikely that it will allow a professional athlete a deduction for the cost of business suits and other clothing, aside from a team uniform, that are worn off-the-field, even if such clothing is worn to maintain the professional athlete's public image and even if it is otherwise required by the team.

F. League Fines

In one week during the 2012 National Football League (NFL) season alone, twenty-nine players were fined for a multitude of violations.[135] Overall, during the 2012 NFL season, 193 fines were issued to NFL players for a total sum of $2,825,321, including three separate fines issued to former Baltimore Raven, Ed Reed, totaling $126,000.[136]

Depending on the sport, professional athletes are paid to perform what some may consider violent acts—acts that at times break the rules of the league for which they play and are, thus, punishable by fines imposed by the league. It could be argued (and should be, in the authors' opinion) that such fines are both ordinary and necessary expenses incurred in the performance of the player's services and are, thus, generally deductible under section 162. If deductible, they are subject to the general substantiation requirements under Regulation section 1.162-17.[137] There is one limitation on the deductibility of fines and penalties under the U.S. Tax Code, and it is inapplicable to fines issued by a professional sports league: I.R.C. section 162(f) states that "fine[s] . . . *paid to the government for the violation of any law*" are not deductible.[138] Disputing the IRS's disallowance of his deduction of $12,000 in league-issued fines, Odom argued, '"The fines imposed by the team and the NBA are not imposed for the violation of any government law and are therefore not specifically excluded."'[139]

While the U.S. Tax Court has yet to specifically address the deductibility of

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134. *Id.*

135. *See 2012 NFL Fines & Suspensions*, SPOTRAC, http://www.spotrac.com/nfl/fines-suspensions/2012/ (last visited May 8, 2015).

136. *Id.*

137. *See* I.R.C. § 1.162–17 (2012).

138. I.R.C. § 162(f) (emphasis added).

139. Barrett, *supra* note 1.

fines imposed by a sports league, it has addressed the deductibility of fines imposed by an exchange commission in *Rothner v. Commissioner*.[140] In that case, David Rothner, a floor broker for the Chicago Mercantile Exchange, was fined $75,000 by the Exchange for violating its rules.[141] The U.S. Tax Court ruled in favor of Mr. Rothner and allowed the deductions, holding that they were ordinary and necessary business expenses because "payments of fines pursuant to disciplinary proceedings by securities and commodities exchanges were a common and frequent occurrence in the type of business in which petitioner was engaged," and that "[b]y paying the fine, petitioner was able to resume his business activities without further disruption."[142] It seems that, for tax purposes, the fines imposed on an athlete under league governance should not be handled any differently insomuch as they are not uncommon in professional sports leagues and must be paid by the player in order to resume play.

IV. TRAVEL AND MOVING EXPENSES

Professional athletes are transient in nature, and the location of an athlete's job or team may or may not be the same as his home or resident state. In addition, the team or location in which an athlete performs services in any given year may change. For those athletes who play team sports, there is the added complexity of potentially being traded mid-season to another team. In this section, we address the unique issues pertaining to travel and moving expenses that professional athletes incur and how they are treated by the IRS.

A. Travel Expenses

In order to be deductible, travel expenses must not only be ordinary and necessary but must also be incurred "while away from home in the pursuit of a trade or business."[143] The "away from home" requirement is what distinguishes travel expenses from transportation expenses, and the distinction is important. The deduction for travel expenses includes a deduction for meals and lodging, at least to the extent that they are not lavish under the circumstances.[144] As noted under Section II and III, meals are deductible up to 50% of the actual expense,[145] in which case the taxpayer must substantiate his expense with actual receipts; alternatively, he can take a deduction for his meals and incidentals

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140. 72 T.C.M. (CCH) 801, *4 (1996).

141. *Id.* at *3.

142. *Id.* at *5.

143. I.R.C. § 162(a)(2) (2012); *see also* Comm'r v. Flowers, 326 US 465, 470 (1946).

144. I.R.C. § 162(a)(2) (2012).

145. I.R.C. § 274(n)(1) (2012) (limiting the deduction for meals to 50% of the expense incurred).

based on a federal per diem rate so long as he can properly substantiate the dates and business purpose of his travel.[146] The deduction for transportation expenses does not allow for a deduction of meals or lodging.

For many taxpayers, travel expenses may seem somewhat straightforward: if they are incurred while the taxpayer is traveling away from home on business, they are very likely deductible. However, consider a professional athlete who maintains a personal residence in New York and plays for a franchise located in Los Angeles. When he travels with his team to an away game in Atlanta, there is no question that he is away from home and that his travel expenses are thus deductible. But when he is in Los Angeles, is he away from home on business? Are his living expenses in Los Angeles considered travel expenses?

Like other taxpayers, in order for a professional athlete to be considered away from home in the pursuit of a trade or business, his work assignment must be (i) away from his "tax home" and requiring an overnight stay; and (ii) temporary in nature.[147] Where is the taxpayer's tax home? What does it mean for the work assignment to be temporary in nature? We turn to these questions next.

1. Where Is the Athlete's Tax Home?

I.R.C. section 162(a)(2) allows a taxpayer to deduct certain living expenses, such as meals and lodging, that are paid or incurred while away from home in the pursuit of a trade or business.[148] The purpose of the "'away from home'" provision is to help mitigate the burden on the taxpayer who, because his trade or business demands it, must incur additional living expenses that are duplicative of those associated with maintaining his personal residence.[149] It is generally reasonable, however, to expect the taxpayer to maintain a permanent residence near his principal place of work. If he nevertheless chooses to maintain a permanent residence elsewhere, the duplication of living expenses that arises from traveling to and from his principal place of work is incurred by personal choice and not because his trade or business demands it. In that instance, his tax home is his principal place of work so that when he travels there, he is not considered away from home, and the expenses associated with being there are nondeductible.[150] Consistent with this rule, a professional athlete's "'tax home'" is typically the location of the home office of the team for which he

146. *See* Treas. Reg. § 1.162–17(d)(2)–(3) (2014).

147. *Topic 511 – Business Travel Expenses*, IRS, http://www.irs.gov/taxtopics/tc511.html (last updated Mar. 5, 2015).

148. I.R.C. § 162(a)(2) (2012).

149. Kroll v. Comm'r, 49 T.C. 557, 562 (1968).

150. *See id.*

plays.[151]

2. What Does It Mean for the Work Assignment To Be Temporary in Nature?

While it is generally reasonable to expect a taxpayer to maintain his residence in the same location as his principal place of business, it is also generally reasonable to expect him to relocate whenever his principal place of employment changes.[152] If he fails to relocate, then the fact that he incurs living expenses at his new place of employment that duplicate the expense of maintaining his personal residence may be attributed to personal choice and not because his work demands it.[153] In that case, the taxpayer would be denied a deduction for business travel expense.[154]

This issue is relevant to professional athletes considering how common it is for them to be employed in a location away from home. However, are there circumstances under which a professional athlete can maintain a personal residence away from his principal place of work and still claim a deduction for travel expenses? *Horton v. Commissioner*[155] is one example. In that case, the court held that the taxpayer's employment with the team was nothing more than temporary—a duration of only six months, a short enough period of time such that termination could be logically expected or foreseen—and that his tax home, thus, "remained in Flint, Michigan, the situs of the family's only permanent employment."[156]

What if the taxpayer's main source of income is from employment with a team that is located away from home, and he is traded to another team in a different location? In *Gardin v. Commissioner*,[157] the U.S. Tax Court specifically addressed the deductibility of travel expenses claimed by an athlete whose assignment with an NFL team was away from his state of residence and who was traded during the term of his contract.[158] The plaintiff in the case, Ron Gardin, was a resident of Arizona and a football player at the University of Arizona in Tucson, who was selected by the Baltimore Colts in the sixth round of the 1970 NFL draft.[159] He signed three consecutive one-year contracts with the team

151. Horton v. Comm'r, 86 T.C. 589, 594 (1986).
152. *Kroll*, 49 T.C. at 562.
153. *Id.*
154. *See id.*
155. *See generally* 86 T.C. 589.
156. *Id.* at 595–96.
157. *See generally* 64 T.C. 1079 (1975).
158. *Id.* at 1080–81.
159. *Id.* at 1080.

prior to the 1970 NFL season.[160]

Although his work assignment was located in Baltimore, Gardin claimed that his home for tax purposes remained in Arizona and that his expenses for the 1971 tax year for food and lodging at his employers' locations in Baltimore were, thus, incurred while he was away from home in the pursuit of a trade or business.[161] Gardin substantiated his claim by arguing that his employment with the Baltimore Colts was merely temporary in nature and, in fact, that he had been traded from the Colts to the New England Patriots on September 26, 1971.[162]

The Tax Court ruled that, as a professional football player, Gardin's exposure to being traded during his three year period of employment did not compel a decision in his favor, nor did the fact that the Colts terminated his contract shortly after the start of the 1971 season.[163] The court held that, as a general rule, the permanent or temporary nature of employment is to be judged at the time it begins and that the possibility of a transfer does not necessarily require that the work be characterized as "'temporary.'"[164] Otherwise, most professional athletes would merely be engaged in a series of temporary assignments, rendering their living expenses at franchise locations deductible, a result the Tax Court was confident that Congress did not intend.[165] Thus, Gardin was not temporarily away from home while playing for the Baltimore Colts—Baltimore *was* his home—and, therefore, his meals and lodging while in Baltimore were not deductible.[166]

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160. *Id.* at 1080, 1083.

161. *See id.* at 1083.

162. *Id.* at 1081, 1083.

163. *Id.* at 1083–85. Noting that,

> Although petitioner's contracts could be canceled by the team, we infer that they provided some degree of permanence from the facts that the right to cancel was not unqualified; that petitioner bargained for a multiyear agreement, and testified that 3 years was 'the most they would give me'; and that he in fact remained employed as a football player throughout the term of his initial contracts, but was not so employed thereafter.

Id. at 1083 n.7 (citing Maresca v. Comm'r, 33 T.C.M. (CCH) 953 (1974)).

164. *Id.* at 1084 (citing Courtney v. Comm'r, 32 T.C. 334, 343 (1959)).

165. *Id.* at 1084–85.

166. *See id.* at 1085. What about coaches or managers? In *Dews v. Commissioner*, a case involving Atlanta Braves baseball coach Robert Dews, the court expanded on *Gardin*, stating that in spite of the differences between a player and coach's responsibilities and his ability to be dismissed at any given time, players and coaches are essentially the same inasmuch as "they live a highly mobile life, and they have no well-established place of employment, other than that of the team with which they are associated." 53 T.C.M. (CCH) 1378 (1987).

B. Moving Expenses

In addition to the travel expenses an athlete pays or incurs while away from home on a temporary work assignment, a professional athlete may deduct all qualified moving expenses he pays or incurs that are associated with being assigned or traded to, or signing on with, a new team.[167]

In order for moving expenses to qualify for a deduction, the taxpayer must meet both the distance test and the time test.[168] Under the first test, the distance between the athlete's new work location and his former residence must be at least fifty miles greater than the distance between his former work location and residence.[169] For example, if an athlete lives ten miles away from the arena or stadium of the team for which he plays, and he is subsequently traded to a new team, then in order to qualify for a moving expense deduction, the arena or stadium of his new team will have to be at least sixty miles from the athlete's former residence. If the athlete does not have a former principal place of work, then his new work location must be at least fifty miles from his former residence.[170]

Under the second test, the athlete must be employed full time for at least thirty-nine weeks during the first twelve months after he arrives in the general area of his new principal place of work.[171] If he fails this specific time test, he is required to establish that he was either a full-time employee or was self-employed on a full-time basis in that location for at least thirty-nine weeks during the first twelve months AND for at least seventy-eight weeks during the first twenty-four months following his arrival.[172] This latter time test is particularly relevant for seasonal athletes who are otherwise employed full-time before the off-season, after the off-season, or both.

Although a professional athlete will nearly always satisfy the distance test, the time test is another issue. Training camps for the NFL start in July, and both the NBA and NHL open their training camps in September. Therefore, athletes who sign during the off-season may not have been working in their new location for the required thirty-nine weeks by the time they are required to file their returns for the tax year in which they moved. However, they are still entitled to

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167. *See* I.R.C. § 217(a) (2012). The deduction is above the line. *See* I.R.C. § 62(a)(15) (2012).
168. *See* I.R.C. § 217(c) (2012).
169. *See* I.R.C. § 217(c)(1)(A) (2012).
170. *See* I.R.C. § 217(c)(1)(B) (2012).
171. *See* I.R.C. § 217(c)(2)(A) (2012).
172. *See* I.R.C. § 217(c)(2)(B) (2012).

take a deduction in that tax year so long as they may still satisfy the time requirement as of the following year.[173] If an athlete does not fulfill the time requirement within the first twelve months after arriving in the general area of their new location, any deductions that were taken should be included as income for the following tax year.[174]

If the athlete satisfies the distance and time requirements, all qualified expenses for moving and travel with the exception of meals are deductible.[175] IRS Publication 521 provides guidance on those items that can and cannot be deducted and are summarized in the table below:

Table I
Moving Expenses[176]

Items you can deduct	Items you cannot deduct
Transporting household goods & personal belongings.	Any part of the purchase price of new home.
Packing & crating belongings.	Expenses of entering into or breaking a lease.
Lodging.[177]	Pre-move house-hunting expenses.
Shipping taxpayer's vehicle.	Return trips to former residence.
Shipping household pet.	Security deposits (including any given up due to the move).
Connecting or disconnecting utilities.	Storage charges, except those incurred in transit and for foreign moves

If the taxpayer drives his vehicle to his new home, he is entitled to deduct, as a moving expense under I.R.C. section 217, either (i) his actual expenses, such as the amount he pays for gas and oil, so long as he keeps an accurate record of each expense;[178] or (ii) the moving standard mileage rate published by the IRS in an annual notice.[179] In addition, the taxpayer may deduct parking fees and tolls that he pays or incurs during the move.[180] However, the taxpayer

173. *See* I.R.C. § 217(d)(2) (2012).

174. *See* I.R.C. § 217(d)(3) (2012).

175. *See* I.R.C. § 217(b)(1) (2012).

176. *See* I.R.S., MOVING EXPENSES 7–9 (2014), *available at* http://www.irs.gov/publications/p521/ar02.html [hereinafter IRS Publication 521].

177. In addition to the expense of lodging and travel to the taxpayer's new home, he can include lodging expenses he paid or incurred in the area of his former residence within one day after he could no longer live in the former residence because his furniture had been moved. *Id.* at 8.

178. Rev. Proc. 2010–51, 2010–51 I.R.B. 883–84, §§ 1, 4.02.

179. *Id.* at § 4.02.

180. *See id.* at § 4.02.

may not "take [both] a moving expense deduction and a business expense deduction for the same expense[].[181]

If an athlete moves outside the U.S. to play professionally, he may also claim two additional moving expenses.[182] Unlike taxpayers moving from one location to another within the U.S., he may claim the expense of moving his household items and "personal effects" to and from storage, as well as the expense of storing those items while he is playing with his new team.[183] These additional deductions would be available, for example, for players who were on the Atlanta Thrashers and incurred unreimbursed storage expenses when they moved with the team to Winnipeg.[184]

As with other expense deductions, professional athletes should keep receipts to justify each moving-related expense.

V. Responsibility of the Tax Preparer

Lamar Odom's case provides an example of the types of issues that arise between the IRS and professional athletes regarding the deductibility of expenses for this specific population.[185] Kevin Durant's case, in which he alleges his accountant committed malpractice when he took certain deductions on Durant's corporate tax return (for personal travel expenses and the services of a personal chef)[186] pose other interesting and timely questions: What is the responsibility of the tax professional in preparing an accurate return, and to whom is this responsibility owed? What are some of the potential repercussions should the preparer fail to meet those responsibilities?

In her 2013 Annual Report to Congress, the National Taxpayer Advocate identified accuracy-related penalties under I.R.C. sections 6662(b)(1) and (2) as the number one most litigated issue between taxpayers and the IRS.[187] As we shall see, one of the defenses that the taxpayer can potentially raise to avoid such penalties is his good faith reliance on his tax advisor's judgment.[188] Thus, the tax advisor's judgment in preparing the return—and whether his client

181. *See* IRS Publication 521, *supra* note 176, at 9.

182. *See id.*

183. *See* I.R.C. § 217(h)(1) (2012).

184. *See Thrashers Headed to Winnipeg*, ESPN (June 1, 2011), http://sports.espn.go.com/nhl/news/story?id=6610414.

185. *See, e.g.*, Barrett, *supra* note 1.

186. *See* Clay, *supra* note 2.

187. *See* National Taxpayer Advocate, Int'l revenue Service, *Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)*, in 2013 Annual Report to Congress 339 (2013), *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Accuracy-Related-Penalty-Under-IRC-6662-b-1-and-2.pdf [hereinafter *Accuracy-Related Penalty*].

188. *See id.*

should have relied on it—can become a key issue in the litigation.

A. Understatement of Tax Penalties: When Is the Taxpayer Liable?

Section 6662(b)(1) authorizes a penalty in the event that the taxpayer's negligence or disregard of IRS rules and regulations results in an understatement of tax.[189] I.R.C. section 6662(c) defines "'negligence'" as "any failure to make a reasonable attempt to comply with the provisions" of the I.R.C., and it includes the taxpayer's failure to keep adequate books and records, or to otherwise substantiate items, that results in an understatement of tax.[190] It also includes the taxpayer's failure to "reasonabl[y] attempt to ascertain the correctness of a deduction, credit, or exclusion."[191] I.R.C. section 6662(c) defines "'disregard'" to include any "careless, reckless, or intentional disregard."[192] The penalty does not apply, however, to any portion of the understatement where, given the "facts and circumstances,"[193] the taxpayer acted with "reasonable cause" and "in good faith" to determine his tax liability.[194]

A penalty for an understatement of tax may also be imposed, under I.R.C. section 6662(b)(2), if there is a substantial understatement of tax.[195] For purposes of determining whether it is substantial, the understatement is first reduced, generally, by any amount that is attributable to an item for which the taxpayer has substantial authority.[196] The understatement is also reduced by any amount attributable to an item for which the taxpayer adequately discloses the relevant facts affecting the item's tax treatment on his return and for which the taxpayer had a reasonable basis for the specific tax treatment taken.[197] If the resulting understatement exceeds the greater of (i) $5,000; or (ii) 10% of the tax that the individual was required to show on his return, then it is "substantial," and it exposes the taxpayer to the penalties authorized under I.R.C. section 6662(d)(1)(A).[198]

In either case, understatement of tax or "accuracy-related" penalties can be significant. They are generally calculated at 20% of the portion of the understatement that is attributable to either the taxpayer's negligence or disregard of

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189. I.R.C. § 6662(b)(1) (2012).

190. *See* I.R.C. § 6662(c) (2012); *see also* Treas. Reg. § 1.6662-3(b)(1) (2014).

191. Treas. Reg. § 1.6662-3(b)(1)(ii) (2014).

192. I.R.C. § 6662(c) (2012).

193. *See* Treas. Reg. § 1.6664-4(b)(1) (2014).

194. I.R.C. § 6664(c)(1) (2012).

195. I.R.C. § 6662(b)(2) (2012).

196. *See* I.R.C. § 6662(d)(2)(B) (2012).

197. I.R.C. § 6662(d)(2)(B)(ii) (2012).

198. *See* I.R.C. § 6662(d)(1)(A) (2012).

the rules or regulations, or that constitutes a substantial understatement.[199] While penalties may be imposed under both I.R.C. sections 6662(b)(1) and (2), the maximum penalty is limited to 20% of whichever amount is greater.[200]

The National Taxpayer Advocate "identified 178 opinions issued between June 1, 2012, and May 31, 2013," in which an understatement of tax penalty was litigated, and they are instructive.[201] She determined that the courts ruled in favor of the IRS in 78% of the cases.[202] She also found, however, that while many litigants failed to claim the reasonable cause and good faith defense under I.R.C. section 6664(c), taxpayers were most successful in overcoming accuracy-related penalties when they produced adequate records showing that they made a good faith attempt to substantiate the deductions they took, or otherwise established that they made a reasonable attempt to comply with the rules and regulations.[203]

In one of those cases, the Tax Court ruled that the taxpayer's records were inadequate to properly substantiate certain business expense deductions taken on his return and, thus, it upheld the IRS's decision to disallow those deductions.[204] However, because the amount of his deductible expenses could be estimated, and because the taxpayer demonstrated a good faith effort to maintain records, the court did not uphold the IRS's assessment of accuracy-related penalties.[205] On the other hand, in cases in which the IRS disallowed a deduction because the taxpayer failed to substantiate it, the Tax Court upheld accuracy-related penalties if the taxpayer failed to demonstrate a good faith effort to keep records.[206] In one case, it found a taxpayer negligent for having destroyed his records after being told that he would soon die.[207] Because he did not keep the records that were required to substantiate the deduction, he could not establish that he acted with reasonable cause and in good faith to determine his tax liability.[208] In another case, the Tax Court upheld the understatement of tax penalty imposed on a married couple after they were disallowed a Net Operating Loss (NOL) deduction that they failed to substantiate.[209] Despite the fact that the

199. *See* I.R.C. § 6662(a) (2012).

200. *Accuracy-Related Penalty*, *supra* note 187, at 339; *see also* Treas. Reg. § 1.6662–2(c) (2014).

201. *See Accuracy-Related Penalty*, *supra* note 187, at 341.

202. *Id.*

203. *Id.* at 342.

204. *Id.* at 342 (citation omitted).

205. *Id.*

206. *See id.* at 342–43.

207. *Id.* at 343 (citation omitted).

208. *Id.*

209. *Id.* (citation omitted).

husband suffered a brain aneurysm, he continued his practice as a Certified Public Accountant (CPA) and, therefore, his illness was not sufficient to explain his failure to comply, in good faith, with the substantiation requirements.[210]

In still other cases, taxpayers successfully overcame an accuracy-related penalty when they were able to demonstrate a good faith, misunderstanding of the law.[211] For instance, one taxpayer avoided the accuracy-related penalty assessed in connection with a dependency exemption that she had claimed and that the IRS had disallowed.[212] The Tax Court found her to be too inexperienced in taxation to hold her negligent in attempting to comply with the law.[213] In another case, the taxpayer avoided the accuracy-related penalty assessed in connection with self-employment taxes after demonstrating that she was inexperienced, did not understand her employment status even after consulting the instructions for the Form 1040, and did not understand that she owed the taxes.[214]

B. When Is the Taxpayer's Reliance on a Tax Professional an Adequate Defense?

Some of the decisions reviewed by the National Taxpayer Advocate, in which an understatement of tax penalty was litigated, involved taxpayers who relied on the advice of a tax professional.[215] This raises the question as to whether a taxpayer can overcome accuracy-related penalties because of his reliance on such advice. One of the key factors, when taking into consideration the taxpayer's education, degree of sophistication, and business experience, is whether the taxpayer's reliance was reasonable.[216] In addition, the taxpayer must satisfy a three-prong test set forth in *Neonatology Associates, P.A. v. Commissioner*[217]:(1) The adviser was a competent professional who had sufficient expertise to justify reliance, (2) the taxpayer provided necessary and accurate information to the adviser, and (3) the taxpayer actually relied in good faith on the adviser's judgment.[218] For example, in *Cook v. Commissioner*,[219] the taxpayer was able to satisfy *Neonatology Associates'* three-prong test to overcome an accuracy-related penalty that was assessed in connection with a mistake his

210. *Id.*

211. *Id.* at 342 n.34.

212. *Id.* at 342 n.34 (citation omitted).

213. *Id.*

214. *Id.* (citation omitted).

215. *See id.* at 344.

216. *Id.* (citations omitted).

217. *See generally* 115 T.C. 43 (2000), *aff'd*, 299 F.3d 221 (3d Cir. 2002).

218. *Id.* at 99 (citation omitted).

219. *See generally* 103 T.C.M. (CCH) 1983 (2012).

CPA made on his return.[220] The taxpayer was able to establish that he had provided the CPA with proper documentation substantiating the expense in question.[221] The taxpayer was still liable, however, for the portion of the penalty relating to deductions for which he could *not* prove that he provided the CPA with proper documentation so as to substantiate them.[222]

In *Meinhardt v. Commissioner*,[223] the taxpayers were able to overcome the full accuracy-related penalty.[224] Although the IRS had disallowed business expense deductions that they could not substantiate, the taxpayers were able to establish that they had hired an experienced practicing attorney to prepare their returns and had provided him with all of the documents they thought were relevant.[225] The Court found that the taxpayers had relied in good faith on their attorney in the preparation of their return and, therefore, they were not liable for the accuracy-related penalty.[226]

Mills v. Commissioner[227] and several other cases cited by the National Taxpayer Advocate[228] illustrate the real danger of using a preparer who is not a competent professional with sufficient expertise to justify the taxpayer's reliance.[229] Because of the poor choices they made in selecting an individual to provide them with sound tax advice and to prepare an accurate return for them, the taxpayers in these cases failed to establish the first prong of the three-prong test set forth in *Neonatology Associates, P.A. v. Commissioner*.[230] They were, thus, held liable for the IRS's assessment of accuracy-related penalties.[231]

Ultimately, taxpayers have the responsibility of filing accurate returns with the IRS, and they may fulfill this obligation by preparing the returns themselves or by hiring someone else who is qualified to do so. Tax return preparers, in turn, owe a professional responsibility to their clients to prepare accurate returns based on all of the information that the client makes available to them. Their

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220. *Id.* at *4; *see also Accuracy-Related Penalty*, *supra* note 187, at 345 n.51 (citation omitted).

221. *See Cook*, 103 T.C.M. (CCH) at *1; *see also Accuracy-Related* Penalty, *supra* note 187, at 345 n.51 (citation omitted).

222. *See Cook*, 103 T.C.M. (CCH) at *4; *see also Accuracy-Related Penalty*, *supra* note 187, at 345 n.51 (citation omitted).

223. *See generally* 105 T.C.M. (CCH) 1530 (2013).

224. *Id.* at *6.

225. *Id.* at *6; *see also Accuracy-Related Penalty*, *supra* note 187, at 345 (citation omitted).

226. *Meinhardt*, 105 T.C.M. (CCH) at *6; *see also Accuracy-Related Penalty*, *supra* note 187, at 345 (citation omitted).

227. *See generally* 105 T.C.M. (CCH) 1014 (2013).

228. *See Accuracy-Related Penalty*, *supra* note 187, at 345 n.57 (citations omitted).

229. *Id.*; *see also* Deutsch v. Comm'r, 104 T.C.M. (CCH) 573, *23 (2012).

230. *See, e.g.*, *Deutsch*, 104 T.C.M. (CCH) at *7.

231. *See, e.g.*, *id.*

failure to exercise the degree of care and to utilize the knowledge that a qualified professional would use to prepare the return constitutes malpractice, a cause of action for which they could potentially be held liable under state law. They may also be enjoined under I.R.C. section 7407 from preparing tax returns if they engage in fraudulent or deceptive conduct that interferes with the administration of the internal revenue laws.[232] Unfortunately, these actions can be taken only after real harm has been done.

In any event, it appears that a taxpayer may not avoid accuracy-related penalties where his reliance on his tax advisor was not justified. If the taxpayer's reliance on his advisor was not justified, it certainly calls into question the taxpayer's chances of prevailing against him for malpractice.

VI. CONCLUSION

Lamar Odom and Kevin Durant represent only two examples of the hundreds of professional athletes who work as high profile employees in a multi-billion-dollar sports industry. As employees, they are entitled to certain tax deductions under U.S. tax law for the business expenses they incur. This Article reviews some of those expenses and outlines the I.R.C. sections and regulations that determine their deductibility. It also reviews relevant U.S. Supreme Court rulings, U.S. Tax Court rulings, and the IRS's own publications and Revenue Rulings. As for the deductibility of a player's hot tub, the answer—as with many of these expenses—centers on the nature of the expense, the circumstances under which it has been incurred, and whether it has been properly substantiated.

Business expenses that fail to be either "ordinary" or "necessary," or that are unsubstantiated, have been routinely disallowed by the IRS. Thus, professional athletes and their advisors need to understand what constitutes "ordinary" and "necessary" in the context of their particular sport, as well as the recordkeeping that needs to be maintained in order to substantiate the expenditure. Finally, as Kevin Durant's case underscores, professional athletes, like other taxpayers, are ultimately responsible for filing accurate returns with the IRS. It is absolutely critical that they enlist a qualified tax advisor who is willing and able to provide them with the appropriate advice.

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232. *See* I.R.C. § 7407 (2012).