STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
GEORGETTE FLEISCHER	:	DECISION DTA NO. 825817
for Redetermination of Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 2009 through 2011.	:	

Petitioner, Georgette Fleischer, filed an exception to the determination of the Administrative Law Judge issued on October 1, 2015. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel).

Petitioner filed a brief in support of her exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a reply brief. Oral argument was heard in New York, New York on June 16, 2016, which date began the six-month period for the issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether it was proper for the Division of Taxation to deny deductions claimed by petitioner for unreimbursed employee business expenses.

II. Whether it was proper for the Division of Taxation to deny deductions for the legal expenses incurred by petitioner.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except that we have modified findings of fact 3, 27 and 28. We have also added additional findings of fact, numbered 29 through 31 herein. We make these changes to more accurately reflect the record. The Administrative Law Judge's findings of fact, the modified findings of fact and the additional findings of fact are set forth below.

1. During the years in issue, petitioner, Georgette Fleischer, was an adjunct professor of English at Barnard College. She taught literature and English and had the title of Lecturer. She also taught classes at Columbia University, which is associated with Barnard College.

2. Petitioner filed a New York State resident income tax return for the year 2009 wherein she claimed job expenses and miscellaneous deductions in the amount of $3,265.00. The return included wage and tax statements from Columbia University and Barnard College. Petitioner did not report any business income for this year. The corresponding federal income tax return for 2009 listed the following unreimbursed employee business expenses that were subject to the two percent of adjusted gross income limitation:

Union and professional dues	$130.00
Professional subscriptions	$439.00
Supplies and research materials used at job	$2,550.00
Computer used only for work $2467.00 @ 20%	$494.00

3. Petitioner filed a resident income tax return for the year 2010 wherein she reported job expenses and miscellaneous deductions in the amount of $14,212.00. Except for legal expenses (***see*** finding of fact 29), the record does not contain a listing of the specific expenses claimed. The return included wage and tax statements from Columbia University and Barnard College and

a schedule C-EZ wherein she reported income from a business or profession of writing and editing.

4. Petitioner filed a resident income tax return for the year 2011 wherein she reported job expenses and miscellaneous deductions in the amount of $21,064.00. The return included wage and tax statements from Columbia University and Barnard College. Petitioner did not report any business income for this year.

5. Petitioner's federal income tax return for 2011 reported the following amounts as unreimbursed employee expenses on line 21:

Excess educator expenses	$1,817.00
Professional subscriptions	$585.00
Supplies/research materials used at jobs	$2,180.00

6. At the hearing, petitioner offered the following breakdown of the foregoing unreimbursed employee expenses:

Research	$835.00
Publications	$383.00 plus $202.00 New York Times
Gifts	$138.00
Photocopy/Paper (including printer ink)	$599.00
Postage and FedEx	$265.00
Photos (developing)	$34.00
Transportation	$317.00
Meals and Entertainment	$322/2 = 50%
Professional Computer Help	$300.00
Office Equipment (purchases)	$1,144.00
Office Equipment (repair and replacement parts)	$191.00

7. Petitioner reported the following legal expenses on her federal schedule A as other expenses subject to the two percent limitation:

"Legal bills for the preservation of income (Taxpayer lost her employment due to various situations and in [sic] involved in legal action for her livelihood)"	$16,801.00

8. On or about March 19, 2012, the Division of Taxation (Division) sent a letter to petitioner asking for documentation verifying certain deductions claimed for job expenses and miscellaneous deductions. Among other things, the Division requested that petitioner provide a letter from her employer verifying that the reported expenses were necessary for her employment and were not reimbursed or reimbursable. Petitioner was also asked to explain the nature of each expense as well as provide cancelled checks and receipts that identify the items purchased.

9. In response to the request, the Division received hundreds of pages of documentation including receipts, copies of tickets that were purchased for travel or entertainment, expense verification for items such as cost of supplies and verification of expenses, letters of explanation, newspaper clippings and copies of blog entries. Petitioner also presented a list of invoices pertaining to legal expenses and a letter from Barnard College that explained that the expenses of adjunct professors were not reimbursed.

10. Petitioner did not feel that she could pressure her employer to provide a more detailed letter regarding unreimbursed expenses because she felt that doing so would place her employment in jeopardy.

11. Following a review of the documentation, the Division found that a substantial portion of the expenses were for legal fees and concluded that these fees were not deductible because the legal action that petitioner was engaged in was not for the preservation and

maintenance of income.[1] The Division also concluded that the letter from petitioner's employer was unsatisfactory because it did not mention any expenses that may have been required. Rather, it only stated that expenses were not reimbursed.

12. On October 10, 2012, the Division issued a notice of deficiency to petitioner stating that, following a review of her documentation for 2009, the itemized deductions claimed as job expenses and the other miscellaneous deductions had been disallowed for lack of acceptable verification as requested. The notice further explained that in order to claim amounts as job expenses, the taxpayer was required to provide a letter from her employer stating that the expenses were required and necessary for her position and that no reimbursement was given for the expenses being claimed. The Division also stated that the amounts deducted as legal fees required proof of lost wages or income. On the basis of the foregoing conclusions, the Division issued a series of notices of deficiency that stated that additional New York State and New York City personal income tax was due as follows:

Year	Date of Notice	Tax	Interest	Balance Due
2009	10/10/12	$337.00	$69.12	$406.12
2010	10/10/12	$1,412.00	$165.68	$1,577.68
2011	10/17/12	$637.50	$24.69	$662.19

13. Barnard is a distinguished leader in higher education offering a rigorous liberal arts education to young women. It prides itself on using the resources of New York City, and in the first year writing seminar, Barnard faculty are expected to go into the city and establish connections with cultural activities that pertain to their courses.

[1] Substantiation of the amount of the deductions is not in issue.

14. Barnard describes the first year seminar as a course that gives students the experience of being in New York City. Lecturers are provided with a budget of $20.00 per student to bring them to a theater, opera, museum or other experience pertinent to the course. The $20.00 is for the entire semester and lecturers often contribute their own money.

15. Teachers are expected to go out on their own in order to be cultured and knowledgeable. If lecturers are not at a certain standard, they are not invited to continue in the program. The acquisition of theater tickets to performances of plays that petitioner teaches, as well as other events, is necessary for the research and cultural development of Columbia and Barnard professors.

16. Petitioner deducted three tickets to the Radio City Christmas Spectacular as an employment expense. In response to the question as to the business reasoning behind the deduction, petitioner replied "I guess I would consider it very general."

17. Books, literary publications and other research expenses are necessary for petitioner to develop her knowledge and writing skills in order to teach courses that require a great deal of writing. The disciplines taught include English, American Studies, Human Rights and a variety of other cultural and historical studies.

18. If an individual employed in a teaching position is on a tenured track, that person would have financial support to do research in libraries, go to other cities to attend conferences, to travel overseas for research related to schools' scholarships and to be present in the city at various cultural events. This type of support is not available to adjunct lecturers.

19. The only office available to petitioner at Barnard is shared with other faculty. Consequently, petitioner has only a certain number of hours a week to work in an office environment.

20. Petitioner needs a computer and printer in order to perform her job. When petitioner is away from the campus, she needs to be available to students via email. She also needs to create and print assignment sheets and to print drafts of students' essays that she receives as email attachments. Personal computers or other equipment are not generally available to petitioner at the college. The college does not reimburse petitioner for the cost of computers, printing and paper.

21. With respect to the travel expenses, petitioner explained that she is in the process of writing a memoir about her father. As a writing teacher, she is expected to be viable as a writer in order to be effective as a teacher. Petitioner also deducted the expense of cab rides between visits to the doctor and Barnard. These expenses were regarded as deductible because taking a cab was the only way she could get to class on time.

22. In or about 2005, a restaurant opened in the Soho area of New York City. Over time, the owners mounted amplifiers and wide screen televisions on the outside of the building and the restaurant expanded its operation by turning its sidewalk café into a sports bar. On one occasion, petitioner was awakened at 1:30 A.M. by a crowd watching a fight. Petitioner was one of a number of residents in this neighborhood who opposed the operation of the restaurant. In petitioner's opinion, problems were presented by the noise, police activity and the potential for a fire. As a result, petitioner, who regards herself as a community organizer, testified against the restaurant at a Community Board hearing, complained to her elected representatives and made a number of telephone calls concerning the noise emanating from the restaurant.

23. In May 2010, the New York Post published an article that identified petitioner as the individual who called in complaints about the restaurant. The next day, another newspaper article appeared about petitioner titled "It's a Case of Whine and Dine." The online version of

the newspaper stated "Barnard Professor annoys in class as well as in SoHo" and that petitioner was bothersome to students as well as revelers. Comments appearing in the article criticized petitioner's scholarship, writing and teaching. One article quoted a student who stated that petitioner had mood swings before and after class. Other critical articles appeared on the websites Gothamist and Gawker that referred to petitioner as the "Soho Noise Nazi" who shuttered another bar. Subsequently, additional articles appeared in the New York Post that stated that petitioner would have mood swings before and after class and would create issues for students. Four of the articles were republished in the school newspaper.

24. CULPA is the Columbia Underground Listing of Professor Ability. Some of the language from the defamatory articles seeped into the CULPA reviews.

25. In addition to the tenured faculty, there are senior lecturers who are in charge of portions of the program. Some senior lecturers become upset if there is any public attention arising from events external to the college given to one of the lecturers. In addition, petitioner believed that public relations was very important to those in the college administration and that, if it was believed that petitioner was tarnishing the school's marketability, she would be dismissed. Since she regarded her employment at Barnard as tenuous, petitioner felt that the articles described above could be damaging to her part-time employment.

26. An associate of petitioner overheard discussions by administrators who were concerned by the publicity. These administrators did not want any of the faculty to be associated with anything that might damage or hurt the reputation of the college. One supervisor was placed in a position of having to defend petitioner's employment because a professor associated with Barnard was not expected to be subject to critical publicity.

27. Petitioner initiate a lawsuit against the publisher of the New York Post, the publisher of the website Gothamist and the publisher of the website Gawker (the defendants).[2] The theory of petitioner's lawsuit, as set forth in the amended complaint filed therein, was that in retaliation for petitioner's public opposition to the operation of a particular restaurant (***see*** finding of fact 22), the defendants purposefully conspired to ruin petitioner's reputation by publishing various articles while knowing such articles contained false statements. In addition, it was alleged that the defendants had violated petitioner's personal privacy. The amended complaint sought damages for the harm that had been done to her reputation, the loss of a particular teaching assignment and for emotional and psychological injuries. Ultimately, the lawsuit was dismissed on the ground that the allegations were conclusory and unsubstantiated. However, petitioner believes that the lawsuit deterred further publication of offending articles.

28. After the publication of the articles in the New York Post, the Gothamist and Gawker in May 2010 (***see*** finding of fact 23), many students dropped petitioner's class. Petitioner had never experienced an exodus from her class like this in the past. Between the offering of her summer course and the beginning of the critical articles, petitioner's income was reduced by 25 percent because she lost two writing workshops and a summer teaching job. Prior to the alleged defamation, she had been offered the workshops on a continuing basis. The following year, her income returned to a pre-defamation level. Petitioner continued to be worried about her work, her ability to support herself and her professional reputation.

29. At the hearing, petitioner submitted documentation of her legal expenses incurred in connection with her defamation lawsuit. Her 2011 legal expenses are noted in finding of fact 7.

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[2] Petitioner considered suing one student who appeared to be prompting the articles in the New York Post but decided against it because the attorneys felt that suing a student would make her look bad. However, she did speak to the police about the student.

In 2010, she incurred $10,325.00 in such legal expenses. Such 2010 legal expenses are included in petitioner's total claimed miscellaneous itemized deductions of $14,212.00 for that year (***see*** finding of fact 3).

30. Petitioner also submitted documentation at the hearing that provides the following detail for her claimed 2009 unreimbursed employee expenses:

Research	$907.00
Professional Dues	$130.00
Professional Subscriptions	$439.00
Photography (equipment repair and developing)	$91.00
Photocopy/paper (including printer ink)	$823.00
Postage and FedEx	$122.00
Transportation	$185.00
Professional Gifts	$190.00
Meals and Entertainment	$231.00
Computer/Printer @ 20%	$494.00

31. At the start of the hearing, the Administrative Law Judge noted that he would consider only evidence introduced at the hearing in reaching his determination. He also noted that, if petitioner had provided the Division with documents prior to the hearing, it would be necessary for petitioner to introduce such documents into evidence at the hearing if petitioner wanted the Administrative Law Judge to consider them in rendering his determination.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that petitioner met her burden of proof to show entitlement to her claimed 2009 unreimbursed employee business expenses and therefore canceled the notice of deficiency for the 2009 tax year.

The Administrative Law Judge denied petitioner's claimed unreimbursed employee business expenses and other miscellaneous expenses for 2010 because he found that the record lacked any itemization of those expenses. He therefore sustained the notice of deficiency for the 2010 tax year.

With respect to the 2011 tax year, the Administrative Law determined that petitioner's legal expenses were not properly deductible because petitioner's defamation suit arose from her activities as a neighborhood activist and were thus personal in nature. The Administrative Law Judge also found that petitioner did not prove that her claimed deduction for meals was a necessary business expense. Petitioner's claimed entertainment expenses were granted, except for tickets to Radio City, which was deemed a personal expense. The Administrative Law Judge concluded that petitioner's expenses incurred for research and publications were deductible, except for the cost of the New York Times, which was deemed a personal expense. Petitioner's claimed transportation and travel expenses were denied as personal in nature. The Administrative Law Judge also determined that petitioner failed to establish entitlement to the remaining claimed employee business expenses.

SUMMARY OF ARGUMENTS ON EXCEPTION

Along with her notice of exception and brief on exception, petitioner submitted a 2010 miscellaneous itemized deductions statement and a document detailing the employee business expenses claimed on the statement. Petitioner requests that these documents be received into the record in this matter. Petitioner claims that her failure to submit the documents at the hearing was simply an oversight and that, considering her status as a pro se litigant, she should be afforded some leeway. She notes further that the documents in question were provided to the Division during the audit.

Next, petitioner broadly challenges the right of the Division to "pre-audit a taxpayer, making her guilty before she has a chance to prove her innocence." Petitioner also asserts that the Division treated her in a "prejudicial manner" throughout the audit.

As to the specific deductions in dispute, petitioner asserts that the legal fees associated with her defamation suit are properly deductible because the alleged defamatory statements struck at her professional competency and fitness and thereby threatened her employment. Petitioner seeks to distinguish the precedent upon which the determination relies, and finds support for her position in other case law.

Petitioner also notes that her claimed deductions for business gifts, computer-related expenses, postage, and photography were allowed by the Administrative Law Judge for the 2009 tax year and contends, therefore, that these categories of expenses should be allowed for subsequent years. Furthermore, and contrary to the Administrative Law Judge's conclusions, petitioner contends that her claimed deductions for meals and transportation were ordinary and necessary and therefore should be allowed.

The Division asserts that, consistent with the long-standing precedent of this Tribunal, the documents offered by petitioner with her exception should not be received in the record.

Nevertheless, upon review of such documentation, and during the pendency of this decision, the Division modified its asserted deficiency for the 2010 tax year by allowing employee business expenses of $2,147.60. This total is based on the following specific allowances: computer/cable/printer $257.60; postage $203.00; professional dues $100.00; professional subscriptions $579.00; and supplies $1,008.00. The Division advised this Tribunal of this modification by letter dated July 1, 2016.

With respect to petitioner's claimed deductions for legal expenses, the Division contends that the Administrative Law Judge properly determined that such expenses arose from her activities as a community activist and therefore were not deductible. The Division thus agrees with the Administrative Law Judge that the proper standard by which to determine the deductibility of legal expenses in this context is the origin of claim test and that the primary purpose of the litigation is not determinative.

The Division also contends that petitioner failed to establish that she was entitled to the remaining deductions at issue and that, accordingly, the Administrative Law Judge properly denied such deductions.

OPINION

We first address petitioner's general claims regarding the audit. Upon review of the record, we find no impropriety in the manner in which the Division performed its audit of petitioner. The Division plainly has the authority to audit a taxpayer's income tax return and to issue a notice of deficiency if it determines that additional tax is due (Tax Law § 681 [a]). As in the present case, the Division may request that a taxpayer substantiate claimed deductions as part of the audit process. This is, of course, consistent with the law, noted below, that requires a taxpayer to establish entitlement to his or her claimed deductions. We therefore dismiss petitioner's claim of prejudicial treatment as unfounded.

Turning now to the deductions at issue, as a general principle, petitioner has the burden of refuting the Division's disallowance of her deductions and of establishing her entitlement to the claimed expenses (***see Matter of Sperl***, Tax Appeals Tribunal, May 8, 2014).

A deduction is a "particularized species of exemption" and, accordingly, a statute granting a deduction must be "construed against the taxpayer," although not so narrowly as to

"defeat its settled purpose" (***Matter of Grace v New York State Tax Commn.***, 37 NY2d 193, 196-197 [1975], ***rearg denied*** 37 NY2d 816 [1975], ***lv denied*** 338 NE2d 330 [1975]).

Internal Revenue Code (IRC) (26 USCA) § 162 (a) permits deductions for "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." An ordinary expense is one that is "common and accepted," although not necessarily "habitual" (***Welch v Helvering***, 290 US 111, 114 [1933]). A necessary expense is one that is "appropriate and helpful in carrying on the trade or business" (***Heineman v Commr.***, 82 TC 538, 543 [1984]). The performance of services as an employee is considered a trade or business (***O'Malley v Commr.***, 91 TC 352, 363-364 [1988]). Certain deductions from adjusted gross income, such as the claimed unreimbursed employee business expenses and claimed legal expenses at issue, are considered miscellaneous itemized deductions and are allowed only to the extent that the aggregate of such deductions exceeds 2% of the taxpayer's adjusted gross income (IRC [26 USC] § 67 [a]).[3]

Whether legal fees are deductible as an ordinary and necessary business expense depends on the origin and character of the claim with respect to which the expense was incurred and not on its potential consequences on the fortunes of the taxpayer (***United States v Gilmore***, 372 US 39, 49 [1963]). If the legal claim "arises in connection with the taxpayer's profit-seeking activities," then the legal fees are deductible (***id***. at 48). If not, then the legal fees are personal and nondeductible. In other words, "the characterization, as 'business' or 'personal' of the litigation costs . . . depends on whether or not the claim arises in connection with the taxpayer's profit-seeking activities" (***id.*** at 48). The Supreme Court derived this principle, in part, from an

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[3] We note that federal income tax law is determinative in the present matter because federal adjusted gross income is the starting point in determining an individual's New York adjusted gross income and federal itemized deductions provide the starting point for the calculation of New York itemized deductions (***see*** Tax Law §§ 612, 615 [a]).

earlier case that held that legal expenses were deductible as a business expense "'where a suit or action against a taxpayer is directly connected with, or . . . proximately resulted from, his business'" (***Gilmore*** at 47 citing ***Kornhauser v United States***, 276 U.S. 145, 153 [1928]). ***Gilmore*** also premised its rule on an earlier holding that the controlling factor in determining the deductibility of an expense incurred in satisfying an obligation depends on "'the origin of the liability out of which the expense accrues' or 'the kind of transaction out of which the obligation arose'" (***Gilmore*** at 47-48 citing ***Deputy v du Pont***, 308 U.S. 488, 494, 496 [1940]). Subsequent cases have made clear that the deductibility of such legal expenses also does not depend on "the taxpayer's purpose for undertaking the litigation" (***Tsai v Commr.***, TC Summ Op 2013-26 [2013]; ***see also Wellpoint, Inc. v Commr.***, TC Memo 2008-236 [2008]).

Here, petitioner's legal fees were incurred in the prosecution of her claim of defamation against entities that reported on her complaints against the restaurant and, in so doing, allegedly smeared her professional reputation as a professor of English. Petitioner thus became a newsworthy subject (at least in the apparent judgment of the defendants in the litigation), and hence a potential object of libel, because of her personal actions as a community activist. Indeed, the theory of petitioner's litigation was that the defendants were attempting to ruin her personal and professional reputations specifically in retaliation for her actions as a community activist. Accordingly, the origin of her claim of defamation arose, not in connection with her profit-seeking activities, i.e., her employment, but in her personal actions. We thus agree with the Administrative Law Judge's conclusion that the Division properly denied petitioner's deductions for legal expenses in 2010 and 2011.

Petitioner cites ***Salt v Commr.*** (18 TC 182 [1952]) in support of her position. The issue in that case was whether Salt, a motion picture screenwriter, properly deducted legal expenses

incurred in connection with a subpoena to appear before the United States House of Representatives Un-American Activities Committee. The court found that the committee's investigation was directly related to the motion picture industry, of which Salt was a part, and that Salt's future employment in that industry was at stake in the investigation, as a blacklisting of Salt was a potential outcome. The court thus determined that the subject legal expenses were directly related to Salt's business of screenwriting and were therefore properly deductible.

Petitioner likens her situation to that of the taxpayer in ***Salt*** and contends that, accordingly, that decision supports her position herein. We disagree. Salt was subpoenaed, and thereby incurred legal costs, because he was a screenwriter. Salt's legal fees thus arose from, and proximately related to, his employment. Here, petitioner's legal costs arose in response to an alleged defamation. The claimed defamation, however, arose not from her employment, but from her personal activities, for, as discussed, petitioner became a newsworthy subject because of her personal actions. Hence, the event that prompted petitioner to incur legal fees did not arise in connection with her employment (***see Test v Commr***., TC Memo 2000-362 [2000]; ***see also Lykes v United States***, 343 US 118 [1952], ***rehearing denied*** 343 US 937 [1952] [legal costs incurred to successfully defeat an erroneous gift tax assessment arose from the gift and not the erroneous assessment and were therefore personal and nondeductible]).

Turning now to petitioner's claimed deductions for unreimbursed employee business expenses, we note that the Administrative Law Judge determined that petitioner proved entitlement to such claimed expenses for the 2009 tax year.

For the 2010 tax year, as noted previously, the Administrative Law Judge denied petitioner's claim for unreimbursed employee business expenses because the record lacked any itemization of those expenses. As also noted previously, petitioner has attempted to cure this

evidentiary defect by submitting, on exception, a 2010 miscellaneous itemized deductions statement and a document detailing the employee business expenses claimed on the statement.

This Tribunal has long and consistently held that we do not consider evidence offered with an exception if such evidence was not part of the record before the Administrative Law Judge (***see e.g. Matter of Katz***, Tax Appeals Tribunal, September 29, 2016). As we have often stated, our statutory obligation to provide a fair and efficient hearing process requires that such process be both defined and final and that the acceptance of evidence after the record has been closed is not conducive to this obligation (***see e.g. Matter of Laham***, Tax Appeals Tribunal, October 27, 2016). On the other hand, this Tribunal recognizes as asserted by petitioner, that the formal rules for introducing a document into evidence may be confusing to pro se litigants. However, in this case, petitioner was not so confused because she was able to introduce into evidence similar documents for 2009 and 2011. Accordingly, we do not accept the documents related to petitioner's 2010 deductions that were offered for the first time with petitioner's exception and we have not considered such documents in rendering this decision.[4] We note that the Administrative Law Judge expressly advised petitioner of the need to submit all relevant documents in evidence at the start of the hearing (***see*** finding of fact 31).

Accordingly, in the absence of an itemization of petitioner's claimed unreimbursed employee business expenses for 2010, we must conclude that petitioner has not proven that such deductions were proper (***see Matter of Sperl***).

With respect to the 2011 tax year, we agree with the Administrative Law Judge's conclusion that petitioner has established entitlement to her claimed deduction for research and

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[4] We note that the detriment to petitioner occasioned by her failure to offer the documents in question at the hearing is ameliorated by the existence of other documents in the record that establish that she paid $10,325.00 in legal fees in 2010 in connection with the defamation litigation and the Division's concession that she had $2,147.60 in unreimbursed employee business expenses for that year.

her claimed deduction for publications, except for the New York Times (***see*** finding of fact 6). Absent proof to the contrary, and there is none here, we find that the New York Times subscription expense is reasonably deemed personal.

We also agree with the Administrative Law Judge's conclusion that petitioner has not established entitlement to her 2011 deductions under the categories of gifts, transportation and meals and entertainment (***id.***). In our view, there is insufficient evidence to show that these were ordinary and necessary expenses.

We disagree, however, with the Administrative Law Judge's conclusion denying petitioner's claimed 2011 deductions for photocopy/paper (including printer ink) ($599.00), professional computer help ($300.00), office equipment (purchases) ($1,144.00), office equipment (repair and replacement parts) ($191.00), postage and FedEx ($265.00) and photos (developing) ($34.00) (***id.***). We find support for the deductibility of these expenses in the Administrative Law Judge's findings that petitioner used a computer in her job and was required to provide her own supplies. We thus conclude that petitioner has established that these expenses were ordinary and necessary to her employment.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Georgette Fleischer is granted to the extent indicated in paragraph 4 below, but is otherwise denied;

2. The determination of the Administrative Law Judge is reversed to the extent indicated in paragraph 4 below, but is otherwise affirmed;

3. The petition of Georgette Fleischer is granted to the extent indicated in paragraph 4 below, but is otherwise denied; and

4. The notice of deficiency for the tax year 2009, dated October 10, 2012, is canceled; the notice of deficiency for the tax year 2010, dated October 10, 2012, modified as indicated in the Division's letter to this Tribunal, dated July 1, 2016 (***see*** p 12 herein), is sustained; and the notice of deficiency, dated October 17, 2012, modified as indicated in conclusions of law I and J of the Administrative Law Judge's determination, and further modified as indicated in this decision (***see*** p 18 herein), is sustained.

DATED: Albany, New York
December 16, 2016

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner
By JAM with permission