

115 T.C. No. 16

UNITED STATES TAX COURT

MARIN I. AND ANITA J. JOHNSON, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 5114-98.

Filed September 15, 2000.

P is a merchant seaman who captains a vessel that sails worldwide carrying equipment of the U.S. military. The vessel sails infrequently in the general vicinity of P's residence, which also is not near the office of P's employer. P's employer furnishes him with lodging and meals without charge while he works on the vessel, but P pays for his other (incidental) travel expenses. P reported his incidental travel expenses as miscellaneous itemized deductions for 1994 and 1996, ascertaining the amounts of those deductions by using the full Federal per diem rates for meal and incidental expense (M&IE rates). The M&IE rates are referenced in Rev. Proc. 96-28, 1996-1 C.B. 686, and its progenitors, which provide that an employee, in lieu of substantiating his or her actual travel expenses, may use the M&IE rates to compute the cost of meal and incidental expenses paid while working away from home. See, e.g., *id.* sec. 4.03, 1996-1 C.B. at 688. P has no receipts for his incidental travel expenses.