
**PURSUANT TO INTERNAL REVENUE CODE
SECTION 7463(b), THIS OPINION MAY NOT
BE TREATED AS PRECEDENT FOR ANY
OTHER CASE.**

T.C. Summary Opinion 2011-138

UNITED STATES TAX COURT

ALLAN K. VETERE, Petitioner y.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 18287-10S.

Filed December 19, 2011.

Allan K. Vetere, pro se.

Kimberly A. Kazda and Bryce Nakamura (student), for
respondent.

GERBER, Judge: This case was heard pursuant to the provisions of section 7463 of the Internal Revenue Code in effect when the petition was filed.¹ Pursuant to section 7463(b), the

¹Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for 2007, the taxable year in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

decision to be entered is not reviewable by any other court, and this opinion shall not be treated as precedent for any other case.

Respondent determined a \$2,272.50 deficiency attributable to a 10-percent additional tax for an early retirement account distribution under section 72(t)(1). We consider whether petitioner comes under any of the exceptions, from the additional tax, provided for in section 72(t)(2).

Background

Petitioner, who resided in California at the time his petition was filed, caused an individual retirement account (IRA) distribution to be made to him early in 2007. He received a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., from the account trustee and reported the \$22,725.96 distribution as "wages" on his 2007 Form 1040, U.S. Individual Income Tax Return.

Petitioner was unemployed for approximately 1 year before the IRA distribution. During 2007 he used most of the \$22,725.96 distribution for basic living expenses. During 2007 he used \$2,273 of the distribution for educational purposes to improve his skills to enable him to find employment. He also used \$180 for chiropractor visits and \$360 for dentist visits.

Respondent determined that petitioner was liable for the 10-percent additional tax of \$2,272.50 and that he was not eligible for any of the section 72(t)(1) exceptions.

Discussion

Section 72(t)(1) provides for a 10-percent additional tax for "early" distributions from a "qualified retirement plan". Section 72(t)(2) provides exceptions from the additional tax under certain specified circumstances. For purposes of this case, if a person is unemployed for a specified time before the distribution, then the amounts of expenditures for health care premiums and medical expenses may be exempt from the additional tax. See generally sec. 72(t)(2)(B), (D). Additionally, certain expenditures for education may be exempt from the additional tax. See generally sec. 72(t)(2)(E).

At trial respondent's counsel agreed that if petitioner substantiated medical and/or educational expenses, he would come within the exception from the additional tax. The evidence petitioner presented at trial supports our holding that petitioner is exempt from the section 72(t)(1) additional tax with respect to \$2,813 of the \$22,275.96 early distribution.

Decision will be entered
under Rule 155.