

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

WENDY P. TREBAT F.K.A. WENDY P. PELLEGRINI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 28736-12S.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	

**Order of Service of Transcript**

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

ORDERED that the Clerk of the court shall transmit herewith to petitioner and respondent a copy of the pages of the transcript of trial in the above case before Judge Kathleen Kerrigan at Chicago, Illinois, on December 2, 2013, containing her oral findings of fact and opinion rendered at the conclusion of the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, the Court will order the parties to submit computations under Rule 155.

**(Signed) Kathleen Kerrigan  
Judge**

Dated: Washington, D.C.  
January 23, 2014

**SERVED Jan 23 2014**

## Capital Reporting Company

3

1 Bench Opinion by Judge Kathleen Kerrigan  
2 December 2, 2013  
3 Wendy P. Pellegrini v. Commissioner  
4 Docket No. 28736-12S

5 THE COURT: The Court has decided to render  
6 in this case the following as its oral Findings of  
7 Fact and Opinion, which shall not be relied on as  
8 precedent in any other case. This proceeding was  
9 heard as a Small Tax Case pursuant to the provisions  
10 of section 7463 of the Internal Revenue Code of 1986,  
11 as amended, and Rules 170 and 175 of the Tax Court  
12 Rules of Practice and Procedure.

13 This Bench Opinion is made pursuant to the  
14 authority granted by section 7459(b) of the Internal  
15 Revenue Code and Rule 152 of the Tax Court Rules of  
16 Practice and Procedure. Unless otherwise indicated,  
17 all section references are to the Internal Revenue  
18 Code in effect for the years in issue, and all Rule  
19 references are to the Tax Court Rules of Practice and  
20 Procedure. We round all monetary amounts to the  
21 nearest dollar.

22 Respondent determined deficiencies of  
23 \$10,243 and \$11,976 for tax years 2008 and 2009,  
24 respectively. Respondent also determined that  
25 petitioner is liable for accuracy-related penalties

## Capital Reporting Company

4

1 in the amounts of \$2,049 and \$2,395 for tax years  
2 2008 and 2009, respectively. Respondent conceded the  
3 penalty for 2009. The issues for our consideration  
4 are (1) whether petitioner received unreported income  
5 from alimony payments in the amounts of \$56,077 and  
6 \$54,000 for tax years 2008 and 2009, respectively,  
7 and (2) whether petitioner is liable for the  
8 accuracy-related penalty of \$2,049 for tax year 2008.

9 Trial of this case was conducted on  
10 December 2, 2013, in Chicago, Illinois. Petitioner  
11 represented herself, and Angela B. Reynolds  
12 represented respondent. The parties' stipulation of  
13 facts and exhibits 1-J - 9-J, 10-P, and 11-J - 12-J  
14 were admitted into evidence. We find the following  
15 facts.

### 16 Findings of Fact

17 Petitioner resided in Illinois when she  
18 filed the petition.

19 Petitioner and Edward Pellegrini married on  
20 August 26, 1989. During their marriage, petitioner  
21 and Mr. Pellegrini had two children: K.P., born in  
22 1990, and B.P., born in 1991.

23 Petitioner and Mr. Pellegrini filed a  
24 petition for dissolution of marriage in the Circuit  
25 Court of Cook County, Illinois (the Cook County

866.488.DEPO

[www.CapitalReportingCompany.com](http://www.CapitalReportingCompany.com)

## Capital Reporting Company

5

1 court). On July 26, 2002, the Cook County court  
2 entered a Judgment of Dissolution of Marriage, a  
3 Marital Settlement Agreement, and a Uniform Order of  
4 Support.

5 Under the Marital Settlement Agreement, Mr.  
6 Pellegrini was ordered to pay petitioner "unallocated  
7 maintenance" of \$4,500 per month, which would be  
8 reduced to \$2,250 on July 1, 2008, and would cease on  
9 July 1, 2010. These payments would cease upon the  
10 death or remarriage of petitioner or upon  
11 petitioner's cohabitation with another person. The  
12 Marital Settlement Agreement further stated: "The  
13 sums paid by Edward to [petitioner] pursuant to this  
14 paragraph \*\*\* are acknowledged to be paid incident to  
15 Edward's legal obligation to support Wendy. Said  
16 sums shall be includable in the gross income of Wendy  
17 and deductible from the gross income of Edward for  
18 the purpose of federal \*\*\* taxation within the  
19 meaning and intendment of Sections 71 and 215 of the  
20 United States Internal Revenue Code".

21 On May 19, 2003, the Cook County court  
22 entered an Agreed Order. The Agreed Order modified  
23 the Marital Settlement Agreement and stated that the  
24 original language was "set aside and held for  
25 naught". The Agreed Order provided that Mr.

866.488.DEPO

[www.CapitalReportingCompany.com](http://www.CapitalReportingCompany.com)

## Capital Reporting Company

6

1 Pellegrini was to pay petitioner a sum of \$4,500 per  
2 month as unallocated maintenance, which would  
3 continue until June 30, 2010. The replacement  
4 language did not provide for any reduction in support  
5 before the obligation to make the payments was  
6 scheduled to terminate on June 30, 2010.

7 In 2008 and 2009, petitioner received cash  
8 payments of \$56,077 and \$54,000, respectively, from  
9 Mr. Pellegrini. These payments were then directly  
10 deposited into petitioner's checking account.  
11 Petitioner did not report any of these payments as  
12 income on her 2008 or 2009 income tax returns. Her  
13 returns were prepared by a tax professional who was  
14 recommended to petitioner. The tax professional was  
15 employed by a national firm.

### 16 Opinion

17 Generally, the Commissioner's  
18 determinations in a notice of deficiency are presumed  
19 correct, and a taxpayer bears the burden of providing  
20 those determinations are incorrect. Rule 142(a);  
21 Welch v. Helvering, 290 U.S. 111, 115 (1933).  
22 Petitioner does not contend that the burden of proof  
23 should be shifted to respondent under section  
24 7491(a), and the record does not suggest any basis  
25 for a shift.

866.488.DEPO

[www.CapitalReportingCompany.com](http://www.CapitalReportingCompany.com)

## Capital Reporting Company

7

1 I. Alimony Payments

2 The parties dispute whether the payments  
3 petitioner received from Mr. Pellegrini in 2008 and  
4 2009 are alimony or child support. Section 71(a)  
5 provides for the inclusion in income of any alimony  
6 or separate maintenance payments received by an  
7 individual during his or her taxable year. Section  
8 71(b) (1) defines "alimony or separate maintenance  
9 payment: as any payment in cash if --

10 (A) such payment is received by (or on  
11 behalf of) a spouse under a divorce or  
12 separation instrument,

13 (B) the divorce or separation instrument  
14 does not designate such payment as a payment  
15 which is not includable in gross income under  
16 this section and not allowable as a deduction  
17 under section 215.

18 (C) in the case of an individual legally  
19 separated from his spouse under a decree of  
20 divorce or of separate maintenance, the payee  
21 spouse and the payor spouse are not members  
22 of the same household at the time such payment  
23 is made, and

24 (D) there is no liability to make any such  
25 payment for any period after the death of the

## Capital Reporting Company

8

1 payee spouse and there is no liability to make  
2 any payment (in cash or property) as a  
3 substitute for such payments after the death of  
4 the payee spouse.

5 Section 71(c)(1) provides that the general  
6 inclusion rule under section 71(a) "shall not apply  
7 to that part of any payment which the terms of the  
8 divorce or separation instrument fix (in terms of an  
9 amount of money or a part of the payment) as a sum  
10 which is payable for the support or children of the  
11 payor spouse." Any payment that will be reduced "(A)  
12 on the happening of a contingency specified in the  
13 instrument relating to a child (such as attaining a  
14 specified age, marrying, dying, leaving school or a  
15 similar contingency), or (B) at any time which can  
16 clearly be associated with a contingency of a kind  
17 specified in subparagraph (A)" is treated as an  
18 amount fixed as payable for the support of children  
19 of the payor spouse. Sec. 71(c)(2).

20 There are only two situations in which  
21 payments will be treated as to be reduced at a time  
22 which can be clearly associated with the happening of  
23 a contingency related to a child of the payor: (1)  
24 where payments are to be reduced not more than six  
25 months before or after the date the child is to

## Capital Reporting Company

9

1 attain the age of 18, 21, or local age of majority  
2 and (2) where payments are to be reduced on two or  
3 more occasions which occur not more than one year  
4 before or after a different child of the payor spouse  
5 attains a certain age between the ages of 18 and 24  
6 inclusive. Sec. 1.71-1T(c), Q&A-18, Temporary Income  
7 Tax Regs.

8 Under the Marital Settlement Agreement, Mr.  
9 Pellegrini was ordered to pay petitioner "unallocated  
10 maintenance" of \$4,500 per month, which would reduce  
11 to \$2,250 on July 1, 2008, and would cease on July 1,  
12 2010. Petitioner contends that the dates of  
13 reduction and termination coincide with the high  
14 school graduations of her children.

15 The Agreed Order set aside and modified the  
16 Marital Settlement Agreement, such that Mr.  
17 Pellegrini was to pay \$4,500 per month to petitioner  
18 until June 30, 2010 with no reduction. We find that  
19 the maintenance payments under the Agreed Order meet  
20 the criteria for "alimony or separate maintenance  
21 payment: under section 71(b)(2). The Agreed Order  
22 does not refer to the date on which either child is  
23 to attain the age of 18, 21 or local age of majority.  
24 In addition, the Agreed Order cannot be considered  
25 payment for the support of the children of the payor

## Capital Reporting Company

10

1 spouse and must be considered alimony includable by  
2 the payee spouse under section 71(a). We find that  
3 payments in the amount of \$56,077 and \$54,000 for tax  
4 years 2008 and 2009, respectively, are income to  
5 petitioner.

### 6 II. Accuracy-Related Penalty

7 Under section 7491(c), the Commissioner  
8 bears the burden of production with respect to  
9 taxpayer's liability for the section 6662(a)  
10 accuracy-related penalty. This means that the  
11 Commissioner "must come forward with sufficient  
12 evidence indicating that it is appropriate to impose  
13 the relevant penalty." Higbee v. Commissioner, 116  
14 T.C. 438, 446 (2001). Once the Commissioner has met  
15 this burden, the taxpayer must provide persuasive  
16 evidence that the Commissioner's determination is  
17 incorrect. See Rule 142(a); Higbee v. Commissioner,  
18 116 T.C. at 447. Respondent met this burden.

19 Respondent determined that petitioner is  
20 liable for an accuracy-related penalty pursuant to  
21 section 662(a) for tax year 2008. Section 6662(a)  
22 adds to the tax required to be shown on the  
23 taxpayer's return 20 percent of any underpayment  
24 attributable to, among other things, any substantial  
25 understatement of income tax within the meaning of

## Capital Reporting Company

11

1 section 6662(b)(2). The phrase "substantial  
2 understatement of income tax" means an understatement  
3 that exceeds the great of \$5,000 or 10 percent of the  
4 income tax required to be shown on the tax return for  
5 the taxable year. Sec. 6662(d)(1)(A). there is a  
6 substantial understatement.

7           The section 6662(a) accuracy-related  
8 penalty does not apply with respect to any portion of  
9 the underpayment for which it is shown that the  
10 taxpayer had reasonable cause and acted in good  
11 faith. Sec. 6664(c)(1). Whether the taxpayer acted  
12 with reasonable cause and in good faith depends on  
13 all of the pertinent facts and circumstances. Sec.  
14 1.6664-4(b)(1), Income Tax Regs. Generally, the most  
15 important factor is the taxpayer's effort to assess  
16 his or her proper tax liability. Id. Petitioner  
17 contends that the payments were for support of her  
18 minor children. She did not believe the payments  
19 were alimony; and she believed that the payments were  
20 related to her children graduating from high school.  
21 Petitioner hired a tax preparer who had a good  
22 reputation in the community. Petitioner had  
23 reasonable cause and acted in good faith. We hold  
24 that petitioner is not liable for the accuracy-  
25 related penalty for 2008.

## Capital Reporting Company

12

1           So that the liability can be recalculated,  
2 decision will be entered pursuant to Rule 155.

3           This concludes the Court's oral Findings of  
4 Fact and Opinion in this case.

5           (Whereupon, at 2:42 p.m., the above-  
6 entitled matter was concluded.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25