

UNITED STATES TAX COURT  
WASHINGTON, D.C. 20217

DAWN MARIE MOORE-AHMED,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 10438-13S
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

CR

ORDER

Pursuant to the determination of the Court as set forth in its bench opinion rendered on February 11, 2014, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before Special Trial Judge Lewis R. Carluzzo at Dallas, Texas, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered for each year for respondent with respect to the deficiency and for each year for petitioner with respect to the section 6662(a) accuracy-related penalty.

**(Signed) Lewis R. Carluzzo  
Special Trial Judge**

Dated: Washington, D.C.  
March 28, 2014

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1 Bench Opinion by Special Trial Judge Lewis R.  
2 Carluzzo  
3 Docket No. 10438-13S  
4 Dawn Marie Moore-Ahmed  
5 February 11, 2014

6           The Court has decided to render oral  
7 findings of fact and opinion in this case, and the  
8 following represents the Court's oral findings of  
9 fact and opinion (bench opinion). Unless otherwise  
10 noted, section references contained in this bench  
11 opinion are to the Internal Revenue Code of 1986, as  
12 amended, in effect for the relevant periods. Rule  
13 references are to the Tax Court Rules of Practice and  
14 Procedure. This bench opinion is made pursuant to  
15 the authority granted by section 7459(b) and Rule  
16 152.

17           This proceeding for the redetermination of  
18 a deficiency is a small tax case, subject to the  
19 provisions of section 7463 and Rules 170 through 175.  
20 Pursuant to section 7463(b), the decision in this  
21 case shall not be treated as precedent for any other  
22 cases. Except as provided in Rule 152(c), this bench  
23 opinion shall not be cited as authority.

24           Dawn Marie Moore-Ahmed appeared as a self-  
25 represented litigant. Christopher M. Menczer

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1 appeared on behalf of respondent.

2 In a notice of deficiency dated February 5,  
3 2013 (notice), respondent determined deficiencies in  
4 petitioner's 2009 and 2010 Federal income taxes and  
5 imposed a section 6662(a) penalty for each of those  
6 years.

7 The issues for decision for each year are:  
8 (1) whether any portion of the income earned as a  
9 civilian term employee for the United States  
10 Department of the Army (Army) is excludable from her  
11 income; and (2) whether petitioner is liable for the  
12 section 6662(a) penalty.

13 Some of the facts have been stipulated and  
14 are so found. Petitioner lived in Texas at the time  
15 the petition was filed in this case.

16 As relevant here, petitioner's educational  
17 and employment histories are easily summarized.  
18 Although she dropped out of high school before  
19 graduating, she ultimately obtained a high school  
20 degree and completed some college-level courses, none  
21 of which related to accounting or Federal taxation,

22 during her eleven-year career with the Army. That  
23 career began in 1996 and ended eleven years later as  
24 a result of injuries sustained while on active duty.

25 Following a period of unemployment

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1 resulting from her injuries, petitioner was employed  
2 as a civilian term employee by the Army and remained  
3 so at all times relevant here and until her term  
4 employment was converted to permanent employment in  
5 2011.

6           During each year in issue, her duties as an  
7 employee of the Army took her to Iraq, where she  
8 remained for large portions of each year. As an  
9 employee of the Army, petitioner participated in  
10 various benefit plans offered by the Federal  
11 government to its employees. She participated in and  
12 contributed to a Federal government sponsored  
13 retirement plan, although she now believes that she  
14 might not have been eligible to do so. As a term  
15 employee, petitioner was not assured that she would  
16 be re-employed at the expiration of her term of  
17 employment.

18           The wages she earned during each year in  
19 issue are shown on a Form W-2, Wage and Tax  
20 Statement, issued to her by the Army. Those wages  
21 are duly reported on line 7 of her Federal income tax  
22 return for each year. In effect, a portion of those  
23 wages are excluded from the computation of her  
24 taxable income by negative amounts shown on line 21  
25 of each return. Both returns were prepared by a paid

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1 income tax return preparer after consultation with  
2 petitioner.

3 In the notice for each year, respondent  
4 adjusted (increased) petitioner's income by the  
5 amount shown on line 21 of her return. Respondent  
6 also imposed a section 6662(a) penalty on various  
7 alternative grounds. Other adjustments to  
8 petitioner's income for each year made in the notice  
9 are not in dispute or computational and will not be  
10 discussed in this bench opinion.

11 According to the notice, "income received  
12 from the U.S. government or any of its agencies or  
13 instrumentalities as compensation for services  
14 performed by [petitioner] as an employee, regardless  
15 of where the services were performed, is not  
16 excludable under Section 911 of the Internal Revenue  
17 Code."

18 According to petitioner, a portion of her  
19 wages for each year are excludable from her income  
20 for one of two reasons. First, she argues that  
21 section 911 does allow her to exclude at least a part  
22 of her wages. Second, she argues that a portion of  
23 her wages are excludable because she earned them  
24 while providing services in a combat zone.

25 Respondent disagrees with both arguments

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1 and, for the following reasons, so do we.

2 Section 911

3 At trial, petitioner demonstrated that she  
4 met the residence and "tax home" tests set forth in  
5 section 911, and she very well might fit within the  
6 definition of a "qualifying individual" for purposes  
7 of the exclusion to which she claims entitlement.

8 See sec. 911(d). But the exclusion provided in  
9 section 911 applies only to the "foreign-earned  
10 income of such individual." Sec. 911(a)(1).

11 Although at least portions of the wages  
12 that petitioner earned during each year in issue were  
13 earned while in a foreign country, the wages do not  
14 fit within the definition of foreign-earned income,  
15 because the wages were "paid by the United States or  
16 an agency thereof to an employee of the United States  
17 or an agency thereof." Sec. 911(b)(1) and (2).

18 It follows that section 911 does not render  
19 excludable any portion of the wages petitioner  
20 received as an employee of the Army during either  
21 year in issue. Our conclusion in this regard is

22 supported on page 4 of Publication 3, Armed Forces'  
23 Tax Guide (taken as petitioner's pretrial memorandum  
24 at trial) which states that the "foreign-earned income  
25 exclusion does not apply to the wages and salaries of

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1 military and civilian employees of the United States  
2 Government."

3 Section 112

4           Although she did not expressly reference  
5 section 112, petitioner argues that a portion of the  
6 wages she received during year in issue is excludable  
7 by virtue of that section. Section 112 provides that  
8 "gross income does not include compensation received  
9 for active service as a member below the grade of  
10 commissioned officer in the Armed forces of the  
11 United States" for service during certain periods  
12 which such member "served in a combat zone." Sec.  
13 112(a).

14           Petitioner's employment duties required  
15 that she be present in a "combat zone" as that phrase  
16 is used in section 112, see Executive Order No.  
17 12744, but during each year in issue, petitioner was  
18 a civilian employee of the Army, not a member of the  
19 Armed Forces of the United States. cf. Hatton v.  
20 Commissioner, T.C. memo. 1983-28; see also 10 U.S.C.  
21 101. As such, she does not qualify for the exclusion

22 provided in section 112 even if she was subject to  
23 the same dangers as those individuals who do.

24           Again, although not authoritative,  
25 Publication 3 is informative on the point. According

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1 to that publication, wages subject to the section 112  
2 exclusion are not reported on a Form W-2; for each  
3 year in issue, petitioner's wages were so reported.

4 Section 6662(a) penalty

5 Taking into account petitioner's  
6 educational and employment backgrounds, and the  
7 circumstances surrounding the preparation of her  
8 return for each year in issue, we are satisfied that  
9 the underpayment of tax required to be shown on each  
10 of those returns is due to reasonable cause and that  
11 petitioner acted in good faith with respect to the  
12 underpayment. Consequently, she is not liable for a  
13 section 6662(a) penalty for either of those years.  
14 See sec. 6664(c).

15 To reflect the foregoing, for each year in  
16 issue decision will be entered for respondent with  
17 respect to the deficiency and for petitioner with  
18 respect to the section 6662(a) penalty.

19 This concludes this bench opinion.

20 (Whereupon, at 12:24 p.m., the above-  
21 entitled matter was concluded.)

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