

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KEVIN A. CLARK, JR.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 4131-15.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pursuant to the opinion of the Court as set forth in the transcript of the proceeding at Washington, D.C., on May 3, 2016, 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 the undersigned judge at Washington, D.C., 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 respondent.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
May 12, 2016

SERVED May 12 2016

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1 Bench Opinion by Judge David Gustafson
2 May 3, 2016
3 Kevin A. Clark, Jr. v. Commissioner
4 Docket No. 4131-15

5 The Court has decided to render the following as
6 its oral Findings of Fact and Opinion in this case.
7 This Bench Opinion is made pursuant to the authority
8 granted by section 7459(b) of the Internal Revenue
9 Code (26 U.S.C.), and Tax Court Rule 152; and it
10 shall not be relied on as precedent in any other
11 case.

12 By a notice of deficiency dated November 17,
13 2014 (Ex. 1-J), the Internal Revenue Service ("IRS")
14 determined a deficiency in the Federal income tax of
15 petitioner Kevin A. Clark, Jr., for the year 2012.
16 The issue for us to decide is whether income that Mr.
17 Clark received and reported is subject to self-
18 employment tax. For the reasons explained below, we
19 hold that it is.

20 Trial of this case was conducted on May 2, 2016,
21 in Washington, D.C. Mr. Clark represented himself;
22 and respondent, the Commissioner of the IRS, was
23 represented by Rachel L. Rollins.

24 FINDINGS OF FACT

25 In 2012 Mr. Clark worked six to eight hours a

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1 day, seven days a week, as a full-time video blogger.
2 (Stip. 5) He maintained an Internet site on which he
3 posted videos. (Stip. 4-5.) He entered into an
4 agreement with Google, pursuant to which he allowed
5 advertisements to appear on his blog site. In
6 return, he was paid a total of \$20,206.57 for the
7 running of the ads by Google AdSense. The parties
8 have stipulated that Mr. Clark "was paid for his
9 videos through advertising revenue". (Stip. 6.)

10 Google issued to Mr. Clark a Form 1099-MISC for
11 2012, on which it reported \$20,206.57 as "non-
12 employee compensation". Mr. Clark filed a tax return
13 for 2012 (Ex. 2-J) on which he reported the Google
14 payments as "other income" on line 21. He did not
15 report them as self-employment income on Schedule C.
16 The IRS examined Mr. Clarke's 2012 tax return,
17 recharacterized the income as self-employment income,
18 and issued a notice of deficiency (Ex. 1-J) on
19 November 17, 2014, determining a liability for self-
20 employment tax. Mr. Clark timely filed a petition in
21 this Court on February 12, 2015. At the time that he
22 filed his petition, Mr. Clark resided in Maryland.
23 (Stip. 1.)

OPINION

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25 I. Burden of proof

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1 As a general rule, the IRS's determination is
2 presumed correct, and the taxpayer bears the burden
3 to prove any adjustment to the income the IRS
4 determined. See Rule 142(a).

5 II. Self-employment income

6 "Social security" taxes are paid partly by
7 employees as withholding from their wages, see secs.
8 1301-1302, and partly by their employers, see sec.
9 3111. Those provisions do not reach self-employed
10 individuals. Instead, section 1401 imposes a tax on
11 self-employment income, which under section 1402
12 includes "the gross income derived by an individual
13 from any trade or business carried on by such
14 individual".

15 To explain the term "trade or business", the
16 U.S. Supreme Court has stated, "to be engaged in a
17 trade or business, the taxpayer must be involved in
18 the activity with continuity and regularity and * * *
19 the taxpayer's primary purpose for engaging in the
20 activity must be for income or profit." Commissioner
21 v. Groetzinger, 480 U.S. 23, 35 (1987). That is, a
22 trade or business (as distinct from some other
23 activity) involves (a) a profit motive and (b) a
24 continuous and regular activity.

25 III. Discussion

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1 Mr. Clark's blogging activity was a "trade or
2 business". He did it to make a profit (through the
3 AdSense advertising arrangement), and his full-time
4 pursuit of that activity by working six to eight
5 hours a day, seven days a week, must be characterized
6 as continuous and regular. Since the income was
7 derived by him from that trade or business (see Stip.
8 6), it was self-employment income on which he owes
9 self-employment tax.

10 Mr. Clark contends in his petition that the
11 income he received was "a type of royalty or
12 commision [sic] from Google." Even if the payments
13 are considered royalty payments, Mr. Clark would
14 still be liable for self-employment tax. Under
15 section 1402, royalty payments received from a trade
16 or business are subject to self-employment tax. See
17 Jones v. Commissioner, T.C. Memo. 1998-354. We will
18 therefore sustain the IRS's notice of deficiency.

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

21 (Whereupon, at 11:00 a.m., the above-
22 entitled matter was concluded.)
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