

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CANDACE ELAINE,)
)
 Petitioner,)
)
 v.) Docket No. 26078-14S
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ORDER

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 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 Los Angeles, California, 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, a decision will be entered under Rule 155.

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

Dated: Washington, D.C.
October 21, 2016

SERVED Oct 25 2016

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1 Bench Opinion by Judge Lewis R. Carluzzo
2 October 5, 2016
3 Candace Elaine v. Commissioner
4 Docket No. 26078-14S

5 THE COURT: THE COURT HAS DECIDED TO RENDER
6 ORAL FINDINGS OF FACT AND OPINION IN THIS CASE AND
7 THE FOLLOWING REPRESENTS THE COURT'S ORAL FINDINGS OF
8 FACT AND OPINION (BENCH OPINION).

9 Section references made in this bench
10 opinion are to the Internal Revenue Code of 1986, as
11 amended, in effect for the relevant period, and Rule
12 references are to the Tax Court Rules of Practice and
13 Procedure. This bench opinion is made pursuant to
14 the authority granted by Section 7459(b) and Rule
15 152.

16 This proceeding for the redetermination of
17 a deficiency is a small tax case subject to the
18 provisions of Section 7463 and Rules 170 through 175.
19 Pursuant to Section 7463(b), the decision entered in
20 this case shall not be treated as precedent for any
21 other case.

22 Candace Elaine appeared on her own behalf.
23 David J. Warner appeared on behalf of respondent.

24 In a notice of deficiency dated July 28,
25 2014 (notice), respondent determined an \$8,400

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1 deficiency in, and imposed a Section 6662(a) penalty
2 with respect to petitioner's 2012 federal income tax.

3 After concessions the issues for decision
4 are: (1) whether distributions from a qualified
5 retirement account are subject to the additional tax
6 imposed by Section 72(t) and (2) whether petitioner
7 is liable for a Section 6662(a) penalty.

8 Some of the facts have been stipulated and
9 are so found. At the time the petition was filed,
10 petitioner lived in California.

11 During 2012, petitioner received
12 distributions totaling \$84,000 from a qualified
13 retirement plan administered through Capital Bank and
14 Trust Co. (retirement distributions.) As of the close
15 of that year, petitioner was under 55 years of age.
16 All of the distributions are reported in the income
17 shown on her 2012 federal income tax return, but the
18 additional tax imposed by Section 72(t) is not
19 included in the amount of tax shown on that return.

20 In the notice respondent determined that
21 the Section 72(t) additional tax is applicable to the
22 entire amount of the retirement distributions and
23 imposed a Section 6662(a) penalty on the entire
24 amount of the underpayment of tax, which in this case
25 is computed in the same manner as the deficiency.

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1 Another adjustment, now conceded by petitioner, is
2 shown in the notice and will not be addressed in this
3 bench opinion. Also, respondent now concedes that at
4 least a portion of the retirement distribution is
5 excepted from the Section 72(t) additional tax
6 pursuant to Section 72(t)(2)(B) with respect to
7 certain of petitioner's medical expenses.

8 Otherwise, the stipulated facts establish
9 that none of the exceptions to the imposition of the
10 Section 72(t) additional tax is applicable to the
11 retirement distributions.

12 Petitioner explained that after losing her
13 job in 2009, the retirement distributions were used
14 for support for herself and her family. Instead of
15 pointing to an exception listed in Section 72(t),
16 petitioner argues that she should not be subject to
17 the additional tax because the retirement
18 distributions qualify for an exception due to the
19 financial hardship caused by the loss of her
20 employment. While it is evident that petitioner used
21 the retirement distributions to avoid the loss of her
22 home and a financial crisis, there is no hardship
23 exception under Section 72(t)(2). See Arnold v.
24 Commissioner, 111 T.C. 250, 255 (1998) (holding that a
25 distribution received as a result of financial

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1 hardship was subject to 72(t) additional tax, because
2 no exception exists for financial hardship); Milner
3 v. Commissioner, T.C. Memo. 2004-111 (same);
4 Gallagher v. Commissioner, T.C. Memo. 2001-34
5 (holding that a distribution received by taxpayers
6 due to financial hardship and used to pay bills,
7 tuition at their son's private high school, and other
8 personal expenses was subject to Section 72(t)
9 additional tax); Robertson v. Commissioner, T.C.
10 Memo. 2000-100, (holding that a distribution used for
11 the taxpayer's "own subsistence and that of her
12 family" was subject to Section 72(t) additional tax),
13 aff'd, 15 Fed.Appx 467 (4th Cir. 2001); Pullman v.
14 Commissioner, T.C. Memo. 1996-354 (holding that a
15 distribution received by taxpayer due to financial
16 hardship and used to pay off his debts was subject to
17 Section 72(t) additional tax.) It follows that
18 except with respect to amounts now conceded by
19 respondent, the retirement distributions are subject
20 to the Section 72(t) additional tax, and respondent's
21 determination to that end is sustained.

22 The long list of cases cited above, as well
23 as many others decided by this Court to the same
24 effect, strongly suggests there is a common
25 misunderstanding among taxpayers that financial

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1 hardship is an exception to the imposition of an
2 otherwise applicable Section 72(t) additional tax.
3 Petitioner apparently proceeded under that
4 misunderstanding not only with respect to the year
5 here in dispute, but to several previous years as
6 well. Given her explanation at trial, we are
7 satisfied that petitioner had reasonable cause and
8 acted in good faith with respect to the portion of
9 the underpayment of tax resulting from her failure to
10 include Section 72(t) additional tax in the tax
11 liability shown on her 2012 return. See sec.
12 6664(c). Consequently, she is not liable for a
13 Section 6662(a) accuracy-related penalty for that
14 portion. Because the portion of the underpayment of
15 tax attributable to the adjustment conceded by
16 petitioner would seem to be negligible, we'll leave
17 it up to one or the other of the parties to concede
18 that amount and show the concession in the
19 computation submitted under Rule 155.

20 This concludes the Court's bench opinion in
21 this matter.

22 To reflect the foregoing, decision will be
23 entered under Rule 155.

24 (Whereupon, at 9:38 a.m., the above-
25 entitled matter was concluded.)