

UNITED STATES TAX COURT
WASHINGTON, DC 20217 PA

VICTORIA MALEV,)
)
 Petitioner,)
)
 v.) Docket No. 1282-16S
)
 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 New York, New York, 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 under Rule 155.

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

Dated: Washington, D.C.
March 1, 2017

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1 Bench Opinion by Judge Lewis R. Carluzzo

2 February 16, 2017

3 Victoria Malev v. Commissioner

4 Docket No. 1282-16S

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

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

21 Lawrence A. Sannicandro appeared on behalf
22 of Petitioner. Aaron M. Greenberg and Jonathan
23 Bartolomei, specially recognized, appeared on behalf
24 of Respondent.

25 In a Notice of Deficiency dated October 26,

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1 2015 (notice), Respondent determined a deficiency in,
2 and imposed a section 6662(a) penalty with respect
3 to, Petitioner's 2012 Federal income tax. After
4 written and oral concessions, the issue for decision
5 is whether Petitioner is entitled to deduct, as
6 medical expenses, amounts paid for treatments not
7 routinely or universally recognized.

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

11 Petitioner suffers from at least one spinal
12 disease. Apparently, she received only partial and
13 temporary relief from the pain associated with the
14 disease through chiropractic treatment. In a
15 diagnosis dated November 25, 2016, which is after the
16 year in issue, her medical doctor suggested surgery
17 as a remedy, but advised her that the surgery "does
18 not come with complete success, and carries the
19 possibility of worsening" Petitioner's condition.
20 Petitioner's medical doctor further "recommended"
21 "integrative medical care." According to Duke
22 University, "Integrative medicine is an approach to
23 care that puts the patient at the center and
24 addresses the full range of physical, emotional,
25 mental, social, spiritual and environmental

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1 influences that affect a person's health. Employing
2 a personalized strategy that considers the patient's
3 unique conditions, needs and circumstances, it uses
4 the most appropriate interventions from an array of
5 scientific disciplines to heal illness and disease
6 and help people regain and maintain optimum health."

7 The word "heal" in the above definition is
8 critical here, as an expense paid by a taxpayer for
9 "healing services" directed towards any structure of
10 the body may be deducted as a medical expense. See
11 sec. 1.213(e), Income Tax regs. That regulation is
12 promulgated under section 213(a), which in relevant
13 part, and subject to various limitations, allows "as
14 a deduction the expenses paid during the taxable
15 year, not compensated for by insurance or otherwise,
16 for medical care of the taxpayer."

17 The expenses underlying the deduction here
18 in dispute were paid during 2012 and Petitioner was
19 not compensated by insurance or otherwise, for those
20 expenses.

21 Under the circumstances of this case, we
22 focus not only on what the above-referenced statute
23 and regulation require to support a medical expense
24 deduction, but on what is not required as well.
25 Nothing in the statute or the underlying regulation

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1 requires that the treatments received by a taxpayer
2 be furnished by an individual licensed to practice
3 medicine in any particular discipline, or that the
4 services or treatments be provided in person rather
5 than remotely, or that the treatment be successful,
6 or that the treatment be universally accepted as
7 effective. See Tso v. Commissioner, T.C. Memo. 1980-
8 399.

9 As the following summary of the relevant
10 facts will show, Petitioner's claim to the medical
11 expense deduction here in dispute calls into play as
12 much as what is not required by the statutory scheme
13 as it does the literal language of section 213.

14 Concerned that conventional treatments for
15 her condition posed too much risk, or were or would
16 be ineffective, Petitioner subscribed to various
17 forms of treatment from four individuals, none of
18 whom would be commonly recognized as a conventional
19 medical caregiver. And to be sure, none of the
20 methods utilized by these individuals would commonly
21 be recognized as a conventional medical treatment.
22 The methods Petitioner subscribed to might be termed
23 "alternative medicine" by the polite, but we expect
24 the less tolerant would characterize the treatments
25 in other than legitimate or complimentary terms.

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1 We are more persuaded by Petitioner's
2 belief as to the effectiveness of the treatments she
3 paid for than we are by our own impression as to
4 those treatments. At trial, she testified that her
5 condition had greatly improved as a result of the
6 treatments. Had the November 25, 2016, diagnosis
7 referenced above been given before 2012, this would
8 be an easy case. After all, that diagnosis included
9 a recommendation that Petitioner pursue "integrated
10 medical treatment," and that recommendation having
11 been made by a recognized medical professional would
12 probably in and of itself support a deduction for
13 expenses paid to seek such care.

14 But the diagnosis came later, and it seems
15 to speak in the time frame in which it was made,
16 which would undermine, at least to some extent,
17 Petitioner's claim to have been cured by the
18 treatments she was received several years earlier.
19 The timing of that diagnosis provides us with no easy
20 resolution to the issue before us.

21 Under the circumstances, we are faced with
22 a difficult task. Our resolution must take into
23 account not only what is known but what is less
24 understood as well; namely, the role that an
25 individual's state of mind plays in the treatment of

1 the individual's disease.

2 In reaching our conclusion we consider: (1)
3 the literal language of section 213 and its
4 underlying regulation, which speak in broad terms;
5 (2) Petitioner's sincere belief that the expenses she
6 paid for the treatments she received were directed to
7 cure or mitigate the symptoms of her spinal disease;
8 (3) the expenses incurred by Petitioner for the
9 treatments she received were not of the type that an
10 individual would routinely incur for non-medical
11 reasons; (4) nothing in the record suggests that the
12 relationship between Petitioner and any of the four
13 individuals whom she paid for the services was other
14 than professional; and (5) this Court's recognition
15 that expenses paid for "alternative medical"
16 treatments can be deducted as a medical expense under
17 section 213. See Dickie v. Commissioner, T.C. Memo.
18 1999-138; Crain v. Commissioner, T.C. Memo 1986-138;
19 Tso v. Commissioner, T.C. Memo 1980-399.

20 Taking all of the above into account, along
21 with the evidence introduced at trial but not
22 referenced in this bench opinion, we find that
23 Petitioner is entitled to the medical expense
24 deduction claimed on her 2012 return.

25 Be that as it may, in closing we think it

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1 appropriate to note that we fully appreciate the
2 position taken by Respondent in this case, and
3 consider that position to be more than justified.

4 To reflect the foregoing, and the
5 concessions of the parties, decision will be entered
6 under Rule 155.

7 This concludes this Court's bench opinion
8 in this matter.

9 (Whereupon, at 3:25 p.m., the above-
10 entitled matter was concluded.)

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