

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHANELLE S. COLEMAN,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 11752-16.
)	
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 Judge Kathleen Kerrigan at Houston, Texas on April 24, 2017, containing her oral findings of fact and opinion rendered at the conclusion of the trial session at which this case was heard.

In accordance with the oral findings of fact and opinion, a decision will be entered under Rule 155, Tax Court Practice and Procedure.

**(Signed) Kathleen Kerrigan
Judge**

Dated: Washington, D.C.
May 11, 2017

SERVED May 12 2017

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1 Bench Opinion by Judge Kathleen Kerrigan

2 April 28, 2017

3 Chanelle S. Coleman v. Commissioner

4 Docket No. 11752-16

5 The Court has decided to render in this
6 case the following as its oral Findings of Fact and
7 Opinion, which shall not be relied upon in any other
8 case. This Bench Opinion is made pursuant to the
9 authority granted by section 7459(b) of the Internal
10 Revenue Code, and Rule 152 of the Tax Court Rules of
11 Practice and Procedure. Unless otherwise indicated,
12 all section references are to the Internal Revenue
13 Code in effect for the year in issue, and all Rule
14 references are to the Tax Court Rules of Practice and
15 Procedure.

16 By notice of deficiency dated February 8,
17 2016, the Internal Revenue Service determined a
18 deficiency in petitioner's Federal income tax for tax
19 year 2013, and an accuracy-related penalty under
20 section 6662(a). The issue for consideration is
21 whether a payment petitioner received pursuant to a
22 settlement agreement is taxable income. Respondent
23 conceded the accuracy-related penalty.

24 Trial of this case was conducted on April
25 24, 2017, in Houston, Texas. Petitioner represented

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1 herself, and Lewis A. Booth and Courtney M. Hill
2 represented respondent. The parties' Stipulation of
3 Facts was admitted into evidence along with the
4 attached exhibits. We find the following facts:

Findings of Fact

6 Petitioner resided in Houston when she
7 timely filed her petition. The deadline for filing a
8 petition was extended as part of disaster relief
9 assistance. During tax year 2013 petitioner was
10 employed. She received a settlement of \$71,350 from
11 her employer as a result of a sexual harassment
12 complaint.

13 Pursuant to the confidential settlement
14 agreement, petitioner received a lump sum payment of
15 \$35,675, for which she received a Form 1099-MISC,
16 Miscellaneous Income. The remaining \$35,675 was paid
17 directly to her as separation and future pay.

18 Petitioner did not include the lump sum of \$35,675
19 for which she received a Form 1099 on her 2013 Form
20 1040, U.S. Individual Income Tax Return. The
21 confidential settlement agreement provided that the
22 lump sum of \$35,675 paid to petitioner represented
23 compensatory damages, including emotional distress.

Opinion

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25 Generally, a taxpayer bears the burden of

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1 proving the Commissioner's determinations in a notice
2 of deficiency are erroneous. Rule 142(a)(1); Welch
3 v. Helvering, 290 U.S. 111, 115 (1933). Petitioner
4 has neither claimed nor shown that she meets the
5 specifications of section 7491(a) to shift the burden
6 of proof to respondent as to any relevant factual
7 issue.

8 Gross income generally includes all income
9 from whatever source derived. Sec. 61(a). The
10 definition of gross income is broad in scope, while
11 exclusions from income are narrowly construed.
12 Commissioner v. Schleier, 515 U.S. 323, 328 (1995).
13 Damages (other than punitive damages) received on
14 account of personal injuries or physical sickness may
15 generally be excluded from income. Sec. 104(a)(2).
16 For damages to be excluded under this provision, the
17 underlying cause of action must be based in tort or
18 tort-type rights, and the proceeds must be damages
19 received on account of personal injury or sickness.
20 Commissioner v. Schleier, 515 U.S. at 337. When
21 damages are received pursuant to a settlement
22 agreement, the nature of the claim that was the
23 actual basis for settlement controls whether those
24 damages are excludable pursuant to section 104(a)(2).
25 See United States v. Burke, 504 U.S. 229, 237 (1992).

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1 Emotional distress is not treated as a personal
2 physical injury or physical sickness, except for
3 damages not in excess of the amount paid for medical
4 care attributable to emotional distress. Sec. 104(a)
5 (flush language).

6 Petitioner does not dispute that she
7 received the lump sum payment. Petitioner contends
8 that the sexual harassment caused physical ailments.
9 She further contends that the settlement proceeds
10 should not be taxable because of the physical effects
11 of the harassment. Petitioner did not provide any
12 evidence to show that any portion of the settlement
13 proceeds were used for amounts paid for medical care
14 attributable to emotional distress.

15 Pursuant to the settlement agreement, the
16 lump sum that petitioner received was for
17 compensatory damages, including emotional distress.
18 Accordingly, the lump sum payment of \$35,675 that
19 petitioner received in 2013 is not excludable from
20 her gross income pursuant to section 104(a)(2). See
21 McGowen v. Commissioner, T.C. Memo. 2011-186; Shelton
22 v. Commissioner, T.C. Memo. 2009-116.

23 A decision will be entered under Rule 155.

24 This concludes the Court's Oral Findings of
25 Fact and Opinion in this case.

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1 (Whereupon, at 9:10 a.m., the above-
2 entitled matter was concluded.)
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