

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PHUONGTRUC CAO NGUYEN,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 4556-16.
)	
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 Joseph Robert Goeke at Los Angeles, California containing his oral findings of fact and opinion rendered at the trial session at which this case was heard.

In accordance with the oral findings of fact and opinion, a decision will be entered for respondent.

(Signed) Joseph Robert Goeke
Judge

Dated: Washington, D.C.
November 9, 2017

1 Bench Opinion by Joseph Robert Goeke
2 October 18, 2017
3 Phuongtrac Cao Nguyen v. Commissioner
4 Docket No. 4556-16

5 THE COURT: The Court has decided to render oral
6 Findings of Fact and Opinion in this case, and the
7 following represents the Court's oral Findings of Fact and
8 Opinion. The oral Findings of Fact and Opinion shall not
9 be relied upon as precedent in any other case. This
10 opinion is rendered pursuant to the authority provided by
11 Internal Revenue Code section 7459(b) and Rule 152 of the
12 Tax Court Rules of Practice and Procedure.

13 The section references, herein after, are to the
14 Internal Revenue Code in effect for the year 2013, and
15 Rule references are to the Tax ^{Court} ~~Code~~ Rules of Practice and *IR6*
16 Procedure.

17 The Court has jurisdiction over the present case
18 under section 6213, as the Respondent issued a notice of
19 deficiency, which was timely petitioned. The Petitioner
20 was a resident of California when she filed her petition
21 in this case. She received a notice of deficiency from
22 the Internal Revenue Service, which was mailed to her in
23 December 2015. The notice of deficiency asserted a
24 deficiency in federal income tax for the taxable year 2013
25 that resulted from the Petitioner's failure to report

1 forgiveness of indebtedness income on her income tax
2 return, which she filed for 2013.

3 The inclusion of the forgiveness of indebtedness
4 income results in certain other computational adjustments,
5 which were also included in the notice of deficiency. The
6 Petitioner maintains that the forgiveness of indebtedness
7 income is not taxable in 2013, and she also asserts that
8 she was insolvent at the time she is alleged to have
9 received the forgiveness of indebtedness income and that,
10 therefore, the income is excludable under section
11 108(a)(1)(B).

12 We first note that the Petitioner has the burden
13 of proof under Rule 142(a) and that she has not offered a
14 basis on which the burden of proof would shift to the
15 Respondent under section 7491(a).

16 The Petitioner owed Citibank credit card debt in
17 2009. In 2010, a collection case was commenced in
18 California Superior Court, and she ultimately settled that
19 case in 2012 based upon a conditional agreement to pay
20 \$6,000 of the debt in monthly installments of \$500 each,
21 which corresponds to the amount of income at issue in the
22 case if her \$6,000 payment is subtracted from the alleged
23 total balance she owed Citibank.

24 Citibank issued a form 1099-C to the Petitioner
25 for the year 2013 asserting forgiveness of indebtedness

1 income of roughly \$7,000.

2 The documents submitted in the record of the
3 case reflect that the case in California Superior Court
4 was not dismissed pursuant to the conditional agreement
5 until 2013.

6 The record of trial in this case consists of a
7 Stipulation of Facts, related exhibits, and other exhibits
8 which were admitted at trial, and also testimony which was
9 taken over parts of two days. The trial focused on
10 whether the Petitioner was insolvent in 2013 when she is
11 alleged to have received the forgiveness of indebtedness
12 income.

13 The Petitioner had gross income, which she
14 reported on her income tax return for 2013, of \$56,373.
15 And she reported taxable income of \$25,335.

16 As part of the stipulated exhibits, there is a
17 schedule the Petitioner submitted reflecting liabilities
18 greater than assets. But based upon her own testimony,
19 this schedule is fraught with errors and does not provide
20 a basis on which the case could be resolved.

21 Petitioner included in her alleged liabilities
22 credit card debts that are actually owed by her mother.
23 She rationalized these debts were her liabilities because
24 she had obtained a credit card for use on her mother's
25 accounts. These debts that Petitioner alleges were her



1 debts, which were actually in her mother's name, are
2 approximately \$30,000.

3 Based upon the testimony at trial and other
4 documents submitted, our best estimate of the actual debts
5 the petitioner had in 2013 is that they approximate
6 \$16,000.

7 She also included assets on the schedule
8 submitted at trial, and she testified extensively about
9 these assets. It's clear that the original values she
10 included were also incorrect. We have tried to
11 reconstruct the actual value of these assets based upon
12 how much could be obtained by reselling the assets which
13 would approximate their fair market value.

14 The assets included Chanel bags, which we value
15 at roughly \$5,000, Prada bags, which, based upon
16 Petitioner's testimony, we value at approximately \$2,500,
17 a watch, which, based upon Petitioner's testimony, we
18 value at \$6,000, certain other handbags, and other
19 property, including clothing, and diamond earrings, which,
20 based upon Petitioner's testimony, we value at \$2,000.

21 Petitioner's schedule also included bank assets,
22 which, based upon her testimony and the documents in the
23 record, we value at approximately \$2,400. And Petitioner
24 listed a brokerage account, which she stated had assets
25 worth roughly \$1,800. She also valued other assets,



1 including household furnishings and clothing, which we
2 would value at roughly \$5,000 based upon the entire record
3 of trial.

4 Given these estimates, the overall value of
5 Petitioner's assets would be at least \$20,000 based upon
6 the evidence submitted at trial. Given the fact that this
7 exceeds any reasonable estimate that Petitioner
8 established for her liabilities, based upon the record at
9 trial, Petitioner's assets exceed her liabilities.

10 Petitioner argued that her mother had a cause of
11 action against her for the amount of the credit card debt,
12 which she incurred on credit cards for which her mother
13 was liable but for which she had access to a card.
14 Petitioner has failed to establish any legal obligation on
15 her part to pay her mother for this alleged debt.

16 Section 61(a)(12) provides the general rule that
17 gross income includes income from the cancellation or
18 discharge of indebtedness. United States v. Kirby Lumber
19 Company, 284 U.S. 1 (1931); see also section 1.61-12(a)
20 income tax regulations.

21 The includable amount in income is the
22 difference between the face value of the debt and the
23 amount paid in satisfaction of the debt: Babin
24 v. Commissioner, 23 F.3d 1032 (Sixth Circuit, 1994),
25 affirming T.C. Memo 1992-673.

1 The Internal Revenue Code carves out an
2 exception for recognition of forgiveness indebtedness
3 income under section 108(a)(1). The exception in question
4 in this case would arise if the discharge occurs when the
5 taxpayer is insolvent under (B).

6 For the reasons we stated in analyzing the facts
7 of this case, Petitioner has failed in her burden of proof
8 to establish that she was insolvent, and that section 108
9 would relieve her of the forgiveness of indebtedness
10 income.

11 We also note that the year in which Petitioner
12 must recognize the forgiveness of indebtedness income is
13 the year in which it becomes clear that the debt will
14 never be repaid and that the debtor must be viewed as
15 discharged: Cozzi v. Commissioner, 88 T.C. 435, 445
16 (1987). The determination of this event oftentimes does
17 coincide with the issuance of the form 1099-C, but the
18 issuance of the form 1099-C is not dispositive.

19 We determine that the year 2013 is the
20 appropriate year based upon documents submitted at trial,
21 which reflect that the settlement agreement reached in the
22 California Superior Court became final in 2013.

23 As a result of our analysis, a decision will be
24 entered for Respondent. This concludes the Court's oral
25 Findings of Fact and Opinion in this case.

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We'll go off the record.

(Whereupon, at 10:09 a.m., the above-entitled matter was concluded.)

