

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

DEGAULLE CABINDA,)	
)	
Petitioner,)	
)	
v.)	Docket No. 10949-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pursuant to Rule 152(b) of the 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 proceedings 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 under Rule 155.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
November 15, 2017

1 Bench Opinion by Judge David Gustafson
2 October 20, 2017
3 DeGaulle Cabinda v. Commissioner of Internal Revenue
4 Docket No. 10949-16

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

11 Petitioner DeGaulle Cabinda filed his tax return
12 for the year 2013 in November 2014. (Stip. 2.) By a
13 statutory notice of deficiency ("SNOD") dated February 8,
14 2016 (Ex. 4-J), the Internal Revenue Service ("IRS")
15 determined a deficiency in Dr. Cabinda's 2013 federal
16 income tax, plus an accuracy-related penalty under section
17 6662(a) (which the Commissioner has since conceded) and an
18 addition to tax under section 6651(a)(1) for failure to
19 file timely. After petitioner's concession of the
20 addition to tax and of two minor income issues (i.e., \$34
21 of interest and \$2,687 of discharge-of-indebtedness
22 income; see Stip. paras. 7-8), the issue for decision is
23 whether \$234,000 that Dr. Cabinda received in a settlement
24 is taxable. We hold that it is not.

25 The case was tried in Washington, D.C., on



19
1 October 20, 2017. Dr. Cabinda represented himself, and
2 respondent was represented by Trevor B. Maddison.

3 FINDINGS OF FACT

4 Background

5 Petitioner DeGaulle Cabinda was born in
6 Cameroon. He is a medical doctor. He was diagnosed with
7 Guillain-Barre Syndrome in 2002. (Stip. 9.) He
8 thereafter recovered to full health.

9 Employment by Pharma

10 In 2008, after 18 years of experience as a
11 medical professional, Dr. Cabinda was employed as senior
12 medical director of a pharmaceutical company ("Pharma")
13 (Ex. 5-J, para. 3). He considered this to be a crowning
14 achievement that brought him to the pinnacle of his
15 career.

16 Termination and Relapse

17 In 2010 Pharma terminated Dr. Cabinda for
18 alleged reasons that he disputed. He believed that the
19 actual reason for his termination was discrimination
20 against him on the basis of his race (black) and national
21 origin.

22 The termination was extremely stressful to Dr.
23 Cabinda and constituted, in his view, the ruin of his
24 career. As a result of the stress of his termination, Dr.
25 Cabinda experienced a serious recurrence of his

1 Guillain-Barre symptoms in October 2010 and was
2 hospitalized (Exs. 7-P, 9-P, 10-P) for the first of three
3 times.

4 Dr. Cabinda has suffered, at times, from nearly
5 complete paralysis and believes he nearly died. As a
6 result of his medical bills and unemployment, his
7 financial resources have been exhausted (requiring one of
8 his children to withdraw from college for a time). Even
9 as of the time of trial in this case, he has not fully
10 recovered and still suffers extreme weakness.

11 Charge and Complaint

12 In December 2010, Dr. Cabinda filed with the
13 Equal Employment Opportunity Commission ("EEOC") against
14 Pharma a "Charge of Discrimination" (Ex. 5-J, para. 14;
15 "Exhibit A"), which alleged (in para. XIV), "As a result
16 of the discrimination, I have suffered damages including,
17 without limitation, pain and suffering and lost wages."

18 In late October 2011 Dr. Cabinda received from
19 the EEOC his "Notice of Right to Sue" (id., "Exhibit B").
20 (In December 2011 he suffered another Guillain-Barre
21 episode.) In January 2012 he filed suit against Pharma
22 (Stip. 14), and he filed a first amended complaint in July
23 2012 (Stip. 15, Ex. 5-J). His amended complaint alleges
24 (at paras. 85, 93, 99) that:

25 "As a direct and proximate result of the



1 Defendant's conduct, Dr. Cabinda has suffered
2 damages, including but not limited to, lost
3 wages, lost benefits, loss of future employment
4 commensurate with his experience and
5 professional standing, loss of status and self-
6 esteem, including damages, great expense, pain
7 and suffering in the form of emotional distress,
8 anxiety, embarrassment, and humiliation, and
9 physical pain and suffering and medical bills
10 for reoccurrences of his Guillain-Barre
11 syndrome, which he continues to endure."

12 The "Requested Relief" sought in his complaint (at 16)
13 included:

- 14 a. Backpay and front pay commensurate with seniority
15 and any other lost employment benefits including pension;
16 b. Compensatory damages for emotional distress, loss
17 of Dr. Cabinda's hard-earned reputation through more than
18 20 years of devotion to his work, the loss of career
19 advancement which could have been made for the last two
20 years, and physical pain and suffering and medical bills
21 related to his Guillain-Barre syndrome;
22 c. Punitive damages;
23 d. Pre- and post-judgment interest; [and]
24 e. Reasonable attorneys' fees and costs...."

25 With his first amended complaint, he served on Pharma

1 responses to interrogatories (Ex. 8-P), in which he
2 asserted that his Guillain-Barre syndrome "was exacerbated
3 as a direct result of the extreme distress he suffered due
4 to his termination," and with which he released all his
5 health information to Pharma.

6 Dr. Cabinda settled his lawsuit with Pharma
7 (Stip. 20) by means of a settlement agreement (Ex. 13-P),
8 by which he made a "General Release" of "any and all known
9 or unknown claims and causes of action" against Pharma, in
10 return for which Pharma agreed to pay:

11 (a) \$200,000 to Dr. Cabinda's lawyer
12 "representing attorneys' fees and costs" (not in dispute
13 here);

14 (b) \$156,000 to Dr. Cabinda "representing
15 claimed lost wages and benefits" (not in dispute here);
16 and

17 (c) \$234,000 to Dr. Cabinda "representing
18 alleged non-wage damages," the subject of the current
19 dispute.

20 The agreement stated that Pharma takes "no position on how
21 you choose to allocate or spend any portion of the moneys
22 paid to you under this Agreement." In the agreement,
23 Pharma took no position as to the tax consequences of the
24 payments. Pharma paid those amounts in 2013 (and
25 evidently reported them to the IRS on Forms W-2 and 1099).



1 2013 Tax Return

2 On his 2013 tax return (Ex. 1-J), Dr. Cabinda
3 reported as wages on line 7 the \$156,000 payment
4 "representing claimed lost wages and benefits," but he did
5 not report the \$234,000 "representing alleged non-wage
6 damages." The IRS compared his return to the Forms W-2
7 and 1099 that Pharma had submitted and perceived that the
8 \$234,000 had not been reported on the return. The IRS,
9 therefore, adjusted Dr. Cabinda's taxable income to
10 include that amount; and on February 8, 2016, it issued to
11 him an SNOD (Ex. 4-J) on which it determined the resulting
12 deficiency of tax.

13 On May 9, 2016, Dr. Cabinda timely filed his
14 petition in the Tax Court, disputing the deficiency so
15 determined. At that time he resided in Maryland.

16 OPINION

17 I. General Legal Principles

18 A. Burden of Proof

19 The IRS's determination in the SNOD is presumed
20 correct. The taxpayer generally bears the burden to prove
21 his entitlement to any deductions he claims; Rule 142(a).
22 The Commissioner has the burden of production as to
23 penalties and additions to tax. See section 7491(c).

24 B. Principles of Section 104(a)(2)

25 Section 61(a) provides: "Except as otherwise

1 provided in this subtitle, gross income means all income
2 from whatever source derived." One exception is provided
3 in section 104(a)(2), under which amounts are excluded
4 from income if they were "received ... on account of
5 personal physical injuries or physical sickness." Section
6 104(a) is clear that "emotional distress shall not be
7 treated as a physical injury or physical sickness." Even
8 if we give full attention to the legislative history of
9 this statutory provision and assume that "the term
10 emotional distress includes symptoms (e.g., insomnia,
11 headaches, stomach disorders) which may result from such
12 emotional distress," H. Conf. Rept. 104-737, at 301 n.56
13 (1996), 1996-3 C.B. 741, 1041, those "symptoms" are not on
14 a scale with Dr. Cabinda's hospitalization, paralysis, and
15 enduring disability.

16 The Commissioner evidently agrees, because he
17 acknowledges in his pre-trial memorandum (at 8, n.1) that
18 Guillain-Barre is not a mere "symptom of emotional
19 distress".

20 Dr. Cabinda credibly and movingly testified that
21 his termination by Pharma caused the onset of debilitating
22 and life-threatening physical sickness, and he contends
23 that the entire \$234,000 is excluded from taxable income
24 on that basis. The Commissioner contends that Dr. Cabinda
25 failed to carry his burden of attributing the payment to

1 physical sickness. To evaluate the parties' contention,
2 we must consider how to allocate Pharma's payments among
3 the claims in Dr. Cabinda's complaint. Of course,
4 Pharma's payment of \$156,000 is properly allocated to
5 "Backpay and front pay commensurate with seniority and any
6 other lost employment benefits including pension", and Dr.
7 Cabinda properly reported that payment as taxable. But
8 the \$234,000 is the subject of dispute.

9 II. Analysis

10 The payment of \$234,000 ("representing alleged
11 non-wage damages," according to the settlement agreement)
12 is what Dr. Cabinda received in arguable satisfaction of
13 (in the words of the "General Release") "any and all known
14 or unknown claims and causes of action," including six
15 items in his complaint's "Requested Relief" -- i.e., "[1]
16 Compensatory damages for emotional distress, [2] loss of
17 Dr. Cabinda's hard-earned reputation through more than 20
18 years of devotion to his work, [3] the loss of career
19 advancement which could have been made for the last two
20 years, [4] physical pain and suffering and medical bills
21 related to his Guillain-Barre syndrome; ... [5] Punitive
22 damages; [and] ... [6] Pre- and post-judgment interest."

23 "The release instrument made no apportionment of
24 the ... settlement payment among the compromised claims.
25 In the circumstances, we must make an allocation

1 ourselves." Eisler v. Commissioner, 59 T.C. 634, 640
2 (1973). "If the settlement agreement lacks express
3 language stating the claims that payment was to settle,
4 the intent of the payor ... is critical to that
5 determination," Longoria v. Commissioner, T.C. Memo.
6 2009-162, slip op. at 17, but Pharma, the payor,
7 explicitly declined in the agreement to allocate the
8 nonwage payment among these claims.

9 As we noted, the Commissioner contends that Dr.
10 Cabinda failed to carry his burden of attributing the
11 payment to physical sickness, and Dr. Cabinda does indeed
12 have the burden of proof. But apart from that general
13 contention, the Commissioner offered no evidence and made
14 no argument to suggest relative values of, or to attribute
15 the payment to, any of these other forms of relief.

16 Dr. Cabinda believed that his physical sickness
17 was the overwhelming ground of his claim, and his decision
18 to settle his discrimination case was plainly motivated by
19 that conviction. Especially in the absence of any
20 evidence of a different intent by the other party, the
21 plaintiff's motive and purpose for settling is surely
22 entitled to weight.

23 In addition, we see no evidence or reason to
24 imagine values for the other five of the six forms of
25 "Requested Relief." If we put ourselves in the role of

1 defense counsel evaluating Pharma's settlement hazards, it
2 seems clear that Dr. Cabinda's Guillain-Barre recurrence
3 would be the great motivator toward settlement. A jury
4 could not fail to be moved by Dr. Cabinda's plight, and
5 Pharma's attorneys could not fail to so observe. We
6 therefore conclude that the settlement payment was
7 attributable to Dr. Cabinda's physical sickness.

8 However, the Commissioner "maintains petitioner
9 was compensated in part for emotional distress and that
10 such compensation would not be excludable even where the
11 emotional distress resulted in physical symptoms." This
12 seems to be a contention that: some portion of the
13 \$234,000 must be attributable to emotional distress; that
14 portion is not excludable; and none of the settlement
15 payment is excludable unless the petitioner can prove an
16 allocation to items other than emotional distress. This
17 conceives of emotional distress and physical sickness as
18 being two distinct and competing claims to which a payment
19 might be allocated -- and so they are in many
20 circumstances. But someone who suffers physical injury or
21 sickness will almost always suffer some emotional distress
22 along with that physical injury or sickness, and the
23 Commissioner's reading of section 104(a) would almost
24 nullify section 104(a)(2). The injured victim of an
25 outright physical assault is clearly entitled to exclude



1 his damages from income, but if he admits that his
2 physical injury has also caused him emotional distress,
3 then the Commissioner's position taken here would require
4 that a (taxable) portion of the damages must be allocated
5 to that emotional distress. This cannot be right.

6 We think that Dr. Cabinda's \$234,000 settlement
7 payment was attributable to his physical injury and that
8 any attempt to allocate the payment among his other claims
9 would be either hair-splitting or outright speculation.

10 III. Addition to Tax

11 The IRS has the burden of production -- see
12 section 7491(c) -- to show that Dr. Cabinda is liable for
13 the addition to tax determined against him in the SNOD for
14 failure to timely file his return, under section
15 6651(a)(1). However, Dr. Cabinda concedes his liability
16 for the addition to tax, so the Commissioner thereby meets
17 his burden. Dr. Cabinda will, therefore, owe the addition
18 to tax, although measured by a smaller deficiency than is
19 in the SNOD.

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

22 (Whereupon, at 2:59 p.m., the above-entitled
23 matter was concluded.)
24
25