

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KENNETH E. LEVINSON,)	
)	
Petitioner,)	CZ
)	
v.)	Docket No. 2003-17S
)	
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 Chief 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, decision will be entered for respondent with respect to the deficiency and for petitioner with respect to the §6662(a) penalty.

(Signed) Lewis R. Carluzzo
Special Trial Judge

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

SERVED Dec 12 2017

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 November 30, 2017
3 Kenneth E. Levinson v. Commissioner of Internal Revenue
4 Docket No. 2003-17S

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

15 This proceeding for the redetermination of a
16 deficiency is a small tax case subject to the provisions
17 of section 7463 and Rules 170 through 175. Except as
18 provided in Rule 152(c), this bench opinion shall not be
19 cited as authority, and pursuant to section 7463(b) the
20 decision entered in this case shall not be treated as
21 precedent for any other case.

22 Daniel J. Daugherty appeared on behalf of
23 respondent. There was no appearance by or on behalf of
24 petitioner. All of the facts in this case, some of which
25 are recited below, have been stipulated. At the time the

1 petition was filed, petitioner lived in California.

2 In a notice of deficiency dated November 21,
3 2016 (notice), respondent determined a \$7,513 deficiency
4 in petitioner's 2014 Federal income tax and imposed a
5 \$1,503 section 6662(a) penalty upon the ground that the
6 underpayment of tax required to have been shown on
7 petitioner's 2014 Federal income tax return (return) is a
8 substantial understatement of income tax.

9 As relevant here, during 2014 petitioner
10 received the following items of income: (1) a \$39,020
11 distribution from an individual retirement account (IRA
12 distribution); (2) \$24,118 in Social Security benefits
13 (Social Security annuity); and (3) a \$165 taxable
14 dividend. None of these items are included in the income
15 reported on the return, although receipt of the IRA
16 distribution and the Social Security annuity are reported
17 in the appropriate places on petitioner's return. As best
18 we can determine from what has been submitted, the return
19 was prepared by petitioner. It shows \$3 of adjusted gross
20 income, no taxable income, and no Federal income tax
21 liability. The IRA distribution was deposited into a bank
22 account opened by petitioner to manage his investments.
23 The IRA distribution was not rolled over into another
24 individual retirement account or other eligible retirement
25 plan within 60 days from the date of the distribution, see

1 sec. 408(d)(3).

2 In the notice, respondent determined that the
3 entire amount of the IRA distribution and the dividend
4 must be included in petitioner's 2014 income, see secs.
5 61(a)(7), (11) and 408(d), which resulted in the inclusion
6 of \$19,160 of the Social Security benefits petitioner
7 received in 2014, see sec. 86.

8 IRA Distribution

9 Generally, a distribution from an individual
10 retirement account is includable in an individual's gross
11 income in the year in which the distribution is received.
12 Sec. 408(d); see sec. 1.408-4(a), Income Tax Regs.; see
13 also Schoof v. Commissioner, 110 T.C. 1, 7 (1998);
14 Gallagher v. Commissioner, T.C. Memo. 2001-34. An
15 otherwise taxable distribution from an individual
16 retirement account can be excludable from the taxpayer's
17 income for the year of the distribution if the funds
18 distributed from the account to the individual for whose
19 benefit the account is maintained are rolled over to
20 another individual retirement account, or eligible
21 retirement plan for the benefit of such individual,
22 provided that certain criteria are met. See sec.
23 408(d)(3)(A). We need not discuss those criteria because
24 petitioner agrees that no such rollover took place. It
25 follows that the IRA distribution is includable in

1 petitioner's 2014 income and respondent's determination to
2 that effect is sustained.

3 Dividend Income

4 Dividends are included in a taxpayer's income as
5 provided in section 301. The petition does not assign
6 error to respondent's adjustment increasing petitioner's
7 income by the amount of dividends shown in the notice.
8 Petitioner does not deny receipt of the dividend income
9 attributed to him in the notice, and his statement makes
10 no mention of the item. It would not be inappropriate to
11 proceed as though petitioner has conceded the adjustment
12 relating to dividend income, but we need not do so. The
13 evidence sufficiently connects petitioner to the income,
14 see Weimerskirch v. Commissioner, 596 F.2d 358, 360 (9th
15 Cir. 1979), rev'g 67 T.C. 672 (1977) ("before the
16 Commissioner can rely on this presumption of correctness,
17 the Commissioner must offer some substantive evidence
18 showing that the taxpayer received income from the charged
19 activity"); consequently, we find respondent's adjustment
20 increasing petitioner's income by the amount of the
21 dividend to be well made.

22 Social Security Annuity

23 Proceeds received by a taxpayer pursuant to a
24 Social Security annuity are includable in the taxpayer's
25 income as provided in section 86. As shown on the return,

1 petitioner received \$24,118 as a Social Security annuity
2 during 2014. Under the circumstances presented,
3 respondent's adjustment attributable to petitioner's
4 receipt of the Social Security annuity is computational
5 reflecting the increase in petitioner's modified adjusted
6 gross income resulting from the inclusion of the IRA
7 distribution and the dividend income. Respondent's
8 adjustment with respect to the Social Security annuity is
9 sustained.

10 A fair reading of petitioner's statement that
11 was stipulated into the record shows that petitioner: (1)
12 recognizes the mistakes that he made that gave rise to the
13 above-referenced adjustments, and (2) does not dispute the
14 adjustments or the computation of the deficiency that
15 results from those adjustments. Instead, petitioner
16 attributes his mistakes to his good-faith failure to roll
17 the IRA distribution into a different individual
18 retirement account or other eligible retirement plan.
19 Whether petitioner acted in good faith, as he claims, has
20 no consequence to the validity of the adjustments just
21 discussed. Income includable in a taxpayer's income must
22 be so treated regardless of whether the taxpayer, in good
23 faith, believed otherwise. Petitioner's good faith,
24 however, must be taken into account in connection with the
25 section 6662(a) penalty here in dispute.

1 According to respondent, petitioner should be
2 held liable for the penalty because the amount of the
3 underpayment of tax required to be shown on the return
4 (which amount is computed in the same manner as, and equal
5 to the deficiency) exceeds \$5,000 and therefore the
6 underpayment is a substantial understatement of income
7 tax. See sec. 6662(b)(2), (d). Respondent, of course,
8 bears the burden of production with respect to the
9 imposition of the penalty, see sec. 7491(c), and that
10 burden includes not only establishing the amount of the
11 underpayment but satisfying a procedural requirement that
12 the imposition of the penalty was approved in writing by
13 the direct supervisor of the Internal Revenue Service
14 employee who first "determined" to assess it. See sec.
15 6751(b)(1). No such writing has been introduced into
16 evidence in this case. Nevertheless, relying upon an
17 exception to the general requirement of written approval,
18 respondent argues that the requirement is not applicable
19 because the penalty was "automatically calculated through
20 electronic means". Sec. 6751(b)(2)(B). We're not so sure
21 that respondent is correctly construing that exception,
22 however, we need not reach the point. Assuming without
23 finding that respondent has met his burden of production
24 pursuant to section 7491(c), we find that petitioner had
25 reasonable cause and acted in good faith with respect to

1 the underpayment of tax as claimed in his statement, which
2 is the only evidence in the record on the point. He is
3 therefore not liable for the penalty. See sec. 6664(c).

4 To reflect the foregoing, decision will be
5 entered for respondent with respect to the deficiency and
6 for petitioner with respect to the section 6662(a)
7 penalty.

8 This concludes the Court's bench opinion in this
9 case.

10 (Whereupon, at 10:21 a.m., the above-entitled
11 matter was concluded.)

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