UNITED STATES TAX COURT
WASHINGTON, DC 20217

BEVERLY TRENITA HAYNES,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 714-16.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent.	)	

ORDER AND DECISION

This matter is before the Court to decide on respondent's motion for summary judgment, filed December 14, 2016, pursuant to Rule 121.[1] Respondent contends that there is no genuine issue of material fact, and that the Court should find as a matter of law that for the 2013 taxable year petitioner (1) was required to report as income the entire amount of a $11,923 distribution received from a qualified retirement plan during 2013 and (2) is liable for the 10% additional tax imposed by section 72(t) on early distributions from a qualified retirement plan.

By Order dated December 16, 2016, the Court ordered petitioner to file a written response to respondent's motion no later than January 17, 2017. The Court later extended the time for petitioner to respond to respondent's motion. On March 2, 2017, petitioner timely filed a response to respondent's motion.

Background

In 2013 petitioner was a participant in the Proskauer Rose LLP Savings Plan, which was administered by Charles Schwab Bank (Charles Schwab), and

[1]Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect for the year at issue.

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during that year she received a distribution of $11,923 from this Charles Schwab-administered plan.

Charles Schwab sent the Internal Revenue Service (IRS) and petitioner a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., for 2013, reflecting the $11,923 distribution as an early distribution with "no known exception". The form also reflected Federal income tax withheld of $2,384.

Petitioner prepared and timely filed (with the assistance of a paid preparer) her Form 1040, U.S. Individual Income Tax Return, for 2013 (2013 return). Although petitioner reported as income total wages of $29,741 from three different employers, a net business loss from a sole proprietorship of $22,652, and unemployment compensation of $11,700, she did not report as income any IRA distributions or pensions and annuities, despite receiving the $11,923 distribution. (The 2013 return reflects (on lines 15a/b and 16a/b) amounts of zero for IRA distributions and pensions and annuities. Additionally, as relevant here, the 2013 return reflects (on lines 8 and 9b) amounts of zero for taxable interest and ordinary dividends.) She also reported an amount of zero for the additional tax on early distributions from a qualified retirement plan pursuant to section 72(t) and, as discussed below, attached to the 2013 return Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts. Petitioner claimed a head of household deduction of $8,950, two exemptions (one for herself and one for a parent), and a retirement savings contribution credit of $172. Finally, petitioner reported Federal income tax withheld of $4,365 (which included the $2,384 withheld from the $11,923 distribution), and claimed an overpayment of $4,333, which was apparently refunded to her.

In part I (on line 1) of Form 5329, in contrast to the 2013 return, petitioner reported the $11,923 distribution as "Early distributions included in income". She also reported the $11,923 distribution in that same part of the form (on line 2) as "Early distributions * * * that are not subject to the [10%] additional tax" imposed by section 72(t) because of exception "03" (distributions due to total and permanent disability).

The IRS' Automated Underreporter (AUR) function sent petitioner a Notice CP2000 dated May 11, 2015, proposing changes to the 2013 return on the basis that certain income and payment information reported by third parties to the IRS differed from the amounts shown on the return. The discrepancy was attributable to petitioner's not reporting the $11,923 distribution, interest of $57, and taxable

dividends of $18. As a result, the IRS proposed that she owed an additional $1,434 in income tax plus statutory interest.

On May 26, 2015, petitioner sent the IRS a response to the Notice CP2000 via facsimile. Therein, petitioner stated in pertinent part that she was "being forced to take money from * * * [her] 401k just to survive" and directed the IRS to "page 15" of the 2013 return (i.e., presumably the Form 5329 where she reported the $11,923 distribution as "Early distributions included in income"). In later correspondence petitioner faxed to the IRS on July 20, 2015, she expressed the belief that she already had been taxed on the $11,923 distribution because Federal income tax of $2,384 had been withheld from the distribution, directing the IRS to the Form 1099-R that Charles Schwab had sent to her and the IRS with respect to the $11,923 distribution.

In an August 31, 2015, letter to petitioner responding to petitioner's July 20, 2015, letter, the IRS stated in pertinent part:

> When you have federal withholding taken out of a distribution it does not mean the income does not have to be reported on line 15b/16b [in the section for "Income"] of Form 1040; federal withholding helps to cover any taxes on that distribution. In order to determine taxes due, the taxable portion listed on the Form 1099-R box 2a [i.e., the section for "Taxable amount"] needs to be reported on line 15b/16b.

Thereafter, on December 7, 2015, the IRS sent petitioner a notice of deficiency, determining a deficiency of $1,434 in her Federal income tax on the ground that the entire amount of the $11,923 distribution, interest of $57, and dividends of $18 should have been included as taxable income. On January 11, 2016, petitioner timely petitioned this Court for redetermination of the deficiency, contending that she believed the entire amount of the $11,923 distribution had been included on the 2013 return and that she already had been taxed on the distribution. Petitioner did not challenge the IRS's determinations regarding interest and dividends by assigning error to them in her petition.

On February 17, 2016, respondent timely filed an answer, affirmatively alleging in support of a claim for an increased deficiency of $1,192 that petitioner is liable for the section 72(t) 10% additional tax because (1) she is not totally and permanently disabled; (2) she was able to engage in substantial gainful activity during 2013 and in subsequent taxable years, to wit, in 2014 she earned wages of $62,508 as an accountant at a law firm; and (3) as of the close of 2013 she was

under 59½ years of age and has not alleged that any other exception under section 72(t) applies. Petitioner did not file a reply to respondent's answer.

Shortly after his answer was filed, respondent's counsel forwarded petitioner's case for settlement consideration to the IRS Office of Appeals (Appeals), and the case, once received by Appeals, was assigned to Appeals Officer Angela Stoddard (AO Stoddard). On March 8, 16, and 29, 2016, AO Stoddard and petitioner spoke by telephone regarding petitioner's case. During the March 8, 2016, telephone call, AO Stoddard explained to petitioner where the $11,923 distribution should have been reported on the 2013 return. They also discussed the applicability of the section 72(t) additional tax. On the March 16, 2016, telephone call, they further discussed the applicability of the section 72(t) additional tax. During this call, petitioner agreed that she was not disabled during 2013 but that she would like to review the IRS publication outlining all of the exceptions to the section 72(t) additional tax to see whether any other exception is applicable to the $11,923 distribution. During the March 29, 2016, telephone call, petitioner acknowledged that no other exception under section 72(t) applied but stated that she still wished to proceed to trial. Accordingly, AO Stoddard returned petitioner's case to respondent's counsel for trial preparation.

On April 26, 2016, respondent moved, pursuant to Rule 37(c), that the undenied allegations in his answer pertaining to the section 72(t) additional tax be deemed admitted. Petitioner failed to file a reply to respondent's Rule 37(c) motion, despite an order of this Court to do so. On September 7, 2016, the Court granted respondent's Rule 37(c) motion and deemed admitted for purposes of this case the affirmative allegations set forth in respondent's answer.

Thereafter, on December 14, 2016, respondent timely filed a motion for summary judgment. Petitioner's response to respondent's summary judgment motion consisted of the following one-paragraph statement:

> I, Beverly Trenita Haynes responding. I respectfully ask the courts to dismiss without prejudice, any and all outstanding tax debt. This tax debt, unbeknownst to me has caused severe hardship. I believed when I employed Gaynairs tax service to prepare my income tax return, all necessary documentation was provided and accounted for. I entrusted Gaynairs Tax Service to prepare my return accurately and completely. However I was not knowledgeable at the time there were errors and discrepancies involving my return. I have attempted to resolve this

issue with the U.S. Tax court with leniency. I respectfully ask to be exonerated from this debt.

Discussion

A. Summary Judgment

The purpose of summary judgment is to expedite the litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted where the moving party shows through "the pleadings, * * * admissions, and any other acceptable materials, together with the affidavits and declarations, if any, that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b); see also Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The burden is on the moving party to demonstrate that there is no genuine issue as to any material fact; consequently, factual inferences will be viewed in a light most favorable to the party opposing summary judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982). The nonmoving party may not rest upon the mere allegations or denials of her pleading, but must set forth specific facts showing that there is a genuine issue for trial. Rule 121(d); Sundstrand Corp. v. Commissioner, 98 T.C. at 520. Petitioner has failed to demonstrate that there is a dispute as to any material fact. Consequently, we may render a decision as a matter of law.

B. Taxability of Retirement Distribution

Section 61(a) defines gross income as "all income from whatever source derived", including distributions from qualified retirement plans. See Cabirac v. Commissioner, 120 T.C. 163, 167 (2003). Under section 402(a), any amounts distributed from such a plan are taxable to the recipient in the taxable year of the recipient in which distributed, and the taxable amount of the distribution is determined under section 72 (relating to annuities). When an amount from a qualified retirement plan is not received as an annuity, but is received before the annuity starting date, the amount will not be included in income to the extent allocable to the investment in the contract. Sec. 72(e)(1)(A), (e)(2)(B), (e)(5)(D), (e)(8).

The Forms 1099-R and 5329 indicate that petitioner received a taxable distribution of $11,923 in 2013 from the Charles Schwab-administered plan, a qualified retirement plan, and petitioner does not dispute that she in fact received this distribution. There is also no evidence in the record indicating that petitioner had any investment in the contract as contemplated by section 72.

On the basis of her filings in this Court and her dealings with the IRS before and after she filed her petition, petitioner appears to have the following two notions about the $11,923 distribution: (1) that she reported the distribution as income because it was reflected on the Form 5329, and (2) that she already was taxed on the distribution because Federal income tax of $2,384 was withheld from it. Her notions, however, are patently ill-conceived. Section 402(a) is unambiguous, and its application to the undisputed facts of this case is clear. Unlike her wages, net business loss, and unemployment compensation, petitioner omitted the $11,923 distribution from the "Income" section of the 2013 return (and yet she claimed as "Payments" on the 2013 return the Federal income tax withheld of $2,384 associated with the distribution). As a matter of law, the $11,923 distribution is includible in her income for 2013.

This result may seem harsh to petitioner and the omission appears to have been caused by her return preparer, but as a business owner and accountant she of all people should know of her obligation to exercise diligence and prudence with respect to the 2013 return, to wit, that she had a duty to review that return and to make sure that it did not contain any patent errors. Cf. Stough v. Commissioner, 144 T.C. 306, 323 (2015).

C. Additional Tax Under Section 72(t)

Section 72(t) imposes an additional 10% tax on early distributions from a qualified retirement plan. See sec. 72(t)(1). The additional 10% tax, however, does not apply to certain enumerated distributions. See sec. 72(t)(2). One such exception is for distributions that are made on or after the date on which the employee attains the age of 59½. Sec. 72(t)(2)(A)(i). Another exception is for distributions attributable to the employee's total and permanent disability. Sec. 72(m), (t)(2)(A)(iii).

It has been deemed admitted for purposes of this case that petitioner was not totally and permanently disabled during 2013 and that she was younger than 59½ years of age at the close of that year. Additionally, throughout these proceedings petitioner has admitted as such and that no other enumerated statutory exception

applies. Thus, as a matter of law, the $11,923 distribution is subject to the section 72(t) additional tax.

Respondent having shown that there is no genuine issue of material fact, and that he is entitled to judgment as a matter of law,[2] it is hereby

ORDERED that respondent's Motion for Summary Judgment, filed December 14, 2016, is granted. It is further

ORDERED and DECIDED that there is a deficiency in income tax due from petitioner for the 2013 taxable year in the amount of $2,626. It is further

ORDERED that, in addition to electronic service, the Clerk of the Court shall serve a copy of this Order on petitioner at 2642 Brighton Avenue, Los Angeles, California 90018.

(Signed) Tamara W. Ashford
Judge

ENTERED: **JUN 28 2018**

[2]Petitioner has not challenged the IRS' determinations that petitioner had unreported interest income of $57 and unreported dividends income of $18. Accordingly, we deem her to have conceded these issues. See Rule 34(b)(4).