

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

PAUL C. NORDBERG &	)	CLC
DEBRA L. NORDBERG,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 1426-17.
	)	
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 Boston, Massachusetts, 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 7, 2018

**SERVED Nov 07 2018**

Bench Opinion by Judge David Gustafson

1  
2 October 17, 2018

3 Paul C. Nordberg & Debra L. Nordberg v. Commissioner of  
4 Internal Revenue

5 Docket No. 1426-17

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

12 By a notice of deficiency ("SNOD") dated October  
13 31, 2016 (Ex. 2-J), the Internal Revenue Service ("IRS")  
14 determined deficiencies in the 2014 Federal income tax of  
15 petitioners Paul C. Nordberg and Debra L. Nordberg.

16 (Stip. 3.) On their petition the Nordbergs state an  
17 address in Massachusetts. After concessions (see Stip. 6-  
18 10), the sole issues for decision are whether some portion  
19 of the annuity payments Mr. Nordberg received pursuant to  
20 the Civil Service Retirement System ("CSRS") is taxable  
21 (we hold that it is) and, if so, what that portion is (a  
22 question that will be resolved under Rule 155).

23 The case was tried in Boston, Massachusetts, on  
24 October 15, 2018. The Nordbergs represented themselves,  
25 and the Commissioner was represented by Molly H. Donohue.



FINDINGS OF FACT

1 Applying the burden of proof principles set out  
2 in the opinion below, we find the following facts:

3 Mr. Nordberg was an employee of a Member of the  
4 House of Representatives from 1975 through 1992. During  
5 that time, mandatory contributions totaling \$46,476 were  
6 withheld from his after-tax wages and were contributed to  
7 the CSRS (Ex. 4-J), pursuant to 5 U.S.C. sec.  
8 8334(a)(1)(A). His employer was obliged to make  
9 corresponding contributions, pursuant to 5 U.S.C. sec.  
10 8334(a)(1)(B)(i). Mr. Nordberg left that employment in  
11 1992 and thereafter was otherwise employed.

12 In April 2008 at age 65 he began to receive  
13 annuity payments from the CSRS. As of June 2018, he had  
14 received annuity payments totaling \$379,368. (Ex. 4-J.)  
15 Mr. Nordberg reckons (see Ex. 10-P), and for purpose of  
16 this opinion we assume, that if, instead of making  
17 mandatory contributions to the CSRS, he had invested those  
18 amounts in an index fund, then his investment would have  
19 yielded an amount greatly in excess of what his CSRS  
20 pension will pay. (See petitioners' pretrial memorandum  
21 ("PTM") filed October 10, 2018, at 5-8.)

22 In 2014 the annuity payments that Mr. Nordberg  
23 received from the CSRS totaled \$22,044. The Office of  
24 Personnel Management ("OPM") reported that amount on Form  
25

1 1099-R (Ex. 3-J), and also reported in box 2a that the  
2 "Taxable amount" of that total was \$20,494, thus treating  
3 as non-taxable only \$1,550 of his total 2014 annuity  
4 payments. (For 2013 the same amount--\$1,550--was  
5 evidently treated as non-taxable, even though the total  
6 annuity payments for 2013 were only \$21,720, an amount  
7 \$324 smaller than the 2014 total. See PTM, Attachment A.)

8 The Nordbergs filed their 2014 Federal income  
9 tax return in 2015. (Stip. 1.) They did not report Mr.  
10 Nordberg's annuity payments on that return but left blank  
11 line 16a ("Pensions and annuities") and line 16b ("Taxable  
12 amount"). On October 31, 2016, after receiving  
13 information about the annuity payments from OPM on Form  
14 1099-R, the IRS issued to the Nordbergs a notice of  
15 deficiency (Ex. 2-R) that determined a deficiency in their  
16 2014 income tax. The Nordbergs timely filed their  
17 petition in this Court on January 18, 2017, challenging  
18 the IRS's determination.

#### 19 OPINION

##### 20 I. Burden of proof

21 The IRS's determination in the SNOD is presumed  
22 correct, and the taxpayer generally bears the burden to  
23 prove any adjustment to the income tax the IRS determined.  
24 Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933).  
25 Mr. Nordberg disputes OPM's tally of his total annuity

1 payments since 2008; but he does not propose an  
2 alternative amount and offers no documentation to  
3 substantiate any other total. More important, he does not  
4 dispute the total amount of 2014 annuity payments.

## 5 II. The taxability of CSRS annuities

6 "Gross income" subject to income tax explicitly  
7 includes "Annuities" and "Pensions"--"[e]xcept as  
8 otherwise provided". Sec. 61(a)(9), (11). For Mr.  
9 Nordberg to prevail, he must be able to point to an  
10 exception. Respondent acknowledges that a portion of  
11 pension payments may be non-taxable--i.e., the portion  
12 that consists of a taxpayer's after-tax contributions made  
13 to the pension fund (see sec. 72(b), (m)). Those general  
14 rules apply to CSRS annuities. That is, "The amount is  
15 withheld from after-tax income and is therefore taxable  
16 the year the salary deduction is made. Contributions by  
17 the employing agency and any accrued interest are taxable  
18 upon distribution to the eligible employee. 26 U.S.C. §§  
19 72, 402(a)." Malbon v. United States, 43 F.3d 466, 467  
20 (9th Cir. 1994). That resolves the issue in this case:  
21 Mr. Nordberg's CSRS annuity payments are not completely  
22 excluded from taxable income. Only a portion of them is  
23 non-taxable.

24 Mr. Nordberg argues to the contrary, invoking a  
25 principle he perceives in the Internal Revenue Code: The

1 Individual Retirement Account ("IRA") is a retirement  
2 benefit provision under which a taxpayer's qualified  
3 contributions to a qualifying plan are deductible (see  
4 sec. 219(a)), and the later distributions from the IRA are  
5 taxable. In 1997 Congress created the "Roth IRA" and  
6 provided that contributions to a Roth IRA are not  
7 deductible (see sec. 408A(c)(1)) and, correspondingly,  
8 that qualified distributions from a Roth IRA are generally  
9 not taxable (see sec. 408A(d)(1)). Drawing inferences  
10 from these IRA and Roth IRA rules, Mr. Nordberg perceives  
11 a general rule that where retirement contributions are  
12 deductible (as with a regular IRA), the payout is taxable,  
13 but that where retirement contributions are not deductible  
14 (as with a Roth IRA), then the payout must be non-taxable.  
15 The Roth IRA rules were enacted in 1997--after the Malbon  
16 opinion we cite above--so Mr. Nordberg dismisses that  
17 opinion and urges complete non-taxability for CSRS annuity  
18 payments.

19 The principle flaw in Mr. Nordberg's argument is  
20 that there is no basis for it in the Code. The Roth IRA  
21 rules apply only to Roth IRAs. Mr. Nordberg points to no  
22 provision in the Code that they reach CSRS annuities, and  
23 we know of no such provision. Rather, CSRS annuity  
24 payments are income under section 61(a) "[e]xcept as  
25 otherwise provided", and the only "otherwise" we find in

1 the Code is the provision in Rule 72(m) allowing for non-  
2 taxability of only the portion of a pension that the  
3 taxpayer himself contributed.

4 At trial Mr. Nordberg called the Court's  
5 attention to an excerpt (Ex. 8-P) from the "General  
6 Explanation of Tax Legislation Enacted in the 107th  
7 Congress" (Jan. 24, 2003), prepared by the Staff of the  
8 Joint Committee on Taxation. He highlighted the section  
9 "Deemed IRAs under employer plans", which explains the  
10 enactment of section 408(q) of the Code. Section 408(q)  
11 provides, "If ... a qualified employer plan elects to  
12 allow employees to make voluntary employee contributions  
13 to a separate account or annuity established under the  
14 plan, ... then such account or annuity shall be treated  
15 for purposes of this title in the same manner as an  
16 individual retirement plan". (Emphasis added.) And, as  
17 the Joint Committee Staff explained (at 88), the separate  
18 account so established "is deemed a traditional IRA or a  
19 Roth IRA, as applicable, for all purposes of the Code."  
20 (Emphasis added.) However, section 408(q) has no  
21 application to Mr. Nordberg and his receipt of CSRS  
22 annuities. His contributions were not voluntary, and the  
23 CSRS did not set up a separate account for Mr. Nordberg.  
24 It has simply paid him the benefit defined in 5 U.S.C.  
25 section 8339.

1 Mr. Nordberg points to CSRS Form 2802 (Ex. 9-P,  
2 "Application for Refund of Retirement Deductions"), which  
3 in some circumstances permits a rollover of such a refund  
4 to a regular IRA or a Roth IRA. However, (1) Mr. Nordberg  
5 does not allege that he ever submitted such an  
6 application; and if he had (2), then according to the  
7 instructions on the form, a rollover to a Roth IRA would  
8 have been permitted only for his contributions, and (3)  
9 the "interest portion" of his interest in the CSRS would  
10 be "taxable in the year paid if you roll it into a Roth  
11 IRA." Nothing in CSRS Form 2802 purports to entitle him to  
12 non-taxable treatment of anything other than the portion  
13 of his CSRS annuity payments that he contributed.

14 Mr. Nordberg urges that it is unfair for the  
15 Government to give him a pension that (he reckons) is so  
16 far below what a fair return on his money would have  
17 yielded and, at the same time, to add insult to injury by  
18 taxing him on that disappointing return on his money.  
19 However, we do not have authority to depart from the laws  
20 Congress has enacted and to instead devise rules of  
21 taxation based on felt fairness.

22 Under the Internal Revenue Code, only a portion  
23 of Mr. Nordberg's CSRS annuity payments is non-taxable.

24 III. The non-taxable portion of Mr. Nordberg's 2014  
25 annuity payments

1 The Commissioner acknowledges that, under  
2 section 72, the contributions that Mr. Nordberg previously  
3 made by withholding are non-taxable to him when  
4 distributed. Mr. Nordberg observes that if the non-  
5 taxable amount is as asserted by the Government here  
6 (\$1,550 per year), then he will not recover his  
7 contributions of \$46,476 as non-taxable income unless and  
8 until just barely less than 30 years of annuity payments  
9 have been made ( $30 \times \$1,550 = \$46,500$ ) and he has reached  
10 age 95. We hope he will do so, but we share his feeling  
11 that this would be excessively optimistic from an  
12 actuarial point of view. OPM began paying Mr. Nordberg's  
13 pension in 2008, and we note that the Social Security  
14 Administration's "Period Life Table, 2007" (2008 is not  
15 available) projects, for a male age 65, a life expectancy  
16 of about 17 years, not 30 years. See  
17 [ssa.gov/OACT/STATS/table4c6\\_2007.html](http://ssa.gov/OACT/STATS/table4c6_2007.html). (We do not rely on  
18 this information to find a life expectancy.)

19 Neither party has proposed a specific,  
20 alternative non-taxable amount, but our reading of section  
21 72 suggests as follows: It appears that under section  
22 72(d)(1)(B), Mr. Nordberg's contributions (which totaled  
23 \$46,476) were to be recovered over 260 months--i.e., at  
24 \$179 per month, or \$2,148 per year. That is, it appears  
25 that the non-taxable portion may have been not \$1,550, as

1 OPM evidently figured, but rather \$2,148. If, as it  
2 seems, the non-taxable amount is not \$1,550, then the  
3 deficiency will have to be recomputed. If that  
4 calculation of an alternative non-taxable amount of \$2,148  
5 is not correct, then the parties can propose the correct  
6 calculation, and to that end--

7 Decision will be entered pursuant to Rule 155.

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

10 (Whereupon, at 3:42 p.m., the above-entitled  
11 matter was concluded.)  
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