

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 October 31, 2018
3 Timothy Roy Nuss v. Commissioner of Internal Revenue
4 Docket No. 22655-17S

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)

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

15 This proceeding for the redetermination of a
16 deficiency is a small tax case subject to the provision of
17 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 This case was tried in Las Vegas, Nevada on
23 October 30, 2018. Michael Thomas Garrett appeared on
24 behalf of respondent. There was no appearance by or on
25 behalf of petitioner. The evidence consists entirely of

1 facts and exhibits included in a stipulation of facts
2 signed by petitioner on October 15, 2018, and respondent
3 on the day of trial. The facts recited below are based
4 upon unopposed allegations made in the petition, the
5 stipulated facts and exhibits, and reasonable inferences
6 drawn from those documents.

7 At the time the petition was filed, petitioner
8 was a resident of Nevada. In the Notice of Deficiency
9 dated August 14, 2017 (Notice) respondent determined a
10 deficiency in petitioner's 2015 Federal income tax.
11 Petitioner attached a copy of the notice (without
12 attachments) to the petition. The deficiency results from
13 (1) One or more distribution from petitioner's retirement
14 plan (pension distributions) administered by Metropolitan
15 Life Insurance Company (Met Life) and (2) Taxable interest
16 from the Clark County Credit Union. As best we can
17 determine from a review of petitioner's 2015 Federal
18 Income Tax Return (return) the income reported on that
19 return does not include the interest or the pension
20 distributions identified in the notice.

21 A fair reading of the petition shows that
22 petitioner does not challenge respondent's adjustment with
23 respect to interest, and we proceed as though petitioner
24 has conceded that adjustment. According to the petition,
25 the pension distribution should not be included in



1 petitioner's 2015 income because any Federal income tax
2 liability that could result from a distribution from his
3 retirement plan has been paid in previous years. The
4 issue for decision is whether the pension distributions
5 are includable in petitioner's 2015 income.

6 According to a form W-2 wage and tax statement
7 included with petitioner's return, petitioner was employed
8 by the Clark County School District and was covered by a
9 "retirement plan", but we cannot tell from what has been
10 submitted the type of retirement plan so referenced. The
11 evidence shows the retirement plan was administered
12 through an account maintained by Met Life but, with
13 exceptions noted below, we have no information regarding
14 the transaction history of the account from whatever
15 unknown date it was established until the date it was
16 closed in 2015, the year here in issue. A September 1,
17 2015 Met Life statement shows that as of August 28, 2015
18 petitioner had a \$6,195.37 outstanding loan balance,
19 including principal and interest stemming from a \$2,400
20 loan he made from his Met Life Retirement Plan on March
21 26, 1996, and because petitioner failed to repay the loan
22 when due, Met Life considered the loan to be in "full
23 default" and closed the account.

24 In the petition petitioner acknowledges receipt
25 of forms 1099-R that Met Life apparently issued with



1 respect to the pension distributions, but as noted claims
2 that he paid any Federal Income Tax due as a result in
3 prior years. As we view petitioner's position he does not
4 seem to dispute the general principles that the term
5 "income" as used in the Internal Revenue Code means all
6 income from whatever source derived, including
7 distributions from a pension. Section 61(a)(11), 72 and
8 402(a). Or that for purposes of section 72 the term
9 "distributions" includes proceeds of a defaulted loan from
10 various types of retirement accounts. See Section 72(q),
11 Perry v. Commissioner, T.C. Memo 2018-90.

12 Instead, petitioner seems to dispute only the
13 year the pension distributions should be considered
14 includable in his income. Nothing in evidence or
15 otherwise in the record, however, identifies what year he
16 had in mind when he prepared the petition. In general,
17 determinations made in a Notice of Deficiency are presumed
18 correct, and the petitioner has the burden of proving it
19 to be wrong. Welch v Helvering, 290 U.S. 111, 115 (1933).
20 See also Rule 142(a).

21 Taking into account petitioner's residence at
22 the time that petition was filed in cases such as this one
23 involving unreported income, the presumption of
24 correctness arises only if the evidence shows a nexus
25 between the taxpayer and the source of the unreported

1 income. See Weimerskirch v Commissioners, 596 F. 2d 358,
 2 360 (9th Circuit 1979), rev'g 67 T.C. 672 (1977). That
 3 nexus has been established with respect to each item of
 4 income referenced in the notice either through
 5 petitioner's deemed concession, or through review of what
 6 limited evidence we do have before us, as summarized in
 7 the facts recited above.

8 It follows that petitioner, who did not appear
 9 for trial, bears the burden of proving that the
 10 determination made in the notice is erroneous. This he
 11 has failed to do. It further follows that the interest
 12 income and pension distributions referenced in the notice
 13 are includable in petitioner's 2015 income as respondent
 14 has determined, and we so find.

15 To reflect the foregoing decision will be
 16 entered for respondent.

17 This concludes the Court's bench opinion in this
 18 case.

19 (Whereupon, at 11:04 a.m., the above-entitled
 20 matter was concluded.)

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