

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

TIMOTHY ROY NUSS, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 22655-17S  
 )  
 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 Las Vegas, Nevada, 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.

**(Signed) Lewis R. Carluzzo  
Special Trial Judge**

Dated: Washington, D.C.  
November 9, 2018

**SERVED Nov 09 2018**

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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