

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

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KEITH WILLIAM BROWN,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 5817-18.
	)	
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 Judge Michael B. Thornton 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, a decision will be entered under Rule 155, Tax Court Rules of Practice and Procedure.

**(Signed) Michael B. Thornton**  
**Judge**

Dated: Washington, D.C.  
March 14, 2019

**SERVED Mar 14 2019**

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IN THE UNITED STATES TAX COURT

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In the Matter of: )

KEITH WILLIAM BROWN, )

Petitioner, )

v. )

COMMISSIONER OF INTERNAL REVENUE, )

Respondent. )

Docket No. 5817-18

Pages: 1 through 11

Place: Los Angeles, California

Date: March 4, 2019



IN THE UNITED STATES TAX COURT

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In the Matter of: )  
 KEITH WILLIAM BROWN, ) Docket No. 5817-18  
 Petitioner, )  
 v. )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 Respondent. )

Edward R. Roybal Center & Fed. Bldg.  
255 East Temple Street  
Room 1167, 11th Floor  
Los Angeles, California 90012

March 4, 2019

The above-entitled matter came on for bench opinion,  
pursuant to notice at 2:11 p.m.

BEFORE: HONORABLE MICHAEL B. THORNTON  
Judge

APPEARANCES:

For the Petitioner:  
No Appearance

For the Respondent:  
No Appearance



P R O C E E D I N G S

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(2:11 p.m.)

THE CLERK: Calling from the calendar docket  
number 5817-18, Keith William Brown.

(Whereupon, a bench opinion was rendered.)



1 Bench Opinion by Judge Michael B. Thornton

2 March 4, 2019

3 Keith William Brown v. Commissioner of Internal Revenue

4 Docket No. 5817-18

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. Except as otherwise provided by Rule 152(c) of  
9 the Tax Court Rules of Practice and Procedure, the oral  
10 findings of fact and opinion shall not be relied upon as  
11 precedent in any other case.

12 This bench opinion is made pursuant to the  
13 authority granted by section 7459(b) and Rule 152.  
14 Section references are to the Internal Revenue Code in  
15 effect for the taxable years<sup>/</sup> at issue. All rule *MST*  
16 references are to the Tax Court Rules of Practice and  
17 Procedure. All monetary amounts are rounded to the  
18 nearest dollar.

19 This case was tried on March 4, 2019 in Los  
20 Angeles, California. Petitioner appeared pro se. Ms.  
21 Sheri A. Wight appeared on behalf of respondent. When  
22 petitioner filed his petition he resided in California.

23 By notice of deficiency, respondent determined a  
24 deficiency in petitioner's 2012 Federal income tax of  
25 \$6,561, an addition to tax under section 6651(a)(1) of



1 \$1,476, an addition to tax under section 6651(a)(2) of  
2 \$1,640, and an addition to tax under section 6654 of \$118.

3 Findings of Fact

4           During 2012 petitioner was employed by Advanced  
5 Constructors Corporation and received wages of \$50,858.  
6 Advanced Constructors Corporation issued a Form W-2, Wage  
7 and Tax Statement, to petitioner reflecting these wages.  
8 Petitioner also received unemployment compensation of \$900  
9 from the Employment Development Department and a State  
10 income tax refund of \$140 from the State of California.  
11 All of the foregoing income items were reflected on  
12 information returns issued to petitioner and filed with  
13 the Internal Revenue Service (IRS).

14           Although petitioner was obligated to file a  
15 Federal income tax return for 2012 he did not file a  
16 return nor did he make any payments toward his Federal  
17 income tax liabilities for that year.

18           Respondent prepared a substitute for return for  
19 the 2012 tax year, and issued to petitioner the notice of  
20 deficiency that is at issue in this case. Petitioner  
21 timely petitioned this Court for redetermination of the  
22 income tax deficiency and additions to tax. Respondent  
23 now concedes that the State income tax refund of \$140 is  
24 nontaxable income for the 2012 tax year.

25

1 Opinion

2 Respondent's determinations in a notice of  
3 deficiency are generally presumed correct, and petitioner  
4 bears the burden of proving them erroneous. See Rule  
5 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933).  
6 Moreover, deductions are a matter of legislative grace,  
7 and the taxpayer bears the burden of proving that he is  
8 entitled to any claimed deductions. INDOPCO, Inc. v.  
9 Commissioner, 503 U.S. 79, 84 (1992). Petitioner does not  
10 contend that section 6201(a) or 7491(a) shifts the burden  
11 of production or proof to respondent, and the record does  
12 not permit us to conclude that the requirements of section  
13 7491(a) are met so as to shift the burden of production or  
14 proof to respondent. In sum petitioner bears the burden  
15 of proof.

16 Section 61 provides that gross income includes  
17 all income from whatever source derived, unless the  
18 taxpayer can establish that the specific item of income is  
19 nontaxable. Commissioner v. Glenshaw Glass Co., 348 U.S.  
20 426, 429-430 (1955). Petitioner has not meaningfully  
21 disputed receiving the various items of income as  
22 determined in the notice of deficiency. Rule 34(b)(4)  
23 provides that the petition shall contain "[c]lear and  
24 concise assignments of each and every error which the  
25 petitioner alleges to have been committed by the

1 Commissioner in the determination of the deficiency". In  
2 his petition, as his basis for disagreeing with the  
3 determination in the notice of deficiency, petitioner  
4 states: "irreconcilable differences". And for the facts  
5 upon which he relies: "the facts are many and span a  
6 period of 37 years, beginning in 1981". Petitioner  
7 testified that he does not dispute the "numbers" in the  
8 notice of deficiency, and he has not presented any  
9 relevant evidence or made any judicially cognizable  
10 argument to properly challenge his 2012 underlying  
11 liability. Accordingly, we affirm respondent's  
12 determinations in the notice of deficiency as relate to  
13 petitioner's underlying 2012 liability, except for the  
14 \$140 adjustment for a State income tax refund, which  
15 respondent has conceded.

16           The petition contains no specific allegations or  
17 supporting facts regarding the section 6651(a)(1) and (2)  
18 and section 6654 additions to tax. Petitioner's frivolous  
19 arguments at trial and the documents he has filed with the  
20 Court similarly do not specifically address any issue  
21 regarding the additions to tax. We deem petitioner to  
22 have conceded the additions to tax and hold that  
23 respondent has no burden of production under section  
24 7491(c) as to the section 6651(a)(1) and (2) and section  
25 6654 additions to tax. See Rule 34(b); see also Funk v.





1 Commissioner, 123 T.C. 213, 217-218 (2004); Swain v.  
2 Commissioner, 118 T.C. 358, 363-365 (2002).

3 But even if we were to assume, for the sake of  
4 argument, that petitioner had properly stated a claim with  
5 respect to these additions to tax, respondent has  
6 satisfied any burden of production that might arise in  
7 this regard under section 7491(c).

8 Section 6651(a)(1) provides for an addition to  
9 tax when a taxpayer fails to file a timely return, unless  
10 the taxpayer establishes that the failure was due to  
11 reasonable cause and not willful neglect. Petitioner has  
12 not put forth any argument to establish that his failure  
13 to file was due to reasonable cause and not due to willful  
14 neglect. And his gross income exceeded the maximum amount  
15 to be exempt from filing for the year. See secs. 6012,  
16 6072. Respondent has met any burden of production under  
17 section 7491(c).

18 Section 6651(a)(2) provides for an addition to  
19 tax for failure to timely pay the amount of tax shown on a  
20 return, unless the taxpayer establishes that the failure  
21 was due to reasonable cause and not willful neglect. This  
22 addition to tax applies only when an amount of tax is  
23 shown on a return. See Cabirac v. Commissioner, 120 T.C.  
24 163, 170 (2003), aff'd without published opinion, 94  
25 A.F.T.R.2d (RIA) 2004- 5490 (3d Cir. 2004); Burr v.



1 Commissioner, T.C. Memo. 2002-69, aff'd, 56 F.App'x 150  
2 (4th Cir. 2003). Petitioner failed to file a return, and,  
3 as evidenced by Form 13496, IRC Section 6020(b)  
4 Certification, respondent made a substitute for return  
5 (SFR) pursuant to section 6020(b) that qualifies as a  
6 return for purposes of section 6651(a)(2). See sec.  
7 6651(g)(2); Wheeler v. Commissioner, 127 T.C. 200, 208-209  
8 (2006), aff'd, 521 F.3d 1289 (10th Cir. 2008); Grandy v.  
9 Commissioner, T.C. Memo. 2012-196, slip op. at 13.  
10 Because petitioner has failed to show reasonable cause for  
11 failing to pay timely the tax due as shown on the SFR, we  
12 hold that petitioner is liable for the section 6651(a)(2)  
13 addition to tax.

14 Section 6654 provides for an addition to tax  
15 when a taxpayer fails to pay a required installment of  
16 estimated income tax. Each required installment is equal  
17 to 25% of the required annual payment. Sec.  
18 6654(d)(1)(A). The required annual payment is equal to  
19 the lesser of (1) 90% of the tax shown on the return for  
20 the taxable year (or, if the taxpayer filed no return, 90%  
21 of the tax for that year), or (2) 100% of the tax shown on  
22 the return, if any, for the preceding taxable year. Sec.  
23 6654(d)(1)(B). The parties have stipulated Forms 4340,  
24 Certificate of Assessments, Payments, and Other Specified  
25 Matters, for tax years 2011 and 2012, which together



1 demonstrate that petitioner has a Federal income tax  
2 liability for 2012, made no estimated income tax payments  
3 for 2012, and filed no Federal income tax returns for 2011  
4 and 2012. Respondent has satisfied any burden of  
5 production for the section 6654 addition with respect to  
6 the year at issue.

7           The Court reminds petitioner that section  
8 6673(a) (1) authorizes this Court to require a taxpayer to  
9 pay to the United States a penalty not in excess of  
10 \$25,000 whenever it appears that: (1) the taxpayer has  
11 instituted or maintained proceedings primarily for delay;  
12 (2) the taxpayer's position is frivolous or groundless; or  
13 (3) the taxpayer unreasonably failed to pursue  
14 administrative remedies. The purpose of section 6673 is  
15 to compel taxpayers to conform their conduct to settled  
16 tax principles and to deter the waste of judicial  
17 resources. See Coleman v. Commissioner, 791 F.2d 68, 71  
18 (7th Cir. 1986); Salzer v. Commissioner, T.C. Memo. 2014-  
19 188, 2014 WL 4547041, at \*11. Although we decline to  
20 impose a section 6673 penalty today, we strongly warn  
21 petitioner that he may be subject to a section 6673  
22 penalty, even upon the Court's own motion, if he persists  
23 in maintaining proceedings in this Court primarily for  
24 delay or continues to press frivolous arguments.

25           We have considered the remaining arguments made



1 by the parties, and to the extent not discussed above, we  
2 conclude those arguments are irrelevant, moot, or without  
3 merit.

4 To reflect the foregoing and respondent's  
5 concession, a decision will be entered under Rule 155.

6 This concludes the Court's oral findings of fact  
7 and opinion in this case.

8 (Whereupon, at 2:21 p.m., the above-entitled  
9 matter was concluded.)

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CERTIFICATE OF TRANSCRIBER AND PROOFREADER

CASE NAME: Keith William Brown v. Commissioner

DOCKET NO.: 5817-18

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 11 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Troy Ray on March 4, 2019 before the United States Tax Court at its session in Los Angeles, CA, in accordance with the applicable provisions of the current verbatim reporting contract of the Court and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.

*Meribeth Ashley*

Meribeth Ashley, CET-507 3/10/19  
Transcriber Date

*Jessica Hernandez*

Jessica Hernandez 3/11/19  
Proofreader Date

