

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

JENNIFER G. DAVIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 20462-18S
	)	
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 Dallas, Texas, 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, an appropriate decision will be entered.

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

Dated: Washington, D.C.  
December 4, 2019

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo  
2 November 20, 2019  
3 Jennifer G. Davis v. Commissioner of Internal Revenue  
4 Docket No. 20462-18S

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

14 This proceeding for the redetermination of a  
15 deficiency is a small tax case subject to the provisions  
16 of section 7463 and Rules 170 through 174. Except as  
17 provided in Rule 152(c), this bench opinion shall not be  
18 cited as authority, and pursuant to section 7463(b), the  
19 decision entered in this case shall not be treated as  
20 precedent for any other case.

21 Petitioner failed to appear for trial, and she  
22 has provided no reason to the Court for such failure.  
23 Michael S. Navarro appeared on behalf respondent.

24 In a notice of deficiency dated September 4,  
25 2018 (notice), respondent determined a deficiency in and

1 imposed a section 6651(a)(1) addition to tax with respect  
2 to petitioner's 2016 federal income tax.

3 Respondent now concedes the section ~~6641~~<sup>6651</sup>(a)(1) <sup>cc</sup>  
4 addition to tax. Ignoring the computational adjustment  
5 relating to petitioner's claimed deduction for student  
6 loan interest, we must decide whether (1) a distribution  
7 from an individual retirement account (IRA) requested and  
8 received by petitioner during 2016 is includable in her  
9 income for that year, and (2) whether the distribution is  
10 subject to the additional tax imposed by section 72(t).

11 At the time the petition was filed, petitioner  
12 lived in Texas.

13 During 2016, petitioner received a distribution  
14 from an IRA (IRA distribution). Apparently, federal  
15 income taxes were withheld from the IRA distribution.  
16 Neither the IRA distribution nor the amount of federal  
17 income tax withheld from the distribution are shown on  
18 petitioner's 2016 federal income tax return.

19 According to respondent's pretrial memorandum,  
20 following the receipt of the notice and the filing of the  
21 petition in this case, the petitioner participated in a  
22 conference with respondent's Appeals Office. During that  
23 conference, petitioner suggested that the distribution was  
24 used to help pay for her daughter's medical school  
25 expenses, but she offered no documentary support for that

1 suggestion.

2 In general, distributions from an IRA are  
3 includable in the taxpayer's income. See secs. 72 and  
4 408(d). Nothing in the record demonstrates that anything  
5 less than the full amount of the IRA distribution is  
6 includable in petitioner's 2016 income, and respondent's  
7 determination that the entire amount of the IRA  
8 distribution must be included in her 2016 income is  
9 sustained.

10 As relevant here, section 72(t) imposes a 10%  
11 additional tax on what are commonly referred to as "early  
12 distributions" from qualified retirement accounts,  
13 including IRAs. For the most part, "early" means the  
14 distribution was received before the recipient was 59 1/2  
15 years old, and the evidence in this case shows that  
16 petitioner had not attained that age by the close of 2016.  
17 In the notice, respondent determined that the section  
18 72(t) additional tax is applicable to the entire amount of  
19 the IRA distribution.

20 There are numerous exceptions to the imposition  
21 of the section 72(t) additional tax on early distributions  
22 from qualified retirement plans or individual retirement  
23 plans. Only one is possibly relevant here. In general,  
24 and subject to various conditions and limitations, section  
25 72(t)(2)(E) provides that a distribution to an individual

1 from an individual retirement plan, which includes a  
2 distribution from an IRA, is not subject to the section  
3 72(t) additional tax if the distribution is used "for  
4 higher education purposes". Petitioner apparently  
5 discussed this exception with respondent's appeals  
6 officer, and apparently she was given the opportunity to  
7 present such information to respondent's appeals officer.  
8 She certainly has had the opportunity to present such  
9 information to the Court in this proceeding, but she has  
10 not taken the opportunity to do so. In simple terms, she  
11 has not met her burden of proving that she is not liable  
12 for the section 72(t) additional tax. See Rule 142(a).  
13 That being so, it follows that respondent's imposition of  
14 the section 72(t) additional tax on the entire amount of  
15 the IRA distribution is sustained.

16 To reflect the foregoing, decision will be  
17 entered for respondent with respect to the deficiency, and  
18 for petitioner with respect to the section 6651(a)(1)  
19 addition to tax.

20 This concludes the Court's bench opinion this  
21 matter.

22 (Whereupon, at 10:52 a.m., the above-entitled  
23 matter was concluded.)

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