

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLC

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

CLC

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[/] 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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1 CERTIFICATE OF TRANSCRIBER AND PROOFREADER

2 CASE NAME: Keith William Brown v. Commissioner

3 DOCKET NO.: 5817-18

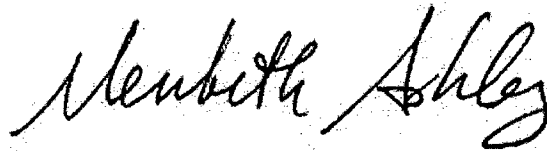
4 We, the undersigned, do hereby certify that the
5 foregoing pages, numbers 1 through 11 inclusive, are the
6 true, accurate and complete transcript prepared from the
7 verbal recording made by electronic recording by Troy Ray
8 on March 4, 2019 before the United States Tax Court at its
9 session in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

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18

Meribeth Ashley, CET-507

3/10/19

19

Transcriber

Date

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23

Jessica Hernandez

3/11/19

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Proofreader

Date

25

