

T.C. Memo. 2020-151

UNITED STATES TAX COURT

SCOTT LASHUA, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 9144-19.

Filed November 9, 2020.

Scott Lashua, pro se.

Brian M. Howell, for respondent.

MEMORANDUM OPINION

MARVEL, Judge: Respondent determined a deficiency of \$2,964 in petitioner's Federal income tax for the 2016 taxable year.¹

¹Unless otherwise indicated, all section references are to the Internal Revenue Code (Code) for the year at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

[*2] The issues for decision are: (1) whether petitioner had \$7,800 of unreported retirement income, (2) whether petitioner is liable for an additional tax of \$780 under section 72(t) for an early distribution from a qualified retirement plan, and (3) whether petitioner received a valid notice of deficiency.

Background

This case was submitted fully stipulated under Rule 122 on March 6, 2020. The stipulation of facts and facts drawn from stipulated exhibits are incorporated herein by this reference. Petitioner resided in Massachusetts when he petitioned this Court.

In 2016 petitioner had an individual retirement account (IRA) with National Financial Services, LLC (NFS), from which he received a distribution of \$7,800. Petitioner timely filed a Form 1040, U.S. Individual Income Tax Return, for 2016, but he failed to report the IRA distribution and the additional tax under section 72(t). At the time of the IRA distribution, petitioner had not yet reached 59-1/2 years of age, and no portion of the distribution was deposited in another IRA or other retirement account. None of the facts necessary to establish an exception under section 72(t)(2) existed at the time of petitioner's distribution.

Respondent issued a statutory notice of deficiency to petitioner on March 18, 2019. The notice of deficiency was not signed by any Internal Revenue

[*3] Service (IRS) employee. Petitioner timely petitioned this Court on June 4, 2019. On March 6, 2020, the parties submitted a joint motion to submit case pursuant to Rule 122, which the Court granted.

Discussion

Generally, the Commissioner's determination of a deficiency is presumed correct, and the taxpayer bears the burden of proving it is erroneous.² Rules 142(a), 122(b); Welch v. Helvering, 290 U.S. 111, 115 (1933).

I. Unreported Income

Section 61(a) defines gross income as "all income from whatever source derived" unless specifically exempted or excluded. Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 430 (1955). Generally, a distribution from an IRA is includible in gross income in the manner prescribed by section 72 unless it is rolled over into another IRA or other eligible retirement plan. Sec. 408(d)(1), (3).

Petitioner has stipulated that he received the \$7,800 distribution from his NFS IRA in 2016. Petitioner has further stipulated that he did not contribute any portion of the distribution to another IRA or other retirement account. Because the stipulations establish that petitioner did not comply with the requirements of

²Petitioner has neither alleged nor proven that the burden of proof should shift to respondent under sec. 7491(a).

[*4] paragraphs (1) and (3) of section 408(d), petitioner has not proven that the distribution was not taxable. Accordingly, we conclude that the entire distribution is includible in gross income.

II. Additional Tax

Section 72(t)(1) imposes an additional tax of 10% when a participant in a qualified retirement plan as defined in section 4974(c)(4) receives an early distribution that does not satisfy one of the exceptions enumerated in section 72(t)(2). A distribution is premature if the distributee has not attained 59-1/2 years of age at the time of the distribution. Sec. 72(t)(2)(A)(i).

Petitioner had not attained 59-1/2 years of age when he received the distribution from his NFS IRA,³ and he has not proven that any exception to the additional tax applies. See El v. Commissioner, 144 T.C. 140, 148-149 (2015). Accordingly, we hold petitioner is liable for the additional 10% tax imposed by section 72(t).

III. Notice of Deficiency

Petitioner argues he is not liable for any tax on his IRA distribution because the notice of deficiency he received was not signed by an authorized IRS official

³The parties do not dispute that petitioner's NFS IRA was a qualified retirement plan under sec. 4974(c)(4).

[*5] and, therefore, was not valid. Accordingly, petitioner contends that this Court lacks jurisdiction.

A statutory notice of deficiency need not take any particular form to be valid. Campbell v. Commissioner, 90 T.C. 110, 115 (1988). A statutory notice of deficiency must advise the taxpayer that the IRS has determined a deficiency with respect to the taxpayer and must specify the year and amount. Id. It does not require a signature. Commissioner v. Oswego Falls Corp., 71 F.2d 673 (2d Cir. 1934), aff'g 26 B.T.A. 60 (1932); see also Perlmutter v. Commissioner, 44 T.C. 382, 399-400 (1965), aff'd, 373 F.2d 45 (10th Cir. 1967).

Petitioner nonetheless argues that section 6212 requires all statutory notices of deficiency to be signed by the Secretary of the Treasury or his delegate. Petitioner's argument is without merit. Neither section 6212 nor any other provision of the Code includes such a requirement. The notice petitioner received complied with the requirements of section 6212, identified petitioner, and notified him that respondent had determined a deficiency of \$2,964 for 2016. The notice of deficiency petitioner received was valid. Accordingly, we sustain respondent's determinations.

Petitioner's other arguments are frivolous and warrant no further discussion. See Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive

[*6] no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.”)

We have considered the parties’ other arguments and, to the extent they are not discussed herein, find them to be irrelevant, moot, or without merit.

Decision will be entered for
respondent.