United States Tax Court

T.C. Memo. 2022-51

PAUL CHRISTOPHER CALDWELL,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 3333-19. Filed May 18, 2022.

Shannon C. Fiedler and *Brian C. McManus*, for petitioner.

Christine A. Fukushima, *Jeffrey A. Rodgers*, and *Katherine Holmes Ankeny*, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

LAUBER, *Judge*: With respect to petitioner's Federal income tax for 2011, the Internal Revenue Service (IRS or respondent) determined a deficiency of $21,977 and additions to tax under sections 6651 and 6654.[1] After concessions by respondent,[2] the questions remaining for decision are whether petitioner (1) is required to include in gross income $88,391 of disability benefits received during 2011 and (2) is liable for additions to tax for failure to file and failure to pay. We rule for respondent on each point.

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[1] Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

[2] Respondent concedes that petitioner during 2011 did not receive taxable Social Security benefits of $22,395 and is not liable for an addition to tax under section 6654.

Served 05/18/22

[*2] FINDINGS OF FACT

The following facts are derived from the parties' pleadings, the documents admitted into evidence at trial, the trial testimony, and the documents and information admitted into evidence pursuant to Rule 91(f). Petitioner resided in California when he petitioned this Court.

In 2007 petitioner began working for Sprint Nextel (Sprint or employer) as an account executive. He remained employed by Sprint during 2011 and at all relevant times. Through his employer he enrolled in two disability plans: the "Core Plan" (basic long-term disability, enrollment date March 21, 2008), and the "Buy-Up Plan" (supplemental long-term disability, enrollment date January 1, 2009). These plans provided for payments in the event petitioner was unable to perform the material duties of his job because of injury or illness.

An affiliate of United Healthcare (United) was the administrator of both plans when petitioner originally enrolled in them. In June 2010 or earlier, Aetna Life Insurance Co. (Aetna) replaced United as the administrator of both plans. Aetna was the administrator of both plans during 2011, and it made all of the disability payments at issue.

Under the Core Plan, Sprint paid all premiums directly without any contribution from petitioner. The normal monthly benefit payable under the Core Plan was 50% of petitioner's monthly salary. For purposes of calculating this benefit, petitioner's annual salary was determined to be $123,300, or $10,275 monthly. The normal monthly benefit payable under the Core Plan was thus $5,137.50.

Under the Buy-Up Plan, petitioner paid all premiums himself through pre-tax payroll deductions from his Sprint wages. Aetna's documentation states that the Buy-Up Plan was "contributory, pre-tax" and that the "post-tax employee contribution" was 0%. The normal monthly benefit payable under the Buy-Up Plan was 15% of petitioner's monthly salary. For purposes of calculating this benefit, petitioner's annual salary was again determined to be $123,300, or $10,275 monthly. The normal monthly benefit payable under the Buy-Up Plan was thus $1,541.25.

Petitioner suffered a knee injury in 2009 and applied for long-term disability benefits in June 2010. After a period of review, Aetna approved, with retroactive effect to February 14, 2010, petitioner's claims for disability benefits under the Core Plan (claim No. 2888485) and the Buy-Up Plan (claim No. 3159492). Petitioner remained eligible

[*3] for benefits under the Core Plan throughout 2011. On August 22, 2011, Aetna determined that he ceased to be eligible for benefits under the Buy-Up Plan.

Under the Core Plan, Aetna made monthly disability payments to petitioner throughout 2011. Aetna issued each payment by generating a physical check and mailing it to petitioner. Aetna's records show that petitioner cashed all 12 monthly checks.

For each of the first eight months of 2011, Aetna issued petitioner a check for $5,137.50, the usual monthly payment under the Core Plan. For September Aetna reduced his monthly payment by $462.38 to recoup an overpayment it had made to him under the Buy-Up Plan, which was terminated in August. For October Aetna reduced his monthly payment to $856.25 because of a temporary dispute about his continued eligibility. When that dispute was resolved in petitioner's favor, Aetna made a catch-up payment of $9,418.75 in November that restored petitioner to the status quo ante ($856.25 + $9,418.75 = $10,275 = 2 × $5,137.50). For December Aetna resumed the usual monthly payment of $5,137.50, yielding total monthly payments to petitioner of $61,187.62 under the Core Plan, as follows:

Check No.	*Date Issued*	*Period*	*Amount*
1778282	1/21/11	January	$5,137.50
1799088	2/18/11	February	5,137.50
1825876	3/29/11	March	5,137.50
1842805	4/21/11	April	5,137.50
1867223	5/20/11	May	5,137.50
1889329	6/21/11	June	5,137.50
1910883	7/21/11	July	5,137.50
1935279	8/19/11	August	5,137.50
1957882	9/21/11	September	4,675.12
1971100	10/13/11	October	856.25
2005107	11/21/11	November	9,418.75
2027845	12/21/11	December	5,137.50
Total			**$61,187.62**

Under the Buy-Up Plan, petitioner's normal monthly benefit was $1,541.25. Aetna made a large payment in February 2011 that included petitioner's January benefit and payment in arrears for the period during 2010 for which he had been determined retroactively eligible. Aetna made the normal monthly payment for March through August 2011.

[*4] Having determined that petitioner's eligibility under the Buy-Up Plan ceased as of August 22, 2011, Aetna subsequently recouped $462.38 of the August payment by debiting that sum against his September payment under the Core Plan. *See supra* p. 3. Petitioner thus received during 2011 total payments of $27,204.07 under the Buy-Up Plan, as follows:

Check No.	*Date Issued*	*Period*	*Amount*
1791158	2/16/11	2/14/10–1/31/11	$16,415.32
1799089	2/18/11	2/1/11–2/28/11	1,541.25
1820377	3/29/11	3/1/11–3/31/11	1,541.25
1842806	4/21/11	4/1/11–4/30/11	1,541.25
1867224	5/20/11	5/1/11–5/31/11	1,541.25
1889330	6/21/11	6/1/11–6/30/11	1,541.25
1910884	7/21/11	7/1/11–7/31/11	1,541.25
1935280	8/19/11	8/1/11–8/31/11	1,541.25
Total			**$27,204.07**

Petitioner did not file a Federal income tax return for 2011. At trial he testified as to his recollection that he had filed a return with the assistance of volunteers at a disability resource center. But IRS records show that no return was filed, and petitioner could not produce a copy of a 2011 return or evidence that such a return had been filed, by mail or electronically. We did not find petitioner's testimony on this point reliable.

Having received no return from petitioner for 2011, the IRS prepared, on October 9, 2018, a substitute for return (SFR) on the basis of third-party reporting. The IRS received from Aetna Form W–2, Wage and Tax Statement, reporting that it had paid petitioner during 2011 "wages, tips, or other compensation" of $88,391.69. The IRS determined that these payments were includible in petitioner's gross income. Allowing him the standard deduction and one personal exemption, the IRS determined taxable income of $101,286 and a tax liability of $21,977. The SFR was properly certified by the appropriate IRS officer, and it met all the requirements of section 6020(b).

On December 10, 2018, the IRS sent petitioner a timely notice of deficiency, determining the deficiency set forth in the SFR and additions to tax under sections 6651(a)(1), (a)(2), and 6654. (Respondent has since conceded $22,395 of Social Security income included in the notice of deficiency and the section 6654 addition to tax. *See supra* note 2.) Petitioner timely petitioned this Court. In response to trial subpoenas,

[*5] Aetna produced to petitioner and respondent 1,097 pages of documents, consisting of its entire claim file for petitioner. These documents, certified by an appropriate Aetna officer as authentic business records, were admitted into evidence at trial.

OPINION

A. *Burden of Proof*

The Commissioner's determinations in a notice of deficiency are generally presumed correct, and the taxpayer bears the burden of proving them erroneous. Rule 142(a); *see Welch v. Helvering*, 290 U.S. 111, 115 (1933). In certain circumstances section 7491 may shift the burden of proof to the Commissioner. But that section applies only if the taxpayer (among other things) "introduces credible evidence" and "has maintained all records required under this title." § 7491(a)(1), (2)(B). Petitioner does not contend, and he could not plausibly contend, that he met these requirements.

B. *Unreported Income*

Section 61(a) provides that "gross income means all income from whatever source derived." In cases of unreported income, the Commissioner must establish an evidentiary foundation connecting the taxpayer to the income-producing activity, *Weimerskirch v. Commissioner*, 596 F.2d 358, 361 (9th Cir. 1979), *rev'g* 67 T.C. 672 (1977), or demonstrate that the taxpayer actually received income, *Edwards v. Commissioner*, 680 F.2d 1268, 1270–71 (9th Cir. 1982). Once the Commissioner has met his threshold burden, the burden shifts to the taxpayer to show that the Commissioner's determinations are arbitrary or erroneous. *See Hardy v. Commissioner*, 181 F.3d 1002, 1004–05 (9th Cir. 1999), *aff'g* T.C. Memo. 1997-97.

Information supplied to the IRS on a Form W–2 is sufficient to meet the Commissioner's initial burden. *See id.* at 1005. Respondent introduced into evidence a Form W–2 from Aetna reporting that it had paid petitioner $88,391.69 of "wages, tips, or other compensation" during 2011. Petitioner produced no evidence to establish a "reasonable dispute" with respect to the accuracy of this information. *See* § 6201(d). In any event respondent introduced certified business records of Aetna that connected petitioner to the unreported income. The burden thus shifts to petitioner to prove, by a preponderance of the evidence, that respondent's determination of unreported income is arbitrary or erroneous. *See Hardy*, 181 F.3d at 1004–05.

[*6] Respondent determined that petitioner during 2011 received unreported income of $88,391, the amount of disability benefits reported by Aetna. Petitioner concedes that disability benefits, as a replacement for wages, constitute taxable income unless the premiums therefor are paid with after-tax dollars. *See* § 104(a)(3); *Tuka v. Commissioner*, 120 T.C. 1, 4 (2003) ("[E]xemption of benefits depends on whether contributions . . . involve after-tax dollars."), *aff'd*, 85 F. App'x 875 (3d Cir. 2003). At various points in this litigation petitioner has advanced numerous (often inconsistent) theories in contending that he received less income than Aetna reported. None of his theories has any plausibility, and none is sufficient to carry his burden of proof.

● Before, during, and after the tax year in issue, petitioner had repeated disagreements with Aetna about his disability coverage. At various points in this litigation he asserted that Aetna had embarked on a vendetta against him by creating records that were "completely bogus," a "forgery," "fraudulently created," and "not[] legit." He asserted at trial that the plans shown in Aetna's records "were bogus group plans." We did not find any of these assertions remotely credible. Aetna's complete claim file was admitted into evidence, supported by a proper certification of authenticity. Its records are thoroughly consistent in setting forth the types of payments made to petitioner and the amounts thereof.

● In his Petition, petitioner alleged that he "had overpayment recoupment from Aetna [during 2012–2018] which left [his] taxable income for tax year 2011 ZERO." He introduced no credible evidence to this effect and abandoned this argument in his Post-Trial Brief. In any event, post-2011 reductions in benefits would not eliminate taxable income that petitioner in fact received during 2011. *See* Treas. Reg. § 1.451-1(a); *see also N. Life Ins. Co. v. United States*, 685 F.2d 277, 278 (9th Cir. 1982) ("Income accrues when the right to receive it becomes fixed . . . even if later events may require the recipient to repay it.").

● In his Pretrial Memorandum petitioner asserted that his claim under the Core Plan was terminated on June 1, 2011, that it was never reinstated, and that he was taxable only on five monthly disability payments of $1,541.25 allegedly received under the Core Plan. The evidence contradicted these assertions. Aetna's records show that petitioner's monthly benefit under the Core Plan was $5,137.50; payments of $1,541.25 were made under the Buy-Up Plan, which supplemented the Core Plan, and petitioner's assertion that Aetna malevolently "switched the plans [around]" was not credible.

[*7] Aetna's records likewise show that it made payments to petitioner under the Core Plan throughout 2011. There was a brief hiatus in October, when his payment was reduced to $856.25 because of an eligibility dispute. But Aetna quickly resolved that dispute in his favor and made a catch-up payment of $9,418.75 in November. For the entire year Aetna issued checks to petitioner under the Core Plan totaling $61,187.62—the equivalent of $5,137.50 per month, minus $462.38 recouped from the September payment on account of the August overpayment under the Buy-Up Plan. Aetna's records show that petitioner cashed each monthly check. Sprint paid all premiums for the Core Plan, and the benefits petitioner received under it were thus taxable in full. *See Tuka*, 120 T.C. at 3–4; *Connors v. Commissioner*, T.C. Memo. 2006-239, 92 T.C.M. (CCH) 404, 408, *aff'd*, 277 F. App'x 122 (2d Cir. 2008).[3]

- Petitioner paid the premiums on the Buy-Up Plan, and these amounts were withheld from his paychecks. But he errs in asserting that the Buy-Up Plan was "pre-taxed and not subject to Federal or State taxes." Petitioner supplied no credible evidence that he paid premiums for the Buy-Up Plan with after-tax dollars. Aetna's records repeatedly and consistently state that the Buy-Up Plan was "contributory, pre-tax" and that the "post-tax employee contribution" was 0%.

- Petitioner asserts that he never received the Buy-Up Plan payment issued in February 2011, which included payment in arrears for 2010. We did not find his testimony on this point credible. Aetna's records show that on February 16, 2011, it issued him check No. 1791158 for $16,415.32, and that he cashed this check.

In sum, the Form W–2 that Aetna issued to petitioner, as well as the company's voluminous business records, show that it paid him $88,391 of disability benefits during 2011. Petitioner concedes that Aetna paid all premiums under the Core Plan. Aetna's records show that petitioner paid premiums under the Buy-Up Plan with pre-tax dollars, and he submitted no credible evidence to the contrary. He is therefore taxable on all benefits received, and he did not carry his burden of

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[3] At trial petitioner noted that Aetna in 2012 issued him a check for $30,825 and asserted that this corresponded to six months of "missing payments" that he allegedly did not receive during 2011 after Aetna supposedly terminated the Core Plan on June 1 of that year. There is no evidence that Aetna terminated the Core Plan in 2011; petitioner's trial testimony showed that he was confusing the Core Plan with Aetna's termination of the Buy-Up Plan in August 2011. As indicated in the text, Aetna's records consistently show that it made payments to him under the Core Plan for every month in 2011.

[*8] proving that the amount of these payments was less than $88,391, as determined in the notice of deficiency. That amount is thus includible in his gross income.[4]

C. *Additions to Tax*

1. *Failure to File*

Section 6651(a)(1) provides for an addition to tax of 5% of the tax required to be shown on the return for each month or fraction thereof for which there is a failure to file the return, not to exceed 25% in toto. Respondent contends that petitioner is liable for an addition to tax (reduced as discussed *supra* note 2). Respondent has the burden of production on this point. *See* § 7491(c).

Petitioner's return for 2011 was due on April 17, 2012. *See* §§ 6072(a), 7503. Respondent has produced a certified transcript of petitioner's account for 2011 showing that no return was filed. This was sufficient to satisfy respondent's burden of production. *See Catlett v. Commissioner*, T.C. Memo. 2021-102, 122 T.C.M. (CCH) 147, 152.

At trial petitioner testified as to his recollection that he had filed a return for 2011 with the assistance of volunteers at a disability resource center. But IRS records show that no return was filed, and petitioner produced neither a copy of a 2011 return nor any evidence that such a return had been filed, by mail or electronically. Nor did he produce any documents or testimony from the people who allegedly helped him prepare the return. We did not find petitioner's testimony credible, and we find that he failed to file a return for 2011.

No addition to tax will apply if the taxpayer shows that his failure to file was "due to reasonable cause and not due to willful neglect." § 6651(a)(1). Petitioner supplied no evidence seeking to establish reasonable cause for failure to file. Rather, his testimony was that he did file a return, but we found that testimony unsupported by any

[4] In his Post-Trial Brief petitioner contends that "respondent did not enter into evidence any bank records establishing that the alleged [disability] payments were actually paid or received" and that petitioner "did not constructively receive any other checks in 2011." Contrary to petitioner's view, it was his burden to establish that respondent's determination of unreported income was "arbitrary or erroneous," *Hardy*, 181 F.3d at 1004–05, not respondent's burden to disprove the existence of the income reported on the Form W–2. And since we find that petitioner actually received $88,391 of disability benefits during 2011, his arguments about constructive receipt are beside the point.

[*9] objective evidence. We will thus sustain an addition to tax for failure to file.

2. *Failure to Pay*

Section 6651(a)(2) provides for an addition to tax when a taxpayer fails to pay timely the tax shown on a return. To meet his burden of production under section 7491(c) with respect to the section 6651(a)(2) addition to tax, respondent must provide evidence of a tax return. *See Wheeler v. Commissioner*, 127 T.C. 200, 208–11 (2006), *aff'd*, 521 F.3d 1289 (10th Cir. 2008). An SFR that meets the requirements of section 6020(b) is treated as the "return" filed by the taxpayer for this purpose. *See* § 6651(g)(2).

The IRS determined an addition to tax under section 6651(a)(2). Respondent has met his burden of production by producing a certified copy of the SFR that the IRS prepared on petitioner's behalf for 2011. Petitioner's account transcripts show that he has made no payments toward his 2011 tax liability. Respondent has thus satisfied his threshold burden. *See Catlett*, 122 T.C.M. (CCH) at 152.

No addition to tax will apply if the taxpayer shows that his failure to pay was "due to reasonable cause and not due to willful neglect." § 6651(a)(2). At trial petitioner produced no evidence, in the form of testimony or documents, to show that he had "reasonable cause" for failure to pay his 2011 tax. Although he was receiving long-term disability benefits because of a knee injury, he did not contend that his knee injury prevented him from filing a return or paying his tax. On Post-Trial Brief he asserted that he also suffered from depression, had trouble sleeping and concentrating, and "struggled with memory problems" at various times. But he offered no testimony at trial to establish that he suffered from these conditions or that these (or any other) conditions prevented him from timely paying his tax. We will thus sustain an addition to tax for failure to pay.

To implement the foregoing, and in the light of respondent's concessions,

Decision will be entered under Rule 155.