United States Tax Court

T.C. Summary Opinion 2022-7

JIHAD Y. IBRAHIM,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 10750-20S. Filed May 16, 2022.

Austin L. Mitchell, for petitioner.

Jamie M. Powers and *Philip Edward Blondin*, for respondent.

SUMMARY OPINION

WEILER, *Judge*: This case was heard pursuant to the provisions of section 7463 of the Internal Revenue Code in effect when the petition was filed.[1] Pursuant to section 7463(b), the decision to be entered is not reviewable by any other court, and this opinion shall not be treated as precedent for any other case.

The Internal Revenue Service (IRS) determined that petitioner, Jihad Y. Ibrahim, is liable for a federal income tax deficiency of $15,786 and an accuracy-related penalty pursuant to section 6662(a) of $3,157 for the 2017 tax year. Dr. Ibrahim invoked the Court's jurisdiction by

[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. All dollar amounts are rounded to the nearest dollar.

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timely filing a Petition for redetermination pursuant to section 6213(a). Dr. Ibrahim resided in Missouri when the Petition was filed.

The issues for decision are (1) whether certain payments Dr. Ibrahim made during 2017 constitute deductible alimony or separate maintenance and (2) whether he is liable for the accuracy-related penalty pursuant to section 6662(a).

Background[2]

I. *Dr. Ibrahim's Tax Return*

On April 17, 2018, Dr. Ibrahim timely filed Form 1040, U.S. Individual Income Tax Return, for the 2017 tax year using "Head of Household" filing status. Dr. Ibrahim's 2017 federal tax return was not amended. He claimed a $50,000 deduction on line 31a for "Alimony paid." On line 31b, "Recipient's [Social Security number]," he included the Social Security number of his ex-wife, Cheryl Edington (formerly known as Cheryl Ibrahim).

II. *Dr. Ibrahim's Separation and Divorce*

A. *Marriage*

Dr. Ibrahim and Ms. Edington were married on June 20, 2008. Both Dr. Ibrahim and Ms. Edington had been previously married. While Dr. Ibrahim and Ms. Edington each had children from prior marriages, no children were born into the marriage between the two.

During the marriage Dr. Ibrahim was continuously employed and worked as a physician, and Ms. Edington was continuously employed and worked as a registered nurse. Dr. Ibrahim and Ms. Edington maintained their respective employments after their divorce.

B. *Separation*

On or about August 2, 2016, Dr. Ibrahim and Ms. Edington separated. From the time of their separation, each maintained separate residences in Missouri. After separating from Dr. Ibrahim, Ms. Edington rented a home and subsequently purchased a residence.

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[2] Some of the facts have been stipulated by the parties and are incorporated herein.

On September 17, 2016, Dr. Ibrahim and Ms. Edington signed a Marital Separation Agreement (agreement). Paragraph 42 of the agreement states that "[t]he parties agree that neither shall pay maintenance, each will be forever precluded from requesting maintenance as part of their decree of dissolution." Paragraph 43 of the agreement states:

> However, Husband agrees to pay Wife the total sum of ten thousand dollars ($10,000), to assist in Wife's relocation and legal fees, payable three hundred dollars ($300) monthly beginning upon execution of this agreement and payable monthly for one year or until a final judgment and decree of dissolution, whichever occurs earlier, at which time Husband will pay the then yet unpaid balance of the ten thousand dollars.

C. *Divorce*

On January 5, 2017, Ms. Edington filed a petition for dissolution of marriage in Texas County Circuit Court in Texas County, Missouri. Dr. Ibrahim filed his answer to the petition for dissolution of marriage on January 27, 2017.

On May 11, 2017, Dr. Ibrahim and Ms. Edington signed the first amendment to the marital separation agreement (amended agreement). The amended agreement was executed "to allow the Court in its Judgment for Dissolution to refer to the fact that the parties hereby agree that neither party shall pay maintenance to the other party, as expressly stated in Paragraph 42 in the Maintenance section." The amended agreement also states:

> Paragraph 43 in the Maintenance section is hereby amended to state that the Husband agrees to pay Wife the total sum of fifty thousand dollars ($50,000), to assist in Wife's relocation and legal fees, payable three hundred dollars ($300) monthly beginning upon the execution of the original agreement and payable five hundred dollars ($500) monthly beginning in June 2017, and payable monthly until a final judgment and decree of dissolution, at which time Husband will pay the then yet unpaid balance of the fifty thousand dollars.

Dr. Ibrahim and Ms. Edington's divorce was finalized on June 7, 2017, when the judgment for dissolution of marriage (judgment) was

filed in the Texas County Circuit Court. Paragraph 11 of the judgment states that "[t]he parties have entered into a written Marital Separation Agreement that makes full and final disposition of all marital property and provides that neither party shall receive maintenance from the other." The judgment provided that "neither party shall receive maintenance from the other, and this judgment with respect to maintenance is not modifiable."

The agreement, the amended agreement, and the judgment have not been modified since the judgment was filed on June 7, 2017.

III. *Payments in Issue*

Dr. Ibrahim made the following payments, totaling $50,000, via check to Ms. Edington:

Date	*Check Number*	*Amount*
9/17/2016	1366	$300
10/3/2016	1369	300
11/1/2016	1375	300
12/2/2016	1382	300
1/1/2017	1392	300
2/1/2017	1406	300
3/1/2017	1412	300
4/3/2017	1421	300
5/1/2017	1430	300
5/16/2017	1435	300
6/2/2017	1438	200
6/15/2017	1441	46,800

Dr. Ibrahim paid Ms. Edington a total of $1,200 during 2016 and a total of $48,800 during 2017.

IV. *Notice of Deficiency*

On May 10, 2019, IRS examiner Jill Bowden issued Letter 3541 to Dr. Ibrahim, informing him that the IRS was proposing to disallow the $50,000 alimony or separate maintenance deduction he claimed on his 2017 tax return. Mrs. Bowden's supervisor, Laura. L. Sherman, approved Mrs. Bowden's assertion of the accuracy-related penalty on May 8, 2019, in a case note stating: "Assertion of Substantial Understatement Penalty I.R.C. § 6662-(d) approved by manager per IRM 4.19.13.5.2, and IRM 20.1.5.8. CEAS non-action note has been input."

The IRS subsequently issued Dr. Ibrahim a Notice of Deficiency on February 10, 2020, in regard to his 2017 tax year.

Discussion

I. *Summary of the Parties' Arguments*

Respondent argues that Dr. Ibrahim is not entitled to an alimony or separate maintenance deduction under section 215(a) for 2017 for three reasons. First, his payments do not qualify as deductible alimony or separate maintenance payments since a divorce or separation instrument did not designate the payments to be includible as income to Ms. Edington and deductible to Dr. Ibrahim and therefore do not satisfy the requirements of section 71(b)(1)(B). Second, since the payments do not qualify as deductible alimony or separate maintenance because the agreement, the amended agreement, and the judgment between the parties are silent as to whether the payments would terminate upon Ms. Edington's death, the requirements of section 71(b)(1)(D) are not satisfied. Third, a portion of the claimed alimony or separate maintenance deducted was paid in 2016 and is thus not deductible for 2017. Respondent also contends that Dr. Ibrahim is liable for an accuracy-related penalty under section 6662(a) and (b)(2).

In his brief Dr. Ibrahim contends, notwithstanding the terms of the agreement, the amended agreement, and the judgment, that the payments to Ms. Edington were in fact alimony or separate maintenance. Citing Missouri state law, Dr. Ibrahim contends that the Court can infer the payments were alimony or separate maintenance. He contends that Ms. Edington's qualification for maintenance under

Missouri state law was questionable, and therefore to avoid litigation, he agreed under the amended agreement to increase his payment obligation to Ms. Edington from $10,000 to $50,000. Dr. Ibrahim also contends that the payments could not possibly be child support and were not an additional division of marital assets, and accordingly they default to alimony or separate maintenance. Finally, Dr. Ibrahim avers that under Missouri state law his obligation to make payments under the agreement, as amended, would cease upon the death or remarriage of Ms. Edington.

II. *Law Governing Alimony or Separate Maintenance Deductions*

As a general rule the Commissioner's determination of a taxpayer's liability in a notice of deficiency is presumed correct, and the taxpayer bears the burden of proving that the determination is incorrect. Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). Deductions are a matter of legislative grace, and the taxpayer bears the burden of proving entitlement to any deduction claimed. Rule 142(a); *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934). Section 7491(a)(1) provides that the burden of proof may shift to the Commissioner when the taxpayer has introduced credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax. *See also* I.R.C. § 7491(a)(2). Section 7491(c) provides that the Commissioner shall have the burden of production with respect to any penalty asserted against an individual. *See Higbee v. Commissioner*, 116 T.C. 438, 446–47 (2001).

If a taxpayer pays alimony or separate maintenance as defined in section 71(b), then the taxpayer may deduct those payments from gross income if the amounts are includible in the gross income of the recipient under section 71. I.R.C. §§ 62(a)(10), 215(a) and (b).[3]

In pertinent part, section 71(b)(1) defines an "alimony or separate maintenance payment" as any payment in cash that satisfies each of the following four requirements: (A) the payment is received by (or on behalf of) a spouse under a divorce or separation instrument; (B) the divorce or

[3] Congress repealed sections 62(a)(10), 71, and 215 for all divorce or separation agreements executed or modified after December 31, 2018. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 11051, 131 Stat. 2054, 2089. Both the agreement and the amended agreement dated September 17, 2016, and May 11, 2017, respectively, are unaffected by this repeal as they were executed before December 31, 2018 (and not modified thereafter).

separation instrument does not designate the payment as a payment that is not includible in gross income under this section and not allowable as a deduction under section 215; (C) in the case of an individually legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household when the payment is made; and (D) there is no liability to make the payment for any period after the death of the payee spouse, and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse. I.R.C. §§ 71(b), 215(b); *Okerson v. Commissioner*, 123 T.C. 258, 263–64 (2004).

III. *Analysis*

Dr. Ibrahim claimed an alimony or separate maintenance deduction of $50,000 for 2017, which the IRS disallowed. Respondent agrees that the payments Dr. Ibrahim made to Ms. Edington were made in cash and that they satisfy the requirements of section 71(b)(1)(A) and (C). Respondent avers, however, that the payments fail to meet the requirements of subparagraph (B) or (D) and therefore do not qualify for a deduction under section 215(a). Accordingly, our analysis will be limited to section 71(b)(1)(B) and (D).

A. *Are the Requirements of Subparagraph (B) Met?*

Section 71(b)(1)(B) requires that the divorce instrument "not designate such payment as a payment which is not includible in gross income under this section and not allowed as a deduction under section 215." While it is not necessary for the divorce instrument to use the exact statutory text of sections 71 and 215, the requirements of subparagraph (B) will generally be met if there is no "clear, explicit and express direction" in the divorce decree stating that the payment is not to be treated as an alimony or separate maintenance payment. *Proctor v. Commissioner*, 129 T.C. 92, 96 (2007) (quoting *Estate of Goldman v. Commissioner*, 112 T.C. 317, 323 (1999), *aff'd without published opinion sub nom. Schutter v. Commissioner*, 242 F.3d 390 (10th Cir. 2000)). We have previously held that payments made pursuant to a divorce or separation instrument do not meet the requirements of subparagraph (B) where the instrument "provides clear, explicit, and express direction that neither party shall receive alimony or a separate maintenance payment." *Shelton v. Commissioner*, T.C. Memo. 2011-266, 2011 Tax Ct. Memo LEXIS 260, at *3.

Here, the agreement, the amended agreement, and the judgment each contain statements indicating that neither Dr. Ibrahim nor Ms. Edington would pay maintenance[4] to the other. We find these statements provide "clear, explicit and express direction" that neither party shall receive maintenance payments from the other.[5] Accordingly, Dr. Ibrahim's 2017 payments do not satisfy the section 71(b)(1)(B) requirements, and thus, he is not entitled to an alimony or separate maintenance payment deduction pursuant to section 215. *See id.* at *3–4.

B. *Are the Requirements of Subparagraph (D) Met?*

Having already determined that Dr. Ibrahim fails to meet the requirements of section 71(b)(1)(B) and is not entitled to an alimony or separate maintenance deduction, we need not determine whether the requirements of section 71(b)(1)(D) are met. However, we will briefly address the issue herein since it was briefed by the parties.

Pursuant to section 71(b)(1)(D), for an alimony or separate maintenance payment to be deductible there must be no liability for the payor to make such payments, or for the payor to make substitute payments, after the death of the payee spouse. To determine whether a payor has liability to continue payments after the payee's death, we apply the following sequential approach: (1) the Court first looks for an unambiguous termination provision in the applicable divorce instrument; (2) if there is no unambiguous termination provision, then the Court looks to whether payments would terminate at the payee's death by operation of state law; and (3) if state law is ambiguous as to the termination of payments upon the death of the payee, the Court will look solely to the divorce instrument to determine whether the payments would terminate at the payee's death. *Logue v. Commissioner*, T.C. Memo. 2017-234, at *8–9; *see Hoover v. Commissioner*, 102 F.3d

[4] In 1973 the Missouri General Assembly passed the Divorce Reform Act instituting no fault dissolution of marriage. Under the new law, Missouri courts no longer award "alimony" but instead award "maintenance." *See Cates v. Cates*, 819 S.W.2d 731, 734 (Mo. 1991). In the Court's mind, the two awards are synonymous for federal income tax purposes.

[5] Regardless of the parties' understanding or intent, our task is to focus on the legal effect of the agreement in determining whether the payments meet the criteria set out by Congress under section 71. Since section 71(b)(1)(B) requirements are not met, the payments are not considered alimony or separate maintenance for federal income tax purposes. *See Okerson*, 123 T.C. at 265; *see also Rosenthal v. Commissioner*, T.C. Memo. 1995-603, at *2, 1995 WL 760398.

842, 846 (6th Cir. 1996), *aff'g* T.C. Memo. 1995-183; *Okerson*, 123 T.C. at 264–65; *Stedman v. Commissioner*, T.C. Memo. 2008-239, 2008 Tax Ct. Memo LEXIS 234, at *4.

The parties agree that there is no express termination upon death provision in the agreement, the amended agreement, or the judgment. The parties further agree that relevant Missouri state law, *see* Mo. Rev. Stat. § 452.370(3) (2017), provides that "[u]nless otherwise agreed in writing or expressly provided in the judgment, the obligation to pay future statutory maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance." Courts have previously ruled that a taxpayer may rely upon state law to comply with section 71(b)(1)(D). *See Johanson v. Commissioner*, 541 F.3d 973, 976–77 (9th Cir. 2008), *aff'g* T.C. Memo. 2006-105; *Kean v. Commissioner*, 407 F.3d 186, 191 (3d Cir. 2005), *aff'g* T.C. Memo. 2003-163. However, before Dr. Ibrahim can rely upon state law to meet the requirements of section 71(b)(1)(D), we must determine whether there is an "obligation to pay future statutory maintenance."

Dr. Ibrahim asserts that the payments qualify as statutory maintenance under Missouri state law because it was questionable whether Ms. Edington had sufficient property to provide for her reasonable needs and was unable to support herself through appropriate employment. Under Missouri state law, the Missouri state court can award maintenance only where the court finds that the receiving spouse "(1) [l]acks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and (2) [i]s unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home." *See* Mo. Rev. Stat. § 452.335(1) (2017).[6]

We decline to accept Dr. Ibrahim's argument, since there was no finding by the Missouri state court that Ms. Edington was eligible for maintenance under Missouri state law. Rather, the evidence demonstrates that Ms. Edington was continuously employed as a nurse

[6] Dr. Ibrahim contends that "at least ten [Missouri state law] factors" must be considered in determining the sufficiency of assets and whether a party qualifies for maintenance. Dr. Ibrahim is essentially contending the payments to Ms. Edington qualify as statutory maintenance under Missouri state law; therefore, since the agreement, the amended agreement, and the judgment are silent as to what happens upon Ms. Edington's death, he argues he can rely upon Missouri state law to satisfy the requirements of section 71(b)(1)(D).

during and after their marriage. She was able to rent and later purchase a home during her separation from Dr. Ibrahim. Moreover, Dr. Ibrahim's trial testimony confirms that Ms. Edington was able to support herself financially during and after the divorce. Furthermore, under the express terms of the agreement, the amended agreement, and the judgment, neither party was responsible for maintenance of the other.

On the facts before us, we conclude that Dr. Ibrahim has failed to demonstrate that the payments of $50,000 were made because of an "obligation to pay future statutory maintenance."[7] *See* Mo. Rev. Stat. §§ 452.335(1), 452.370(3). Accordingly, we conclude that it is equally inappropriate for Dr. Ibrahim to rely upon Missouri state law to satisfy the requirement of section 71(b)(1)(D).

IV. *Section 6662(a) Accuracy-Related Penalty*

Section 6662(a) and (b)(2) imposes a penalty equal to 20% of any portion of an underpayment of tax required to be shown on a return that is attributable to a substantial understatement of income tax. An understatement is "substantial" if it exceeds the greater of 10% of the tax required to be shown on the return for the taxable year or $5,000. I.R.C. § 6662(d)(1)(A).

As indicated above, the Commissioner bears the burden of production with respect to an individual taxpayer's liability for any penalty. I.R.C. § 7491(c); *Higbee*, 116 T.C. at 446. In *Frost v. Commissioner*, 154 T.C. 23, 34 (2020), we held that the Commissioner's initial burden of production under section 7491(c) includes producing evidence of compliance with the procedural requirements of section 6751(b). After the Commissioner has satisfied this initial burden, the taxpayer must come forward with any contrary evidence. *See also* I.R.C. § 7491(c); *Graev v. Commissioner*, 149 T.C. 485, 492–93 (2017), *supplementing and overruling in part* 147 T.C. 460 (2016). Once the Commissioner meets his burden of production, the taxpayer bears the burden of proving that the Commissioner's determination is incorrect. *Higbee*, 116 T.C. at 446–47.

Section 6751(b)(1) provides that no penalty shall be assessed unless "the initial determination" of the assessment was "personally

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[7] The payments totaling $1,200 Dr. Ibrahim paid Ms. Edington during 2016 are not deductible in the 2017 tax year, the year in issue. *See* I.R.C. § 215(a).

approved (in writing) by the immediate supervisor of the individual making such determination." The initial determination to impose the penalty at issue was made by Mrs. Bowden on May 8, 2019. The 30-day letter issued to Dr. Ibrahim on May 10, 2019, constituted the first communication of the IRS's determination to assert the section 6662 penalty for the 2017 tax year. *See Clay v. Commissioner*, 152 T.C. 223, 249 (2019), *aff'd*, 990 F.3d 1296 (11th Cir. 2021). Respondent's CEAS program records indicate that Mrs. Bowden's immediate supervisor approved, in writing, her assertion of the accuracy-related penalty for the 2017 tax year on May 8, 2019, before the issuance of the 30-day letter. We hold that evidence is sufficient to show that the IRS complied with the requirements of section 6751(b). *See Belanger v. Commissioner*, T.C. Memo. 2020-130, at *29.

A taxpayer generally is not liable for an accuracy-related penalty if he or she shows that there was "reasonable cause" for the underpayment and that he or she acted in good faith. I.R.C. § 6664(c)(1). This determination is made on a case-by-case basis, taking into account all pertinent facts and circumstances. Treas. Reg. § 1.6664-4(b)(1). In making that determination, "the most important factor" is usually "the extent of the taxpayer's effort to assess the taxpayer's proper tax liability." *Id*. The taxpayer bears the burden of showing that the underpayment was due to reasonable cause or that some other exception to the imposition of the penalty applies. *Higbee*, 116 T.C. at 446.

Respondent determined a section 6662(a) accuracy-related penalty of $3,157 for the 2017 tax year. Respondent contends that Dr. Ibrahim "did not act with reasonable cause or in good faith, by claiming a deduction for maintenance payments when the agreement, amended agreement, and judgment clearly stated that neither party in the divorce was entitled to receive maintenance from each other" and is liable for the accuracy-related penalty. We agree. The agreement, the amended agreement, and the judgment explicitly state that neither party was entitled to alimony or separate maintenance, yet Dr. Ibrahim claimed an alimony or separate maintenance deduction on his 2017 return. *See Shelton*, 2011 Tax Ct. Memo LEXIS 260.

On brief Dr. Ibrahim argued that his $50,000 deduction for alimony or maintenance payments "does not constitute negligence" and "the proposed accuracy[-]related penalty should be eliminated because his substantial substantive authority requires the elimination of the tax understatement by virtue of [I.R.C. § 6662(d)(2)(B)]." To satisfy this substantial authority exception, a taxpayer must show that the weight

of the authorities supporting the tax return treatment of an item is substantial in relation to the weight of authorities supporting contrary treatment. *Antonides v. Commissioner*, 91 T.C. 686, 702 (1988), *aff'd*, 893 F.2d 656 (4th Cir. 1990); Treas. Reg. § 1.6662-4(d)(3)(i). All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are considered in determining whether substantial authority exits. Treas Reg. § 1.6662-4(d)(3)(i).

Here, Dr. Ibrahim has failed to satisfy this standard. He has not identified the authorities in support of his position, nor has he provided any authorities supporting the contrary. *See Brown v. Commissioner*, T.C. Memo. 2013-275, at *50–53. Accordingly, we will sustain respondent's section 6662(a) penalty determined against Dr. Ibrahim.

We have considered all of the parties' arguments, and to the extent they are not addressed herein, we find the arguments to be moot, irrelevant, or without merit.

To reflect the foregoing,

Decision will be entered for respondent.