

Federal tax case

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Willow Road, Huston TEL: 06782 4367 1st July, 1999 Waterman, Willow Road, Huston, Cambridge shire, Cb31 3rr Dear Mr. Waterman RE: Waterman, Petitioner-Appellant V. Commissioner of Internal Revenue, Respondent-Appellate We refer to the above matter and to the meeting at our offices on 4th June, 1999. In this case, both the United States Tax Court and the Fourth Circuit Court of Appeals determined that you could not exclude from income an early separation payment you received from the United States Navy. You had excluded the payment under section 112 of the IRS as compensation while on active duty in combat zone. In our opinion, there are three key points of law upon which the Supreme Court will likely decide this case. They are as follows: 1. Time and place When considering taxation on Separation Payment, time and place are relevant. Although regulations seem to cover the issue on taxation of separation payment, those regulations were issued in 1993 and were made retroactive, by the Treasury Department, to 1991. The year as issue in this case was 1992. Therefore, at the time you filed your tax return, there were no regulations covering the issue. The Supreme Court should take the moment the member became deserving of the compensation in question; he must serve the in the Armed Forces. Treasury Regulation 1. 112-1(b)(4) confirms this reading of section 112 by stating that Compensation received by a member of the Armed Forces for services rendered while in active service can be excluded under section 112. The Supreme Court therefore has the mandate to invalidate the regulations. 2. Whether to tax Separation payment Separation Payment was excludable under section 112 and therefore cannot be taxed. It should not be treated no differently than other types of compensation that are excludable under section 112, such as dislocation allowances, reenlistment bonuses, pay for <https://assignbuster.com/federal-tax-case/>

accrued leave, compensation for employment in clubs and masses, and awards for suggestions, inventions and scientific achievements. This section does not define active service. Instead, the definition appears in the interpreting Treasury Regulation as: A member of the Armed Forces is in active service if the member is actually serving in the Armed Forces of the United States. You accepted the proposal of the Navy regarding the term of your active service to terminate your service and you did so while in active service in a combat zone. I must conclude that your separation payment was for active service, and thus is excludable from your gross income. You can argue that Separation Payment is neither a pension nor a retirement, which are both excluded by section 112 (c) (4) it must be compensation. 3. The Combat Zone The word Combat Zone means any area which the President of the United States by Executive Order designates, for purposes of Section 112 of the code, as an area in which Armed Forces. Section 112's exclusion applies to compensation earned any time during a month, as long as the taxpayer served in a combat zone for any part of that month. Instead, section 112 excludes that compensation if the service member's entitlement to the compensation fully accrued in a month during which the member served in a combat zone. Treasury Regulation 1. 112-1(b) (4) states that compensation fully accrues upon the completion of all actions required of the member to receive the compensation. You served in a designated combat zone during April 1992. On April 20, 1992, you accepted the Navy's offer of early separation. Acceptance of this offer was the final act required of you to receive the special separation payment. Consequently, your entitlement to the payment fully accrued during April of 1992, a month in which you served in a combat zone, and the payment therefore satisfies section 112. You

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accepted separation thus became entitled to the separation payment during April 1992, a month during which you were in a combat zone. The party that would prevail In our opinion, we believe that you case will prevail because the Supreme Court must consider the Internal Revenue Commission regulations, although regulations seem to cover the issue, those regulations were made retroactive, by the Treasury Department a year later. Therefore at the time you were filing your Tax returns, there were no regulations covering the issue. Secondly, you were advised by the Navy that payments received pursuant to your early separation would be excluded from gross income if accepted while serving in a designated combat zone. The same government comes around through the IRC and states that separation payment must be taxed, this is double-crossing by the government.

Acceptance of this offer was the final act required of you to receive the special separation payment. Consequently, your entitlement to the payment fully accrued during April of 1992, a month in which you served in a combat zone, and the payment therefore satisfies section 112. You accepted separation thus became entitled to the separation payment during April 1992, a month during which you were in a combat zone. Conclusion We conclude by saying that you have a strong claim against the Treasury Department, whose regulations were not enforceable when you were filing tax returns but breached the rules of the Armed forces by ruling that you should be taxed. This is because at that time, no rules had been passed and the government double-crossed you and therefore you were not accorded a fair hearing by the previous Tax court and the Court of Appeal. We therefore believe your Separation payment should not be taxed. Yours faithfully,

Katina & Associates Works cited Balkissoon v Commissioner of Internal

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