

Montes v. Comm'r

United States Tax Court

June 29, 2023, Decided

Docket No. 17332-21.

Reporter

2023 U.S. Tax Ct. LEXIS 2939 *

SUZANNE MONTES, Petitioner v. COMMISSIONER
OF INTERNAL REVENUE, Respondent

Judges: [*1] Mark V. Holmes, Judge.

Opinion by: Mark V. Holmes

Opinion

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 of the trial of the above case before Judge Mark V. Holmes at San Francisco, California on May 1, 2023, containing his oral findings of fact and opinion rendered after the conclusion of trial.

In accordance with the oral findings of fact and opinion, a decision will be entered under Rule 155.

(Signed) Mark V. Holmes

Judge

Bench Opinion by Judge Mark V. Holmes

May 3, 2023

Suzanne Montes v. Commissioner of Internal Revenue

Docket No. 17322-21

THE COURT: The Court has decided to render oral findings of fact and opinion and the following represents the Court's oral findings of fact and opinion. This bench opinion is made pursuant to the authority granted by section 7459(b) of the Internal Revenue Code of 1986, as amended, and Rule 152 of the Tax Court's Rules of Practice and Procedure.

This case is about a settlement received by a woman named Suzanne Montes. Ms. Montes was a pioneer for women in the San Francisco Fire Department and wanted to be a firefighter since she was a little girl. She was one of the few women to pass the exam to get into the Fire Academy. There were only a handful of women admitted to the Fire Academy and she was one of only about half that didn't wash out from the [*2] Fire Academy.

Back in 2016, she received a coveted assignment to a firehouse in downtown San Francisco. Firefighters, of course, have to live and work as a team. Their job requires physical skill and actual bravery to perform. She was part of this team, but the other members of the team were all men, and they were not uniformly welcoming to her as a woman in their ranks.

In early 2016, she began work as a firefighter on a truck unit. This unit has particularly difficult chores of securing the roof of a building burning, perhaps venting gases to allow suppression of the fire; it's extremely dangerous work, and of course it requires the members of the team to be able to trust each other and work together.

The other members of her team, at least many of them, did not welcome her. Within weeks, even days of the start of her tenure in the firehouse in downtown San Francisco, some of the male firefighters began making disparaging comments about her, sabotaged her equipment, making it difficult for her to speedily respond to calls. Ostracized her within the firehouse, and escalated into doing disgusting and extremely unsanitary things to her personal property.

She did what one would expect. She [*3] complained up the chain. She complained to the chiefs within the firehouse itself, which only served to increase the harassment she was suffering from. She reasonable feared sabotage in a dire situation, which again, firefighters have to confront routinely in the course of their profession. She made complaints to higher authorities. It leaked out into the local press and her

name became known locally as somebody who was making complaints about the conditions of her employment. Finally, in 2017, it led to her decision to file a lawsuit in Federal court to put an end to the harassment, and in June of 2018, that lawsuit was settled.

We're here in Tax Court because of one of the terms of the settlement. One of those terms was a payment to Ms. Montes of \$382,797.70 to her personally. The agreement also provided for attorney's fees, but that's not at issue here. The agreement was approved, and the payment was made and received in 2018. Ms. Montes returned to work and continues to this day as a firefighter working for the people of the City of San Francisco.

She went to a CPA when her taxes were due for 2018 and the CPA prepared her return and advised her that she did not have to report the [*4] \$382,000 plus that she had received in the settlement, so she didn't report it. The Commissioner disagreed and issued a Notice of Deficiency. Ms. Montes was a California resident when she filed her petition. The only remaining issue after some other more minor issues were settled is the proper tax treatment of that nearly \$400,000 payment.

Section 61(a) of the Internal Revenue Code says that "Gross income means all income from whatever source derived." And the Supreme Court has repeatedly emphasized the sweeping scope of this section and its statutory predecessors. Commissioner v. Schleier, 515 U.S. 323, 327, 115 S. Ct. 2159, 132 L. Ed. 2d 294 (1995). This robust rule of taxability has exceptions. The one we have to consider here is section 104(a)(2), which excludes from gross income "any damages other than punitive damages received whether by suit or agreement and whether is lump sums or is periodic payment on account of personal, physical injuries or physical sickness."

Settlement proceeds are excludable under section 104(a)(2) only if the settlement is paid "on account of personal physical injuries or physical sickness." Rivera v. Baker W., Inc., 430 F.3d 1253, 1256 (9th Cir. 2005). For a taxpayer to fall within this exclusion, she must show that there is a direct causal link between the damages and the personal injuries sustained. Where as here, a taxpayer settles a suit, we look at the nature of the [*5] claim that was the basis of the settlement. United States v. Burke, 504 U.S. 229, 237, 112 S. Ct. 1867, 119 L. Ed. 2d 34 (1992).

We looked, first, at the settlement agreement itself to

see if "it expressly states that the damages compensate for internal 'personal physical injuries or physical sickness.'" Rivera, 430 F.3d at 1257. If the settlement agreement is silent, we try to figure out the intent of the payor from all the facts and circumstances of the case, including the complaint that was filed and the details surrounding the litigation.

Our detective work here begins and ends with the settlement agreement. It says that the payment to Ms. Montes of nearly \$400,000 "will be considered and treated as general damages for personal injury, including allegations of emotional injury. This amount will not be considered or treated as back wages." Similarly, two paragraphs down, "the parties understand and agree that the settlement amount is inclusive of all of plaintiff's claimed general damages, including emotional distress, special damages, and attorney's fees and costs."

Even if we were to look at the complaint, it too stresses that no physical injuries were alleged. The first claim for relief was for sex discrimination. The second for retaliation under California law. The third for sex discrimination [*6] under Federal law. The fourth for retaliation under Federal law. The fifth, the failure on the part of the Fire Department to prevent discrimination against Ms. Montes. And the sixth, the intentional infliction of emotional distress.

There are no allegations of physical injury to Ms. Montes, and indeed, in the summary of the complaint it says, "She has lost compensation for which she would have been entitled. She has suffered from emotional distress, embarrassment, and humiliation and her prospects for career advancement have been diminished." She sought compensatory damages, including future wages, employee benefits, and damages for mental and emotional distress, damage to her reputation, and humiliation. There are no allegations of physical disease or harm to her in the complaint.

This leads to the next question, which is, is alleged emotional distress a personal physical injury or physical sickness? Here, the Code tells us that it isn't. Section 104(a) specifically commands that "emotional distress shall not be treated as a physical injury or physical sickness" and case law tells us that emotional distress includes symptoms such as insomnia, headaches, and stomach problems that result from such [*7] severe emotional distress. See Pettit v. Commissioner, T.C. Memo. 2008-87.

While I have noted in previous opinions about the

crumbling barrier between psychiatry and neurology. Where the Code itself assumes a dualist view of mind and body, we must assume such a view as well when we apply the Code to the facts of the particular case. I can't fault Ms. Montes for the position that she took, but section 104 says that this payment has to be included in her taxable income. Certainly, she wouldn't have had to pay a penalty. She took a reasonable position on the advice of a CPA. The parties settled all the other issues in this case, so an order will be entered requiring computations under Rule 155.

This concludes the Court's oral findings of fact and opinion in this case.

(Whereupon, at 10:11 a.m., the above-entitled matter was concluded.)

End of Document