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| Joseph Peery & Dawn Shannon Chapel. T.C. Memo. 2014-151 (Jul. 29, 2014) [abbreviated by Instructor] [Appealable, barring stipulation to the contrary, to CA-6.—CCH.], [ Code Sec. 71]   |  |  | | --- | --- | |  | Joseph Peery married Ms. Peery on May 21, 1971. Ms. Peery was granted a divorce from Joseph on June 9, 2008. The separation agreement, dated June 6, 2008, addressed numerous issues, including the division of marital assets and spousal support to be paid by Joseph to Ms. Peery.  Paragraph 1 of the separation agreement sets forth certain items of “property” that Ms. Peery “shall have as her own, free and clear of all claims of Joseph. As part of her property rights, subparagraph 1(I) of the separation agreement assigns to Ms. Peery  “[a]n award of property settlement in the sum of $63,500.00, which amount shall be paid within thirty (30) days” of June 6, 2008.  Further, in order to “equalize the division of marital assets” between Joseph and Ms. Peery, paragraph 5 of the separation agreement provides Ms. Peery with an additional property settlement of $85,723.  Paragraph 2 of the separation agreement provides that “spousal support” is to be paid by Joseph to Ms. Peery “until such time as she remarries, is deceased or Joseph is deceased.”  Paragraph 2 of the separation agreement states, in relevant part:  A. Spousal support shall be equal to 40% of all income earned by \* \* \* [Joseph]. Income shall include, but not be limited to the following:  1. All wages. ..2. All net self-employment income …3. All guaranteed payments.  Furthermore, paragraph 4 of the separation agreement assigns Joseph various properties:  E. All financial institution accounts in his individual name.  F. All right, title and interest \* \* \* [Joseph] owns in [several corporations], …  **In addition to the above payments, Joseph wrote a $63,500 check—check No. 1040—payable to Ms. Peery and dated July 23, 2008.**  Josephs timely filed their 2008 Federal income tax return. On the return, **Josephs claimed a deduction from gross income of $90,264 for alimony paid to Ms. Peery during the tax year.**  On October 12, 2011, the IRS issued to Josephs a notice of deficiency for 2008.  The IRS determined an $18,369 deficiency in Josephs' 2008 Federal income tax and an accuracy-related penalty under section 6662(a). [While the court did not disclose the amount of tax after credits on the return, we will ASSUME that the tax return filed by the taxpayers showed the amount of federal income tax after credits to be $30,000, which the IRS says was understated by $18,369.]  Joseph and his second wife (Dawn Shannon Chapel) timely filed a petition disputing the determinations in the notice of deficiency. The issues for decision were:  (1) whether a $63,500 payment Joseph Peery (Joseph) made to Katrina H. Peery (Ms. Peery, former wife) was: (A) alimony or (B) a property settlement; and  (2) whether Josephs are liable for an accuracy-related penalty under section 6662(a) for a substantial understatement of income tax.  Assume the IRS is correct, and the payment of $63,500 is a non-deductible property settlement.   1. How do you determine if the understatement is substantial? 2. How much penalty under Section 6662 will be proposed by the IRS? 3. Assume you prepared the return, and charged a $3,600 fee return preparation.  What is the amount of the penalty under Section 6694 that the IRS may potentially assess against you, the preparer? 4. Please explain some factors (or reasons) that may be presented by the taxpayer to convince the IRS or the court that the Section 6692 penalty should not be imposed. | |