

ON MOTION FOR CLARIFICATION

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-1940

DEBORAH A. MESSINA,

Petitioner - Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

Appeal from the United States Tax Court. (Tax Ct. No. 04-10926)

Submitted: April 4, 2007

Decided: July 16, 2007

Before WILLIAMS, Chief Judge, and MOTZ and SHEDD, Circuit Judges.

Affirmed in part; vacated and remanded in part by unpublished per curiam opinion.

Deborah A. Messina, Appellant Pro Se. Eileen J. O'Connor, Assistant Attorney General, Karen Grace Gregory, Arthur T. Catterall, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Donald L. Korb, INTERNAL REVENUE SERVICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Deborah A. Messina appeals the tax court's order upholding the Commissioner's determination of a deficiency in Messina's 1994 income taxes and assessing penalties. The Commissioner concedes on appeal that, subject to certain limitations, Messina is entitled to a deduction for the \$84,500 contingency fee paid to the attorney to collect this income amount. See 26 U.S.C. § 212(1) (2000). Thus, while we affirm the tax court's determination that the entire settlement payment was gross income to Messina in the 1994 tax year, we vacate the tax court's order and remand this case to the tax court with instructions for that court to recompute Messina's tax deficiency and penalties for 1994, after affording her a deduction for the contingency fee amount. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART;
VACATED AND REMANDED IN PART