
**PURSUANT TO INTERNAL REVENUE CODE
SECTION 7463(b), THIS OPINION MAY NOT
BE TREATED AS PRECEDENT FOR ANY
OTHER CASE.**

T.C. Summary Opinion 2005-140

UNITED STATES TAX COURT

IRMA J. WHITE, Petitioner y.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 14818-03S.

Filed September 27, 2005.

Irma J. White, pro se.

James E. Schacht, for respondent.

POWELL, Special Trial Judge: This case was heard pursuant to the provisions of section 7463¹ of the Internal Revenue Code in effect at the time the petition was filed. The decision to be entered is not reviewable by any other court, and this opinion should not be cited as authority.

¹ Unless otherwise indicated, subsequent section references are to the Internal Revenue Code in effect for the year in issue.

Respondent determined a deficiency of \$3,748 in petitioner's 2001 Federal income tax. The issue is whether petitioner is entitled to an earned income credit in the same amount. Petitioner resided in Milwaukee, Wisconsin, at the time she filed her petition.

The relevant facts and discussion of law are combined because of the nature of the resolution of the issue.² Section 32(a) provides for a so-called earned income credit. Section 32(d) provides that "In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year under section 6013". It is undisputed that petitioner was legally married and was not legally separated under a decree of divorce or separate maintenance at the end of the 2001 taxable year. See sec. 7703(a). As relevant here, section 7703(b), however, provides that if an individual is married and otherwise satisfies the residency and support requirements of section 7703(b)(1) and (2) and "during the last 6 months of the taxable year, such individual's spouse is not a member of such household, such individual shall not be considered as married." In other words, if a taxpayer, claiming the earned income credit, is married and his or her spouse lived in his or her residence for the last 6

² While petitioner's marital status is a factual issue, sec. 7491, concerning burden of proof, has no bearing on this case.

months of the taxable year, he or she must file a joint return with the spouse to be entitled to the earned income credit.

During 2001, petitioner was married within the meaning of section 7703 and resided at 4505 North 44th Street, Milwaukee, Wisconsin (the 4505 residence). Petitioner's husband (Mr. White) moved out for a period of time and then moved back to the 4505 residence. Petitioner could not testify as to the dates he moved in and out of the 4505 residence. Petitioner used a filing status of "head of household" for her 2001 tax return.

Mr. White testified that he moved out of the 4505 residence in 1998 and returned in November 2001. He further testified that he used the filing status of "single" for his 2001 tax return.³

The evidence is not in dispute that Mr. White lived in the 4505 residence with petitioner during the last 2 months of 2001. Accordingly, petitioner is not entitled to claim the earned income credit.

Reviewed and adopted as the report of the Small Tax Case Division.

To reflect the foregoing,

Decision will be entered
for respondent.

³ It is not disputed that, if petitioner and Mr. White had filed a joint return, their combined income would have exceeded the income requirements for the credit. See sec. 32(b).