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

T.C. Summary Opinion 2004-24

UNITED STATES TAX COURT

GIL G. AND PATROCENIA C. SANTILLA, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 2485-03S.

Filed March 9, 2004.

Gil G. Santilla, pro se.

Donna L. Pahl, for respondent.

GOLDBERG, Special Trial Judge: This case was heard pursuant to the provisions of section 7463 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. Unless otherwise indicated, subsequent section references are to the Internal Revenue Code in

effect for the year in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Respondent determined a deficiency in petitioners' Federal income tax of \$2,852 for the taxable year 2000.

The issue for decision is whether petitioners are entitled to a dependency exemption deduction for their daughter, Beverly Santilla (Ms. Santilla).

Some of the facts have been stipulated and are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference. Petitioners resided in San Diego, California, on the date the petition was filed in this case.

Petitioners filed a joint Federal income tax return for taxable year 2000. On their return, petitioners claimed a dependency exemption deduction for each of their three children. In the notice of deficiency, respondent disallowed all of the claimed dependency exemption deductions. Respondent has conceded that petitioners are entitled to two of the deductions, but respondent argues that petitioners are not entitled to the third deduction for Ms. Santilla.

Ms. Santilla was born on July 25, 1977, and turned 23 years old during the year in issue. During 2000, Ms. Santilla was a student at San Diego Miramar College (SDMC). In the spring semester, from January 18 through May 27, Ms. Santilla completed

nine units. In the fall semester, from August 21 through December 23, Ms. Santilla completed six units. According to SDMC requirements, students with 6 units are "half-time", students with 9 units are "3/4 time", and students with 12 units are "full-time". Throughout the year, Ms. Santilla was employed by Charlotte Russe, Carmel Mountain Preschool, and KinderCare Learning Centers. Ms. Santilla filed a Federal income tax return for taxable year 2000 on which she reported gross income of \$4,002.

Subject to restrictions not applicable here, a taxpayer is entitled to a dependency exemption deduction for a dependent who meets one of two requirements in a given taxable year. Sec. 151(a), (c)(1). The dependent must either (a) have gross income during the year in an amount that is less than the exemption amount, or (b) be a child of the taxpayer who meets the age requirement. Sec. 151(c)(1)(A), (B). To meet the age requirement, the child must be under the age of 19 at the end of the year or a "full-time student" under the age of 24. Sec. 151(c)(1)(B), (4). To be a full-time student within the meaning of the statute, the child must be enrolled "for the number of hours or courses which is considered to be full-time attendance" in at least some part of 5 different months of the year. Sec. 1.151-3(b), Income Tax Regs.

Ms. Santilla does not meet the first requirement for a dependency exemption under section 151(c)(1)(A). Ms. Santilla had gross income of \$4,002 during 2000, which is in excess of the exemption amount for that year, \$2,800. Sec. 151(d); Rev. Proc. 99-42, sec. 3.09(1), 1999-2 C.B. 568, 571. Ms. Santilla also does not meet the second requirement for a dependency exemption under section 151(c)(1)(B). Although Ms. Santilla was a student at SDMC during both the spring and fall semesters, she was not enrolled as a full-time student at any time during the year. SDMC requires that full-time students take 12 units during the semester; Ms. Santilla never completed more than 9 units during any one semester.

Because Ms. Santilla did not meet either of the requirements for a dependency exemption under section 151(c)(1), petitioners are not entitled to a dependency exemption deduction for her during the taxable year 2000. Sec. 151(a).

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

Decision will be entered
under Rule 155.