

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHRISTOPHER JAMES BRAUER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 21000-16S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pursuant to Rule 152(b) of the Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit to petitioner and to respondent a copy of the pages of the transcript of the proceedings in the above case before Judge Joseph W. Nega at Memphis, Tennessee, on October 3, 2017, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered for petitioner.

(Signed) Joseph W. Nega
Judge

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Dated: Washington, D.C.  
October 27, 2017

**SERVED Oct 27 2017**

1 Bench Opinion by Judge JOSEPH W. NEGA  
2 October 3, 2017  
3 CHRISTOPHER JAMES BRAUER V. COMMISSIONER  
4 Docket No. 21000-16S

5 The Court has decided to render oral findings of  
6 fact and opinion in this case. The following represents  
7 the Court's oral findings of fact and opinion. This Bench  
8 Opinion is made pursuant to Section 7459(b) and Rule 152.  
9 This case was a small tax case subject to the provisions  
10 of section 7463 and Rules 170 through 174. Pursuant to  
11 section 7463(b), the decision to be entered is not  
12 reviewable by any other court, and this opinion shall not  
13 be treated as precedent for any other case. Unless  
14 otherwise indicated, all section references are to the  
15 Internal Revenue Code in effect <sup>for</sup> in the year at issue, and <sup>JWN</sup>  
16 all rule references are to the Tax Court Rules of Practice  
17 and Procedure.

18 The Petitioner Christopher James Brauer appeared  
19 pro se. Dustin J. Pitts appeared on behalf of Respondent.

20 By a notice of deficiency dated June 20, 2016,  
21 respondent determined a deficiency of \$3,242 in  
22 petitioner's Federal income tax for 2014. The primary  
23 issue in this case is whether the petitioner is entitled  
24 to an exemption for his minor child for the year 2014  
25 under section 152(e). This issue also informs our

1 disposition with respect to whether petitioner is entitled  
2 to a related earned income <sup>tax</sup> credit under section 32(a), and JWN  
3 a child tax credit under section 24(a).

4 FINDINGS OF FACT

5 This case was tried on October 2, 2017, in  
6 Memphis, Tennessee. Petitioner resided in Tennessee when  
7 he filed the petition.

8 Petitioner and his ex-wife (custodial parent)  
9 divorced in 2012. Pursuant to their divorce, Petitioner  
10 and the custodial parent entered into a permanent  
11 parenting plan (parenting plan). This parenting plan was  
12 an unconditional release wherein the custodial parent  
13 agreed, in the absolute, to waive her right to claim a  
14 dependency exemption deduction with respect to their minor  
15 child, K.D.B.; that petitioner, although he was the  
16 noncustodial parent, should instead be eligible to claim  
17 the dependency exemption.

18 Petitioner filed a timely income tax return for  
19 2014 (return). The custodial parent, however, refused to  
20 provide to Petitioner a Form 8332, Release/Revocation of  
21 Release of Claim to Exemption for Child By Custodial  
22 Parent (Form 8332). In lieu of the Form 8332 and hoping  
23 to substantiate his claimed entitlement to the dependency  
24 exemption, petitioner included with his return a copy of  
25 the parenting plan.



1 By a notice of deficiency dated June 20, 2016,  
2 respondent determined a deficiency in petitioner's 2014  
3 Federal income tax liability of \$3,242. The adjustments  
4 resulting in the deficiency exclusively arose from  
5 respondent disallowing petitioner's claim of a dependency  
6 exemption with respect to K.D.B. Petitioner timely filed  
7 a petition with this Court, seeking redetermination.

8 Thereafter, petitioner subsequently sought and  
9 received a state court order recognizing that the  
10 custodial parent breached the parenting plan, ~~holding her~~  
11 ~~in contempt of court~~ and ordering her to provide <sup>JWN</sup>  
12 petitioner with a completed Form 8332. On January 11,  
13 2017, the custodial parent complied with the state court  
14 order, and provided petitioner with a completed Form 8332  
15 wherein she again unconditionally waived any claim of  
16 right to the dependency exemption with respect to K.D.B.  
17 Petitioner has previously provided respondent with this  
18 Form 8332 and it has been entered into evidence.

19 OPINION

20 A. Section 152(e) Special Rules for Noncustodial  
21 Parents

22 Section 152<sup>1</sup>(c) permits a taxpayer to claim as a <sup>JWN</sup>  
23 deduction an exemption for each dependent. Section 152(a)  
24 provides that a dependent must be either a "qualifying  
25 child" or a "qualifying relative" of the taxpayer. A

1 qualifying child is a child who, among other things, lived  
 2 with the taxpayer for more than one-half of the taxable  
 3 year at issue. Sec. 152(c)(1)(B). In the case of  
 4 divorced parents, however, an otherwise qualifying child  
 5 that lives with a custodial parent for the greater portion  
 6 of the calendar year may be treated as the qualifying  
 7 child of the noncustodial parent when certain criteria are  
 8 met. Sec. 152(e). In order for a noncustodial parent to  
 9 claim a dependency exemption in this manner, the custodial  
 10 parent must sign a written declaration waiving in the  
 11 absolute his or her entitlement to claim the otherwise  
 12 qualifying child for the taxable year, and the  
 13 noncustodial parent must attach such written declaration  
 14 to his or her return filed for the taxable year. Sec.  
 15 152(e)(2)(A)&(B).

16 Generally, an executed Form 8332 included with a  
 17 return filed by a noncustodial parent satisfies the  
 18 statutory requirements of section 152(e)(2). But  
 19 noncustodial parents may also rely on <sup>an</sup> alternative JWN  
 20 documents, provided it conforms to the statute's JWN  
 21 substance. See Boltinghouse v. Commissioner, T.C. Memo JWN  
 22 2003-134.

23 Petitioner was a credible witness. Through the  
 24 terms of the parenting plan, the custodial parent  
 25 unconditionally waived any claim of right she may have



1 otherwise had to a dependency ~~exemption~~<sup>deduction</sup> for K.D.B. JWN  
 2 Petitioner included a copy of this waiver with his return  
 3 for 2014, wherein he claimed a dependency exemption for  
 4 the child. Upon examination and respondent's subsequent  
 5 denial of petitioner's claimed exemption for the want of a  
 6 Form 8332, petitioner pursued his available legal remedy  
 7 to secure from the custodial parent the necessary Form  
 8 8332 sought by the respondent to substantiate petitioner's  
 9 right to claim a dependency deduction for K.D.B.

10 At trial, respondent did not dispute the  
 11 validity or veracity of the Form 8332. Respondent did not  
 12 invite our attention to any terms of the parental plan or  
 13 other documentary evidence indicating the noncustodial  
 14 spouse's waiver was conditional, and we find none.

15 Respondent did not allege petitioner and the custodial  
 16 parent ~~I'm sorry, strike that. Respondent did not~~<sup>e</sup> JWN  
 17 ~~allege petitioner and the noncustodial~~<sup>e</sup> colluded to  
 18 "double-dip" with respect to claiming a dependency

19 ~~exemption~~<sup>deduction</sup> for K.D.B. JWN Instead Respondent argues petitioner  
 20 is ineligible to claim a dependency deduction because the  
 21 Form 8332 was not "attached" to the petitioner's return as  
 22 required by an applicable regulation. Petitioner does not  
 23 dispute the applicability of that regulation, but invites  
 24 our attention to his inclusion of the parenting plan with  
 25 his timely filed tax return, and invites us to contemplate



1 his dogged pursuit of legal remedies against the custodial  
2 parent in order to secure the Form 8332 that respondent  
3 desired.

4 When pressed by the Court, respondent did not  
5 proffer an opinion as to whether petitioner could still  
6 properly file an amended return for tax year 2014,  
7 "attach" the Form 8332, and again satisfy the requirements  
8 <sup>for</sup> ~~by~~ claiming the subject dependency exemption. We observe JWN  
9 that petitioner's return was timely filed less than three  
10 years ago. We similarly note that the return of the  
11 custodial spouse is likely still open to either audit or  
12 amendment.

13 The Court is aware of the dicta in Armstrong v.  
14 Commissioner, 139 T.C. 468, 473 (2012) <sup>3</sup> aff'd, 745 F.3d 890 JWN  
15 (8<sup>th</sup> Cir. <sup>2</sup> 2014), that explored the contours of what ought JWN  
16 to constitute a section 152(e)(2) "attachment." However,  
17 because we find the parental plan petitioner included with  
18 his return, and the Form 8332 supplied to respondent  
19 satisfied the statutory requirements of section 152(e)(2),  
20 we need not and do not weigh in on that subject here.  
21 Accordingly, we hold that under section 152, petitioner  
22 was entitled to claim a dependency exemption for his  
23 qualifying child K.D.B. for tax year 2014

24 B. Earned Income Tax Credit

25 Section 32(a)(1) provides an eligible individual

1 with an earned income credit against the individual's  
2 income tax liability, subject to a phase out in section  
3 32(a)(2). Section 32(b) describes different percentages  
4 and amounts used to calculate the credit. The limitation  
5 amount is based on the taxpayer's earned income and  
6 adjusted gross income and whether the taxpayer has any  
7 qualifying children. Sec. 32(b), (f). To be eligible for  
8 a higher earned income credit with respect to a child, the  
9 taxpayer must establish that the child meets the  
10 definition of a qualifying child under section 152(c) as  
11 modified by 32(c) <sup>3</sup> ~~(1)~~ (A). JWN

12 Respondent reduced petitioner's earned income  
13 credit in light of the respondent's determination that  
14 K.D.B. did not constitute petitioner's qualifying child.  
15 Respondent did not allege or argue any other grounds for  
16 this reduction in petitioner's earned income credit.  
17 Because we hold that K.D.B. constitutes petitioner's  
18 qualifying child, we similarly hold that the petitioner is  
19 entitled to the earned income credit for taxable year 2014  
20 reflecting that determination. See Sec. 32(b).

21 C. Child Tax Credit for 2014.

22 A taxpayer is entitled to a child tax credit for  
23 "each qualifying child", as defined in section 152, who  
24 has not yet reached the age of 17. Sec. 24(a), (c)(1).

25 Reflective of his determination that petitioner was



1 ineligible to claim K.D.B. as a qualifying child,  
2 respondent disallowed Petitioner's claimed child tax  
3 credit. Respondent did not allege or argue any other  
4 grounds for disallowing petitioner's child tax credit.  
5 Given our holding above, petitioner is entitled to the  
6 child tax credit for tax year 2014. See Sec. 24(b).

7 D. Conclusion

8 Accordingly, a decision will be entered for  
9 petitioner. This concludes the Court's oral findings of  
10 fact and opinion in this case. In reaching our holdings  
11 herein, we have considered all arguments made and to the  
12 extent not mentioned above, we conclude they are moot,  
13 irrelevant, <sup>or</sup> ~~and~~ without merit. (JWM)

14 (Whereupon, at 11:55 a.m., the above-entitled  
15 matter was concluded.)

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