

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

PA

JUANITA P. MORGAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 14362-16.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

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

ORDERED that the Clerk of the Court shall transmit with this order to petitioner and respondent a copy of the pages of the transcript of the trial in this case before Judge Ronald L. Buch at Indianapolis, Indiana, 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 respondent.

**(Signed) Ronald L. Buch**  
**Judge**

Dated: Washington, D.C.  
November 28, 2017

**SERVED Nov 28 2017**

1 Bench Opinion by Judge Ronald L. Buch  
2 November 2nd, 2017  
3 Juanita P. Morgan v. Commissioner  
4 Docket No. 14362-16

5 THE COURT: The following represents the Court's  
6 oral findings of fact and opinion. The oral findings of  
7 fact and opinion may not be relied upon as precedent in  
8 any other case. This opinion is in conformity with  
9 Internal Revenue Code section 7459(b) and Rule 152(a) of  
10 the Tax Court Rules of Practice and Procedure. Any  
11 section references refer to the Internal Revenue Code or  
12 the Treasury regulations in effect during the years at  
13 issue, and all Rule references are to the Tax Court Rules  
14 of Practice and Procedure.

15 The question before the Court is whether Ms.  
16 Morgan is liable for a deficiency of \$6,930 for 2014 and  
17 which represents a recapture of Affordable Care Act  
18 premium assistance credits. We hold that she is liable.

19 Background

20 Although Ms. Morgan did not have any records to  
21 substantiate the events she described, we decide this case  
22 based on the facts as she described them and as shown by  
23 the documents in the record. Ms. Morgan received a notice  
24 in the mail informing her that her health insurance did  
25 not meet the minimum requirements of health insurance that



1 she was required to maintain under what is commonly  
2 referred to as the Affordable Care Act or the ACA.  
3 Through a series of telephone calls, Ms. Morgan eventually  
4 arranged for health insurance. Through those telephone  
5 calls, Ms. Morgan effectively applied for and received  
6 benefits under the ACA. On the basis of her household  
7 income the Health Insurance Marketplace determined that  
8 Ms. Morgan was eligible for an advance premium assistance  
9 credit of \$770 per month to be applied to her monthly  
10 health insurance premium. That credit was applied to her  
11 health insurance premiums from April 2014 through December  
12 2014. She received a total credit of \$6,930 for 2014.

13 After the eligibility determination, but still  
14 in 2014, one or more of Ms. Morgan's family members needed  
15 financial assistance. Ms. Morgan had funds that she could  
16 withdraw from a retirement account without penalty and  
17 graciously decided to help her family. She was not aware  
18 that she might run afoul of the ACA income limits. Ms.  
19 Morgan took gross distributions from her individual  
20 retirement accounts in the amount of \$36,408.

21 Ms. Morgan timely filed her tax return and  
22 reported an adjusted gross income of \$49,282. Due to the  
23 withdrawal from her retirement accounts, Ms. Morgan's  
24 income was greater than the premium assistance credit  
25 eligibility threshold. The Commissioner issued a Letter

1 692-C, Request for Consideration of Additional Findings,  
2 asserting that Ms. Morgan was required to reconcile, on  
3 Form 8962, Premium Tax Credit, the \$6,930 advance premium  
4 tax credit paid on her behalf. After some back and forth,  
5 the Commissioner issued a notice of deficiency to Ms.  
6 Morgan, disallowing the \$6,930 advance premium tax credit,  
7 the effect of which was to increase her tax liability in  
8 the amount of that disallowed credit. While residing in  
9 Indiana, Ms. Morgan timely filed a petition.

10 Discussion:

11 Discussion

12 As a general matter, the Commissioner's  
13 determinations in the notice of deficiency are presumed  
14 correct, and the taxpayer bears the burden of proving an  
15 error. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115  
16 (1933). In limited situations, the burden can shift to  
17 respondent under section 7491(a), but the record does not  
18 establish that the criteria under section 7491 have been  
19 met, therefore, the burden of proof remains on Ms. Morgan.

20 The premium assistance tax credit is available  
21 to households with incomes between 100 percent and 400  
22 percent of the Federal poverty line. See McGuire v.  
23 Commissioner, 149 T.C. (slip. op. at 3) (Aug. 28, 2017)  
24 for a full discussion of eligibility requirements. During  
25 2014 the Federal poverty line was \$11,490 for a one-person

1 household in Indiana, and 400 percent of the Federal  
2 poverty line was \$45,960.

3 The ACA allows for the advance payment of the  
4 premium assistance tax credit "in order to reduce premiums  
5 payable by individuals eligible for [premium assistance  
6 tax credits]". Id. sec. 1412(a)(3), 124 Stat at 231-232  
7 (codified at 42 U.S.C. 18082). The "advance premium tax  
8 credits" are paid directly to the insurer in the form of  
9 monthly payments based on advance eligibility  
10 determinations. Id. sec. 1412(c)(2)(A), 124 Stat. at 232  
11 (codified at 42 U.S.C. 18082(c)(2)).

12 Sometimes circumstances change, and a taxpayer's  
13 annual income might be more or less than the estimate that  
14 was used when the advance premium tax credit was  
15 determined. So at the end of the year, a taxpayer who  
16 receives an advance premium tax credit must reconcile the  
17 amount of the credit received (i.e., the premiums paid  
18 with the advance credits) with the eligible credit amount.  
19 Sec. 36(B)(f). This is done when the taxpayer files her  
20 annual income tax return. If the amount of the advance  
21 premium tax credit is more than the amount to which the  
22 taxpayer is ultimately entitled, the taxpayer owes the  
23 excess credit back to the government, and it is reflected  
24 as an increase in tax. Sec. 36(B)(f)(2). A taxpayer with  
25 income greater than 400 percent of the Federal poverty

1 line is not eligible for the credit, and the full amount  
2 of the advance premium tax credit received during the year  
3 must be included as a tax liability with the tax return.

4 Section 36(B)(f)(2); sec. 1.36B-4(a)(4), Example(5),  
5 Income Tax Regs.

6 Because Ms. Morgan's household income exceeded  
7 that threshold, she is not entitled to any of the advance  
8 premium tax credit she received. See sec. 36(B)(c)(1)(A),  
9 and (f)(2).

10 Ms. Morgan's withdrawal of retirement funds to  
11 help her family put her income over 400 percent of the  
12 Federal poverty line. Although we are sympathetic to Ms.  
13 Morgan's situation, the statute is clear; because her  
14 income was over that threshold, she was no longer entitled  
15 to the credits she had received. And excess advance  
16 premium tax credits are treated as an increase in the tax  
17 imposed. Sec. 36(B)(f)(2)(A). She is liable for the  
18 \$6,930 deficiency.

19 Decision will be entered for the Commissioner.  
20 (Whereupon, at 9:57 a.m., the above-entitled  
21 matter was concluded.)

22  
23  
24  
25

