

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

MARGARET ANN LAMANTIA,)
)
 Petitioner,)
)
 v.) Docket No. 17994-17S.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

On August 23, 2017, petitioner Margaret Ann LaMantia filed her petition in this Court challenging a statutory notice of determination (“SNOD”) issued by the IRS on June 2, 2017. The SNOD determined a deficiency of \$410 for the year 2016. The SNOD states, “You claimed the earned income credit for income you earned while you were an inmate. We adjusted the credit claimed on your tax return because amounts received for work performed while an inmate don't qualify as earned income for the earned income credit.” See 26 U.S.C. sec. 32(c)(2)(B)(iv) (“no amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account”).

On December 5, 2017, Ms. LaMantia filed two papers with the Court, each of which bears a cover sheet entitled “Motion to Dismiss”. The second (ECF 007) is illegible, but the first (ECF 006) is a letter of the South Carolina Department of Corrections that states:

To Whom this May Concern:

Please be advised that Ms. Margaret Lamantia (#00361246) was incarcerated at the South Carolina Department of Corrections (SCDC) on September 5, 2014. She was released to the community under parole

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supervision with the South Carolina Department of Probation, Parole and Pardon Services on December 24, 2014.

The Projected Release Date indicated on the SCDC website of August 20, 1018 [sic], does not reflect the actual parole date for Ms. Lamantia. Ms. Lamantia was sentenced for an indeterminate period of time. The Projected Release Date indicates the longest period of time for which Ms. Lamantia could have been incarcerated prior to being released on parole. However, her actual parole date was December 24, 2014.

Ms. Lamantia is not an inmate at SCDC. She completed her incarceration sentence on December 24, 2014, and was released to the community under parole supervision.

The evident purport of Ms. Lamantia's filing is that she should prevail in this case because she was not an inmate during 2016, the year at issue, and her income was therefore eligible for the earned income credit.

We construe the filing as a motion for summary judgment (not a motion to dismiss, since dismissal would be adverse to Ms. LaMantia; see sec. 7459(d)). We will order respondent (the IRS) to respond to the motion as such.

It is

ORDERED that the illegible Document 007 is stricken from the record of this case. It is further

ORDERED that Ms. LaMantia's motion filed as Document 006 shall be recharacterized as a motion for summary judgment, asserting that she was not incarcerated in 2016 and that her income was therefore eligible for the earned income credit. It is further

ORDERED that respondent shall file a response to the deemed motion for summary judgment no later than January 12, 2018, unless a stipulated decision document has been filed by that date.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
December 6, 2017