

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

CLC

DAVID P. MOLLICA, )  
)  
Petitioner, )  
)  
v. ) Docket No. 9722-16.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER AND DECISION**

David P. Mollica asks us to redetermine his deficiency for 2014. The Commissioner moved for summary judgment on the sole issue in this case: whether Mr. Mollica is entitled to the earned income tax credit (EITC). Mr. Mollica does not dispute the dispositive fact; he was an inmate in a penal institution for all of 2014. Under section 32(c)(2)(B)(iv), income earned by an inmate in a penal institution is disregarded when determining eligibility for the EITC. Because we find that there is no genuine dispute as to any material fact, we grant the Commissioner's motion for summary judgment.

Background

In 2014 Mr. Mollica was an inmate at a penal institution in the state of Florida. Mr. Mollica has been incarcerated since 1978 and is currently serving a life sentence.

On April 15, 2015, Mr. Mollica filed a Form 1040EZ, Income Tax Return for Single and Joint Filers with no Dependents. On that return Mr. Mollica claimed the filing status of single, reported adjusted gross income of \$2,517 and Federal income tax withholding of \$13, and claimed an EITC of \$193.

The Commissioner issued a notice of deficiency to Mr. Mollica on March 9, 2016. In the notice, the Commissioner disallowed Mr. Mollica's EITC of \$193 and withheld his refund.

While residing in Florida, Mr. Mollica filed a timely petition to challenge the Commissioner's determination. In that petition, Mr. Mollica challenges the Commissioner's disallowance of the claimed EITC. He states: "I believe whatever Law it is that states because I'm an inmate I don't qualify for E.I.C. even though I pay taxes, Room + Board (rent) \* \* \* is discrimination against a class."

On October 17, 2016, the Commissioner filed a motion for summary judgment under Rule 121.<sup>1</sup> Mr. Mollica did not file a response.

### Discussion

The issue before this Court is whether we should grant the Commissioner's motion for summary judgment. Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in controversy. We may grant summary judgment only if there is no genuine dispute as to any material fact.<sup>2</sup>

The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute as to any material fact.<sup>3</sup> "In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party."<sup>4</sup> When a motion for summary judgment is made and properly supported, the nonmoving party may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine dispute for trial.<sup>5</sup> As a general matter, the Commissioner's determinations in the notice of deficiency are presumed correct, and the taxpayer bears the burden of proving an error.<sup>6</sup>

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<sup>1</sup> Unless otherwise indicated, all Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect for the year at issue.

<sup>2</sup> Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

<sup>3</sup> Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

<sup>4</sup> FPL Group, Inc. v. Commissioner, 115 T.C. 554, 559 (2000).

<sup>5</sup> Rule 121(d).

<sup>6</sup> Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933).

The Commissioner determined that Mr. Mollica had an income tax deficiency because he was not entitled to the EITC. Section 32 governs the EITC. The EITC is calculated on the basis of a taxpayer's earned income for the year.<sup>7</sup> Earned income is defined by section 32(c)(2)(A)(i) as "wages, salaries, tips and other employee compensation." Certain items of income are excluded from this definition.<sup>8</sup> Earned income does not include welfare payments such as Aid to Families with Dependent Children and Social Security income, nor does earned income include Social Security disability benefits or gifts.<sup>9</sup> As is relevant here, section 32(c)(2)(B)(iv) provides that income received by an inmate at a penal institution is not included in income for the purpose of the EITC.<sup>10</sup>

Mr. Mollica does not dispute that he was an inmate in a penal institution for the entire year of 2014. Instead, he argues that not allowing inmates to receive the EITC is discriminatory. Section 32(c)(2)(B) excludes various classes of individuals from receiving the EITC. Congress intentionally excluded income earned by inmates. The legislative history of section 32(c)(2)(B)(iv) indicates that: (1) Congress designed the earned income credit to alleviate poverty and to provide work incentives to low-income individuals and (2) these objectives would not be furthered if amounts paid for inmates' services were included in the definition of earned income.<sup>11</sup> For Mr. Mollica's constitutional challenge to succeed, he must show that Congress had no reasonable basis in classifying the income as it did.<sup>12</sup> We have no difficulty in holding the legislative classification in question is well within congressional power.

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<sup>7</sup> Sec. 32(a)(1).

<sup>8</sup> Sec. 32(c)(2)(B).

<sup>9</sup> See sec. 32(c)(2)(A); sec. 1.32-2(c)(2), Income Tax Regs.

<sup>10</sup> See Rogers v. Commissioner, T.C. Memo. 2004-245.

<sup>11</sup> H.R. Rept. No. 103-826, at 182 (1994); See also Wilson v. Commissioner, T.C. Memo. 2001-139.

<sup>12</sup> Bryant v. Commissioner, 72 T.C. 757, 764 (1979) (citing Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911)).

Mr. Mollica's general grievance against the tax system is not a type of controversy to be resolved in the courts. "Congress is the appropriate body to which such matters should be referred."<sup>13</sup> Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment is granted. It is further

ORDERED and DECIDED that Mr. Mollica has a deficiency in income of \$193 for 2014.

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

Entered: **JAN 31 2018**

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<sup>13</sup> Hatfield v. Commissioner, 68 T.C. 895, 899 (1977); See also Nelson v. Commissioner, T.C. Memo. 1989-209.