

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

ELIOT M. GRAY & SUSAN C. GRAY, )  
)  
Petitioners, )  
) **ALS**  
v. ) Docket No. 28011-16S.  
)  
COMMISSIONER OF INTERNAL REVENUE, )  
)  
Respondent )

**ORDER AND DECISION**

Mr. and Mrs. Gray seek review of the Commissioner’s deficiency determination for 2015. The Commissioner moved for summary judgment under Rule 121,<sup>1</sup> arguing that the undisputed facts require a decision in his favor. The Court ordered the Grays to respond to the motion. They submitted a response but did not dispute any material facts. Because we find that there is no genuine dispute as to any material fact, we grant the Commissioner’s motion for summary judgment.

Background

Eliot M. Gray and Susan C. Gray married in June of 2015, during the year at issue. Before they married, Mrs. Gray received benefits under the Affordable Care Act (commonly referred to as the ACA). On the basis of her pre-marriage estimated household income, Mrs. Gray was eligible for an advance premium assistance tax credit of \$489 a month to be applied to her monthly health insurance premium. Mrs. Gray and her son were enrolled in a health insurance plan with Blue Cross Blue Shield of Alabama. Advance premium assistance payments were made to Blue Cross on her behalf from January to July of 2015 for a total of \$3,281. After the Grays married, Mrs. Gray ceased enrollment with Blue Cross in July.

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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 years at issue. All monetary amounts are rounded to the nearest dollar.

Mr. and Mrs. Gray filed a joint Federal income tax return for 2015 and reported an adjusted gross income of \$141,528. On October 7, 2016, the Commissioner issued a notice of deficiency to Mr. and Mrs. Gray for 2015. In the notice of deficiency, the Commissioner disallowed the \$3,281 advance premium tax credit, the effect of which was to increase their tax liability in the amount of that disallowed credit.

Mr. and Mrs. Gray timely filed a petition in response to the notice of deficiency. The Grays resided in Alabama at the time they filed this petition. In that petition, Mr. and Mrs. Gray argue that Mr. Gray's income should not be included in determining whether Mrs. Gray was eligible to receive the credit.

On November 9, 2017, the Commissioner filed a motion for summary judgment. In the motion for summary judgment, the Commissioner argues that there is no dispute over any material fact.

This case was called from the calendar for the trial session of the Court at Birmingham, Alabama on January 8, 2018, for hearing on the Commissioner's motion. Both parties appeared and were heard. Mr. Gray acknowledged he received a copy of the Commissioner's motion and was given the opportunity by the Court to set forth his legal arguments in a response to the Commissioner's motion for summary judgment.

On February 6, 2018, Mr. and Mrs. Gray filed a response to the Commissioner's motion for summary judgment. In that response, Mr. and Mrs. Gray assert the same position they raised in their petition. Mr. and Mrs. Gray argue that Mr. Gray's income should not be included when determining Mrs. Gray's eligibility to receive the advance premium assistance tax credit before they were married.

### 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.

The premium assistance tax credit is available to households with incomes between 100% and 400% of the Federal poverty line.<sup>2</sup> During 2014 the Federal poverty line was \$19,790 for a three-person household in Alabama, and 400% of the Federal poverty line was \$79,160.<sup>3</sup>

The ACA allows for the advance payment of the premium assistance tax credit “in order to reduce the premiums payable by individuals eligible for [premium assistance tax credits]”.<sup>4</sup> The “advance premium tax credits” are paid directly to the insurer in the form of monthly payments based on advance eligibility determinations.<sup>5</sup>

Sometimes circumstances change, and a taxpayer’s annual income might be more or less than the estimate that was used when the eligibility for the advance premium tax credit was determined.<sup>6</sup> At the end of the year, taxpayers who receive an advance premium tax credit must reconcile the amount of the credit received (in other words, the premiums paid with the advance credits) with the eligible credit amount.<sup>7</sup> This is done when the taxpayers file their annual income tax return. If the amount of the advance premium tax credit is more than the amount to which the taxpayers are ultimately entitled, the taxpayers owe the excess credit back to the Government, and it is reflected as an increase in tax.<sup>8</sup> Taxpayers with income greater than 400% of the Federal poverty line are not eligible for the credit, and the full amount of the advance premium tax credit received during the year must be included as a tax liability with the tax return.<sup>9</sup>

Sometimes a circumstance that changes is a taxpayer’s marriage status. A taxpayer that is married at the end of the tax year must file a joint return with their spouse to qualify for the premium tax credit.<sup>10</sup> Generally eligibility is based on the

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<sup>2</sup> Sec. 36B(b)(3)(A)(i); See McGuire v. Commissioner, 149 T.C. \_\_\_, \_\_\_ (slip op. at 8) (Aug. 28, 2017) for a full discussion of eligibility requirements.

<sup>3</sup> See sec. 36B(d)(3)(B).

<sup>4</sup> Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, sec. 1412(a)(3), 124 Stat. at 232 (2010).

<sup>5</sup> ACA sec. 1412(c)(2)(A), 124 Stat. at 232.

<sup>6</sup> McGuire v. Commissioner, 149 T.C. at \_\_\_ (slip op. at 11).

<sup>7</sup> Sec. 36B(f).

<sup>8</sup> Sec. 36B(f)(2).

<sup>9</sup> Sec. 36B(f)(2); sec. 1.36B-4(a)(4), Example (5), Income Tax Regs.

<sup>10</sup> Sec. 36B(c)(1)(C); sec. 1.36B-2T(b)(2), Temporary Income Tax Regs.

couple's household income rather than each spouse's individual income.<sup>11</sup> When a taxpayer marries during the year they can elect the alternative computation of additional tax liability.<sup>12</sup> Under this computation each spouse individually computes the alternative premium assistance amounts for the time they were unmarried using one-half of the actual household income and their family size prior to the marriage.<sup>13</sup> The taxpayers add the alternative premium assistance amounts from the time they were unmarried with the premium assistance amounts the taxpayers were entitled to when married to calculate the alternative marriage-year credit.<sup>14</sup> The alternative marriage-year credit is then reconciled with the actual credit received to determine if excess credit was paid on behalf of the taxpayer.<sup>15</sup> Mr. and Mrs. Gray did not elect this alternative computation on their Form 8962. Even under this election their tax liability would not be reduced.

Because the Grays had a household income above 400% of the Federal poverty line, Mrs. Gray is not entitled to any of the advance premium tax credit she received.<sup>16</sup> The statute is clear; because their income was over that threshold, they were no longer entitled to the credits Mrs. Gray received before their marriage. Excess advance premium tax credits are treated as an increase in the tax imposed.<sup>17</sup> The Commissioner is correct in determining that tax. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment filed on November 9, 2017, is granted. It is further

ORDERED and DECIDED that Mr. and Mrs. Gray have a deficiency in income tax of \$3,281 for 2015.

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

Entered: **MAR 23 2018**

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<sup>11</sup> Sec. 1.36B-4(b)(1), Income Tax Regs.

<sup>12</sup> Sec. 1.36B-4(b)(2), Income Tax Regs.

<sup>13</sup> Sec. 1.36B-4(b)(2)(ii)(B), Income Tax Regs.

<sup>14</sup> Sec. 1.36B-4(b)(2)(ii)(A), Income Tax Regs.

<sup>15</sup> Sec. 1.36B-4(b)(5), Example (1), Income Tax Regs.

<sup>16</sup> See sec. 36B(c)(1)(A), (f)(2).

<sup>17</sup> Sec. 36B(f)(2)(A).