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

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| BRYAN DOUGLAS WENDT, ET AL., | ) | |
| | ) | |
| Petitioners, | ) | |
| | ) | |
| v. | ) | Docket No. 11366-17S, 14535-17S |
| | ) | |
| COMMISSIONER OF INTERNAL REVENUE, | ) | |
| | ) | |
| Respondent. | ) | |

**O R D E R**

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

ORDERED that the Clerk of the Court shall transmit herewith to petitioners and to respondent a copy of the pages of the transcript of the trial in the above cases before Chief Special Trial Judge Lewis R. Carluzzo at Dallas, Texas, containing his oral findings of fact and opinion rendered at the trial session at which the cases were heard.

In accordance with the oral findings of fact and opinion, an appropriate Order granting respondent's motion for summary judgment, filed December 18, 2017, will be issued, and decisions will be entered for respondent.

**(Signed) Lewis R. Carluzzo**
**Special Trial Judge**

Dated: Washington, D.C.
March 30, 2018

**SERVED Mar 30 2018**

IN THE UNITED STATES TAX COURT

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|---|---|
| In the Matter of: | |
| BRYAN DOUGLAS WENDT, ET AL., Petitioners, | Docket Nos. 11366-17S, 14535-17S |
| v. | |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | |

Earie Cabell Fed. Bldg. & U.S. Cthse.
1100 Commerce Street
Room 726, 7th Floor
Dallas, Texas 75242

March 7, 2018

The above-entitled matter came on for bench opinion, pursuant to notice at 10:46 a.m.

BEFORE: HONORABLE LEWIS R. CARLUZZO
Special Trial Judge

APPEARANCES:

For the Petitioner:

No Appearance

For the Respondent:

No Appearance

P R O C E E D I N G S

(10:46 a.m.)

THE CLERK: Docket number 11366-17S, Bryan Douglas Wendt, and docket number 14535-17S, Starla Ann Wendt, consolidated cases.

(Whereupon, a bench opinion was rendered.)

Bench Opinion by Special Trial Judge Lewis R. Carluzzo

March 7, 2018

Bryan Douglas Wendt, et al. v. Commissioner of Internal Revenue

Docket Nos. 11366-17S; 14535-17S

The Court has decided to render oral findings of fact and opinion in these consolidated cases and the following represents the Court's oral findings of fact and opinion (bench opinion). Unless otherwise noted, section references made in this bench opinion are to the Internal Revenue Code of 1986, as amended, in effect for the relevant period, and Rule references are to the Tax Court Rules of Practice and Procedure. This bench opinion is made pursuant to the authority granted by section 7459(b) and Rule 152.

This consolidated proceeding for the redetermination of a deficiency involves two small tax cases each subject to the provisions of section 7463 and Rules 170 through 175. Except as provided in Rule 152(c), this bench opinion shall not be cited as authority, and pursuant to section 7463(b) the decisions entered in this case shall not be treated as precedent for any other case.

The matter is now before the Court on respondent's motion for summary judgment, filed December 18, 2017. A hearing was conducted on respondent's motion

on March 6, 2018. Hannah K. Wilkins appeared on behalf of respondent and argued in support of the motion. Bryan Douglas Wendt (petitioner) appeared on his own behalf and opposed it. There was no appearance by or on behalf of Starla Ann Wendt.

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. See Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988); The moving party bears the burden of proving that there is no genuine issue of material fact, and factual inferences will be read in a manner most favorable to the party opposing summary judgment. See Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982).

Taking into account the statements made in the motion now before the Court, the position taken in

petitioners' response, filed January 17, 2018, and the statements made by the parties at the hearing, we are satisfied that there are no genuine issues of material fact in dispute in this case, and that decisions can be entered as a matter of law. See Rule 121. Those undisputed facts are easily summarized below along with our findings and conclusions.

Petitioners are husband and wife; at the time the petition was filed, they lived in Texas. Petitioners have at least two children, one who attended Texas Tech University during 2014. Petitioners paid the tuition and educational expenses (educational expenses) related to that child's enrollment there. The educational expenses are taken into account in two ways in the computation of petitioners' 2014 Federal income tax liability as shown on their timely filed 2014 joint Federal income tax return (return). First, petitioners claimed a deduction for the educational expenses, the computation of which is shown on a Form 8917, Tuition and Fees Deduction, included with their return (deduction for tuition and fees). Second, petitioners claimed a credit for the educational expenses, the computation of which is shown on a Form 8863, Education Credits (American Opportunity and Lifetime Learning Credits), also included with their return (education credit).

According to the notice of deficiency dated April 3, 2017 (notice), that forms the basis for this case, petitioners are not entitled to "claim the deduction for Tuition and Fees and Education Credits for the same student". The deduction for tuition and fees is disallowed in the notice, and the deficiency determined in the notice is attributable entirely to that disallowance.

As we have observed in countless opinions, deductions and credits are a matter of legislative grace, and the taxpayer bears the burden of proving entitlement to any claimed deduction or credit. Rule 142(a); INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934).

Subject to various conditions and limitations not here in dispute, section 222(a) allows a taxpayer to deduct "qualified tuition and related expenses" paid during the taxable year. The educational expenses petitioners paid in connection with their child's enrollment at Texas Tech University fit within the meaning of "qualified tuition and related expenses" as used in the statute, and there is no dispute that petitioners paid those expenses during 2014, but section 222(c)(2)(A) expressly prohibits a deduction for tuition and fees if the taxpayer "elects to have section 25A apply with respect to such individual for such year."

In general, and subject to various conditions and limitations, section 25A allows various types of credits for "qualified tuition and related expenses". Sec. 25A(a)(1) and (2), (b), (c), (f)(1). Respondent's position proceeds as though the educational expenses fit within the definition of "qualified tuition and related expenses" within the meaning of section 25A and qualify for a credit under that section, and further that the education credit claimed on petitioners' return reflects that they "elected" to have the credit apply under section 25A within the meaning of section 222. According to petitioners, they did not elect to have section 25A apply, and the education credit claimed on their return was not claimed under section 25A.

According to petitioners, the structure of section 25A, and the titles of the various credits allowable under that section, that is, the Hope Scholarship Credit, the Lifetime Learning Credit and the American Opportunity Tax Credit (AOTC), including the overlap of the AOTC with the Hope Scholarship Credit, see sec. 25A(i), make the statute difficult to apply and subject the statute to differing interpretations. Suffice it to note that we do not share their view in this regard. According to petitioners, their interpretation of section 25A informs their position that the education credit was

not claimed under that statute.

As noted, however, Federal income tax credits are allowable only as provided by statute. If the petitioners did not elect to have section 25A apply to the education expenses, then we wonder under what authority the credit has been claimed. At the hearing petitioner candidly admitted that petitioners could not identify any other provision of the Internal Revenue Code that would allow for a credit for the educational expenses, and we are aware of none. Ironically and arguably, petitioners' position could result in the disallowance of the education credit, which in turn would allow the deduction for tuition and fees, but result in a substantially larger deficiency. To respondent's credit, respondent does not alternatively argue for that result.

Petitioners' ill-advised claim that the education credit does not reflect their election to have section 25A apply to the education expenses is entirely undermined by a simple review of their return, and we are not impressed with their attempt to distance themselves from that election. On line 68 of the return, petitioners claim the AOTC, a credit specifically and only allowable under section 25A. Furthermore, the Form 8863 attached to their return includes information specifically attributable to an allowance of a section 25A credit,

including an acknowledgment that their child was enrolled at Texas Tech University for the period required under the statute, see Form 8863, line 24 and sec. 25A(b)(2)(B), and their child was not convicted of a felony drug offense during the relevant period, see Form 8863, line 26 and sec. 25A(b)(2)(D).

Under the circumstances, we are satisfied that the undisputed facts as summarized above in support of respondent's motion show that petitioners elected to claim a section 25A credit for the education expenses, even if as they now claim, that election was unintended. That being so, the express and clear language of section 222(c)(2)(A) provides that the deduction for tuition and fees here in dispute is not allowable. It follows that respondent's disallowance of that deduction is sustained.

To reflect the foregoing, an appropriate order granting respondent's motion will be issued, and decisions will be entered for respondent.

This concludes the Court's bench opinion in this matter.

(Whereupon, at 11:01 a.m., the above-entitled matter was concluded.)

CERTIFICATE OF TRANSCRIBER AND PROOFREADER

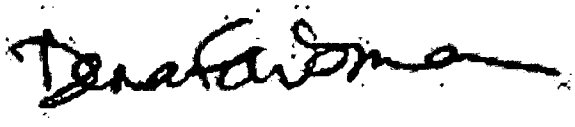
CASE NAME: Bryan Douglas Wendt, et al. v. Commissioner

DOCKET NO.: 11366-17S; 14535-17S

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 10 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Stephanie Novak on March 7, 2018 before the United States Tax Court at its session in Dallas, TX, in accordance with the applicable provisions of the current verbatim reporting contract of the Court and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.

Meribeth Ashley, CET-507 3/9/18

Transcriber Date



Dena Farbman, CET-629 3/9/18

Proofreader Date