

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

BRYAN DOUGLAS WENDT, ET AL.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 11366-17S, 14535-17S
)	
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 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.,) Docket Nos. 11366-17S
 Petitioners,) 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

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(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.)



1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 March 7, 2018
3 Bryan Douglas Wendt, et al. v. Commissioner of Internal
4 Revenue
5 Docket Nos. 11366-17S; 14535-17S

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

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

23 The matter is now before the Court on
24 respondent's motion for summary judgment, filed December
25 18, 2017. A hearing was conducted on respondent's motion

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

6 Summary judgment is intended to expedite
7 litigation and avoid unnecessary and expensive trials.
8 See Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681
9 (1988). Summary judgment may be granted with respect to
10 all or any part of the legal issues in controversy "if the
11 pleadings, answers to interrogatories, depositions,
12 admissions, and any other acceptable materials, together
13 with the affidavits or declarations, if any, show that
14 there is no genuine dispute as to any material fact and
15 that a decision may be rendered as a matter of law." Rule
16 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520
17 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994); Zaentz v.
18 Commissioner, 90 T.C. 753, 754 (1988); The moving party
19 bears the burden of proving that there is no genuine issue
20 of material fact, and factual inferences will be read in a
21 manner most favorable to the party opposing summary
22 judgment. See Dahlstrom v. Commissioner, 85 T.C. 812, 821
23 (1985); Jacklin v. Commissioner, 79 T.C. 340, 344 (1982).

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

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

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

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

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

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

1 In general, and subject to various conditions
2 and limitations, section 25A allows various types of
3 credits for "qualified tuition and related expenses".
4 Sec. 25A(a)(1) and (2), (b), (c), (f)(1). Respondent's
5 position proceeds as though the educational expenses fit
6 within the definition of "qualified tuition and related
7 expenses" within the meaning of section 25A and qualify
8 for a credit under that section, and further that the
9 education credit claimed on petitioners' return reflects
10 that they "elected" to have the credit apply under section
11 25A within the meaning of section 222. According to
12 petitioners, they did not elect to have section 25A apply,
13 and the education credit claimed on their return was not
14 claimed under section 25A.

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

1 not claimed under that statute.

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

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

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

7 Under the circumstances, we are satisfied that
8 the undisputed facts as summarized above in support of
9 respondent's motion show that petitioners elected to claim
10 a section 25A credit for the education expenses, even if
11 as they now claim, that election was unintended. That
12 being so, the express and clear language of section
13 222(c)(2)(A) provides that the deduction for tuition and
14 fees here in dispute is not allowable. It follows that
15 respondent's disallowance of that deduction is sustained.

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

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

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

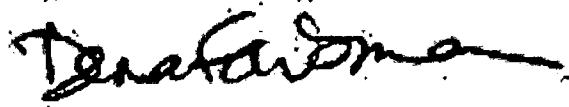


Meribeth Ashley, CET-507

3/9/18

Transcriber

Date



Dena Farbman, CET-629

3/9/18

Proofreader

Date

