

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

WAYNE DENNIS WOODROW & COLLEEN J.	)	
WOODROW,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 13346-18S
	)	
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 case before Chief Special Trial Judge Lewis R. Carluzzo at Tampa, Florida, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered under Rule 155.

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

Dated: Washington, D.C.  
November 22, 2019

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo  
 2 October 30, 2019  
 3 Wayne Dennis Woodrow & Colleen J. Woodrow v. Commissioner  
 4 Docket No. 13346-18S

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

15 This proceeding for the redetermination of a  
 16 deficiency is a small tax case subject to the provisions  
 17 of section 7463 and Rules 170 through 174. Except as  
 18 provided in Rule 152(c), this bench opinion shall not be  
 19 cited as authority, and pursuant to section 7463(b) the  
 20 decision entered in this case shall not be treated as  
 21 precedent for any other case.

22 Wayne Dennis Woodrow (petitioner) appeared on  
 23 his own behalf. Colleen J. Woodrow did not appear at  
 24 trial, but she did sign the stipulation of facts that was  
 25 filed on October 21, 2019, and admitted into evidence



1 during the trial on October 28, 2019. David Livermore  
2 appeared on behalf of respondent. At the time the  
3 petition was filed, petitioners lived in Florida.

4 In a notice of deficiency dated April 13, 2018  
5 (notice), respondent determined a deficiency in  
6 petitioners' 2016 Federal income tax and imposed a section  
7 6662(a) penalty. Respondent now concedes a portion of  
8 that deficiency and the penalty. The deficiency, or the  
9 portion of it that remains in dispute, results entirely  
10 from the Federal income tax consequences that flow to a  
11 taxpayer who secures health insurance pursuant to the  
12 Patient Protection and Affordable Care Act (ACA), Pub. L.  
13 No. 111-148, 124 Stat. 119(2010). In order to resolve  
14 what remains in dispute between the parties we must decide  
15 (1) whether petitioners are entitled to a health care  
16 premium assistance tax credit (premium tax credit or PTC)  
17 for 2016, and (2) whether the advance payments of the  
18 premium tax credit (APTC) they received that year exceeded  
19 that credit. See sec. 36B. The resolution of these  
20 questions depends upon whether petitioners may exclude  
21 certain distributions from petitioner's retirement  
22 accounts or pension plans from their modified adjusted  
23 gross income as that term is defined in section  
24 36B(d)(2)(B).

25 All of the stipulated facts are found. In



5  
1 addition to the stipulated facts, we incorporate all of <sup>the</sup> the  
2 facts included in petitioner's trial testimony as the  
3 findings of the Court. Because there is no apparent  
4 factual disputes between the parties, only the more  
5 relevant facts will be mentioned in this bench opinion.

6           Petitioner had a long career in the coal  
7 industry before and until political and economic  
8 conditions caused his employer to lay-off or eliminate 60  
9 percent of its workforce. His employment ended in  
10 December 2014, but he was able to maintain health  
11 insurance for his family through a private plan with  
12 Highmark Health Insurance Company (Highmark) at least  
13 through 2015 (private plan). The private plan cost  
14 petitioners about \$1,000 per month. A dramatic increase  
15 in the cost of petitioner's monthly prescriptions alerted  
16 him to the fact that Highmark had switched him to a  
17 different plan that apparently cost the same as the  
18 private plan, but did not provide the same coverage as the  
19 private plan.

20           While investigating health insurance coverage  
21 options petitioner was referred to a health insurance  
22 marketplace created under the ACA (marketplace).  
23 Following a consultation with a representative of the  
24 marketplace, petitioner opted for a health insurance plan  
25 offered by Highmark through the marketplace (marketplace

1 plan). The monthly premium for the marketplace plan was  
2 \$1,944 per month, which was more than petitioner wanted to  
3 pay, but he was advised that a portion of the cost would  
4 be covered by the APTC. As petitioner viewed the matter  
5 at the time, the marketplace plan he selected would offer  
6 about the same coverage available to him and his family  
7 under the private plan for about the same out-of-pocket  
8 cost. Had petitioner known at the time that he would not  
9 be eligible<sup>for</sup> APTC he would not have enrolled in the  
10 marketplace plan.

11 Coverage under the marketplace plan was  
12 effective for petitioners and three other individuals from  
13 March 1, 2016, through December 31, 2016, and over that  
14 10-month period APTC payments totaling \$9,170 were paid  
15 directly to Highmark.

16 Petitioner prepared petitioners' 2016 Federal  
17 income tax return (return) using a commercially available  
18 Federal income tax return preparation program. The  
19 adjusted gross income shown on the return is significantly  
20 higher than 400 percent of the applicable Federal poverty  
21 guidelines published in the Federal Register (poverty  
22 guidelines), and a great majority of that adjusted gross  
23 income consists of distributions from petitioner's  
24 retirement account and pension plan (retirement account  
25 income). If the retirement account income is not taken

1 into account, petitioners' adjusted gross income would be  
2 more than 100 percent but less than 400 percent of the  
3 poverty guidelines. Petitioners did not include a Form  
4 8962, Premium Tax Credit, with the return, and no amount  
5 is shown on line 46, "Excess advance premium tax credit  
6 overpayment" of the return.

7 In general, section 36B(a) allows a refundable  
8 Federal income tax credit computed with reference to  
9 amounts incurred by an "applicable taxpayer" for the cost  
10 of certain qualified health care insurance plans.  
11 Application of the provisions of section 36B can be  
12 complicated, and during trial I admitted to being less  
13 than completely informed as to how those provisions apply  
14 to the dispute between the parties in this case. But as  
15 it turns out, deep analysis into what are otherwise  
16 complicated statutory provisions is not necessary here.  
17 The first question posed, that is, are petitioners  
18 entitled to a PTC is answered by little more than reading  
19 a few simple sentences.

20 The credit created by section 36B is only  
21 allowed to an "applicable taxpayer". The term "applicable  
22 taxpayer" is defined in section 36B(c) to include only  
23 those taxpayers whose "household income" falls between  
24 100 percent and 400 percent of the poverty guidelines.  
25 "Household income" means the "modified adjusted gross

1 income" of the taxpayer, see sec. 36B(d)(2), and "modified  
2 adjusted gross income" means the adjusted gross income  
3 shown on the taxpayer's return, increased by certain items  
4 of income excludable from the taxpayer's income and/or  
5 exempt from tax. See sec. 36B(d)(2)(B). Contrary to the  
6 advice received by petitioners, retirement income must be  
7 included in the computation of modified adjusted gross  
8 income and ~~therefor~~<sup>therefore</sup> household income.

9           Here's how those provisions apply here.  
10 Petitioners' adjusted gross income as shown on the return,  
11 their modified adjusted gross income, and household income  
12 for 2016, as those terms are defined in section 36B are  
13 equal and all exceed 400 percent of the poverty  
14 guidelines. It follows then, that petitioners are not an  
15 "applicable taxpayer" within the meaning of section 36B,  
16 and they are not entitled to an PTC.

17           A simple mathematical equation taking into  
18 account petitioners' APTC, which amounted to \$9,170 and  
19 petitioners' PTC, which is zero, shows that the excess  
20 APTC equals the APTC, that is \$9,170. Section 36B(f)  
21 provides that the excess APTC increases the Federal income  
22 tax imposed by section 1 on the taxpayer's taxable income,  
23 and now subject to respondent's concession, that is how  
24 the deficiency was computed in this case. Had petitioner  
25 properly completed a Form 8962 when the return was due

1 this would all have become clear at the time, and we are  
2 satisfied from petitioner's presentation at trial that is  
3 has become clear to him after the return was filed.

4           Petitioners do not challenge the inevitable  
5 results that flow from the application of the technical  
6 provisions of section 36B. Instead, they point out that  
7 they were ~~erroneous~~ <sup>erroneously</sup> advised that petitioner's retirement  
8 income would not be taken into account in the computation  
9 of their household income for purposes of the PTC.  
10 According to petitioners' the erroneous ~~advise~~ <sup>advice</sup> prompted  
11 them to select a marketplace plan that they would not  
12 otherwise have selected. At trial petitioner commented on  
13 his attempts to resolve the dispute administratively and  
14 noted that respondent's employees were sympathetic to  
15 petitioners' situation, but claimed to have no discretion  
16 to offer any relief under the circumstances. We share  
17 both the sympathy and lack of discretion exhibited by  
18 respondent's employees that previously considered  
19 petitioners' claim for relief. Like petitioners, the  
20 taxpayers' in McGuire v. Commissioner, 149 T.C. 254 (2017)  
21 considered themselves trapped in a health care plan that  
22 they did not want, or could not afford without the subsidy  
23 provided under the ACA. The taxpayer's request for an  
24 equitable result McGuire, like petitioners' request here,  
25 is simply not available, as we explained in that case, the

1 Court is "not a court of equity" and it "cannot ignore the  
2 law to achieve an equitable result."

3 It follows that the deficiency determined in the  
4 notice, as now modified by respondent, is sustained. In  
5 order to give effect to that modification and to  
6 respondent's concession of the section 6662(a) penalty,  
7 decision will be entered under Rule 155. This concludes  
8 the Court's bench opinion in this case.

9 (Whereupon, at 10:06 a.m., the above-entitled  
10 matter was concluded.)

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