

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

STANLEY V. MCCLAIN & SONIA N.	)	
MCCLAIN,	)	
	)	
Petitioner(s),	)	<b>CZ</b>
	)	
v.	)	Docket No. 4732-14S
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

Pursuant to the determination of the Court as set forth in its bench opinion rendered on May 1, 2015, 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 Special Trial Judge Lewis R. Carluzzo at Miami, 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 for petitioners.

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

Dated: Washington, D.C.  
May 14, 2015

**SERVED May 15 2015**

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1 Bench Opinion by Special Trial Judge Lewis Carluzzo

2 May 1, 2015

3 Stanley V. McClain & Sonia N. McClain v. Commissioner

4 Docket No. 4732-14S

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

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

23 Stanley V. McClain and Sonia N. McClain  
24 appeared on behalf of themselves. Brian A. Pfeifer  
25 appeared on behalf of respondent.

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1           In a notice of deficiency dated December  
2 30, 2013 (notice), respondent determined a \$2,500  
3 deficiency in petitioner's 2011 Federal income tax.  
4 The issue for decision is whether petitioners are  
5 entitled to the education credit apparently claimed  
6 on their 2011 joint Federal income tax return  
7 (return). Petitioners reside in Florida at the time  
8 the petition was filed.

9           During 2011, Stanley V. McClain  
10 (petitioner) was a student at ITT Technical Institute  
11 (ITT), a qualified educational institution, as that  
12 phrase is used in section 25A. The tuition charged  
13 by ITT was paid, at least in part, by Stafford  
14 student loans. Petitioner apparently applied for,  
15 and was granted the loans prior to, or around the  
16 same time he enrolled as an ITT student in December  
17 of 2011, and his student financial account statement  
18 shows that tuition charges accrued on that date. The  
19 proceeds of the student loans were paid directly to  
20 ITT and applied against those tuition charges on  
21 February 17, 2012.

22           Petitioners' 2011 return has not been  
23 admitted into evidence but the parties proceeded at  
24 trial as though petitioners claimed an educational  
25 credit totaling \$2,500 on that return, as we do

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1 likewise. According to the notice, a copy of which  
2 is attached to respondent's answer, petitioners are  
3 not entitled to the credit because ITT "did not  
4 verify" the education credit claimed on petitioners'  
5 return.

6           Subject to a variety of conditions and  
7 limitations, an individual is entitled to a credit  
8 against the individual's Federal income tax liability  
9 for qualified tuition and related expenses paid to an  
10 eligible education institution. See section 25A. We  
11 need not discuss the technical requirements set forth  
12 in section 25A because respondent agrees that  
13 petitioner has satisfied those requirements.

14           Replying upon section 1.25A-5(e)(3), Income  
15 Tax Regs., however, respondent argues that  
16 petitioners have claimed the credit in the wrong  
17 year. According to respondent, if the credit is  
18 otherwise allowable in 2012, it is properly available  
19 in that year, that is, the year that petitioner's  
20 student loan proceeds were applied against  
21 petitioner's 2011 tuition charges.

22           Section 1.25A-5(e)(3), Income Tax Regs.,  
23 provides a timing rule and states in relevant part,  
24 "Expenses paid with loan proceeds. - An education tax  
25 credit may be claimed for qualified tuition and

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1 related expenses paid with the proceeds of a loan  
2 only in the taxable year in which the expenses are  
3 paid, and may not be claimed in the year the load is  
4 repaid. Loan proceeds disbursed directly to an  
5 eligible education institution will be treated as  
6 paid on the date the institution credits the proceeds  
7 to the student's account". Other language in the  
8 regulation establishes that the timing rule with  
9 respect to the disbursement of the proceeds of  
10 Stafford loans is consistent with the above-quoted  
11 language. This portion of the regulation certainly  
12 supports the position that respondent has taken in  
13 this matter.

14           The last sentence of the regulation,  
15 however, goes on to state, "If the taxpayer does not  
16 know the date the institution credits the student's  
17 account, the taxpayer must treat the qualified  
18 tuition and related expense as paid on the last day  
19 for payment prescribed by the institution". The use  
20 of the word "must" in the last sentence of the  
21 regulation suggests that under the circumstances  
22 there described, the rule is mandatory and supercedes  
23 the disbursement rules stated earlier in the  
24 regulation. We think it reasonable to fix the time  
25 of the taxpayer's "knowledge", or lack thereof, as of

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1 the date the taxpayer's return is filed.

2           The trial exhibits showing the date  
3 petitioner's student loans were credited to his  
4 account is dated April 30, 2015, which was the date  
5 this matter was tried. Apparently the document was  
6 faxed to respondent's counsel by ITT shortly before  
7 the trial started. There is no showing that  
8 petitioner was previously aware of the date the loan  
9 proceeds were credited to his account, and from his  
10 presentation we are satisfied that he was not. In  
11 the words of the regulation we are satisfied that  
12 petitioner did not know the date that his student  
13 loan proceeds were credited to his account as of the  
14 date his return was filed. Petitioner credibly  
15 testified that the policy of ITT was that a student  
16 could not begin classes until the student's tuition  
17 was paid. Because petitioner's classes began in  
18 December of 2011, petitioner apparently assumed that  
19 his student loan proceeds were disbursed no later  
20 than the date his classes began, that is, that is the  
21 last date that ITT prescribed for payment was at the  
22 latest, the first day of class.

23           Under the circumstances, we are satisfied  
24 that the last sentence of the regulation operates to  
25 allow the credit to be claimed in 2011. Therefore,

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1 we find that petitioners are entitled to the  
2 education credit as claimed on their return.

3 To reflect the foregoing, decision will be  
4 entered for petitioners.

5 This concludes the bench opinion in this  
6 case.

7 (Whereupon, at 2:15 p.m., the above-  
8 entitled matter was concluded.)

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