

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

LOTUS RICHARD BALLARD,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 3843-15S
	)	
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 petitioner 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 Los Angeles, California, 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.  
February 12, 2016

**SERVED Feb 17 2016**

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1 Bench Opinion by Special Trial Judge Lewis R.  
2 Carluzzo  
3 January 28, 2016  
4 Lotus Richard Ballard v. Commissioner  
5 Docket No. 3843-15S

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

17 This proceeding for the redetermination of a  
18 deficiency is a small tax case subject to the  
19 provisions of Section 7463 and Rules 170 through 175.  
20 Pursuant to section 7463(b) the decision entered in  
21 this case shall not be treated as precedent for any  
22 other case.

23 Lotus Richard Ballard appeared on his own  
24 behalf. Mark A. Nelson appeared on behalf of  
25 respondent.

In a notice of deficiency dated November 24,

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1 2014 (notice), respondent determined a \$4,703  
2 deficiency in petitioner's 2013 Federal income tax  
3 and imposed a section 6662(a) accuracy related  
4 penalty.

5 The issues for decision are whether petitioner:  
6 (1) is entitled to a dependency exemption deduction  
7 for Z.B., who was 10 years old as of the close of  
8 2013; (2) qualifies for head of household filing  
9 status; (3) is entitled to an earned income credit;  
10 (4) is entitled to a child tax credit; and (5) is  
11 precluded by Section 32(k)(1)(A) from claiming an  
12 earned income credit for 2014 and 2015.

13 Some of the facts have been stipulated and are  
14 so found. At the time the petition was filed,  
15 petitioner lived in California.

16 Petitioner was born in 1960. He is a barber and  
17 operates a barber shop in the Los Angeles,  
18 California, area. Although previously engaged,  
19 petitioner was not married at any time during the  
20 year in issue.

21 Petitioner's 2013 timely filed Federal income  
22 tax return (return) was prepared by a paid return  
23 preparer. As relevant here, on that return  
24 petitioner: (1) claimed a dependency exemption  
25 deduction for Z.B.; (2) claimed an earned income

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1 credit computed as though Z.B. was petitioner's  
2 qualifying child for purposes of that credit; and  
3 (3) claimed a child tax credit computed as though  
4 Z.B. was petitioner's qualifying child for that  
5 credit as well. The return shows petitioner's  
6 adjusted gross income as \$15,635. The taxable  
7 income and Federal income tax liability reported on  
8 the return take into account the standard deduction  
9 and petitioner's claimed filing status as a head of  
10 household.

11 In the notice respondent: (1) disallowed the  
12 dependency exemption deduction claimed for Z.B.; (2)  
13 disallowed the earned income credit and child tax  
14 credit claimed on the return; (3) changed  
15 petitioner's filing status from head of household to  
16 single and adjusted the standard deduction  
17 accordingly; (4) imposed a section 6662(a) penalty  
18 upon the ground of negligence; and (5) determined  
19 that petitioner "recklessly and intentionally  
20 disregarded rules and regulations" within the meaning  
21 of Section 32(k)(1)(B)(ii) with respect to the earned  
22 income credit here in dispute.

23 After careful review of the evidence in this  
24 case in the following numbered paragraphs we limit  
25 our findings only to those necessary for the

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1 resolution of the above-referenced issues.

2       1. Petitioner's relationship with Z.B. is  
3 certainly consistent with, and might very well  
4 transcend the relationships set forth in Section  
5 152(c)(2), (f)(1), but his relationship with Z.B.  
6 is not described in those provisions of the  
7 Internal Revenue Code. That being so, petitioner  
8 does not qualify for the earned income credit  
9 claimed on his return or the child tax credit here  
10 in dispute. See Section 24(a), (c); Section  
11 32(c)(3)(A). Otherwise, it appears that petitioner  
12 fits within the definition of an eligible  
13 individual provided in Section 32(c)(1)(A)(ii). If  
14 the amount of his adjusted gross income does not in  
15 effect reduce any such credit to zero, then the  
16 amount allowable can be taken into account in a  
17 Rule 155 computation.

18       2. Petitioner and Z.B. shared the same  
19 principal residence as members of the same  
20 household during 2013, and that household was  
21 maintained by petitioner. I find this to be so  
22 even though Z.B. was absent from petitioner's  
23 residence for temporary periods in order to  
24 spend nights, weekends, or weeks at his mother's  
25 residence. It follows from these findings that

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1 petitioner's relationship with Z.B. is described  
2 in Section 152(d)(1) and (2)(H). It further  
3 follows that petitioner is entitled to the  
4 dependency deduction here in dispute, see  
5 Sections 151(c) and 152(a)(2), and that petitioner  
6 qualifies as a head of household, see Section  
7 2(b)(1)(A)(ii).

8         3. The evidence shows that petitioner's  
9 return was prepared by a paid income tax return  
10 preparer. Nothing in the record suggests that  
11 Petitioner has any particular training or  
12 background in accounting or matters involving  
13 Federal income taxation, and his relationship with  
14 Z.B. has been acknowledged by order of a local  
15 court. Taking all of this into consideration, and  
16 keeping in mind the definition of "negligence", see  
17 Section 6662(c), respondent's burden of  
18 production, see Section 7491(c), and the  
19 provisions of Section 6664(c), we find that  
20 Petitioner is not liable for a Section 6662(a)  
21 penalty.

22         4. At trial we commented that it would be  
23 unlikely that we would resolve this case by bench  
24 opinion because of the Court's unfamiliarity with  
25 issues relating to the application of Section

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1 32(k). Subsequent research and the delivery of  
2 this bench opinion show that the comment was not  
3 well-made. Among other things, Section 32(k)  
4 precludes a taxpayer from claiming an earned income  
5 credit for two years following the year in which  
6 Respondent determines that the taxpayer's claim to  
7 an earned income credit was due to "reckless or  
8 intentional disregard of rules or regulations".  
9 Section 32(k)(1)(B)(ii). Respondent made that  
10 determination for the year in dispute here, but the  
11 determination obviously has no consequence to the  
12 deficiency determined in the notice -- the  
13 consequences of the determination take effect in  
14 years other than the year before us. Normally, in  
15 a deficiency case the Court is reluctant to make  
16 findings or rulings that have no tax consequences  
17 in the period or periods presently before it.  
18 Nevertheless, we can see the attractiveness in  
19 making the determination in the same year that the  
20 earned income credit is disallowed albeit on other  
21 grounds and we have addressed the issue in other  
22 non-precedential opinions, see Section 7463(b).

23 In this case not only does the application of  
24 section 32(k) have no tax consequence to  
25 Petitioner's Federal income tax liability for the  
year before us, the record does not reveal whether

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1 a finding or ruling on the point would have any  
2 Federal tax consequence in either 2014 or 2015. We  
3 cannot tell whether petitioner's Federal income tax  
4 returns, if required, have been filed for those years  
5 -- and point out that his return for 2015 is not  
6 yet even due. Assuming that one or both of those  
7 returns have been filed, we cannot <sup>tell</sup> if either return *tel*  
8 includes a claim for an earned income credit.  
9 Moreover, even if one or both of those returns have  
10 been filed, and even if an earned income credit is  
11 claimed on one or both of them, we wonder what  
12 precedential effect a ruling in this case subject to  
13 the provisions of Section 7463(b) would have on the  
14 subsequent years. Under the circumstances, we  
15 decline to rule on the application of section 32(k)  
16 here, although we point out (1) our rejection of the  
17 imposition of the Section 6662(a) penalty imposed  
18 in the notice strongly suggests that Section  
19 32(k)(1)(B)(ii) does not apply and (2) unless the  
20 relationship between petitioner and Z.B. is  
21 different in the subsequent years from their  
22 relationship in the year before us, our reasoning  
23 for the disallowance of the earned income credit in  
24 this case would apply to deny petitioner's  
25 entitlement to an earned income credit for those  
years as well.

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1 To reflect the foregoing, decision will be  
2 entered under Rule 155.

3 THIS CONCLUDES THE BENCH OPINION IN THIS CASE.  
4 (Whereupon, at 3:55 p.m., the above-  
5 entitled matter was concluded.)

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