

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DAVID LEE NELSON & CYNTHIA)
ELIZABETH NELSON,)
)
Petitioners,) **ALS**
)
v.) Docket No. 12491-16S
)
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 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 for respondent.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
April 19, 2017

SERVED Apr 20 2017

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1 Bench Opinion by Special Trial Judge Lewis R.

2 Carluzzo

3 April 6, 2017

4 David Lee Nelson & Cynthia Elizabeth Nelson v.

5 Commissioner

6 Docket No. 12491-16S

7 THE COURT: The Court has decided to render
8 oral findings of fact and opinion in this case and
9 the following represents the Court's oral findings of
10 fact and opinion (bench opinion). Unless otherwise
11 noted, section references made in this bench opinion
12 are to the Internal Revenue Code of 1986, as amended,
13 in effect for the relevant period, and Rule
14 references are to the Tax Court Rules of Practice and
15 Procedure. This bench opinion is made pursuant to
16 the authority granted by section 7459(b) and Rule
17 152.

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

25 David Lee Nelson and Cynthia Elizabeth

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1 Nelson appeared unrepresented by counsel. Emma S.
2 Warner appeared on behalf of respondent.

3 In a notice of deficiency dated March 1,
4 2016 (notice), respondent determined a \$3,392
5 deficiency in petitioners' 2014 Federal income tax.
6 The deficiency results entirely from the disallowance
7 of the premium tax credit in the same amount claimed
8 on petitioners' timely filed joint 2014 Federal
9 income tax return. The issue for decision is whether
10 petitioners are entitled to that credit. As it turns
11 out, the resolution of the issue depends upon the
12 manner in which petitioners' premium assistance
13 amount, see sec. 36B(b)(2) is computed.

14 Some of the facts have been stipulated and
15 are so found. At the time the petition was filed and
16 at all other time here relevant, the petitioners
17 resided in California. References to petitioner in
18 this bench opinion are to Cynthia Elizabeth Nelson.

19 Petitioner was self-employed during the
20 year in issue. For the first seven months of 2014
21 petitioners were covered by a health insurance plan
22 offered through Kaiser Permanente (plan). Petitioner
23 enrolled in the plan directly through the insurance
24 company. Neither she nor David Lee Nelson enrolled
25 in any health insurance plan "through an Exchange

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1 established by the State under [section] 1311 of the
2 Patient Protection and Affordable Care Act". Sec.
3 36B(b)(2)(A).

4 According to the notice, the credit here in
5 dispute was disallowed because petitioners were not
6 "enrolled in health insurance coverage through the
7 Health Insurance Marketplace."

8 At trial petitioners pointed out the use of
9 the term "marketplace", particularly in various
10 publications issued by the Commissioner is ambiguous.
11 As they define the term, specifically pursuant to a
12 standard dictionary definition, the plan was
13 purchased in or through the "marketplace" as it was
14 offered by the insurance company both as an
15 individual plan and a plan available on a State
16 Exchange. It is clear that respondent would define
17 the term more narrowly, but we need not resolve the
18 apparent dispute between the parties on the point.

19 Although in not so many words, the parties
20 agree that Covered California is an Exchange
21 established by California under section 1311 of the
22 Patient Protection and Affordable Care Act. The
23 stipulation of facts shows that neither petitioner
24 enrolled in a qualified insurance plan through
25 Covered California or any other Exchange during 2014.

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1 That being so, the flush language of the controlling
2 statute supports respondent's disallowance of the
3 credit here in dispute. Petitioners' invitation to
4 ignore the statute and proceed upon information
5 provided in various publications issued by the
6 Commissioner, of course, must be rejected. See
7 Miller v. Commissioner, 114 T.C. 184, 195 (2000)
8 aff'd sub nom. Lovejoy v. Commissioner, 293 F.3d
9 1208 (10th Cir. 2002).

10 Section 36B(a) states, "In General - In the
11 case of an applicable taxpayer, there so be allowed
12 as a credit against the tax imposed by this subtitle
13 for any taxable year an amount equal to the premium
14 assistance credit amount of the taxpayer for the
15 taxable year." In relevant part, section 36B(b)(2)
16 defines the taxpayer's premium assistance credit
17 amount to be the lesser of "the monthly premiums for
18 such month for 1 or more qualified health plans
19 offered in the individual market within a State which
20 cover the taxpayer, the taxpayer's spouse, or any
21 dependent (as defined in section 152) of the taxpayer
22 and which were enrolled in through an Exchange
23 established by the State under [section] 1311 of the
24 Patient Protection and Affordable Care Act", see sec.
25 36B(b)(2)(A), over the excess of an amount computed

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1 pursuant to section 36(B)(b)(2)(B).

2 Because petitioners' plan was not "enrolled
3 in" through Covered California, which is the relevant
4 Exchange, petitioners' premium assistance amount, as
5 computed pursuant to section 36B(b)(2)(A) is zero.
6 That being so, the amount contemplated in section
7 36B(b)(2)(B) need not be computed as it cannot be
8 less than zero. Because the amount of petitioners'
9 premium assistance amount as defined in section
10 36(B)(b)(2) is zero, the amount of petitioners'
11 premium assistance credit amount, as allowed by
12 section 36(B)(a) is likewise zero. It follows that
13 petitioners are not entitled to the credit here in
14 dispute and respondent's disallowance of that credit
15 is sustained.

16 In closing we think it important to note
17 that our reading of the publications relied upon by
18 petitioners, even if those publications were not
19 timely published, is not inconsistent with the
20 statute scheme summarized above. We think it is also
21 appropriate to note that at the conclusion of trial
22 the Court questioned whether in lieu of the disputed
23 credit, the petitioners might be entitled to the
24 deduction for the health insurance premiums paid by
25 petitioners during 2014 as allowable pursuant to

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1 section 162(1). A closer review of the record shows
2 that the deduction was claimed and allowed. As for
3 the interplay between the credit allowed by section
4 36B(a) and the deduction allowed by section 162(1),
5 see Rev. Proc. 2014-41, I.R.B. 2014-33 (August 11,
6 2014). See also page 52, I.R.S. Publication 974,
7 Premium Tax Credit (PTC), January 3, 2017.

8 Otherwise, to reflect the foregoing,
9 decision will be entered for respondent. This
10 concludes the Court's bench opinion in this case.

11 (Whereupon, at 9:55 a.m., the above-
12 entitled matter was concluded.)

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