

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

TIMOTHY R. WALLACE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 16860-16S.
	)	
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 with this order to petitioner and respondent a copy of the pages of the transcript of the trial in this case before Judge Ronald L. Buch at Indianapolis, Indiana 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) Ronald L. Buch**  
**Judge**

Dated: Washington, D.C.  
November 22, 2017

**SERVED Nov 22 2017**

1 Bench Opinion by Judge Ronald L. Buch  
2 November 2nd, 2017  
3 Timothy R. Wallace v. Commissioner  
4 Docket No. 16860-16S

5 THE COURT: The following represents the Court's  
6 oral findings of fact and opinion. These oral findings of  
7 fact and opinion may not be relied upon as precedent in  
8 any other case. This opinion is in conformity with  
9 Internal Revenue Code section 7459(b) and Rule 152(a) of  
10 the Tax Court Rules of Practice and Procedure. Any  
11 section references refer to the Internal Revenue Code or  
12 the Treasury regulations in effect during the year at  
13 issue, and Rule references are to the Tax Court Rules of  
14 Practice and Procedure.

15 This case was heard pursuant to section  
16 7463. Under section 7463(b), the decision to be entered  
17 in this case is not reviewable by any other court, and  
18 this opinion may not be treated as precedent for any other  
19 case.

20 The items at issue in this case are Mr.  
21 Wallace's (1) cancellation of indebtedness income, (2)  
22 filing status, (3) dependency exemptions, (4) earned  
23 income tax credit, (5) itemized deductions, and (6)  
24 education credits. Cancellation of indebtedness income  
25 was redetermined in Mr. Wallace's June 6, 2016, notice of

1 deficiency. The Commissioner raised the remaining items  
2 in the December 23, 2016, answer to amended petition and  
3 at trial.

#### 4 Background

5 Mr. Wallace failed to appear at trial and failed  
6 to provide any evidence on the issue of cancellation of  
7 indebtedness income or any other issue.

8 Mr. Wallace filed his 2014 return claiming head  
9 of household status and reporting various itemized  
10 deductions and tax credits. For that same year, Mrs.  
11 Wallace filed a return showing her marital status as  
12 single and claiming the standard deduction. In 2014, the  
13 Wallaces filed a petition in bankruptcy showing that they  
14 were married to each other. And on their 2015 return, the  
15 Wallaces reported that they were married to each  
16 other. The Wallaces have a son, who in 2014 was age 25  
17 and did not reside with them. He earned in excess of  
18 \$8,000 of income from various jobs. There is no evidence  
19 that he was disabled.

20 Mr. Wallace claimed education credits on his  
21 return, but the Commissioner did not receive any  
22 information reporting of payment of educational  
23 expenses. Mr. Wallace claimed tax preparation fees, but  
24 his return does not indicate that he used a paid  
25 preparer. And Mr. Wallace claimed substantial medical

1 expenses, but those expenses were not paid; they were  
2 discharged in bankruptcy.

3 Discussion

4 I. Cancellation of Indebtedness Income

5 In general, the Commissioner's determinations in  
6 a notice of deficiency are presumed correct and taxpayers  
7 bear the burden of proving those determinations  
8 incorrect. Rule 142(a); Welch v. Helvering, 290 U.S. 111,  
9 115 (1933). Because Mr. Wallace's notice of deficiency  
10 determined that he had cancellation of indebtedness  
11 income, he bears the burden of proving that the  
12 Commissioner's determination is incorrect. Mr. Wallace  
13 provided no evidence, and we decide that issue in favor of  
14 the Commissioner.

15 The Commissioner bears the burden as to any  
16 issues relating to any "new matter, increases in  
17 deficiency, and affirmative defenses, pleaded in the  
18 answer". Rule 142(a)(1); see also Wayne Bolt & Nut Co.,  
19 v. Commissioner, 93 T.C. 500, 507 (1989); Shea v.  
20 Commissioner, 112 T.C. 183, 191 (1999). The Commissioner  
21 raised issues in his answer to the amended petition and at  
22 trial that are new matters and that increase Mr. Wallace's  
23 deficiency. These new matters require the submission of  
24 new evidence, and the Commissioner bears the burden of  
25 proof.

1 II. Filing Status/Dependency Exemption/Earned Income Tax  
2 Credit

3 The issue of whether Mr. Wallace can claim the  
4 earned income tax credit potentially turns on issues of  
5 his filing status and whether he can claim his son as a  
6 dependent, so we address these issues together.

7 Mr. Wallace is ineligible for head of household  
8 in 2014 for various reasons. Filing as head of household  
9 requires a taxpayer, among other requirements, to not be  
10 married and to maintain as his home a household that is  
11 the principal place of abode of a qualifying child or  
12 dependent for more than one-half of the taxable year. Sec.  
13 2(b)(1).

14 Mr. Wallace was married, which made him  
15 ineligible for head of household filing status.

16 Mr. Wallace's son was not a qualifying child. A  
17 Qualifying child is defined under 152(c). Sec.  
18 2(b)(1)(A)(i). Dependent means an individual who "the  
19 taxpayer is entitled to a deduction for the taxable year  
20 for such person under section 151". Sec.  
21 2(b)(1)(A)(ii). As stated above, dependents under section  
22 151 may be qualifying children or qualifying relatives.  
23 See section 151(c); sec. 152(a). A qualifying child must  
24 live with the taxpayer for more than one-half of the  
25 taxable year. Sec. 152(c)(1)(B). Evidence in the record



1 shows that Mr. Wallace's son did not live with him during  
2 the year at issue. A qualifying child must be under age  
3 19 or a student under age 24 at the end of the year. Sec.  
4 152(c)(1)(C). There is no evidence that Mr. Wallace's son  
5 was a student, and even if he was, he was over 24 at the  
6 end of the year. For several reasons, Mr. Wallace's son  
7 was not a qualifying child.

8 Mr. Wallace's son also was not a qualifying  
9 relative. Section 152(d) provides various requirements  
10 for the individual to be a qualifying relative. One of  
11 those requirements is that the individual's gross income  
12 must be less than the exemption amount defined in section  
13 151(d). Sec. 152(d)(1)(B). In 2014, the exemption amount  
14 was \$3,950; Mr. Wallace's son had gross income in excess  
15 of \$8,000.

16 Finally, Mr. Wallace's marital status and lack  
17 of a dependency exemption disqualify him from the earned  
18 income tax credit. Eligible individuals are entitled to  
19 an earned income credit against their income tax liability  
20 within certain limits. Sec. 32(a). For married taxpayers  
21 the earned income tax credit is permissible only for joint  
22 returns. Sec. 32(d). Mr. and Mrs. Wallace did not file a  
23 joint return, and thus are ineligible for the earned  
24 income tax credit. Also, for 2014 eligible individuals  
25 without a qualifying child must have adjusted gross income

1 below \$14,590. Mr. Wallace's adjusted gross income was in  
2 excess of that amount.

3 III. Itemized Deductions

4 Evidence introduced at trial shows that Mr.  
5 Wallace did not incur many of the expenses for which he  
6 claimed itemized deductions. After taking into account  
7 those items that he cannot deduct, the allowable itemized  
8 deductions fall below the standard deduction.  
9 Accordingly, we will allow him the standard deduction.

10 IV. Education Credits

11 Taxpayers are allowed to deduct qualified  
12 tuition and related expenses that they paid, subject to  
13 certain limits. Sec. 222(a) and 222(b). Additionally,  
14 taxpayers may be eligible for the Lifetime Learning Credit  
15 and American Opportunity Credit for amounts paid during  
16 the taxable year. Sec 25(A).

17 The Commissioner did not receive any information  
18 reporting showing that Mr. Wallace paid educational  
19 expenses in 2014. Mr. Wallace may not claim education  
20 credits.

21 Decision will be entered for respondent.

22 (Whereupon, at 10:05 a.m., the above-entitled  
23 matter was concluded.)

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