PEDRO MANZUETA,	)
	)
Petitioner,	)
	)
v.	) Docket No. 1092-18S
	)
COMMISSIONER OF INTERNAL REVENUE,	)
	)
Respondent.	)

O R D E R

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 Chief Special Trial Judge Lewis R. Carluzzo at New Orleans, Louisiana, 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 10, 2019

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo

2 April 2, 2019

3 Pedro Manzueta v. Commissioner of Internal Revenue

4 Docket No. 1092-18S

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). Section references made in this

9 bench opinion are to the Internal Revenue Code of 1986, as

10 amended, in effect for the relevant periods, and Rule

11 references are to the Tax Court Rules of Practice and

12 Procedure. This bench opinion is made pursuant to the

13 authority granted by section 7459(b) and Rule 152.

14 This proceeding for the redetermination of a

15 deficiency is a small tax case subject to the provisions

16 of section 7463 and Rules 170 through 174. Pursuant to

17 section 7463(b) the decision entered in this case shall

18 not be treated as precedent for any other case. Except as

19 provided in Rule 152(c), this bench opinion shall not be

20 cited as authority.

21 Pedro Manzueta appeared on his own behalf. John

22 K. Parchman appeared on behalf of respondent.

23 Some of the facts have been stipulated and are

24 so found. At the time the petition was filed, petitioner

25 lived in Louisiana.

1   In a notice of deficiency dated October 23, 2017

2 (notice), respondent determined a $4,393 deficiency in

3 petitioner's 2016 Federal income tax. According to the

4 notice, petitioner: (1) overstated the income reported on

5 a Schedule C, Profit or Loss from Business, included with

6 his 2016 Federal income tax return (return), which was

7 prepared by a paid income tax return preparer; (2) is not

8 entitled to a dependency exemption deduction for his

9 brother or his sister; (3) is not entitled to the earned

10 income credit claimed on the return; and (4) is not

11 entitled to a child tax credit.

12   Under the circumstances, the critical issue for

13 decision is whether petitioner's brother or sister fits

14 within the definition of a qualifying child for purposes

15 of the dependency exemption deductions and credits here in

16 dispute. For the following reasons, we find that neither

17 does, and summarize below the consequences of that

18 finding.

19   Depending upon a taxpayer's income and subject

20 to numerous limitations and conditions, generally a

21 taxpayer is entitled to a dependency exemption deduction,

22 an earned income credit and a child tax credit for each

23 qualifying child of the taxpayer. In general and subject

24 to various limitations, the term "qualifying child" means

25 with respect to any taxpayer for any taxable year, an

1 individual who satisfies several conditions or tests set

2 forth in the statute. See sec. 152(c). We need address

3 only one of those conditions, that is the one commonly

4 referred to as the residency test. See sec.

5 152(c)(1)(B). That test requires that the taxpayer and

6 the individual have the same "principal place of abode ***

7 for more than one-half of the taxable year". Taking into

8 account the places where the taxpayer and the individuals

9 lived during the taxable year, the residency test is a

10 simple mathematical count-the-days test that must be

11 satisfied with mathematical precision.

12   Petitioner bears the burden of proving to

13 establish that respondent erred by disallowing the earned

14 income credit and child tax credit. See Rule 142(a). At

15 trial he offered no documents in support of that burden.

16 Petitioner's failure to offer any documents in support of

17 his burden might be due to his expectation that he would

18 have more time to do so, but the procedural history of the

19 case shows that he did not take advantage of numerous

20 opportunities to provide supporting documentation to

21 respondent previous to the trial. As it turned out, the

22 only evidence petitioner offered in support of his burden

23 of proof was his testimony.

24   Although we find that petitioner was forthcoming

25 in describing his living conditions during the year in

1 issue, his testimony at trial was not sufficiently precise

2 enough to support a finding that his brother and sister,

3 or either one of them, lived with him for more than one

4 half of 2016. That being so, neither individual fits

5 within the definition of petitioner's qualifying child.

6 Because neither child may be treated as his qualifying

7 child, it follows that he is not entitled the earned

8 income credit or child tax credit claimed on the return.

9 See sec 32(a),(c)(1)(A) and (3); and sec. 24(a),(c)(1).

10 Respondent's disallowances of those credits are sustained.

11   Because the deficiency determined in the notice

12 results entirely from the disallowances of the earned

13 income credit and the child tax credit claimed on the

14 return, we need not resolve the dispute between the

15 parties regarding petitioner's entitlement to the

16 dependency exemption deductions claimed on the return or

17 the extent of the income reported on his return. Under

18 the circumstances, neither resolution would affect the

19 calculation of the deficiency determined in the notice.

20   To reflect the foregoing, decision will be

21 entered for respondent.

22   This concludes the Court's bench opinion in his

23 case.

24   (Whereupon, at 1:43 p.m., the above-entitled

25   matter was concluded.)