

Representing Clients Before The United States Tax Court

Prepared by
The Community Tax Law Project

The Earned Income Credit (EIC) is a common issue in many of the U.S. Tax Court cases CTLP handles. In this type of case the IRS examines the taxpayer's federal income tax return for filing status, dependency exemptions, and the EIC. It sends the taxpayer a letter advising him or her of the examination, the information needed to resolve the examination, and notifying the taxpayer that s/he has thirty (30) days to contact the IRS and submit the requested information. If the taxpayer does not respond to the examination letter requesting additional information within 30 days, the IRS issues a statutory Notice of Deficiency. The Notice of Deficiency gives the taxpayer 90 days from the date of the Notice of Deficiency to file a petition with the U.S. Tax Court.

If you are not admitted to the U.S. Tax Court, you will need to gain admission before filing a petition on the client's behalf. If you are not able to do so before the deadline for filing expires, the client may sign the petition and you may enter an appearance on his/her behalf after you have been admitted to practice before the court. To gain admission to the U.S Tax Court, you must submit a notarized application with the application fee to the Clerk's Office. The application is available on the U.S Tax Court's web site at <http://www.ustaxcourt.gov>. The application also requires that you submit a certificate of good standing from the highest state court to which you are admitted. You can obtain this certificate by filing a written request with the Supreme Court of Virginia Clerk's Office. Enclose a self-addressed envelope and the \$1.00 processing fee. After you submit your application to the U.S. Tax Court, the Court will notify you of your admission and will assign you a Tax Court Bar Number. This number must appear on all future filings with the Court. You should also download and review the rules of the U.S. Tax Court from the Court's web site.

Petitions are filed with the U.S. Tax Court in Washington, D.C. The Court charges a \$60.00 filing fee for all petitioners. If your client is unable to pay the filing fee, you may request that the Court waive this fee by filing a Motion for Waiver of Filing Fee. You must enclose a notarized Affidavit outlining your client's monthly income and expenses that demonstrates his/her inability to pay the fee.

A complete petition package includes the petition itself, the Designation of Place of Trial, and the \$60.00 filing fee (or Motion for Waiver of Filing Fee and Affidavit of Support, if applicable). Review the rules of the Tax Court to determine the appropriate number of copies to be filed with the Court. We recommend filing the petition via certified mail to verify the mailing date, as the Court treats items timely mailed as timely filed. Small case, or "S" status, is available for cases where the amount in controversy for each tax period in question is less than

\$50,000.00. You may designate “S” case status in the petition itself. With a few exceptions, “S” cases adhere to the same Rules of Court as regular cases, although they are handled on a slightly more informal basis. However, the taxpayer cannot appeal a decision by the Court in an “S” case. Tax Court Rules 170 through 183 apply to “S” cases. You should review these rules and discuss the advantages and disadvantages of “S” case status with your client.

Once the Court files the petition, it will forward a copy to the IRS Associate Area Counsel. If the case is not designated as an “S” case, the IRS must file a reply to the petition. The IRS will assign the case to an Appeals Officer, whose role is to attempt settlement prior to trial. The Appeals Officer will contact you to arrange a settlement conference. This conference may occur in person, or the Appeals Officer may simply ask for documentation establishing your client’s position. If a settlement is reached, the Appeals Officer will return the case to the IRS Associate Area Counsel for preparation of decision documents, which include three copies of the decision itself, three copies of the stipulation of facts, and a statement of the taxpayer’s account pending the Court’s decision. You will sign two sets of the decision and stipulation of facts and return them to the IRS Counsel’s Office. The IRS Counsel will file the documents with the Court. If a settlement is not reached, the parties begin preparing for trial. Most of CTLP’s cases settle without litigation, and it is not unusual to settle the case at the trial calendar itself.

Below are several items that you may find useful during your representation of the client:

- Sample Petition
- Sample Designation of Place of Trial
- Sample Motion for Waiver of Filing Fee
- Sample Affidavit

These forms may also be available on the Tax Court’s web site.

If you have any questions, please do not hesitate to contact The Community Tax Law Project at (804) 358-5855. Our staff attorneys are available to provide technical assistance and answer any questions you might have during your representation of the client.

UNITED STATES TAX COURT

NAME OF TAXPAYER,)
)
 Petitioner,)
)
 v.) Docket No. _____
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

PETITION

The petitioner hereby petitions for a redetermination of the deficiency in tax set forth by the Commissioner of Internal Revenue in his notice of deficiency dated May 30, 2003, and as the basis for her case alleges as follows:

1. The Petitioner is an individual with legal residence at <Street Address> in City, State Zip Code. Petitioner's taxpayer identification number is XXX-XX-XXXX. The return for the period here involved was filed with the Internal Revenue Service Center at Atlanta, Georgia.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the Petitioner on May 30, 2003, and was issued by the Office of Internal Revenue Service at Atlanta, Georgia.

3. The deficiency as determined by the Commissioner is for income taxes for the calendar year 2002 in the amount of \$5,085.00, the portion of which relates to the Petitioner's filing status and Earned Income Tax Credit is in dispute.

4. The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

- a. Respondent erred in determining that Petitioner is not entitled to the claim the head of household filing status under Sections 1(b) and 2(b) of the Internal Revenue Code.
- b. Respondent erred in determining that Petitioner is not entitled to claim the Earned Income Credit under Section 32 of the Internal Revenue Code.

5. The facts upon which the Petitioner relies, as the basis of her case, are as follows:

- a. Petitioner and her two children, <Child's Name>, SSN XXX-XX-XXXX, and <Child's Name>, SSN XXX-XX-XXXX resided at <Street Address> in City, State Zip Code during the entire calendar year 2002.
- b. Petitioner provided over one-half of the total cost of maintaining a home for her two children during calendar year 2002.
- c. Petitioner qualifies as eligible for the Earned Income Credit for calendar year 2002 under Section 32(c)(1)(A)(i).
 1. Petitioner had earned income permitting her to qualify for the Earned Income Tax Credit during

calendar year 2002 as required by Section 32(c)(2)(A)(i).

2. Petitioner's children are qualifying children under Section 32(c)(3):

i. Petitioner's qualifying children bear the required relationship to Petitioner as defined in Section 32(c)(3)(B)(i)(I).

ii. Petitioner's qualifying children had the same principal place of abode as the Petitioner for more than one-half of calendar year 2002 as required by Section 32(c)(3)(A)(ii).

iii. Petitioner's qualifying children meet the age requirement of Section 32(c)(3)(A)(iii) as they were both under the age of nineteen (19) at the end of calendar year 2002 as required by Section 32(c)(3)(C)(i).

iv. Petitioner's principal place of abode was in the United States as required by Section 32(c)(3)(E).

v. No other person with a higher adjusted gross income qualified as an eligible

individual for the same qualifying
children during calendar year 2002.

6. Petitioner requests, pursuant to Tax Court Rule 172, that
this proceeding be conducted as a small tax case under I.R.C.
Section 7463.

WHEREFORE, the Petitioner prays that this Court determine
that there is no deficiency in Petitioner's income tax for the
calendar year 2002 and grant Petitioner such other and further
relief to which she may be entitled.

Date: _____

<ATTORNEY NAME>
Counsel for Petitioner
FIRM OR ORGANIZATION
STREET ADDRESS
CITY, STATE & ZIP
Phone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX
Tax Court Bar No. XXXXXX

UNITED STATES TAX COURT

NAME OF CLIENT,)
)
 Petitioner,)
)
 v.) Docket No. _____
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

DESIGNATION OF PLACE OF TRIAL

Petitioner hereby designates Richmond, Virginia, as the
place of trial of this case.

Respectfully submitted,

Date: _____

<ATTORNEY NAME>.
Counsel for Petitioner
FIRM OR ORGANIZATION
STREET ADDRESS
CITY, STATE & ZIP
Phone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX
Tax Court Bar No. XXXXXX

UNITED STATES TAX COURT

<TAXPAYER'S NAME>,)
)
Petitioner,)
)
v.) Docket No. _____
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

MOTION FOR WAIVER OF FILING FEE

WHEREAS the Petitioner is barely able to maintain a level of income adequate for the support of himself and his two minor children;

WHEREAS, Petitioner performs line installation outside and was out of work for several weeks due to inclement weather in June;

WHEREAS, Petitioner is delinquent with his utilities and rental payments and received an eviction notice dated July 1, 2003; and

WHEREAS, the Petitioners' income is currently only sufficient to meet basic expenses;

THEREFORE pursuant to Tax Court Rule 20(b), the Petitioner respectfully moves that the Tax Court waive the customary Filing Fee of \$60.00, since payment of said amount would constitute a financial hardship at this time. The Petitioner will submit an affidavit containing their specific financial information that demonstrates his inability to make such payment as needed.

Date: _____

<ATTORNEY NAME>.
Counsel for Petitioner
FIRM OR ORGANIZATION
STREET ADDRESS
CITY, STATE & ZIP
Phone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX
Tax Court Bar No. XXXXXX

UNITED STATES TAX COURT

(Name of Petitioner),)
)
 Petitioner,)
)
 v.) Docket No. _____
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

AFFIDAVIT OF PETITIONER

Affiant, (Name of Petitioner), being first duly sworn, states the following to be true to the best of his knowledge and belief:

1. Affiant is Petitioner in the above styled case.
2. Petitioner filed a Petition in the above styled case on February 20, 2003.
3. Petitioner filed a Motion for Waiver of Filing Fee in the above styled case on February 20, 2003.
4. Pursuant to Tax Court Rule 20(b) and in support of his Motion for Waiver of Filing Fee, Petitioner sets forth the following schedule of average monthly income and expenses for his household of three individuals:

a. Gross Monthly income:

Primary Employment:	\$1,760.00
Total:	\$1,760.00

b. Monthly expenses:

Mortgage:	\$256.00
Auto Fuel and Tolls:	\$460.00
Childcare:	\$100.00
Telephone:	\$55.00
Utilities:	\$93.00
Taxes:	\$264.00
Food:	<u>\$500.00</u>
Total:	\$1,728.00

5. Petitioner would testify in support of the above statements in court.

Affiant (Name of Petitioner), being duly sworn, hereby affirms that the above statements are true and accurate to the best of his knowledge.

Sworn this ____ day of _____, _____.

(Name of Petitioner)

Commonwealth of Virginia

County / City of _____

I, a notary public of the Commonwealth of Virginia, hereby declare that (Name of Petitioner) personally appeared before me this day and, being duly sworn, affirmed the above statements to be true to the best of his knowledge and belief.

This the ___ day of _____, _____.

NOTARY PUBLIC

My Commission Expires:

