

ACTION ON DECISION

Subject: *Yosef A. Tsehay v. Commissioner*, T.C. Memo. 2016-200

Issue: Whether a taxpayer whose filing status is married filing separately is entitled to an earned income tax credit (EITC) under I.R.C. § 32.

Discussion: The Tax Court held that the taxpayer's filing status was married filing separately, rather than head of household as claimed by the taxpayer, or single as determined by the Commissioner. The Tax Court also held that the taxpayer had qualifying children and therefore was entitled to the EITC.

Section 32(d) provides that a married taxpayer who does not file a joint return is not entitled to an EITC. There is no mention of § 32(d) in the court's opinion; therefore, it appears that the Tax Court overlooked the prohibition disallowing the EITC to married taxpayers filing separately. Accordingly, the Service will not follow the court's opinion in *Tsehay* in allowing an EITC to a married taxpayer filing separately.

Recommendation: Nonacquiescence.

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