

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

CHRISTINA DANYEAL BASSETT- MCCARTHY,)	
)	
Plaintiff,)	TC-MD 091438C
)	
v.)	
)	
DEPARTMENT OF REVENUE, State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appealed Defendant’s September 1, 2009, Notice of Deficiency Assessment, which denied Plaintiff’s claim to the earned income credit (EIC) for 2007 in the amount of \$143.

The court held a hearing in the matter January 11, 2010. Plaintiff appeared on her own behalf. Defendant was represented by Morgan Brown. During that proceeding, the court concluded that Plaintiff did not legally qualify for the disputed credit.

For the 2007 tax year, Oregon allowed an (EIC) equal to “five percent¹ of the earned income credit allowable to the individual for the same tax year under section 32 of the Internal Revenue Code.” ORS 315.266(1).² The federal Internal Revenue Code (IRC) section 32 credit, in turn, is based on a percentage of an eligible individual’s qualifying earned income. IRC § 32.³

A prerequisite to the credit, for purposes of this case, is that the “eligible individual” have a “qualifying child” as defined in section 152(c) of the code. IRC §§ 32(a)(1), (c)(1)(A)(i), (c)(3). Internal Revenue Code section 152(c) defines a “qualifying child” to include the

¹ The amount of the credit was increased to six percent beginning with the 2008 tax year. Or Laws 2007, ch 880, § 2.

² All references to the Oregon Revised Statutes (ORS) are to 2005, because those were the laws in effect in 2007, which is the year of Plaintiff’s return.

³ References to the IRC are to 2007.

taxpayer's own child or grandchild, a brother or sister, or the child ("descendant") of a brother or sister (*i.e.*, a niece or nephew). IRC § 152(c)(1)(A), (c)(2).

Plaintiff claimed the EIC because she provided care for a child she initially identified as her niece. In her written submissions (including a statement from the child's mother), as well as some of her initial statements to the court, Plaintiff is identified as the child's aunt and godmother. A niece is a qualifying child. However, during the January 11, 2010, proceeding, Plaintiff stated that she was a friend of the child's mother, but that there was no family relationship between her and the child or the child's mother. The court appreciates Plaintiff's candor. However, because the requisite relationship is lacking, Plaintiff is not entitled to the EIC. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal of Defendant's Notice of Deficiency Assessment for 2007 is denied because the only adjustment to Plaintiff's 2007 return was the denial of the EIC and Plaintiff does not qualify for the credit.

Dated this ____ day of January 2010.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Dan Robinson on January 22, 2010. The Court filed and entered this document on January 22, 2010.