

the basis that Plaintiffs are not allowed a child tax credit.

II. ANALYSIS

All taxpayers are allowed tax credits only as provided by Oregon statutes. The State of Oregon uses the federal income tax laws as the basis for calculating Oregon state income taxes. ORS 316.127 (1999). The statute indicates that the non-residents' adjusted gross income is the portion of federal adjusted gross income derived from sources within the state, with modifications, additions or subtractions, as provided in chapter 316 of the Oregon Revised Statute. ORS 316.127 (1997).²

It is not required that the state law precisely match the federal code. This court has stated:

"ORS ch[apter] 316 had as its basic goal the incorporation of all the provisions of the federal Internal Revenue Code with regard to the measurement of personal taxable income. As a result of this incorporation *generally* the taxpayer's federal taxable income will be the same as his state taxable income. * * * *However, incorporation does not mean that state taxable income will be identical with federal taxable income in all cases.*"

Smith v. Dept. of Rev., 270 Or 456, 459, 528 P2d 73 (1974) (emphasis in original) (quoting *Christian v. Dept. of Rev.*, 269 Or 469, 526 P2d 538 (1974).)

None of the modifications, additions or subtractions in ORS chapter 316 of either 1997 or 1999 reveals that the Oregon statute includes a provision for child tax credit. It is beyond the court's authority to judicially create an exception to legislative requirements where none exist. *Taylor v. Dept. of Rev.*, OTC-MD No 030181E, WL 21674321, at *2 (June 30, 2003). Any oversight of a similar error Plaintiffs may have made in the past cannot change the base tax which Defendant is obligated to assess by

² ORS 316.127 (1999) uses exactly the same language. The 1997 statute applies to 40N 1999, while the 1999 statute applies to 40N 2000.

law.

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III. CONCLUSION

There is no express provision for a child tax credit in the Oregon tax code. Therefore, Plaintiffs are not entitled to the claimed credit for 1999 and 2000. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal must be denied.

Dated this ____ day of November, 2003.

JEFF MATTSON
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE JEFF MATTSON ON NOVEMBER 26, 2003. THE COURT FILED THIS DOCUMENT ON NOVEMBER 26, 2003.