

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

TRACEY R. GORINGE,)	
)	
Plaintiff,)	TC-MD 040905D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant's Notice of Refund Denial, dated May 28, 2004, for the 2003 tax year.

The case management conference held Wednesday, September 15, 2004, was converted to a trial. Tracey Goringe appeared on her own behalf. Laurie Fery, Auditor, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff testified that she is the legal guardian of her "almost" two-year-old granddaughter. Plaintiff explained that, in order to obtain medical coverage for her granddaughter, it was necessary for her to be the child's legal guardian. Plaintiff testified that both her daughter and granddaughter live with her. Although her daughter assists with the parenting responsibilities, Plaintiff provides all financial support. Plaintiff testified that she claimed the Working Family Credit for tax year 2003 because she paid for her granddaughter's child care.

II. ANALYSIS

The issue of whether a legal guardian can claim a Working Family Credit has been thoroughly discussed in the court's Decision and Judgment in *Richmond v. Department of*

Revenue, TC-MD 040802E.¹ (Copy attached.) In *Richmond*, the court concluded “that a grandchild does not meet the definition of a ‘qualifying child’ under ORS 315.262(1)(e) because a grandchild is not a ‘child of the taxpayer.’” *Richmond* Decision and J at 5. The facts in the *Richmond* case are identical to the facts in the case before the court. Regrettably, as explained in *Richmond*, the court must deny Plaintiff’s assertion that she is entitled to claim the Working Family Credit for child care expenses incurred for the care of her granddaughter.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal is denied.

Dated this ____ day of October 2004.

JILL A. TANNER
PRESIDING 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 PRESIDING MAGISTRATE JILL A. TANNER OCTOBER 4, 2004. THE COURT FILED THIS DOCUMENT OCTOBER 4, 2004.

¹ The court discussed the *Richmond* decision with the parties.

Small Claims Income Tax

Plaintiff,

DEPARTMENT OF REVENUE,
State of Oregon,

Defendant.

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DECISION and JUDGMENT

I. STATEMENT OF FACTS

On April 5, 2004, Defendant sent notice to Plaintiff that it was denying the Working Family Credit and reducing Plaintiff's 2003 refund to \$981. Plaintiff submitted to Defendant a written objection to the denial of the credit. On May 12, 2004, Defendant issued a Notice of Refund Denial that rejected Plaintiff's claim. Defendant concluded that, for Plaintiff to qualify

for the credit, the child expenses incurred must be for her son, daughter, step-son, or step-daughter. Plaintiff appeals Defendant's ruling claiming child care expenses incurred for her grandson should qualify under the statute. She further argues that her status as the child's legal guardian qualifies her for the credit.

II. ANALYSIS

ORS 315.262² allows certain low-income taxpayers a refundable credit against their Oregon income taxes for the purpose of partially offsetting the taxpayer's child care costs. The statute provides, in pertinent part:

"A qualified taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 316 equal to the applicable percentage of the qualified taxpayer's child care expenses * * *."

ORS 315.262(2).

The legislature provided definitions for the terms "qualified taxpayer" and "child care expenses." *See* ORS 315.262(1). Broadly speaking, a "qualified taxpayer" is a taxpayer who meets the income requirements specified in ORS 315.262(1)(d). "Child care expenses" are defined as "costs associated with providing child care to a qualifying child of a qualified taxpayer." ORS 315.262(1)(b).

From the text of the statute, it is clear that the legislature intended the Working Family Credit to be available only in limited circumstances. First, the credit is available only to a "qualified taxpayer." If a taxpayer fails to satisfy the income requirements specified in ORS 315.262(1)(d), the Working Family Credit is unavailable. Second, the credit is available to offset only those child care costs specifically identified in the statute. Because the definition of the term "child care expenses" includes only those costs incurred in providing child care to a
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² All references to the Oregon Revised Statutes (ORS) are to 2001.

qualifying child, the costs of providing child care to a nonqualifying child are not creditable under ORS 315.262(2).

The key question is whether Plaintiff's grandson is a "qualifying child" for purposes of ORS 315.262(2). The statute defines the term "qualifying child" as "**a child of the taxpayer** who is under 13 years of age, or who is a disabled child, as that term is defined in ORS 316.099." ORS 315.262(1)(e) (emphasis added). Plaintiff acknowledges that she has not adopted her grandchild. For that reason, Plaintiff's grandchild is not a "child of the taxpayer." Accordingly, the court finds that Plaintiff's child care costs are not creditable under ORS 315.262.

Plaintiff argues that she may claim her grandson as a dependent on both her state and federal returns and, as a consequence, he should similarly be viewed as her dependent for purposes of the credit. Oregon allows the same number of personal dependency exemptions "as allowed under section 151 of the Internal Revenue Code" for federal purposes. ORS 316.085(1)(a). The Internal Revenue Code (IRC) generally allows an exemption credit for each "dependent" of a taxpayer. IRC § 151(c).³ A "dependent" is defined in IRC § 152(a)(1) and includes "a son or daughter of the taxpayer, **or a descendant of either[.]**" (Emphasis added.) Therefore, for purposes of determining dependency exemptions, the statute specifically includes the descendants of a taxpayer's son or daughter. A grandchild falls within the definition of a dependent for purposes of the exemption credit.⁴

In contrast, Oregon's statutory provisions for the Working Family Credit do not relate to any federal definitions of dependents or qualifying children. Instead, the legislature chose to

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³ All references to the Internal Revenue Code (IRC) are to 2003.

⁴ A similar situation occurs for the child care expense credit found in ORS 316.078(1). The Oregon statute allows a credit for a percentage of the child care expenses allowed under IRC § 21. IRC § 21 allows expenses for qualifying individuals and defines a "qualifying individual" as "a dependent of the taxpayer." IRC § 21(b)(1)(A). The statute then refers to the dependency requirements contained in IRC § 151(c).

specifically set forth its own definition of a “qualifying child.” In doing so, it limited the definition to only children of a taxpayer. The legislature did not expand the definition to include descendants of those children.

Plaintiff argues that, because she is the child’s legal guardian, she possesses all the rights and responsibilities of a parent. However, under Oregon law, when a person is appointed as the legal guardian of a child, that person does not as a matter of course become the child’s parent. Such a change in legal status occurs only as the result of adoption. ORS 109.050 states that the adopted child “bears the same relation to adoptive parents” as the “adopted child would if the adopted child were the natural child of such parents.” There is no similar statement in the law regarding legal guardians.

The establishment of a legal guardianship occurs through a court order and results in the taking of the responsibility of guardianship from the child’s parents and the granting of it to another. It is not the termination of parental rights. *See* ORS 419B.365(5)(b). Furthermore, the powers and duties assigned to a guardian are less comprehensive than those existing in the child’s parents. *See* ORS 125.315(1)(e).

In summary, parental rights are not terminated by the establishment of a legal guardianship, and the parental rights and duties not transferred to the legal guardian by ORS 125.315 continue contemporaneously with the guardianship. As a consequence, a legal guardian cannot obtain the benefits of the Working Family Credit by claiming the child is a “child of the taxpayer” when the child legally remains the child of his or her parents.

The court understands and appreciates Plaintiff’s assertion that she is, in essence, the “parent” of her grandson and should be allowed the benefit of the Working Family Credit. However, in deciding whether the legislature intended Plaintiff to qualify for the credit, this court is constrained by the words of the statute and the words of the statute are unambiguous. Unless

the child is a child of a taxpayer, child care costs incurred in providing care for that child are not creditable under ORS 315.262. Plaintiff's arguments related to equity are better presented to the legislature.

III. CONCLUSION

The court concludes that a grandchild does not meet the definition of a "qualifying child" under ORS 315.262(1)(e) because a grandchild is not a "child of the taxpayer." As a result, the court finds Plaintiff's argument that she is entitled to claim the Working Family Credit for child care expenses incurred for the care of her grandson must be denied. Now, therefore,

IT IS ADJUDGED AND DECREED that Defendant's Notice of Refund Denial for 2003 is upheld.

Dated this ____ day of September 2004.

COYREEN R. WEIDNER
MAGISTRATE

THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER
SEPTEMBER 13, 2004. THE COURT FILED THIS DOCUMENT SEPTEMBER 13,
2004.**