

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

AUTUMN E. LEWIS and TONY R. LEWIS,)	
)	
Plaintiffs,)	TC-MD 050656E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s Notice of Proposed Adjustment and/or Distribution for tax year 2004. Defendant denied Plaintiffs the working family credit claimed on their 2004 return in the amount of \$2,400. That denial reduced the refund claimed on Plaintiffs’ return from \$3,172 to \$772. A telephone trial in the matter was held August 16, 2005. Autumn E. Lewis (Ms. Lewis) appeared on behalf of Plaintiffs. Becky Segovia, Auditor, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Tony Lewis (Mr. Lewis) developed cancer in 1996 and underwent chemotherapy to treat the cancer. Mr. Lewis developed a neurological disorder from the chemotherapy that causes him to spend most of his time in a bed or wheelchair. As a result, Mr. Lewis does not work nor is he capable of caring for Plaintiffs’ three children, ages 6, 10, and 12. Because Ms. Lewis works and Mr. Lewis is unable to care for their children, Plaintiffs hire a sitter to care for the children after school until Ms. Lewis arrives home.

On their 2004 income tax return, Plaintiffs claimed the working family credit in the amount of \$2,400. Defendant denied the credit, claiming the credit is only available to married taxpayers when both individuals are working.

II. ANALYSIS

ORS 315.262¹ 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).

ORS 315.262(1)(b) defines “child care expenses” as those “costs associated with providing child care to a qualifying child of a qualifying taxpayer.” ORS 315.262(1)(a) defines “child care” as that “care provided to a qualifying child of the taxpayer *for the purpose of allowing the taxpayer to be gainfully employed, to seek employment or to attend school on a full-time or part-time basis.*” (Emphasis added.) Therefore, only those child care costs that allow taxpayers to be employed, seek employment, or attend school are permitted under the statute.

In this appeal, Mr. Lewis is disabled; as a result, he is not employed, seeking employment, or attending school. Plaintiffs argue that, due to his disability, Mr. Lewis is unable to fulfill the requirements of the statute and, therefore, should be excepted from its requirements. The statute is clear, however, that if a taxpayer is not working, he must either be seeking work or attending school to qualify for the credit. No exception for a disabled parent is permitted, and the court cannot write an exception into the clear statutory language. *See generally Ellsworth v. Dept. of Rev.*, TC-MD No 050649A at 2 (Jan 4, 2006) (ruling that “although an individual is disabled, that factor should not exempt that person from the requirement of ORS 315.262 that requires they be employed, seeking employment, or a student”).

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

III. CONCLUSION

It is the court's conclusion that the working family credit provisions do not allow an exception for a disabled parent unable to work. As a result, Plaintiffs' claim is denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's 2004 Notice of Proposed Adjustment and/or Distribution, dated March 16, 2005, is upheld.

Dated this _____ day of January 2006.

COYREEN R. WEIDNER
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 Coyreen R. Weidner January 30, 2006. The Court filed and entered this document January 30, 2006.