

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

DONNA JO MARKS	)	
and CHRISTOPHER MARLOW MARKS,	)	
	)	
Plaintiffs,	)	TC-MD 070124E
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant’s denial of the Working Family Credit claimed on their 2004 income tax return. A case management conference was held April 30, 2007. Donna Jo Marks (Marks) appeared on behalf of Plaintiffs. Becky Segovia (Segovia) appeared on behalf of Defendant. At the conclusion of the conference, the parties stated they were prepared for the court to issue a decision based on the materials and statements provided. The case is ready for ruling.

I. STATEMENT OF FACTS

Plaintiffs filed a joint income tax return for tax year 2004. On the return, Plaintiffs claimed a Working Family Credit in the amount of \$2,080, based on child care expenses of \$13,000. Marks testified that, in 2004, her brother-in-law, Timothy Thomas (Thomas), provided childcare for Plaintiffs. Both Marks and her husband were in new jobs and worked graveyard shifts. Thomas spent the nights at their house watching their children for them.

In its review of the return, Defendant requested information from Plaintiffs to substantiate their claimed childcare expenses. Marks testified that she submitted a letter signed by Thomas confirming he watched Plaintiffs’ children in 2004 and received \$13,000 for his services.

Defendant apparently never received the letter and proceeded to deny the credit. In their appeal to this court, Plaintiffs attached another letter from Thomas once again confirming he watched the children in 2004 and received \$13,000.

During the telephone conference, Marks explained that she paid Thomas weekly and that she paid “about \$100 or \$200” per week. When asked specifically how much she paid each week, Marks took several minutes to review her papers and concluded she paid him \$250 per week. At 52 weeks, \$250 per week adds up to the \$13,000 claimed. The court questioned Marks whether she, her husband, or Thomas ever took time off in 2004, and she responded that they did not.

Segovia asked Marks whether she had any proof of payment. Marks testified that she paid cash to Thomas and that he did not issue any receipts. Segovia asked about bank statements showing cash withdrawals each week in the amount of \$250. Marks testified that they did not deposit their paychecks into their bank account. Instead, they cashed their paychecks and paid their bills with money orders. Segovia requested contact information for Thomas so she could verify his receipt of the income. Marks testified that she has no way of contacting Thomas. She explained that he is in hiding because there is a secret indictment against him for dealing drugs.

## II. ANALYSIS

Plaintiffs appeal to this court seeking entitlement to the Working Family Credit. Marks recognizes that Plaintiffs have provided little information and suggests they are at the mercy of the court. Defendant claims the credit should be denied due to the lack of substantiating information.

ORS 305.427 (2005) provides that in proceedings before the Tax Court, “[t]he burden of proof shall fall upon the party seeking affirmative relief.” Because Plaintiffs are seeking relief in

this case, they have the burden of proof. That means Plaintiffs must establish their claim “by a preponderance of the evidence, or the more convincing or greater weight of evidence.”

*Schaefer v. Dept. of Rev.*, TC No 4530 (July 12, 2001) (citing *Feves v. Dept. of Revenue*, 4 OTR 302 (1971)).

Plaintiffs submitted a letter from Thomas indicating he provided childcare services for them and received \$13,000 for his services. Thomas was not, however, available to testify and undergo cross-examination by Defendant. In addition, he was not available for the court to weigh his credibility. The question is whether a simple letter, by itself, is sufficient to satisfy Plaintiffs’ burden of proof in this appeal. The court finds that it is not. That is not to say a childcare provider must always be present to testify to satisfy a taxpayer’s burden of proof. However, when a letter is *the only piece of evidence relied upon* by the taxpayer, the provider should be made available to testify.

After evaluating all the information, the court is of the opinion that Plaintiffs failed to adequately support their claim for the Working Family Credit. As a result, the court concludes that Plaintiffs’ appeal must be denied. Now, therefore,

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

Dated this \_\_\_\_\_ day of May 2007.

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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 on May 11, 2007. The Court filed and entered this document on May 11, 2007.***