

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

PRICILA LONGMIRE-YANCY)	
and BRIAN YANCY,)	
)	
Plaintiffs,)	TC-MD 070540C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s determination that they are not entitled to the working family credit for tax year 2006. Pricila Longmire-Yancy (Pricila) appeared for Plaintiffs at trial. Becky Segovia appeared for Defendant.

I. STATEMENT OF FACTS

The year at issue is 2006. Plaintiffs were married in 1999 and remained married in 2006. They have two children, who were five and seven years old in 2006. Pricila worked full-time that year for the Klamath County mental health department. Her husband Brian Yancy (Brian) was incarcerated in 2004 and remained in the Snake River Correctional Institute in Ontario, Oregon, in 2006.

Pricila’s mother cared for the two children while Pricila was at work in 2006. Priscilla paid her mother at least \$1,200 for child care that year.¹ Plaintiffs filed joint federal and state returns and a Schedule WFC (working family credit) claiming \$1,200 in child care expenses and a working family credit of \$480. Defendant denied the credit because Brian was neither working nor going to school in 2006. Actually, Brian was working and going to school within the

¹ Pricila testified that she paid her mother more than \$1,200 for child care that year, but the tax software program she used to prepare her return indicated that she was limited to claiming \$600 per child for the year.

correctional facility that year. Brian was pursuing his high school equivalency certification and working approximately 20 hours per week in exchange for credits used to purchase items at the prison commissary. Plaintiffs filed an objection to Defendant's denial of the credit and, on April 16, 2007, Defendant issued a Notice of Refund Denial upholding its earlier determination. Plaintiffs appealed.

II. ANALYSIS

ORS 315.262² provides a refundable credit for qualifying child care expenses. Among the statutory requirements is that the child care be "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." ORS 315.262(1)(a). Because Plaintiffs were married in 2006, the tax year under appeal, they were statutorily required to, and did, file a joint tax return. ORS 315.262(5)(d)(A). Consequently, Plaintiffs are only entitled to the credit if they were *both* gainfully employed, seeking employment, or attending school.

Plaintiffs argue that they are entitled to the credit because Pricila worked full-time at the county mental health department, and Brian worked and attended school in prison. The court disagrees. Plaintiffs are not entitled to the credit because their child care expenses were not incurred "for the purpose of allowing the taxpayer[s] to be gainfully employed, to seek employment or to attend school," as required by ORS 315.262(1)(a). Brian was unavailable to care for the children because he was incarcerated, not because he was working or attending school. The fact that he was also working and going to school is secondary.

This court has previously denied the working family credit to a couple where the wife was employed full-time and the husband was incarcerated because the incarcerated spouse,

² All references to the Oregon Revised Statutes (ORS) are to 2005.

although working within the prison, was not “gainfully” employed. *Crouch v. Dept. of Rev.*, TC-MD No 050903A, WL 985618 (Apr 13 2006). The same holds true in the instant case because Brian is not engaged in a profitable undertaking that provides an income. See *Webster’s Third New Int’l Dictionary* 928 (unabridged ed 2002) (defining “gainful” as “productive of gain: PROFITABLE, REMUNERATIVE; *esp*: providing an income”) (emphasis in original); *id.* at 743 (defining “employ” as “to provide with a job that pays wages or a salary or with a means of earning a living”). The fact that Brian was also attending school is irrelevant for purposes of the credit because, as indicated above, Plaintiffs’ child care expenses were not incurred because Brian was in school, but rather, because he was incarcerated.

As the court noted in *Crouch*, the credit would no doubt be helpful to the gainfully employed taxpayer whose spouse is unavailable due to imprisonment. The parameters of the credit, however, are defined by the legislature and not the court. The court has no opinion on the policy considerations. The court notes, however, that other taxpayers in more sympathetic circumstances have been denied a credit because of the limitations of the statute.

In *Lewis v. Dept. of Rev.*, TC-MD No 050656E, WL 397919 (Jan 30, 2006), the court denied the working family credit to a couple where the wife worked but the husband was unable to work (or attend school) due to a neurological disorder associated with his cancer and chemotherapy. The court ruled that the statutory definition of qualifying child care expenses required that the expenses be incurred “for the purpose of allowing the taxpayer to be gainfully employed, to seek employment or to attend school” and that Mr. Lewis was neither working, seeking employment, nor attending school. The court noted that there was no exception for a disabled parent physically unable to care for his children, where the wife worked to support the family.

The credit has also been denied to grandparents because the then-existing statutory definition of “qualifying child” did not encompass grandchildren. *Adams v. Dept. of Rev.*, TC-MD No 050817D, WL 3476384 (Dec 2, 2005), *Richmond v. Dept. of Rev.*, TC-MD No 040802E, WL 2212138 (Sep 13, 2004). The legislature subsequently amended the statute to include grandchildren. Or Laws 2005, ch 832, § 25.

III. CONCLUSION

The court concludes that the working family credit provided in ORS 315.262 is not available to a couple where one spouse is incarcerated, notwithstanding the fact that the incarcerated individual is working and attending school, because that spouse is unavailable to care for the children due to his or her imprisonment and not because of employment or schooling. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs are not entitled to the working family credit for 2006 and that Defendant’s Notice of Refund Denial is upheld.

Dated this _____ day of July 2007.

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 July 25, 2007. The Court filed and entered this document on July 25, 2007.