

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

MARLO M. JENSEN,	)	
	)	
Plaintiff,	)	TC-MD 070709E
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s actions for the 2006 tax year regarding the denial of a working family child care credit (WFC). Trial was held by telephone, November 26, 2007. Plaintiff appeared on her own behalf. Testifying for Plaintiff was Caroline Medina (Medina), the child care provider. Defendant was represented by Kathy Strawn (Strawn).

I. STATEMENT OF FACTS

In 2006, Plaintiff worked each week day for Northwest Publishing. Plaintiff had one child, Jordan Jensen. His special needs necessitated a higher level of care during the year. Plaintiff claimed a working family child care credit for 2006, based on reported child care expenses of \$4,800. Defendant denied the credit in its entirety due to a lack of adequate substantiation.

At trial, the only probative sworn testimony was offered by Plaintiff and Medina. Medina corroborated Plaintiff’s testimony, stating that she was paid \$200 twice per month for the entire year. Plaintiff submitted a written, notarized statement dated August 28, 2007, that was signed by Medina, and corroborates the testimony about the payments. Plaintiff worked for the same employer during all of 2006. She testified she was paid twice per month and had “take home

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pay” in excess of \$900 every two weeks. Plaintiff contends that her payments to Medina were always in cash, and usually were made the same time each month.

Defendant contends that the information received earlier from Plaintiff is inconsistent in places. However, Strawn provided no details or exhibits. Defendant is also concerned with the lack of any independent, contemporaneous documentary substantiation.

## II. ANALYSIS

ORS 315.262(2)<sup>1</sup> provides a refundable credit to certain low-income taxpayers to partially offset their qualifying child care expenses incurred to enable the taxpayer to work, or to go to school. The credit is based on a percentage of the taxpayer’s qualifying child care expenses.

The question in this case is whether Plaintiff actually paid for child care and, if so, how much she paid. Plaintiff contends that she paid \$4,800 for child care and is entitled to the credit as reported on her return. Defendant insists the credit should be denied because Plaintiff did not have canceled checks to substantiate the expenses, as required by ORS 314.425.

In such cases, the sworn testimony of the child care provider is critical. *Bello v. Dept. of Rev.*, TC-MD No 060020B, WL 1460903 (May 8, 2007); *Marks v. Dept. of Rev.*, TC-MD No 070124E (May 11, 2007); *Rodriguez v. Dept. of Rev.*, TC-MD No 050651C, WL 2614534 (Oct 12, 2005). Also critical is the candor and credibility of all witnesses.

The weight of the evidence establishes that Plaintiff paid for child care in cash, and there are no contemporaneous receipts. The record includes the testimony of Plaintiff and her provider, Medina, and the August 28, 2007, written statement prepared by Plaintiff and signed by Medina. Both Plaintiff and Medina testified about the amount and nature of the payments made,

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2005.

which totaled \$4,800 for the year. Plaintiff and her witness were candid and credible. No competing evidence was offered, only conjecture and suppositions.

In such cases, Plaintiff has the burden of proof and must establish her case by a preponderance of the evidence. ORS 305.427. A “[p]reponderance of the evidence means the greater weight of the evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). Plaintiff has satisfied that requirement; no contradictory evidence was presented.

### III. CONCLUSION

On the evidence before it, the court concludes that Plaintiff paid Medina \$400 per month for each month of 2006. Plaintiff is, therefore, entitled to the WFC based on total expenses that year of \$4,800. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal is granted; and

IT IS FURTHER DECIDED that Defendant shall redetermine Plaintiff’s tax liability for 2006 based on the court’s decision herein.

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

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JEFFREY S. MATTSON  
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 Jeffrey S. Mattson on December 7, 2007. The Court filed and entered this document on December 7, 2007.***