OREGON DEPARTMENT OF REVENUE

ADMINISTRATIVE RULE REVIEW	Rule No. 150-315-0121	
New Rule	Page: Page 1 of 4	Last Revised Date: November 30, 2016
	NOTICE OF INTENDED ACTION	
Permanent Rule	Bulletin Dated: November 2016	Hearing Scheduled: November 22, 2016

PURPOSE:
The Working Family Household and Dependent Care (WFHDC) Credit under ORS 315.264 is a new refundable Personal Income Tax credit beginning tax year 2016. It ties to Internal Revenue Code section 21 with a few exceptions. The exceptions are explained in this rule.

150-315-0121

Working Family Household and Dependent Care Credit

As used in this rule, references to the Internal Revenue Code (IRC) mean the IRC as in effect on the date specified in ORS 315.004.

(1) Definitions for the purposes of ORS 315.264 and this rule:

(a) “Employment-related expenses” means employment-related expenses as defined in IRC section 21, without regard to the limitation in IRC section 21(c). See section (3) of this rule.

(b) “Earned income” means earned income as provided in IRC section 21.

(c) “Qualifying individual” means a qualifying individual as defined in IRC section 21.

(d) “Federal poverty level” means the federal poverty level for the same tax year as determined by the federal Department of Health and Human Services.

(e) “Household size” generally means the number of individuals, not to exceed eight, who are related by birth, marriage, or adoption, living in the home, and are allowed as exemptions on the taxpayer’s federal return. There are exceptions for disabled qualifying individuals and children whose parents are divorced, legally separated, or permanently living apart. See section (5) of this rule for those household exceptions.

Example 1. Adam and Maggie are married and have one qualifying individual. Maggie is a full-time student for 12 months in 2016. They paid $4,000 in employment-related expenses. Their adjusted gross income is $39,000, which is Adam’s wages. Maggie has no earned income. Because Maggie was a full-time student for 12 months of the year, she is considered to have $3,000 ($250 x 12) in attributable earned income. Their credit amount will be a percentage of $3,000, which is the least of their employment-related expenses ($4,000), the expense limitation ($12,000 for one qualifying individual), his earned income ($39,000), or her earned income ($3,000).

Example 2: Sophia and Tyler live together but are not married; they file separate tax returns. They are the parents of two children, Ken and Leah. Sophia and Tyler provide equal support to the children. However, because Sophia's adjusted gross income is higher than Tyler's, neither Ken nor Leah is a qualifying child of Tyler unless Sophia releases the exemption for that child to Tyler. Sophia releases the exemption for Ken to Tyler, but not for Leah. Sophia claims Leah and has a household size of 2. Tyler claims Ken and has a household size of 2. Each parent may only claim one dependent in their household size. Sophia is not able to claim Ken and Tyler is not able to claim Leah in the household size because the other parent is already claiming that child.

Example 3: Marcus and Erin are married and have three children and also support Marcus's parents who do not live with Marcus and Erin in their home. Because they meet the federal tests for claiming individuals not living with them, their federal return allows seven exemptions. Marcus and Erin cannot increase their household size by the people they claim as dependents on their federal return that do not live with them. Their household size for purposes of the Working Family Household and Dependent Care Credit is five.

(2) To claim the credit, the taxpayer must provide all information requested on the form prescribed by the department and file the form with the tax return. Failure to file the completed form with the department may result in denial of the Working Family Household and Dependent Care Credit.

(3) Employment-related expenses must be paid by the taxpayer claiming the credit. Payments made by an entity or individual other than the taxpayer claiming the credit are not payments made by the taxpayer.

(a) Costs associated with employment-related expenses include:

(A) Expenses paid with amounts excluded from income as dependent care benefits under IRC section 129;

(B) Expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC section 125; or

(C) Reimbursement of expenses as part of a flex spending arrangement under IRC section 125.

Example 4. Daron paid $5,000 in employment-related expenses. He works for a company that offers dependent care benefits and contributes $4,000 pre-tax to a flexible spending arrangement. Daron's employer reports $4,000 of dependent care benefits in box 10 of his W-2. Daron also paid $1,000 with after-tax dollars. Daron will determine his qualifying expenses based upon the total $5,000 ($4,000 + $1,000) paid.

(b) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the Employment-Related Day Care program) for household services or care of the qualifying individual on behalf of the taxpayer who is claiming the credit are not employment-related expenses.

Example 5. Leslie works full time and qualifies for state assistance in paying his child care expenses. The child care provider charges Leslie $600 per month to care for his two children ($7,200 per year). Of the $600 per month, the state pays $450 and Leslie has a copay of $150. Leslie cannot claim the entire $7,200 because he did not pay it. He can only claim $1,800 ($150 x 12), the amount he actually paid.

(4) If medical expenses are claimed as qualified expenses for the credit and as a deduction, the amount of medical expenses claimed as both shall be added to the taxable income for Oregon tax purposes.

(5) Household size exceptions:

(a) Disabled qualifying individuals can be included in the household size calculation even if they are not related to the taxpayer by birth, marriage, or adoption. An otherwise qualifying individual can be included in the household size if the taxpayer is not able to claim the individual as a dependent on their return for one of the following reasons:

(A) The individual had gross income equal to or more than the federal exemption amount for the corresponding tax year;

(B) The individual filed a joint return; or

(C) The taxpayer (or spouse if filing jointly) could be claimed as a dependent on another taxpayer's return.

Example 6. Carey's disabled parents live with her. They would otherwise qualify to be claimed as Carey's dependents on her return, except that they are married and file their own joint return. For this reason, Carey does not claim them on her return. Her parents qualify as her qualifying individuals for the credit. Her household size for the purpose of this credit is three.

(b) For taxpayers who are divorced, legally separated, or permanently living apart, an otherwise qualifying individual cannot be counted in the household size on more than one tax return.

Example 7. Branden and Shannon are divorced with two children, Dustin and Natalie. Dustin lives with Branden and Natalie lives with Shannon. Each parent pays the child care expenses for the child that lives with that parent. Shannon releases the dependent exemption for Natalie to Branden under IRC section 152(e). Natalie is counted in Shannon's household size and Dustin is counted in Branden's household size. Branden and Shannon each have a household size of two for purposes of this credit. Branden claims the employment-related expenses he paid for Dustin and Shannon claims the employment-related expenses she paid for Natalie on their returns.

[**Publications:** Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Stat. Auth.: ORS 305.100 and 315.264

Stats. Implemented: ORS 315.264