

ADMINISTRATIVE RULE REVIEW

	Rule No. 150-315-0120	
Repealed Rule	Page Page 1 of 7	Last Revised Date October 19, 2016
	NOTICE OF INTENDED ACTION	
Permanent Rule	Bulletin Dated November 2016	Hearing Scheduled November 22, 2016

PURPOSE: The Working Family Childcare Credit provided in ORS 315.262 sunset and may not be claimed for tax years beginning on or after January 1, 2016. Therefore, this rule is no longer necessary.

1 **150-315-0120 [Repealed 12/31/2016]**

2 **~~Working Family Childcare Credit~~**

3 ~~(1) Definitions. For purposes of ORS 315.262 and this rule:~~

4 ~~(a) "Federal poverty level" means the federal poverty level for the same tax year as determined by the~~
5 ~~federal Department of Health and Human Services.~~

6 ~~(b) "Household size" generally means the number of individuals related by birth, marriage, or adoption~~
7 ~~who are living in the home and are allowed as exemptions on the taxpayer's return. There are special~~
8 ~~rules for children whose parents are divorced, legally separated, or permanently living apart. See section~~
9 ~~(4) of this rule for those special rules.~~

10 ~~**Example 1:** Chris and Shelly live together but are not married. They have two children together, Tyler~~
11 ~~and Alec. Each child could be the qualifying child of one parent or the other, but not both parents. Each~~
12 ~~parent may claim their qualifying child(ren) in their household size. See definition of qualifying child~~
13 ~~later in this section.~~

14 ~~**Example 2:** Mike and Sarah are married and have three children and also support Sarah's parents who do~~
15 ~~not live with Mike and Sarah in their home. Because they meet the federal tests for claiming individuals~~
16 ~~not living with them, their federal return allows seven exemptions. Mike and Sarah cannot increase their~~
17 ~~household size by the people they claim as dependents on their federal return that do not live with them.~~
18 ~~Their household size for purposes of the working family childcare credit is five.~~

19 ~~(c) "Physical or cognitive condition" means a state where an individual's ability to perform a basic~~
20 ~~activity of daily living is markedly restricted where all or substantially all of the time, even with therapy~~
21 ~~and the use of appropriate devices and medication, the individual is unable (or requires an inordinate~~
22 ~~amount of time) to perform an activity of daily living. "Activities of daily living" include:~~

23 ~~(A) Bathing;~~

24 ~~(B) Dressing oneself, except that it does not include any of the activities of identifying, finding, shopping~~
25 ~~for or otherwise procuring clothing;~~

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- 1 ~~(C) Feeding oneself, except that it does not include any of the activities of identifying, finding, shopping~~
2 ~~for or otherwise procuring food, or the activity of preparing food to the extent that the time associated~~
3 ~~with the activity would not have been necessary in the absence of a dietary restriction or regime;~~
4 ~~(D) Medicating oneself;~~
5 ~~(E) Toileting; or~~
6 ~~(F) Transferring, ambulating, and being mobile.~~
7 ~~(d) "Qualifying child" means a son, daughter, stepson, stepdaughter, grandchild, step grandchild, brother,~~
8 ~~sister, stepbrother, stepsister, niece, nephew, step niece, step nephew, eligible foster child, child legally~~
9 ~~placed with the taxpayer for adoption by the taxpayer, or adopted child of the taxpayer, and descendants~~
10 ~~of all such individuals who:~~
11 ~~(A) Lived more than half the year with the qualifying taxpayer;~~
12 ~~(B) Is under 13 years of age or who is a disabled child of the taxpayer for whom the additional exemption~~
13 ~~credit under ORS 316.099 is allowed; and~~
14 ~~(C) Is not claimed as a qualifying child by another taxpayer. A child can only be the qualifying child of~~
15 ~~one taxpayer. See section (4) of this rule for the special rules for divorced and separated parents and~~
16 ~~taxpayers filing as married filing separately.~~
17 ~~**Example 3:** John and Kim have never been married and have two children, Kyle who lives with John all~~
18 ~~year, and Shannon who lives with Kim all year. In the summer each child spends one month with the~~
19 ~~child's other parent and sibling. John has both Kyle and Shannon in July and Kim has both kids in~~
20 ~~August. In addition to the child care for the child that lives with them, each parent also has daycare~~
21 ~~expenses during those months where both children are living in the parent's home. John may claim one~~
22 ~~"qualifying child" because Kyle lives with him. He may claim the expenses he paid for Kyle, but he may~~
23 ~~not claim the child care expenses he paid for Shannon because Shannon is not his qualifying child;~~
24 ~~Shannon is Kim's qualifying child. Kim may claim one "qualifying child" because Shannon lives with~~
25 ~~her. She may claim the expenses she paid for Shannon, but she may not claim the child care expenses she~~

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- 1 ~~paid for Kyle because Kyle is not her qualifying child; Kyle is John's qualifying child. John and Kim~~
2 ~~each have a household size of two.~~
- 3 ~~(2) Schedule WFC. To claim the working family child care credit, the taxpayer must provide all~~
4 ~~information requested on the Schedule WFC and file the Schedule WFC with the tax return to the~~
5 ~~department. Failure to file a completed Schedule WFC with the department may result in denial of the~~
6 ~~working family child care credit.~~
- 7 ~~(3) Costs associated with child care. For purposes of determining the credit, the credit is limited to costs~~
8 ~~associated with child care. The payments must be made by the parent claiming the working family child~~
9 ~~care credit. Payments made by an entity or individual other than the parent claiming the credit are not~~
10 ~~payments made by the taxpayer.~~
- 11 ~~**Example 4:** Shannon and Caleb are not married and live together with their son, Adam. Adam's child~~
12 ~~care expense for the year is \$4,600 of which each parent pays half. Caleb's adjusted gross income (AGI)~~
13 ~~is \$30,000 and Shannon's AGI is \$16,000. Under federal law, either Caleb or Shannon could claim the~~
14 ~~dependency exemption for Adam as their qualifying child. They agree that Shannon will claim Adam as~~
15 ~~her qualifying child, therefore Caleb cannot. Shannon may claim the working family child care credit~~
16 ~~based on the \$2,300 of child care expenses she paid and a household size of two. Even though Caleb paid~~
17 ~~child care expenses, he may not claim the working family child care credit because Adam is not his~~
18 ~~qualifying child.~~
- 19 ~~(a) Costs associated with child care include:~~
- 20 ~~(A) Child care expenses paid with amounts excluded from income as dependent care benefits under IRC~~
21 ~~section 129;~~
- 22 ~~(B) Child care expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC~~
23 ~~section 125; or,~~
- 24 ~~(C) Reimbursement of child care expenses as part of a flexible spending arrangement under IRC section~~
25 ~~125.~~

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- 1 ~~(b) Costs associated with child care do not include:~~
- 2 ~~(A) Expenses for a child's kindergarten through twelfth grade education at a public or a private~~
- 3 ~~institution;~~
- 4 ~~**Example 5:** Traci has a five-year-old son who attends a local academy. She pays \$750 per month for her~~
- 5 ~~son's kindergarten and child care. Of the amount she pays each month, \$500 is the contract price for child~~
- 6 ~~care and \$250 is an additional amount she pays for the child's education. Traci can only claim \$500 per~~
- 7 ~~month as qualifying child care.~~
- 8 ~~(B) Expenses for extracurricular activities or elective courses such as swimming, dance lessons, or other~~
- 9 ~~such activities unless the activities or courses are an ordinary part of the care provided to the child and~~
- 10 ~~cannot be separated;~~
- 11 ~~**Example 6:** David and Lisa are married and they have a three-year-old son, Noah. David and Lisa are~~
- 12 ~~both gainfully employed and they send Noah to a daycare center near Lisa's work for child care. Noah's~~
- 13 ~~parents signed him up for a swimming class through the daycare center that costs \$50 per month. The~~
- 14 ~~daycare center charges \$400 per month for the full-time care of a toddler. The daycare center bills David~~
- 15 ~~and Lisa \$450 per month for Noah's child care and activities. David and Lisa can use the child care~~
- 16 ~~expenses they paid (\$400 per month or \$4,800 annually) to determine the working family child care~~
- 17 ~~credit they are entitled to claim. They cannot use the amounts they paid for the swimming lessons.~~
- 18 ~~(C) Expenses for care provided when one spouse on a joint return is not gainfully employed, not seeking~~
- 19 ~~employment, not a full-time or part-time student, or not disabled as explained in Section (5) of this rule.~~
- 20 ~~**Example 7:** James and Holly are married and James stays home to take care of their four children. Holly~~
- 21 ~~earns \$55,000 annually and they paid \$4,000 in child care during the year. The child care expenses they~~
- 22 ~~paid are not costs associated with both James and Holly being gainfully employed, seeking employment,~~
- 23 ~~or being a full-time or part-time student. James and Holly cannot claim the working family child care~~
- 24 ~~credit.~~

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~~(D) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the Employer Related Day Care program) for child care expenses on behalf of the taxpayer who is claiming the working family child care credit;~~

~~**Example 8:** Debbie works full time and qualifies for state assistance in paying her child care expenses. The child care provider charges Debbie \$600 per month to care for her two children or \$7,200 per year. Of the \$600 per month, the state pays \$450 and Debbie has a copay of \$150. Debbie cannot claim the entire \$7,200 because she did not pay it. She can only claim \$1,800, the amount she actually paid.~~

~~(E) The value of a child care owner-operator's forgone revenue relating to child care that the owner-operator provided to his or her own child; or,~~

~~**Example 9:** Shirley is the owner-operator of a registered daycare facility. She cares for six children every day, of which two are her own children. Shirley cannot use the value of the two spaces her children use to calculate her working family child care credit because the forgone revenue is not a cost associated with child care.~~

~~(F) Transactions that are not arm's length or have no economic substance.~~

~~(4) Divorced or Separated Parents and Married Individuals Filing Separately:~~

~~(a) Divorced or Separated Parents:~~

~~(A) For purposes of this credit, a child is the qualifying child of the custodial parent, even if the exemption was released to a noncustodial parent under Internal Revenue Code (IRC) section 152(e). In situations where both parents live in the home with the child more than 50 percent of the year, the child may be the qualifying child of either parent, but not both. If the child is claimed on both parent's returns, the child is the qualifying child of the parent with the highest adjusted gross income (AGI).~~

~~**Example 10:** Maria and Kendall are divorced with two children. The children live in Maria's home with Maria for more than half of the year. Kendall has the children on certain weekends, holidays, and one month in the summer. Maria pays childcare expenses for 11 months during the year. Kendall pays childcare expenses for the one month in the summer when the children are with him. Maria releases the~~

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- 1 ~~exemption for one child to Kendall. Only Maria may claim the working family child care credit because~~
2 ~~the children are her qualifying children. Kendall may not claim the working family child care credit~~
3 ~~because he does not have a qualifying child.~~
- 4 ~~(B) An individual cannot be counted in the household size on more than one tax return.~~
- 5 ~~**Example 11:** Sam and Sally are divorced with two children, Ben and Brianna. Ben lives with Sam and~~
6 ~~Brianna lives with Sally. Each parent pays the child care expenses for the child that lives with them.~~
7 ~~Sally releases the dependent exemption for Brianna to Sam under IRC section 152(e). Brianna is counted~~
8 ~~in the household size of Sally because she lives with Sally. Ben is counted in the household size of Sam,~~
9 ~~because he lives with Sam. Sam and Sally will each have a household size of two to determine the~~
10 ~~percentage of child care costs each may claim as a working family child care credit.~~
- 11 ~~(b) Married Individuals Filing Separately:~~
- 12 ~~(A) Taxpayers filing separate returns who share a common household cannot claim the working family~~
13 ~~child care credit.~~
- 14 ~~(B) Taxpayers maintaining separate residences at the end of the tax year, and who intend to live apart in~~
15 ~~the future, determine their household size based on the computation defined in subsection (1)(c) of this~~
16 ~~rule.~~
- 17 ~~**Example 12:** John and Sue are married and have two children. They are legally separated and live apart~~
18 ~~permanently, and one child lives with each. John and Sue file separate returns for the tax year and each~~
19 ~~claims a child as a dependent. John and Sue will each have a household size of two to determine the~~
20 ~~percentage of child care costs each may claim as a working family child care credit. John may claim the~~
21 ~~credit based on the child care costs he paid for the child that lives with him and Sue may claim the credit~~
22 ~~based on the child care costs she paid for the child that lives with her.~~
- 23 ~~(5) Disabled Spouse:~~
- 24 ~~(a) Married taxpayer with disabled spouse. Beginning in tax year 2007, a qualified taxpayer is allowed to~~
25 ~~claim the working family credit based on child care expenses paid even if the expenses were paid when~~



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- 1 ~~the taxpayer has a spouse who did not work, look for work, or attend school. The expenses may be~~
- 2 ~~claimed if the taxpayer's disabled spouse has a physical or cognitive condition which causes the disabled~~
- 3 ~~spouse to require assistance in performing basic activities of daily living and prevents the disabled spouse~~
- 4 ~~from working, looking for work, and attending school.~~
- 5 ~~(b) Certification by physician. For a taxpayer to claim child care expenses paid when the taxpayer's~~
- 6 ~~spouse is unable to work, look for work, and attend school because the spouse has a disability that~~
- 7 ~~prevents the spouse from such tasks, the taxpayer must obtain certification from the physician or other~~
- 8 ~~qualified medical professional that the taxpayer's spouse meets the definition of disabled in the statute~~
- 9 ~~and this rule. This certification is to be kept in the taxpayer's records and provided to the department~~
- 10 ~~upon request.~~
- 11 ~~Stat. Auth.: ORS 305.100~~
- 12 ~~Stats. Implemented: ORS 315.262~~
- 13