

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Income Tax

JAMES P. PRITCHETT,)
)
 Plaintiff,) No. 000804C
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION AND JUDGMENT**

Plaintiff contends that his Oregon source income earned in 1995 is exempt from state income taxes under Public Law 101-322, the Amtrak Reauthorization and Improvement Act of 1990 (Amtrak Act). A trial was held January 4, 2001. Plaintiff appeared and testified on his own behalf. Appearing with plaintiff was Mr. Earl Moore, CPA. The department appeared through Mr. David Zeh.

STATEMENT OF FACTS

In 1995, plaintiff lived in Washington and worked as a dock supervisor for Yellow Freight Systems, Inc., in Portland, Oregon. Plaintiff is no longer working for Yellow Freight. Plaintiff testified that his daily routine was to report to work at the terminal in Portland and that he did not work elsewhere.

As a dock supervisor, plaintiff's duties were to supervise the loading and unloading of tractor trailers that transported goods around the country. Specifically, a dock supervisor is responsible for ensuring that the weight of the goods loaded into each trailer is evenly distributed and that the trailer has the correct placard identifying the materials on board. Mistakes can cause accidents and injuries and close public roadways.

The supervisor signs a manifest attesting to the correct loading and placarding of the trailer and is held responsible for errors. An uneven load can cause a trailer to jackknife (tip over), possibly injuring the driver and other travelers on the road. A severe accident can close a freeway. An incorrect placard can delay cleanup of an accident, because additional time is required to identify the load. Plaintiff testified that on one occasion he supervised the loading of a trailer that jackknifed on the freeway and that an incorrect placard delayed the cleanup and reopening of the highway. His employer took written disciplinary action against plaintiff for that incident.

ISSUE

The question before the court is whether plaintiff meets the requirements of the Amtrak Act. Plaintiff insists he meets the definition of “employee” as set forth in the statute because his duties directly affected commercial motor vehicle safety. In support of that position plaintiff submitted a 1992 Opinion and Order issued by the Department of Revenue involving a former coworker who held the same job at Yellow Freight and performed the same duties. (O & O No. 92-4978; In the Matter of the Appeal of John I. and Sharon A. Chaikin). The department responds that plaintiff’s duties did not directly affect safety and that plaintiff did not work in two or more states. Both requirements must be satisfied.

COURT'S ANALYSIS

The Amtrak Act provides in relevant part:

“(1) No part of the compensation paid by a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 or by a motor private carrier to an employee who performs regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

“(2) Employee defined.--In this subsection, the term "employee" has the meaning given such term in section 31132.” 49 USC § 14503(a).

Section 31132 defines employee as follows:

“(2) ‘employee’ means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who--

“(A) directly affects commercial motor vehicle safety in the course of employment.” 49 USC § 31132.

While plaintiff devoted the majority of his presentation arguing that he fell within the definition of "employee" for the reason that his job "directly affect[ed] commercial motor vehicle safety", as set out in 49 USC section 31132(2) above, plaintiff overlooked the fact that the statute also requires that an employee "perform regularly assigned duties in two or more states." 49 USC § 14503(a)(1). Satisfying the "two or more states" requirement is essential.

It must be understood that the primary purpose of the Act was "to relieve employees of railroads and interstate trucking firms from income taxes that could be imposed if the employees earn part of their income while passing through a state." *Butler v. Dept. of Rev.* 14 OTR 195, 197 (1997). The intent was to relieve certain taxpayers of potentially burdensome filing requirements where, because of the nature of employment, they regularly traveled between two or more states. *Id.* By his own admission plaintiff worked only in the state of Oregon. Thus, he does not qualify under the Act.

The court recognizes that the result in this case may seem unfair in light of the department's Opinion and Order No. 92-4978. However, there is an important distinction between that case and the present. In the Chaikin case the department conceded that "petitioner performs regularly assigned duties in two or more states."

O & O No. 92-4978, p 1. This could be because Mr. Chaikin chaired a labor and management safety committee that regularly met in Washington or for other reasons not set forth in that opinion and unknown to this court. Nonetheless, each case must be decided on the facts presented and here plaintiff acknowledged he worked only in Oregon. The law requires that an employee regularly work in two or more states.

The department asserted that a 1995 decision by this court controls the outcome. In *Butler v. Dept. of Rev.*, 14 OTR 195 (1997), the plaintiff was a shop mechanic who worked for Yellow Freight in the Portland terminal and occasionally (roughly three times per year) traveled to Vancouver, Washington, for his employer to pick up parts. *Id.* at 196. The court found that Mr. Butler's trips to Vancouver were not part of his regularly assigned duties, in spite of a company policy that provided that employees are to do whatever is necessary to insure that trucks continued to operate. *Id.* at 199-200. Thus, *Butler* was concerned with whether several unscheduled trips each year was sufficient to satisfy the requirement of performing “regularly assigned duties in 2 or more States.” Here plaintiff made no trips across state lines for his employer. The statute itself controls without relying on earlier case law.

CONCLUSION

After applying the applicable law to the facts presented the court concludes plaintiff is not entitled to exemption from Oregon income taxes under the Amtrak Act because he did not have regularly assigned duties in two or more states. Plaintiff acknowledged his assigned duties were limited to working in Oregon and that he worked only in Oregon in 1995. Now, therefore;

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IT IS HEREBY ADJUDGED AND DECREED that plaintiff's request for relief under the Amtrak Act for wages earned in 1995 is denied.

Dated this _____ day of January, 2001.

DAN ROBINSON
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON JANUARY 17, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 17, 2001.