

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

TIMOTHY PAUL RYAN,)
)
Plaintiff,) No. 001129F
)
v.)
)
DEPARTMENT OF REVENUE,)
STATE OF OREGON,)
)
Defendant.) **DECISION AND JUDGMENT**

Plaintiff appeals defendant's tax assessments for tax years 1998 and 1999.

Timothy Ryan appeared for himself. Richard Schnell appeared as a witness for plaintiff.

Ron Graham appeared for defendant.

Plaintiff asserts that his income, while earned in Oregon, is exempt from state income tax under Public Law 101-322, the Amtrak Reauthorization and Improvement Act of 1990 (Amtrak Act).

STATEMENT OF FACTS

Plaintiff is a dispatcher for Parr Lumber. (Ptf's Oct. 29, 2000 Ltr.) As such he has a myriad of responsibilities. He routes and schedules trucks, directly supervises truck drivers and warehousemen, participates on the safety committee, supervises loading of trucks and prepares employee evaluations. (Def's Exs G and H.¹) He schedules drivers. Another duty includes maintaining trucks and forklifts. The specifics under this heading include completing required reports, scheduling maintenance and coordinating repairs. In

¹Plaintiff introduced the same document, a copy of a handwritten document entitled "Timothy Ryan - Warehouse Manager - Cabinet and Appliance Divis., (DUTIES)." Because defendant's exhibit is numbered, the court shall refer to it.

the inspection area, plaintiff was responsible for weekly inspection reports. He would look over the entire vehicle to verify that the assigned driver was performing the required daily inspections.

Richard Schnell, fleet manager for plaintiff's employer, testified on plaintiff's behalf. Mr. Schnell testified that plaintiff's normal duties were at the employer's Swan Island terminal although plaintiff's duties could take plaintiff "wherever the trucks were." Mr. Schnell testified that plaintiff's responsibilities took him to Washington "as many as six times a year." For a period of time, plaintiff's schedule required him to be in Washington on a regular basis. For example, plaintiff would meet a driver if a vehicle broke down. Plaintiff would drive a truck approximately one time a month when he was needed to fill in for another driver. Plaintiff, according to Mr. Schnell, would occasionally load trucks, primarily in Oregon but also in Washington.

Plaintiff testified that his primary duties were supervising, overseeing and loading trucks. He was also responsible for training personnel on proper loading and tie-down procedures. Consequently, he would oversee the loading procedures to ensure that the trucks were properly loaded. He testified that he loads trucks everyday for approximately two hours in the morning.²

As noted above, while plaintiff has a myriad of responsibilities, his primary duties as a dispatcher are to supervise the drivers, schedule the trucks and assign the drivers to the routes.

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²The court is unable to reconcile this apparent inconsistency with Mr. Schnell's testimony.

COURT'S ANALYSIS

The Amtrak Act exempts from state taxation, by any state other than the taxpayer's state of residence, the wages of employees who perform regularly assigned duties in two or more states, when their duties directly affect commercial motor vehicle safety in the course of their employment. The pertinent portion of the Amtrak Act, found in Title 49 of the United States Code, reads:

" (1) No part of the compensation **paid by a motor 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) In this subsection, the term 'employee' has the meaning given such term in section 31132."

49 USC § 14503(a)³ (emphasis added).

The Amtrak Act was passed so that "rail and motor carrier transportation workers will only have to pay State taxes to their State of residence." Testimony of Senator Slade Gorton, 136 Cong Rec S8676 (June 25, 1990). Prior to the Amtrak Act's passage "a truck driver or train engineer might pass through several states during a single day, technically earning income in each of the states. That could subject those employees to burdensome filing requirements and conflicting claims for tax credits." *Butler v. Dept. of Rev.*, 14 OTR 195, 197 (1997). The apparent goal of this part of the law "was to relieve [those] employees of unreasonable burdens by limiting their tax obligations." *Id.*

Defendant argues that in order to be exempt from state income tax under the Amtrak Act, plaintiff must meet four elements. Defendant argues that plaintiff must be a

³This statute was originally codified at 49 USC § 11504(b)(1).

non-resident of Oregon, paid by a motor carrier, have a direct affect on safety and have regularly assigned duties in two or more states. The parties agree that plaintiff is a non-resident of Oregon and that he is paid by a motor carrier. Defendant argues, however, that plaintiff has only an indirect affect on safety and that plaintiff does not have regularly assigned duties in two or more states.

There are three issues in this case. The first issue is whether plaintiff is an employee as defined by 49 USC § 31132(2). The second issue is whether plaintiff "directly affects commercial motor vehicle safety in the course of employment[.]" 49 USC § 31132(2)(A). The third issue is whether plaintiff "performs regularly assigned duties in 2 or more States * * *." 49 USC § 14503(a)(1).

Is plaintiff an employee within the meaning of the statute?

The Amtrak Act 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 § 31132⁴ (emphasis added).

"Employer" is defined in chapter 311 of Title 49, as:

" * * * a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or **assigns an employee to operate it** * * *."

49 USC § 31132(3)(A).

⁴This statute was originally codified at 49 USC § 2503.

Plaintiff believes that for purposes of the Amtrak Act he is a freight handler. Plaintiff testified that he spent two hours everyday loading trucks. Under plaintiff's written job duties, he includes "assist in [l]loading and unloading of [t]rucks." (Def's Ex H.) In the detailed portion of the description, plaintiff describes his duties as "supervising loading of Parr trucks for deliveries." (*Id.*) Plaintiff's own written words indicate that he "assists" or "supervises" truck loading. Plaintiff's involvement loading and unloading trucks appears to be a matter of choice and his responsibility only because he supervises the employees who load the trucks. Further, it is dependent on plaintiff's availability with plaintiff's dispatcher responsibilities taking priority over loading and unloading trucks. Plaintiff is not a freight handler within the meaning of the Amtrak Act.

Plaintiff is not a mechanic; nor does he claim that he operates a commercial motor vehicle. Thus, the only way he may be exempt from Oregon income tax under the Amtrak Act is if he is "an individual [who is] not an employer, who * * * directly affects commercial motor vehicle safety in the course of employment." 49 USC § 31132(2)(A).

The present case is similar to *Jensen v. Dept. of Rev.*, 13 OTR 296 (1995). In *Jensen*, the plaintiff was a group operations manager who was responsible for "freight flow, personnel, vehicles and equipment." *Id.* at 297. Mr. Jensen argued that he was an employee who directly affected commercial motor vehicle safety and was therefore exempt from Oregon income tax by virtue of the Amtrak Act. *Id.* at 296-97. The court found that plaintiff "[was] not a driver, mechanic or freight handler. Consequently, he can qualify for the tax benefit or exemption only if he is 'not an employer' **and** he 'directly affects commercial motor vehicle safety in the course of his employment.'" *Id.* at 300 (emphasis added). The court held that

“Taxpayer is ‘engaged in a business’ within the common meaning of that term. * * * Moreover, **taxpayer is one who ‘assigns’ an employee to operate a commercial motor vehicle.** Consequently, for the limited purpose of this statute, Taxpayer may be an ‘employer’ rather than an employee.”

Id. at 300-01 (emphasis added).

The court distinguished “between those who do and those who delegate.” *Id.* at 301. Under plaintiff’s self-described duties, he primarily delegates. To the extent that he does not, it is because he is performing hands-on work on an as-needed basis.

Plaintiff in the present case is not “engaged in a business” as was the case in *Jensen*. However, plaintiff routes the trucks and tells the drivers their routes and schedules. He directly supervises the drivers and warehousemen. The word “assign” is defined as “to appoint (one) to a post or duty” or to “specify, select, designate.” *Webster’s Third New Int’l Dictionary*, 132 (unabridged ed 1993). The court finds that as a dispatcher plaintiff assigns employees to operate the delivery trucks. Plaintiff is an employer for the limited purpose of the Amtrak Act.⁵

CONCLUSION

The court finds that plaintiff is an employer within the meaning of 49 USC § 31132(3)(A). As such, his compensation is not exempt from Oregon income tax under the Amtrak Act. Now, therefore;

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IT IS HEREBY ADJUDGED AND DECREED that plaintiff’s appeal is denied.

⁵Because the court’s finding that plaintiff is an employer within the meaning of the Amtrak Act is dispositive, it need not determine whether plaintiff directly affects safety in the course of his employment or whether he performs regularly assigned duties in two or more states.

Dated this _____ day of March, 2001.

SALLY L. KIMSEY
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON MARCH 29, 2001. THE COURT FILED THIS DOCUMENT ON MARCH 29, 2001.