

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

DEAN G. MOREY and DEE M. MOREY,	)	
	)	
Plaintiffs,	)	TC-MD 010871F
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal from Defendant's Notices of Assessment for tax years 1997 and 1998. A trial was held in Salem. Joseph Wetzel, Wetzel DeFrang & Sandor, represented Plaintiffs. Jerry Bronner, Department of Justice, represented Defendant. The issues in this case relate to Dean Morey's tax home during the years at issue and a claimed charitable donation.

**STATEMENT OF FACTS**

Tax Home Facts

Plaintiffs own a 73.54 acre cattle ranch near Coquille. Plaintiffs also raise hay at the ranch. They have been at their present ranch for 12 years. They formerly owned and operated a ranch near Coos Bay. During 1997 and in earlier years, Plaintiffs had a cow-calf operation. In 1997, Plaintiffs sold the cow-calf operation. Plaintiffs then started a steer feeder operation. For reasons that will become apparent in a moment, Dee Morey is the primary keeper of the ranch. Her responsibilities include being the family bookkeeper and all the work with the animals. Dean Morey also assists at the ranch, performing such chores as hauling brush, removing blackberries, moving irrigation pipes, and fertilizing. When asked about the profitability of the ranch, Dee Morey testified that Plaintiffs' intent is

to have the ranch be a profit-making enterprise. When asked the specifics of the profitability of the ranch in the last 5 or 10 years, Dee Morey was unsure. Plaintiffs reported net losses in each of those years except 1997, the year the cow-calf operation was sold. In the other years, the losses ranged from \$9,191 to \$32,756. (Def's Ex L at 14, 35, 57, and 81.)

Plaintiffs recognize that some of their profits will likely come in the form of capital appreciation of the ranch. Plaintiffs submitted an exhibit showing estimated profits upon sale of the ranch. Using Plaintiffs' assumed 10 percent annual appreciation rate, the value of the ranch would approximately double by the year 2009. After deducting estimated costs of sale and their adjusted basis in the ranch, Plaintiffs estimate a net profit of approximately \$511,000. (Ptf's Ex 17.)

Both Plaintiffs testified to Dean Morey's desire to become a rancher. Plaintiffs hope to retire to the ranch. Dean Morey's grandparents had a farm when he was growing up. He testified that he worked on their farm as a child. Plaintiffs enjoy having a productive life. They derive satisfaction from growing things and providing food for the community.

Dean Morey's primary source of income is not from ranch operations, rather it is from his work as a union pipe fitter. As a union pipe fitter, he is subject to the master labor agreement. When Dean Morey is unemployed, he calls dispatch and is put on the out of work list. When his name comes to the top of the list, he is called for any openings. If there are multiple openings, he will be given an opportunity to choose. He will be told the estimated duration of the assignment. However it is only an estimate; neither the union nor the employee determines the duration of the assignment.

The local union's territory includes all of Oregon except the areas around Pendleton and Ontario. It also includes two counties in California and two counties in southwest

Washington. Thus, Dean Morey's work as a pipe fitter may take him over a wide geographic area. During the years at issue, he worked approximately 16 months in the Eugene area, six months in the Portland metropolitan area, and three weeks in Coos Bay. The work in Eugene was the result of a very large hi-tech job. His work during this period involved a significant amount of overtime. He often worked six days a week, ten hours a day. Because of the distance of his job sites from his home,<sup>1</sup> Dean Morey did not arrive home until Saturday evening. He typically left for work again on Sunday afternoon. When working away from Coquille, he would park Plaintiffs' recreational vehicle (RV) in an RV park in the area in order to be closer to his work. Only rarely was Dean Morey able to enjoy a daily commute from Coquille. He commuted from Coquille to a three week job in Coos Bay in 1997. Occasionally, Dee Morey stayed with her husband for a few days in the RV.

Prior to 1997, starting in June 1992 and extending until March 1997, Dean Morey worked in the Portland metropolitan area. After 1998, starting in mid-April 1999 and extending through December 2000, Dean Morey worked exclusively in the Portland metropolitan area except for four weeks.

In their 1997 income tax return, Plaintiffs claimed \$22,287 in expenses relating to Dean Morey's work in Eugene and Portland. Similarly, they claimed \$27,025 in expenses relating to Dean Morey's work in Eugene and Portland on their 1998 income tax return. Defendant disallowed all of Dean Morey's claimed away from home business expenses. At trial, Defendant conceded that Plaintiffs should be allowed to claim Dean Morey's away from home business expenses when working at a location other than Eugene.

Alternatively, Defendant conceded that Plaintiffs should be allowed to claim Dean Morey's

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<sup>1</sup> The commute between Eugene and Plaintiffs' home takes approximately three hours. The commute between the Portland metropolitan area and Plaintiffs' home takes approximately four and one half hours.

away from home business expenses when working at a location other than the Portland metropolitan area.

### Charitable Contribution Facts

Plaintiffs formerly owned a 5.66 acre parcel of land in Liberty County, Texas. For a number of years prior to 1997, the Liberty County Central Appraisal District (Liberty County) valued the land at \$33,140. Due to its location in a flood plain, any buildings built or placed on the property "would require an elevation certificate to assure building would be one foot above base flood elevation. Any septic system would require a professional design." (Def's Ex A at 1.) As a result of these facts, Plaintiffs asked that Liberty County reduce the value of the property. Plaintiffs made their request as early January 1987. (See Def's Ex E at 5.) In May 1988, they submitted some materials to Liberty County regarding their request to lower the value of the property. The property was listed for sale in July 1987 for \$19,000. The same realtor gave a written opinion of value from \$2,500 to \$3,500 per acre in April 1988. (Def's Ex B at 3-5.) Finally, in October 1997, a change order request was instituted by Liberty County to reduce the property's value to \$16,570. The change was effective for the January 1, 1998, assessment date. (*Id.* at 11.)

Plaintiffs eventually donated the property to the local American Legion on December 19, 1997.<sup>2</sup> On their income tax return for that year, they claimed a charitable donation of \$33,140, the assessed value as of January 1, 1997. They attached a copy of the 1997 tax statement showing the January 1, 1997, assessed value to their return. They also included the appraisal summary form. Part III of the form is entitled "Declaration of Appraiser." The section addresses appraiser qualifications, a declaration that the

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<sup>2</sup> The American Legion sold the property to one of its members in February 1999 for \$3,000.

appraiser is unrelated to the parties to the transaction, a declaration that appraisal fees are not based on the appraised value, the date of the appraisal, and a signature line for the appraiser to sign. In that section, Plaintiffs listed Liberty County as the appraiser. No appraiser signed the form, nor was a date of the appraisal noted.

Based on the proximity of the donation to the January 1, 1998, assessed value of \$16,570, Defendant originally disallowed one half of Plaintiffs' claimed \$33,140 charitable contribution and so stated in its Answer. On July 2, 2002, Defendant filed an Amended Answer asking that the entire charitable contribution be disallowed alleging that Plaintiffs did not obtain a qualified appraisal.

## **ISSUES**

There are two issues before the court. The first is what was Dean Morey's tax home during the years at issue? In other words, what away from home business expenses are Plaintiffs entitled to deduct? The second issue is whether or not Plaintiffs are entitled to a charitable contribution for their donation of land to the American Legion. As a sub-issue, if Plaintiffs are entitled to a charitable contribution, what value are they entitled to deduct?

## **ANALYSIS**

### Tax Home

Taxpayers may deduct business related travel expenses pursuant to IRC section 162(a)(2) (1994). That statute states:

"There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including-

\*\* \* \* \* \*

"(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business[.]"

Plaintiffs claim that during the years at issue Dean Morey's tax home was Coquille, at the site of the ranch. Plaintiffs contend that because Dean Morey's work assignments were at varied locations and of uncertain duration, it is not reasonable to expect Plaintiffs to move to the location of Dean Morey's work. Alternatively, Plaintiffs claim that the ranch is Dean Morey's second business. Thus, he would be entitled to claim those expenses because the business where the residence is located is the tax home and the expenses related to the other business are away from home business expenses.

This court previously spoke on the issue of a construction worker's tax home in *Hintz v. Dept. of Rev.*, 13 OTR 462 (1996). Tom Hintz was raised in Ontario, Oregon. During the years at issue, he lived in his RV that was parked in Scapoose. He primarily worked in the Portland metropolitan area but occasionally worked in the Salem area. When he worked outside the Portland area, he rented a mobile home or a motel, leaving his RV in Scapoose. *Id.* at 464. When a job was completed he would tow the RV to Ontario and park it in his mother's driveway. *Id.* at 463. He argued that because he worked at a variety of job sites, his tax home was his "regular place of abode" in Ontario. *Id.* at 467. The court cited *Rev Rul 83-82*, 1983-1 CB 45, in defining tax home. *Hintz*, 13 OTR at 467. *Rev Rul 83-82* states that:

"Generally, a taxpayer's 'home' for purposes of section 162(a)(2) of the Code is considered to be located at (1) the taxpayer's regular or principal (if more than one regular) place of business, or (2) if the taxpayer has no regular or principal place of business, then at the taxpayer's regular place of abode in a real and substantial sense."

The court held that "if the job sites are all located within the same general area, that area will constitute the taxpayer's principal place of business." *Hintz*, 13 OTR

at 467. The court found that Hintz's principal place of business was the Portland area. Thus, the court disallowed his claimed away from home business expenses for his work in the Portland area but allowed his Salem area expenses. Plaintiffs attempt to distinguish *Hintz* because Hintz "was a true itinerant: he had no home; he had no family; he had no dependants; he owned no real estate anywhere; and he had no immediate responsibilities." (Ptf's Reply to Def's Post-Trial Brief at 4.) The court does not read *Hintz* so narrowly. The Defendant did not argue nor did the court determine that Hintz's marital status or his lack of ownership of any real property was the reason his tax home was his principal place of business. The *Hintz* court determined Hintz's principal place of business was in the Portland area solely because Hintz's **job sites** were within the same general area not because he was "a true itinerant."

Nor is the court persuaded by Plaintiffs' argument that Dean Morey was traveling between a primary and a secondary business. For the five years that Plaintiffs supplied tax returns, Plaintiffs had net income for the ranching operation in only one year, the year they sold the cow-calf operation. Dee Morey testified that they had a profit from their ranching operation during 1999. However, she did not testify as to the amount; nor was the return for that year introduced. Additionally, even if the ranch is a business, it is not a secondary business for Dean Morey. Dee Morey performed the vast majority of ranch work. Dean Morey's ability to contribute was severely limited by his long hours of work as a pipe fitter and long drives between his work sites and Coquille. Dean Morey's intent in driving to Coquille was to be home and with his wife. This is evidenced by the fact that he went to Coquille even when he did not perform any work at the ranch and by Dee Morey's occasional visits to Dean Morey at their RV.

In the years immediately preceding the years at issue, Dean Morey worked almost exclusively in the Portland metropolitan area. During the years at issue, starting in mid-April 1997, Dean Morey worked primarily in the Eugene area. John Endicott, business agent for the union local, testified that the demand for pipe fitters in Eugene was greater in 1997 and 1998 than it had been previously. During 1997 and 1998 Dean Morey had a reasonable expectation of indefinite employment in Eugene because termination was not foreseeable within a short period of time. See *Hassant v. Commissioner*, 60 TCM (CCH) 1244 (1990). Dean Morey's tax home starting in mid-April 1997 and continuing through 1998 was Eugene. Through mid-April 1997, Dean Morey's tax home was in the Portland metropolitan area. Accordingly, Plaintiffs may not claim away from home business expenses during the period that Dean Morey was working in Eugene or in the Portland metropolitan area prior to mid-April 1997. However, Plaintiffs may claim away from home business expenses for the period in 1998 that he was not working in Eugene.

#### Charitable Contribution

There is no dispute that Plaintiffs donated their 5.66 acre parcel of property to the American Legion on December 19, 1997. There is a dispute, however, over whether they are entitled to a charitable contribution for their donation.

The general rule for charitable contributions is that "[t]here shall be allowed as a deduction any charitable contribution \* \* \* payment of which is made within the taxable year. A charitable contribution **shall be allowable \* \* \* only if verified under regulations prescribed by the Secretary.**" IRC § 170(1) (emphasis added). Those regulations set forth that, as to contributions of property whose value is greater than \$5,000, "[n]o deduction under section 170 shall be allowed with respect to a charitable



contribution to which this paragraph applies unless the substantiation requirements described in paragraph (c)(2) of this section are met." Treas. Reg. § 1.170A-13(c)(1)(i) (2001). The substantiation requirements state that

"Except as provided in paragraph (c)(2)(ii) of this section, a donor who claims or reports a deduction with respect to a charitable contribution to which this paragraph (c) applies must comply with the following three requirements:

"(A) Obtain a qualified appraisal (as defined in paragraph (c) (3) of this section) for such property contributed. \* \* \*

"(B) Attach a fully completed appraisal summary (as defined in paragraph (c) (4) of this section) to the tax return \* \* \* on which the deduction for the contribution is first claimed (or reported) by the donor.

"(C) Maintain records containing the information required by paragraph (b) (2) (ii) of this section."

Treas Reg § 1.170A-13(c)(2) (2001).

A qualified appraisal is defined as an appraisal document that

"(A) Relates to an appraisal that is **made not earlier than 60 days prior to the date of contribution** of the appraised property **nor later than** the date specified in paragraph (c) (3) (iv) (B) of this section [the due date, including extensions, of the return claiming the deduction];

"(B) Is prepared, signed, and dated by a qualified appraiser (within the meaning of paragraph (c) (5) of this section);

"(C) Includes the information required by paragraph (c)(3)(ii) of this section; and

"(D) Does not involve an appraisal fee prohibited by paragraph (c) (6) of this section."

Treas Reg § 1.170A-13(c)(3)(i) (2001) (emphasis added).

A qualified appraisal must include the following information:

"(A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;

"(B) In the case of tangible property, the physical condition of the property;

"(C) The date (or expected date) of contribution to the donee;

"\* \* \* \* \*

"(F) The qualifications of the qualified appraiser who signs the appraisal \* \* \*;

"(G) A statement that the appraisal was prepared for income tax purposes;

"(H) The date (or dates) on which the property was appraised;

"(I) The appraised fair market value (within the meaning of § 1.170A-1 (c) (2)) of the property on the date (or expected date) of contribution;

"(J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and

"(K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed."

Treas Reg § 1.170A-13(c)(3)(ii) (2001).

Plaintiffs ask the court to allow the claimed charitable contribution because they "substantially complied" with the substantiation requirements of Treasury Regulation section 1.170A-13(c)(3) (2001). Below is a table that compares some of those requirements with Plaintiffs actions in relation to those requirements.

<u>Treas Reg</u>	<u>Requirement</u>	<u>Plaintiffs' Action</u>
1.170A-13(c)(3)(i)(A)	Appraisal done no more that 60 days prior to contribution.	Assessment date 11 months prior to contribution.
1.170A-13(c)(3)(i)(B)	Prepared, signed, and dated by qualified appraiser.	No signature, no name, no indications of qualifications.
1.170A-13(c)(3)(ii)(A)	A description of the property.	Tax statement includes account number and legal description.

1.170A-13(c)(3)(ii)(B)	Physical condition of the property.	No physical description.
1.170A-13(c)(3)(ii)(C)	Date of contribution.	No mention on tax statement.
1.170A-13(c)(3)(ii)(F)	Qualifications of the qualified appraiser.	None listed.
1.170A-13(c)(3)(ii)(G)	A statement that appraisal prepared for income tax purposes.	Tax statement prepared for property tax purposes.
1.170A-13(c)(3)(ii)(H)	Date property was appraised.	Assessment date of January 1, 1997.
1.170A-13(c)(3)(ii)(I)	Appraised value on date of contribution.	Assessed value as of January 1, 1997.
1.170A-13(c)(3)(ii)(J)	Method of valuation such as income, market or cost approach.	Not noted.
1.170A-13(c)(3)(ii)(K)	Specific basis for valuation such as specific comparable sales or statistical sampling.	Not noted.

As can be seen by the above, Plaintiffs met very few, if any, of the substantiation requirements. A property tax statement is not a qualified appraisal within the meaning of Treasury Regulation section 1.170A-13(c)(2)(A) (2001). Even if the court found that the tax statement was a qualified appraisal, that tax statement does not come close to including the required information. Finding that Plaintiffs substantially complied with the substantiation requirements would render those requirements nugatory. This the court cannot allow.

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## CONCLUSION

Dean Morey's tax home was the Portland metropolitan area through mid April 1997. Starting in mid-April 1997 and through 1998, his tax home was Eugene. Plaintiffs are entitled to claim away from home expenses only when Dean Morey worked away from his tax home from March 2, 1998 through June 17, 1998. Plaintiffs are not entitled to claim a charitable contribution for their donation of property to the American Legion. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant properly disallowed Plaintiffs' claimed away from home expenses except those expenses Plaintiffs incurred when Dean Morey worked away from his tax home from March 2, 1998 through June 17, 1998.

IT IS FURTHER DECIDED that Plaintiffs are not entitled to claim a charitable contribution for their December 19, 1997, donation of property to the American Legion.

Dated this \_\_\_\_\_ day of June, 2003.

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SALLY L. KIMSEY  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. 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 SALLY L. KIMSEY ON JUNE 19, 2003. THE COURT FILED THIS DOCUMENT ON JUNE 19, 2003.**