

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

PAUL M. BUCKEL,)	
)	
Plaintiff,)	No. 010911C (Control)
)	011123C
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiff has appealed to the court seeking a refund of taxes paid to Oregon for 1999 and 2000 because he believes his wages are exempt from taxation by Oregon under the Amtrak Act. The case management conference for the 1999 tax year scheduled for October 25, 2001, was converted to a trial at the request of the Plaintiff and with the consent of the Defendant. Plaintiff appeared by telephone and testified on his own behalf. Defendant also appeared by telephone and was represented by Mr. Ron Graham, an auditor with the Department of Revenue. Plaintiff subsequently appealed the 2000 tax year and a hearing was held on December 17, 2001, based on Defendant's request to consolidate the appeals. Plaintiff agreed to consolidation and the court granted the request. Additional factual information was presented.

STATEMENT OF FACTS

The relevant facts in this case are undisputed. Plaintiff was employed by D.S.U. Peterbilt and GMC Truck, Diesel Service Unit (hereinafter D.S.U.) in 1999 and 2000. D.S.U. is in the business of selling and servicing trucks of all sizes. The parties agree Plaintiff's employer is a "motor private carrier" (U.S. DOT #0276533, ODOT #223275) as provided in the Amtrak Act. Plaintiff is a truck salesman at D.S.U., and works out of the main office in Portland, Oregon. The office is on Swan Island, off Interstate 5,

about nine miles from the Oregon/Washington border. D.S.U. has branches in Medford, Oregon and Kelso, Washington. As part of his employment, D.S.U. requires Plaintiff to have a current commercial driver license. Plaintiff has such a license. Plaintiff's commercial license entitles him to drive any truck except those carrying hazardous materials. Plaintiff also has a home office in Washington where he lives and he "sometimes" worked out of that office in 1999 and 2000.

Plaintiff sells mostly Peterbilt and GMC trucks. Plaintiff sells everything from standard GMC pickup trucks to large Peterbilt flatbeds and tractors. Plaintiff works both out of the main office and "in the field." His assigned sales area includes Oregon and Southwest Washington. Some of Plaintiff's customers simply walk in off the street looking for a truck and others are more actively pursued by Plaintiff. Plaintiff is familiar with the market for the targeted audience and on occasion makes "cold calls" to potential private and public sector business customers. Plaintiff was similarly engaged with D.S.U. in 1999 and 2000, in terms of his sales activities.

Part of Plaintiff's duties include taking potential buyers on test drives. Plaintiff drives the vehicle and the would-be buyer rides along as a passenger. On these test drives, Plaintiff will either drive north into Washington or south, staying in Oregon, depending on current traffic conditions. Plaintiff also delivers trucks to customers who have made a purchase. Some of the deliveries are to customers in Washington.

There is slight disagreement as to Plaintiff's precise sales activity for the years in question. It is sufficient to note that during 1999 and 2000 roughly one-third of Plaintiff's total sales were to out-of-state buyers and Plaintiff traveled into Washington roughly three times each year to deliver vehicles weighing more than 10,001 pounds GVW. The size of the vehicle, in terms of GVW, becomes important for determining whether Plaintiff affected commercial motor vehicle safety, as discussed below.

Plaintiff testified that while there may have been only three Washington deliveries each year involving large trucks, there were likely many more trips involved in those sales to find the customers and convince them to buy. Plaintiff made other unsuccessful ventures into Washington each year in the hopes of making sales.

Plaintiff testified that for the years at issue he was required to show up in the Portland office one day per week for a weekly sales meeting (which he believes occurred on Monday) and an additional six to eight days each month to work the floor (Plaintiff referred to these days as “floor days”). On other days Plaintiff testified that his “duties” were to maintain his customer base and recruit new customers. These efforts took Plaintiff to Washington as well as Oregon.

COURT'S ANALYSIS

Under federal law certain individuals employed by motor carriers are exempt from state income taxes by states other than their state of residency. The statute is commonly referred to as the Amtrak Act.¹ Qualifying individuals are those “employees” who perform regularly assigned duties in two or more states, and whose duties directly affect commercial motor vehicle safety in the course of their employment. See 49 USC § 14503 and 49 USC § 31132(2). The statute providing for the exemption reads:

"(1) No part of the compensation paid by a motor carrier providing transportation * * * 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).

The court has previously noted the history and purpose of the Amtrak Act as

¹The legislation was initially implemented as the Amtrak Reauthorization and Improvement Act of 1990, Pub L No 101-322 (1990), and codified as 49 USC § 11504 et seq. For ease of reference the court will refer to the statute as the Amtrak Act.

follows:

“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.*” *Ryan v. Dept. of Revenue*, OTC-MD No. 001129F, WL 454899 (Mar. 29, 2001).

Section 31132 of 49 USC sets forth the definition of “employee,” which includes four categories. The statute reads 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; and

"(B) is not [a government employee] acting in the course of the employment * * *."

Each of the four types of covered employees (operator, mechanic, freight handler and individual not an employer) must directly affect commercial motor vehicle safety. Plaintiff insists he fits two of the four categories of covered employees. Plaintiff argues he is an “operator of a commercial motor vehicle” and is therefore a qualifying employee, and that he meets the other requirements to come within the protection of the law (i.e., has regularly assigned duties in two or more states, etc.). In the alternative, Plaintiff takes the position that he is “an individual not an employer” whose duties directly affect commercial motor vehicle safety.

Defendant responds Plaintiff is a salesman whose driving duties are only incidental to his job of selling trucks and that Plaintiff’s only regularly assigned duties

are weekly staff meetings in Oregon.

Because the Amtrak Act applies to statutorily defined employees with regularly assigned duties in two or more states, and because all qualifying employees must directly affect commercial motor vehicle safety, these two requirements are both universal and interrelated. That is, every qualifying employee must have regularly assigned duties in more than one state and their assigned duties must affect, directly, commercial motor vehicle safety. With these requirements in mind, the court proceeds to the application of the facts to the law.

Regularly Assigned Duties

The court is not persuaded by Defendant's assertion that Plaintiff does not have regularly assigned duties in two or more states. Plaintiff is assigned a sales area that includes southwest Washington. The evidence is silent on what exactly is entailed in the assignment of a regional sales area. Specifically, it is not known whether Plaintiff can, or must, go to Washington, and how often. Plaintiff testified he is never specifically sent by his employer to Washington, but presumably he is expected to go there "regularly" or "periodically" to penetrate the market. Additionally, Plaintiff maintains his customer base by visiting customers who have bought from him in the past.

Plaintiff relied on Defendant's administrative rule to support his claim to Amtrak Act protection. Plaintiff cites Example 10 from the rule, which reads:

"Example 10: Roberto, a nonresident, works for a small furniture manufacturing company located in Oregon. His job requires him to drive to various states to buy hardwood for use in building the furniture. Roberto is exempt from Oregon tax on his wages because he is employed by a motor private carrier and he transports a product to further a commercial business." OAR 150-316.127-(E)(3).²

²References to the administrative rules are to the January 2000 version.

On the evidence before it, the court finds it unable to rule on the issue of regularly assigned duties. At least, it would be imprudent to rule. However, there is another issue, which, while not raised by the parties, is nonetheless dispositive and the court now turns to that issue.

Directly Affects Commercial Motor Vehicle Safety

In order to determine whether Plaintiff directly affects commercial motor vehicle safety, it is necessary to consider the definition of the phrase “commercial motor vehicle.” The term “commercial motor vehicle” is defined, in relevant part, as:

“(1) * * * a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle - -

 “(A) has a gross vehicle weight rating * * * of at least 10,001 pounds * * *.

 “(B) is designed or used to transport more than 8 passengers * * * for compensation;

 “(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.” 49 USC § 31132 (emphasis added).

In general terms, then, commercial motor vehicles are vehicles with a GVW of at least 10,001 pounds that are used to transport passengers or property. This makes sense given the statutory framework within which the Amtrak Act exists. Title 49 of the United States Code “Interstate Transportation.” Again, speaking in general terms, the only time Plaintiff directly affects *any* motor vehicle safety is when he is operating a vehicle. This is because Plaintiff is not a mechanic or a freight handler. 49 USC 31132(2). The court has previously ruled that safety instructions given to others do not satisfy the statutory requirement because the affect on safety is not direct. *Jensen v. Dept. of Rev.*, 13 OTR 296, 301 (1995). And, the duties must be hands-on. The court in *Jensen* stated:

"The statute limits 'directly affects' to employees whose daily routine and duty has them moving, touching, or affecting a commercial motor vehicle or its contents. It is these employees who are at risk of injury if the commercial motor vehicle is improperly operated, loaded, repaired or maintained. If brakes fail, a tire explodes, or a driver loses control because the load shifts, it is the hands-on employees who are at risk." *Jensen*, 13 OTR at 301.

Under the statutory definition of commercial motor vehicle set out above, Plaintiff must not only drive a truck of a certain weight, but he must drive one to transport a group of passengers, or to transport property. Thus, if Plaintiff is to meet the statutory definition of employee either as an operator of a commercial motor vehicle or individual not an employer, the qualifying duties must be those where Plaintiff is operating a commercial motor vehicle.

The only time Plaintiff transports passengers is when he takes a prospective buyer on a test drive. He does not charge for that transport, and certainly does not carry 15 people in the vehicle, at least not regularly. Accordingly, Plaintiff does not transport passengers as contemplated by the statute. Does Plaintiff transport property?

Plaintiff operates large trucks in two situations. Plaintiff delivers trucks and takes prospective buyers on test drives. However, Plaintiff is not transporting property in either situation. The vehicle *is* the property. It appears from the statutory definition of commercial motor vehicle that these trucks do not become "commercial motor vehicles" until they are deployed on the interstate carrying property. This is because the large vehicles Plaintiff operates on test drives and for delivery are not "used on the highways in interstate commerce to transport" anything. The transporting is done by the vehicle's new owner after purchase and delivery. Thus, Plaintiff does not directly affect commercial motor vehicle safety because the larger vehicles he operates are not being used at that time to transport groups of passengers or property. Accordingly, Plaintiff does not qualify for exemption from Oregon taxes under the Amtrak Act.

CONCLUSION

Plaintiff's Oregon-earned income in 1999 and 2000 is not exempt from taxation by Oregon under the Amtrak Act because Plaintiff did not have any assigned duties that directly affected commercial motor vehicle safety. The only time Plaintiff *directly* affected safety was when he drove a truck over a specified weight limit. On occasion Plaintiff operated a vehicle of sufficient weight to qualify under the Act but he did not transport groups of passengers or property. Accordingly, Plaintiff did not directly affect commercial motor vehicle safety. Now, therefore,

IT IS THE DECISION OF THIS COURT that the cases are consolidated.

IT IS FURTHER DECIDED that Plaintiff's request for an exemption from Oregon income taxes under the Amtrak Act for 1999 and 2000 is denied.

Dated this _____ day of April, 2002.

DAN ROBINSON
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 DAN ROBINSON ON APRIL 15, 2002. THE COURT FILED THIS DOCUMENT ON APRIL 15, 2002.