

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Income Tax

DARRYL R. RICHARDSON and THOMASA)	
A. RICHARDSON,)	
)	
Plaintiffs,)	No. 011044A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

The issue in this appeal is the Richardsons' personal income tax liability for the 2000 tax year.

The Richardsons were represented by Eva Dorlarque. Mr. Richardson gave his testimony. The Department of Revenue appeared through its employee, Ron Graham.

STATEMENT OF FACTS

This case requires an interpretation of the Amtrak Act (Public Law 101-322, the Amtrak Reauthorization and Improvement Act of 1990), and how Mr. Richardson's duties and the application of this federal legislation, may have changed over time. The Richardsons are not residents of the state of Oregon. Mr. Richardson's wages are paid by an interstate motor carrier. Mr. Richardson has regularly assigned duties in two states. The Department of Revenue, as to earlier tax years, agreed that during these periods the Richardsons qualified for the subtraction authorized by the Amtrak Act.

However, for the year at issue, the Department of Revenue does not agree that the subtraction permitted by the Amtrak Act is appropriate. The agency's reasoning is that the operation of a vehicle is incidental, rather than the focus, of Mr. Richardson's duties. Under this more narrow, and restrictive scrutiny, the Department of Revenue

believes Mr. Richardson's income no longer qualifies for the Amtrak subtraction.

Focusing on Mr. Richardson's duties begins with the fact that he is a data consultant technician for Qwest whose duties take him from downtown Portland to as far as Long Beach. His particular task is to respond to failures in high speed data transmission lines. When a problem is reported, Mr. Richardson will drive his truck to the site, investigate, and perform a short-term repair intended to restore immediate service, but is not a permanent fix. Effecting a more durable remedy is the responsibility of another unit that subsequently arrives. According to Mr. Richardson's testimony, his day consists of driving his commercial vehicle to different sites in different states to perform jobs that last from ten minutes to half an hour.

Mr. Richardson went on to speak as to how his truck is an indispensable part of his job. It is a General Motors Corp. vehicle, over 10,000 pounds, equipped with dual tires on the rear axle and a box big enough to walk in at the back. It carries all the equipment used by Mr. Richardson in his work, including a generator, clothes, signs, cones, tools, electrical cords, fans, blowers, and heaters.

COURT'S ANALYSIS

The Department of Revenue (department) argues that Mr. Richardson, as a technician, is not a qualifying employee for purposes of the Amtrak Act. The Amtrak Act, the agency reasons, is intended to benefit people whose duties are to operate regulated vehicles in various states. Mr. Richardson, the department continues, is paid, not to drive in Oregon and Washington, but to work on data transmission lines. As authority the agency points to *Hutchinson v. William C. Barry, Inc.*, 50 F Supp 292 (D Mass 1943).

The court does not disagree with the Department of Revenue's observation that

the interpretation of the Amtrak Act has changed over time. However, as to this particular case, the court is of the conclusion that the Amtrak Act should permit the subtraction of income.

While Mr. Richardson is a technician, he spends much more time driving his commercial vehicle to the site where he performs his repairs than he does making the repairs themselves. In this respect he very much resembles a bus driver or a carrier making a series of deliveries in a multistate route. Driving the regulated vehicle, rather than incidental to Mr. Richardson's duties, instead is an indispensable part of his responsibilities.

This observation leads the court to conclude that Mr. Richardson "directly affects commercial motor vehicle safety in the course of employment," as set out in 49 USC § 14503(a), and is more persuasive than the tangential precedent set out in *Hutchinson*. Mr. Richardson's income comes within the protection of the Amtrak Act.

CONCLUSION

IT IS THE DECISION OF THIS COURT that the Richardson's appeal is granted.

Dated this _____ day of January, 2002.

SCOT A. SIDERAS
PRESIDING 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 SCOT A. SIDERAS ON JANUARY 24, 2002. THE COURT FILED THIS DOCUMENT ON JANUARY 24, 2002.