

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JOHN J. HOLLIDAY and CAROL J. HOLLIDAY,)	
)	
Plaintiffs,)	No. 011156B
)	
v.)	
)	
DEPARTMENT OF REVENUE, STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant's tax assessments for tax years 1998 and 1999. Trial was held at the Oregon Tax Court in Salem, on May 9, 2002. At the request of the parties the court heard this case together with *Julian v. Dept. of Rev.*, Tax Court Magistrate Division Case No. 020071F; the court also accepted the arguments and exhibits submitted for one case as if submitted for both cases. Larry R. Davidson, Attorney at Law, represented Plaintiffs. John Holliday and Cindy Julian testified for Plaintiffs. Jason Iverson appeared for Defendant.

Plaintiffs assert that Mr. Holliday's income, while earned in Oregon, is exempt from state income tax pursuant to Public Law 101-322, the Amtrak Reauthorization and Improvement Act (Amtrak Act).

STATEMENT OF FACTS

Plaintiffs are residents of Vancouver, Washington. Mr. Holliday is currently employed by Oregon Food Bank as "a full-time interstate truck driver." (Ptf's' Ex 1.) Oregon Food Bank is a private, non-profit organization, exempt from taxation under IRC § 501(c)(3). (Ptf's' Ex 2 at 6.) Located in Portland, Oregon, "Oregon Food Bank

is the coordinating agency for a statewide network of 650 private non-profit agencies providing food to hungry people throughout Oregon and Clark County, Washington." (Ptfs' Ex 1.) There is no charge for the food, other than a minimal charge of 14 cents per pound to recoup the costs of delivery. The charge does not vary based on the type of food delivered. As a 501(1)(c) organization, Oregon Food Bank makes every effort to keep its costs, including the salaries of its employees, as low as possible. For example, Mr. Holliday testified that his salary as a truck driver was less than half of the salary of most truck drivers.

As a truck driver for Oregon Food Bank, Mr. Holliday possesses a Class A, Commercial Driver License and drives a 35,000 pound large straight truck. Mr. Holliday's job requires him to make several trips during the week picking up and delivering food for Oregon Food Bank in both Washington and Oregon. Because Mr. Holliday earns income in Oregon but is not an Oregon resident, his income is subject to Oregon income tax. See ORS 316.127.¹ However, because Mr. Holliday's job as a truck driver requires him to work in two or more states on a regularly assigned basis, Plaintiffs claimed exemption from Oregon income tax pursuant to the Amtrak Act. (Ptfs' Ex 7 at 3.) A Notice of Deficiency was issued to Plaintiffs on July 17, 2001, based on Defendant's finding that Plaintiffs do not qualify under the Amtrak Act for exemption from Oregon income tax for the 1998 and 1999 tax years. A Notice of Tax Assessment was issued on August 27, 2001. Plaintiffs filed an appeal with this court on November 13, 2001, requesting the court find their income exempt from taxation pursuant to federal law and that the notices of deficiency be extinguished. (Ptfs' Complaint.)

¹ All references to the Oregon Revised Statutes are to 1999.

Argument at trial focused on the question of whether Plaintiffs' employer, Oregon Food Bank, is a "motor private carrier" as required by the Amtrak Act and defined at 49 USC section 13102 (13) (1994). Defendant argues that Plaintiffs are ineligible to claim exemption under the Amtrak Act because Oregon Food Bank does not meet the definition of "motor private carrier," specifically the requirement that the entity be transporting property "to further a commercial enterprise." 49 USC section 13102 (13)(C). In support of this argument, Defendant directs the court to decisions finding tax-exempt organizations subject to the Fair Labor Standards Act because the organization had engaged in commercial enterprise. Defendant supports its position that Oregon Food Bank does not qualify under the Amtrak Act, with the argument that "a company is involved in commerce if it looks like it is offering competition for other commercial enterprises." (Def's Additional Information at 1 filed in Julian case.) Mr. Iverson cited examples of non-profits that could qualify as motor private carriers such as Salvation Army and Goodwill. Because both have stores where they sell goods, their drivers could be involved in interstate commerce. (*Id.*) Defendant concludes that because Oregon Food Bank does not compete with other businesses that provide food products, it is not a "motor private carrier" and therefore, Plaintiffs are ineligible for the income tax exemption provided by the Amtrak Act.

Plaintiffs respond that the cases cited by Defendant to support its position are inapplicable because the cases are related to the Fair Labor Standards Act and "[t]here is no authority linking this law with the so-called Amtrak Act." (Ptf's Trial Brief at 3.) Plaintiffs argue that "it makes no sense to impose an income tax on a driver for a nonprofit corporation solely because the nonprofit corporation has no division competing with private enterprise." (*Id.* at 4.)

COURT'S ANALYSIS

Federal law provides that certain individuals employed by motor carriers are exempt from state income taxes by states other than their state of residency. The statute, commonly referred to as the Amtrak Act, found in Title 49 of the United States Code, provides in pertinent 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." 49 USC § 14503(a)(1) (1994)² (emphasis added).

The court has previously discussed the history and purpose of the Amtrak Act in *Ryan v. Dept. of Rev.*, OTC-MD No. 001129F, WL 454899, at *2 (Mar 29, 2001) as 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.*"

Plaintiffs argue that Mr. Holliday's work as a truck driver is within the stated purpose of the Act and that he meets the requirements of the statute, specifically the performance of regularly assigned duties in two or more states and in the course of employment these duties directly affect commercial motor vehicle safety. See 49 USC § 14503 and 49 USC § 31132(2) (1994).

² This statute was originally codified at 49 USC § 11504(b)(1).

However, to qualify for exemption under the Amtrak Act, Mr. Holliday's employer must also meet the requirements of the statute. See *generally* 49 USC § 14503(a)(1) (requiring that compensation be paid by a motor carrier or a motor private carrier in order for the employee to claim exemption under the Act). Plaintiffs argue that Oregon Food Bank qualifies as a motor private carrier. For purposes of the Amtrak Act, "motor private carrier" is defined as follows:

"The term 'motor private carrier' means a person, other than a motor carrier, transporting property by motor vehicle when --

"(A) the transportation is as provided in section 13501 of this title;

"(B) the person is the owner, lessee, or bailee of the property being transported; **and**

"(C) **the property is being transported** for sale, lease, rent, or bailment or **to further a commercial enterprise**. 49 USC § 13102(13) (emphasis added).

Thus, the issue presented to the court is whether Oregon Food Bank, a 501(c)(3) private, nonprofit organization qualifies as a "motor private carrier" and therefore, whether Plaintiffs may claim exemption from state income tax under the Amtrak Act.

Section 501(a) of the Internal Revenue Code (IRC) exempts from federal income taxation organizations described in section 501(c). Specifically, entities organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to animals, are exempt under section 501(c)(3). See IRC § 501(c)(3). To be exempt under section 501(c)(3) an organization must be organized exclusively for one or more of the purposes stated in the section, known as the organizational test, and must be operated exclusively for such purposes, known as the operational test. See Treas Reg 1.501(c)(3)-1(a)(1). Oregon Food Bank

is an exempt organization under 501(c)(3) and as such must meet both the organizational and operational tests in order to maintain its exempt status.

An organization is considered to meet the operational test if it is "operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in Section 501(c)(3)." Jacob Mertens, Jr, 9 *Mertens Law of Federal Income Taxation* § 34:12, 34-60 (rev 1999). Although an exempt organization may engage in trade or business activities, the exemption will be lost if the organization is found to be engaged in even a single non-exempt activity that is substantial in nature. Mertens, 9 *Mertens Law of Federal Income Taxation*, § 34:13, at 34-63. Accordingly, "[b]ecause conducting a trade or business is not an exempt purpose, commercial enterprises are not exempt under Section 501(c)(3)." *Id.* at 34-64.

Through the enactment of IRC sections 511 to 513, Congress imposed a tax on unrelated business income that a tax-exempt organization receives. "Taxes are levied on 'unrelated business income' only in order to prevent tax-exempt organizations from gaining an unfair advantage over competing commercial enterprises." *Portland Golf Club v. Comm'r*, 497 US 154, 161, 110 S Ct 2780, 111 L Ed 2d 126 (1990). Thus, a clear distinction is drawn between a tax-exempt organization under Section 501(c) and commercial enterprises with taxable earnings.

This distinction is further illustrated by the Supreme Court decision *Tony & Susan Alamo Foundn. v. Sec. of Labor*, 471 US 290, 105 S Ct 1953, 85 L Ed 2d 278 (1985), cited by Defendant. The Supreme Court upheld the Eighth Circuit's decision that a tax-exempt organization engaging in commercial enterprise will be subject to the

requirements of the Fair Labor Standards Act³ (FLSA). *See id.* While the court notes Plaintiffs' objection to this case because it relates to whether the FLSA applies to a certain tax-exempt organization, not the applicability of the Amtrak Act, the court finds the discussion of whether this organization engaged in commercial enterprise relevant to the court's deliberations in this case. The Supreme Court found that the Alamo Foundation had engaged in commercial operations and was an "enterprise" within the meaning of the FLSA because "the Foundation's businesses serve the general public in competition with ordinary commercial enterprises." *Tony & Susan Alamo Foundn.*, 471 US at 299. The Eighth Circuit's decision is also instructive because it contrasts certain non-commercial activities with the commercial nature of the activities in which the foundation engaged, as follows:

"The gas stations, for example, serve any motorist, and are not limited to fueling vehicles used for transportation of foundation associates or on their travel in connection with their evangelical efforts. The grocery stores, clothing stores, and restaurants serve the public at large, not merely associates of the foundation. **The foundation's motor trucks are not confined to private carriage of supplies for the foundation's own needs, but are common carriers holding out service to the public generally.**" *Donovan v. Tony & Susan Alamo Foundn.*, 722 F 2d 397, 400 (8th Cir 1983), *aff'd* 479 US 290, 105 S Ct 1953, 85 L Ed 2d 278 (1985) (emphasis added).

Returning to the issue in this case, the court finds that Oregon Food Bank is not engaged in "commercial enterprise" for purposes of 49 USC § 13102(13). Oregon Food Bank does not serve the public generally, rather, it solicits food donations that are distributed to a network of hunger-relief agencies which ensure the food is given to the poor and hungry. "Oregon Food Bank contracts with all of the agencies of the OFB network, mandating that donated products will not be sold, traded or bartered.

³See 29 USC § 201 et seq.

Recipients are never charged for food. Products donated to Oregon Food Bank are tracked to ensure they do not re-enter the marketplace." (Ptf's' Ex 2 at 1.) Mr. Holliday explained at trial that as a truck driver he picks up and delivers food products donated to and distributed by Oregon Food Bank. He also testified that Oregon Food Bank does not compete with other businesses that sell food, such as Safeway; the only source of "competition" for Oregon Food Bank, would be other food banks also seeking food donations. Therefore, because Oregon Food Bank does not compete with other food distributors or hold itself out to serve the public generally, the court finds that Oregon Food Bank is not engaged in a "commercial enterprise" and does not qualify as a "motor private carrier" as defined in 49 USC section 13102 (13).

The Amtrak Act requires that both the employer and employee meet certain statutory requirements before the employee may claim exemption from state income tax under the statute. See 49 USC section 14503(a)(1). One requirement is that the employer be either a "motor carrier"⁴ or a "motor private carrier." Because Oregon Food Bank does meet the definition of "motor private carrier," Plaintiffs' Oregon-earned income is not exempt from Oregon income tax under the Amtrak Act.

CONCLUSION

In order for Plaintiffs' income to be exempt from Oregon income tax, Oregon Food Bank must meet the definition of "motor private carrier." As a charitable organization, exempt from tax under section 501(c)(3), Oregon Food Bank does not qualify as a "motor private carrier" because it is not engaged in "commercial enterprise." Consequently, Plaintiffs' Oregon-earned income in 1998 and 1999 is not exempt from

⁴The parties agree that Oregon Food Bank does not qualify as a motor carrier. See 49 USC § 13102 (12).

taxation by Oregon under the Amtrak Act because Mr. Holliday was not employed by a qualifying employer.

By accepting employment with Oregon Food Bank, Mr. Holliday made a conscious decision to accept a lower-than-market wage. In so doing, he made a significant contribution to the good work of Oregon Food Bank. Unfortunately, that is not the standard by which this matter is judged. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' request for an exemption from Oregon income taxes under the Amtrak Act for 1998 and 1999 is denied.

Dated this _____ day of August, 2002.

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 AUGUST 16, 2002. THE COURT FILED THIS DOCUMENT ON AUGUST 16, 2002.