

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

RONALD L. RAY,)	
)	
Plaintiff,)	No. 020574A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Ronald Ray appealed an income tax assessment for the 1998 tax year. Mr. Ray appeared and made his arguments with the assistance of Phyllis Schmitz. Ruth Wu, of the Department of Revenue, was present on its behalf.

STATEMENT OF FACTS

The Department of Revenue, in its audit of Mr. Ray's return for the 1998 tax year, disallowed, in part or in total, Mr. Ray's claimed expenses for recreational vehicle space, insurance on his truck and trailer, materials, office expense, vehicle expense, meals, and depreciation. These amounts had been claimed as employee business expenses. The agency denied the expenses on the reasoning that Mr. Ray was an employee of Bonneville Power Administration, and that Bonneville Power Administration had a policy of reimbursing its employees for these expenditures.

Mr. Ray subsequently demonstrated that his status with Bonneville Power Administration was as a temporary employee, and that Bonneville Power Administration's reimbursement policy did not extend to him. The Department of Revenue accepted this proof, and revised its determination of the tax due. The agency permitted the amount claimed for recreational vehicle space in its entirety, allowed \$2,238 of the \$2,772 claimed for vehicle expenses, and permitted \$2,544 of the \$3,056

presented as the cost of meals. However, only 50 percent of the claimed expense for truck and trailer insurance, and 50 percent of the asserted truck depreciation, were permitted. These changes had the effect of reducing the net tax to pay from \$2,429 to \$1,624.

With it demonstrated that Mr. Ray was not eligible for reimbursement for expenses incurred as an employee, the question in this appeal became one of why all of Mr. Ray's deductions were not permitted. The response of the agency was that not all of these expenses were incurred as a temporary lineman for Bonneville Power. Mr. Ray planned to become self-employed. In this connection he incurred expenses from his home office, and acquired materials to use in subsequent jobs. He also used the truck and some of his various trailers to transport construction equipment, such as welders and other electrical line equipment. This self employment produced no income during 1998.

COURT'S ANALYSIS

Mr. Ray wins his appeal in part. The court, like the Department of Revenue, is satisfied Mr. Ray was a temporary employee, and as such was not entitled to reimbursement of his expenses by Bonneville Power Administration. The expenses he incurred in connection with his employment are deductible.

The reason Mr. Ray's relief is less than complete is that the balance of his deductions do not relate to services he performed for his employer. Instead, they were incurred as part of his plan to become self-employed. While it is definitely understandable that Mr. Ray would spend money now in order to earn money later, that reasoning does not make these expenditures deductible. A taxpayer, like Mr. Ray, may make a firm decision to enter into business. He may, over a considerable period of

time, spend large amounts of money in preparation for entering that business. However, that taxpayer will not, until such time as the business has begun to function as a going concern and perform those activities for which it was organized, be engaged in carrying on a trade or business for purposes of Section 162 of the Internal Revenue Code. *Kelso v. Dept. of Rev.*, 15 OTR 177 (2000). Rather than being deductible as they are incurred, these start-up expenditures may be prorated over 60 months beginning with the month in which the active trade or business begins, as set out in Section 195 of the Internal Revenue Code.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is granted to the extent of the Department of Revenue's adjustment to its assessment, lowering the tax to pay from \$2,429 to \$1,624.

Dated this _____ day of December, 2002.

SCOT A. SIDERAS
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 DECEMBER 6, 2002. THE COURT FILED THIS DOCUMENT ON DECEMBER 6, 2002.