

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ROBERT L. DAVIS and JUDY E. DAVIS,)	
)	
Plaintiffs,)	TC-MD 030062E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s refund denials for tax years 1986 through 2000. A telephone trial in the matter was held May 14, 2003. Kevin Brown, CPA, appeared and testified on behalf of Plaintiffs. Also testifying for Plaintiffs was Robert L. Davis (Davis). Larry Ambrosek, Auditor, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiffs are residents of the State of Washington. Davis works for Jones Stevedoring Company where he supervises the loading and unloading of car ships, long vessels, and container vessels. His employer describes his position as a “Walking Boss/Foreman” and explains that he “is a direct supervisory representative of his employer in the performance of all cargo handling stevedoring activities.” (Ptf’s Ex 1 at 3.) Davis only works on vessels while they are in dock. During the subject years, Davis worked most of the time on vessels docked on the Washington side of the Columbia River. Occasionally, however, he worked on vessels docked on the Oregon side of the river. His employer kept track of where he worked and withheld from his wages taxes payable to Oregon for the time he worked in Oregon. In 2001, the Oregon Legislature passed a new law impacting certain workers of vessels operating on the Columbia River. Based on the

new law, Plaintiffs claim they are entitled to a refund of Oregon taxes paid for 1986 through 2000. Defendant claims they do not qualify for the exemption.

II. ANALYSIS

When a nonresident earns income from sources within this state, they are generally obligated to pay an income tax to the State of Oregon on that income. There are exceptions to the general rule. Plaintiffs claim they are exempted from paying an income tax to Oregon under the provisions of ORS 316.127(10).¹ That statute states, in pertinent part:

“(10) Compensation paid to a nonresident does not constitute income derived from sources within this state if the individual:

“* * * * *

“(b) Performs regularly assigned duties while engaged as a master, officer or member of a crew on a vessel operating on the navigable waters of more than one state.”²

ORS 316.127(10).

The parties agree Davis worked on vessels. The question presented to the court is whether Davis worked on vessels that were “operating on the navigable waters of more than one state.”

When interpreting a statute, the objective of the court is to determine the intent of the legislature. To determine whether the legislature intended to allow an exemption to nonresidents performing work on vessels that are in dock, the court must examine both the text and context of the statute. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610,

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

² This law was enacted by the 2001 legislature and made effective for tax years beginning on or after January 1, 1986. See Or Laws 2001, ch 77, §§ 2, 3. Based on the retroactive nature of the legislation, Plaintiffs filed requests for refunds of taxes previously paid to Oregon.

859 P2d 1143 (1993). The text of the statute is the starting point in the analysis and is “the best evidence of the legislature’s intent.” *Id.* In evaluating the text, the court is guided by the principle that it should not “insert what has been omitted” or “omit what has been inserted.” ORS 174.010.

Plaintiffs argue that, even while in dock, the vessels were on the Columbia River. Because the Columbia River is a navigable water, they claim Davis’ work qualifies for the exemption. The statute, however, requires the vessel be **operating** on the navigable waters. While Davis worked on the vessels, they were in dock. The word “operating” is an action word and suggests the legislature intended the vessels be moving rather than sitting idle. Ships in dock are not “operating” on the navigable waters of more than one state; therefore, work performed on those ships does not qualify a nonresident for exemption.

The court’s interpretation is supported by the purpose of the statute, which was to alleviate the hardship of determining the time spent working in Oregon and Washington when a vessel travels between the Oregon and Washington side of a river several times a day. While the vessel is navigating the waters, it is difficult to determine when the vessel is in Oregon or Washington. To solve the problem, the legislature exempted from taxation those nonresident individuals who work on vessels that are operating on navigable waters of more than one state. In contrast, in this case, there is no uncertainty as to when Davis was in Oregon and when he was in Washington because the vessels were docked on one side of the river or the other.

Plaintiffs note that, as part of the same 2001 law creating the subject exemption, the legislature also provided an exemption to nonresident individuals “for services performed by the nonresident at a hydroelectric facility” that is owned by the United States, is located on the Columbia River, and contains portions located within both this state and another

state. ORS 316.127(8). Plaintiffs argue that hydroelectric facilities are not moving and, as a result, the legislature must not have been concerned about whether vessels are navigating the waters or in dock. When considering the two provisions, however, the differences become apparent. First, the language in the statutes, which is critical for interpretation, are different. ORS 316.127(1), the statute addressing workers on vessels, requires the vessels be “operating.” ORS 316.127(8), the statute addressing workers on hydroelectric facilities, only requires that services be performed “at a hydroelectric facility.” Further, as previously stated, the legislature was concerned about the mobility of vessels and the difficulty of determining when a vessel is on the Oregon or Washington side of the river. As for hydroelectric facilities, the legislature is not concerned about the mobility of the facility but the mobility of the worker and determining when they are in Oregon.

The court finds, therefore, that to qualify for the exemption, a nonresident individual must be working on a vessel that is moving, *i.e.*, operating, on the river. A vessel sitting idle in dock is not operating on navigable waters and, therefore, work performed on a docked vessel does not qualify a nonresident for exemption under the statute.

III. CONCLUSION

It is the court's conclusion that ORS 316.127(10)(b) exempts from taxation only those nonresident individuals who are working on vessels that are moving up and down the navigable waters of more than one state. As a consequence, individuals who work on ships only while they are in dock do not qualify for the exemption. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

Dated this _____ day of November, 2003.

COYREEN R. WEIDNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 COYREEN R. WEIDNER ON NOVEMBER 25, 2003. THE COURT FILED THIS DOCUMENT ON NOVEMBER 25, 2003.