

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

DONALD C. GATTEN,)	
)	
Plaintiff,)	TC-MD 030915A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiff appealed, asserting that he is exempt from Oregon personal income taxes for the 2000 tax year by virtue of the Amtrak Reauthorization and Improvement Act of 1990. Plaintiff appeared and made his arguments. Defendant was represented by Amy Stalnaker, of its staff.

The issue presented by this appeal is whether an employee who drives a Department of Transportation licensed vehicle as a minor part of his regularly assigned duties may claim the benefits of the Amtrak Act.

I. STATEMENT OF FACTS

During the year at issue Plaintiff, who did not reside in Oregon, worked for Wilbur-Ellis Company. His duties required him to spread fertilizer upon golf courses and, in the alternative, to deliver products to them. Plaintiff's employer stated that Plaintiff's regularly assigned duties required him to spend approximately half his time in Vancouver, Washington, and of that 50 percent, some 10 percent of that time was spent driving a Department of Transportation licensed vehicle. The balance of his time was spent operating a spreader truck, which was not licensed with the Department of Transportation.

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II. ANALYSIS

Federal law exempts certain employees of motor carriers from state income taxes imposed by states other than their state of residency. In order to be exempted, the employee must perform regularly assigned duties in two or more states, and those duties must, in the course of their employment, directly affect commercial motor vehicle safety. This legislation, referred to as the Amtrak Act, is found in 49 USC section 14503 and 49 USC section 31132(2).

According to the letter supplied by Plaintiff's employer, some 5 percent (that is, 10 percent of 50 percent) of Plaintiff's work time was spent driving a truck licensed by the Department of Transportation. Although Defendant recognizes that the federal statute does not impose any minimum time requirements that the employee must spend in another state, Defendant contends it is unfair, or unreasonable, to extend the protection of the legislation to an employee who spends less than 5 percent of his working days driving a Department of Transportation vehicle outside the state.

However, the precedent is very clear. Defendant's concerns were discussed in a prior decision of the Regular Division of this court, *Dept. of Rev. v. Hughes*, 15 OTR 316 (2001). There, the court analyzed exactly that question, and found that 5 percent, although startlingly small, was nonetheless sufficient to pass the threshold test for duties regularly assigned in two or more states. The court will not repeat the reasoning of the *Hughes* opinion here. It will instead apply it to order the relief requested by Plaintiff.

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III. CONCLUSION

This case is controlled by the *Hughes* opinion. Now, therefore,

IT IS ADJUDGED AND DECREED that Plaintiff is entitled to the protection afforded by the Amtrak Act for the 2000 tax year.

Dated this _____ day of November, 2003.

SCOT A. SIDERAS
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON NOVEMBER 7, 2003. THE COURT FILED THIS DOCUMENT ON NOVEMBER 7, 2003.