

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

FRANK HOODENPYLE and	)	
ALICE M. HOODENPYLE,	)	
	)	
Plaintiffs,	)	TC-MD 050680C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Defendant determined that Frank Hoodenpyle’s (Hoodenpyle) Oregon-source income in 2001, 2002, and 2003 was not exempt from taxation under 49 USC section 14503 (Amtrak Act). Plaintiffs timely appealed. A case management conference was held October 25, 2005, and, after some discussion, the parties referred the matter to the court for determination based on Hoodenpyle’s acknowledgment that he did not have regularly assigned duties in two or more states. Hoodenpyle appeared for Plaintiffs at that proceeding, and Jason Iverson, an auditor with the Department of Revenue, appeared for Defendant.

I. STATEMENT OF FACTS

Hoodenpyle worked as a dispatcher for a large interstate trucking firm in Portland. As part of his duties, Hoodenpyle was responsible for assuring that all loads that go out on the road were safe: that the trailers were not overloaded or leaning, that they were not leaking hazardous materials, and that they had the proper placard designating the type of material onboard. To carry out that function, Hoodenpyle sometimes had to physically inspect the load, including opening the doors to the trailer. Hoodenpyle was assigned to work in the Portland terminal and rarely traveled out of state.

## II. ANALYSIS

By statute, Oregon taxes individuals who either live or work in the state. *See* ORS 316.048<sup>1</sup> (imposing a tax on residents of the state), ORS 316.127 (defining adjusted gross income of nonresidents), and ORS 316.130 (providing for determination of taxable income of full-year nonresidents). However, Congress has provided a limitation for certain qualifying individuals, under which a state tax may only be imposed by the state in which a taxpayer resides. The applicable provision is commonly referred to as the Amtrak Act. The Act provides, in pertinent part:

“No part of the compensation paid 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 \* \* \* other than the State \* \* \* of the employee’s residence.”

“\* \* \* \*”

“‘[E]mployee’ has the meaning given such term in section 31132.”

49 USC § 14503(a)(1) (emphasis added).

Section 31132 of Title 49 of the United States Code defines an employee as follows:

“(2) ‘[E]mployee’ means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer who—

“(A) directly affects commercial motor vehicle safety in the course of employment; and

“(B) is not [a government employee] acting in the course of employment \* \* \*.”

The dispute in this case initially centered on a question of whether Hoodenpyle’s duties had a direct effect on commercial motor vehicle safety. However, during the October 25, 2005,

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<sup>1</sup> All references to the Oregon Revised Statutes are to 2001.

proceeding, Iverson questioned whether Hoodenpyle had “regularly assigned duties in two or more states,” as required by section 14503(a)(1), set forth above. When questioned by the court, Hoodenpyle stated that he was not aware of the two-state requirement. Hoodenpyle further testified that he only occasionally traveled out of Oregon into Washington on an “as-needed” basis to pick up a driver who was either legally precluded from driving any more that day or who had been in an accident.

This court has previously held that a mechanic employed by an interstate trucking firm who, although assigned to a terminal in Portland, made emergency trips to Vancouver, Washington, on an as needed basis, to pick up parts when others were not available, did not qualify for exemption under the Amtrak Act. *Butler v. Department of Revenue*, 14 OTR 195 (1997). Relief was denied because the trips to Vancouver were not part of Butler’s “‘ normal,’ ‘usual,’ or ‘regularly assigned’” duties. *Id.* at 200. The court stated that “[t]he phrase ‘regularly assigned’ suggests that Congress intended to exclude ‘irregular,’ ‘unusual,’ or ‘special’ assignments.” *Id.*

In this case, Hoodenpyle testified that he was regularly assigned to work in Portland, and was not regularly assigned to work in Washington or any other state. The court appreciates Hoodenpyle’s candor. However, Hoodenpyle’s Oregon-only assignment precludes section 14503 exemption from taxes by this state

### III. CONCLUSION

A prerequisite to a state’s power to tax under section 14503 is the performance of regularly assigned duties in two or more states. Hoodenpyle did not have regularly assigned duties in two or more states for the years at issue. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiffs' request for exemption of Hoodenpyle's Oregon-source income under 49 USC section 14503, and for reimbursement of taxes and interest paid on the deficiencies, is denied.

Dated this \_\_\_\_\_ day of November 2005.

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DAN ROBINSON  
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 Dan Robinson November 22, 2005.  
The Court filed and entered this document November 22, 2005.***