

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

JOEL M. WILLIAMS, )  
 )  
 Plaintiff, ) TC-MD 050811B  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 State of Oregon, )  
 )  
 Defendant. ) **DECISION**

Plaintiff appeals concerning certain personal income tax matters for the 2001 tax year.

A trial was held in this matter. Joel M. Williams appeared on his own behalf; Ed Karr (Karr) testified. Keith Shribbs represented Defendant. Subsequently, written submissions were received. The record closed August 7, 2006.

Subsequent to trial, Defendant notified the court that, based on the evidence presented, it would allow an additional \$2,796 in expenses for the 2001 tax year. (Def's Ltr, July 27, 2006.) The court concurs.

The issue is whether Plaintiff is entitled to deduct mileage expenses incurred during the 2001 tax year.

I. STATEMENT OF FACTS

During 2001, Plaintiff was an apprentice construction lineman.<sup>1</sup> He lived in Yoncalla, Oregon. The union hall that he belonged to was in Portland. He received his job assignments or referrals from the Portland location. About half of those referrals required him to be physically present at the Portland hall; the remaining referrals were made by telephone.

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<sup>1</sup> Apprenticeship began in 2000.

During that year, Plaintiff worked on temporary jobs in Eugene, Cottage Grove, Glide, Coos Bay, Oregon, and other northwest locations. There were no jobs for Plaintiff in the general Winston area, either of a permanent or temporary nature. He usually returned to his Yoncalla residence at the end of each work day. Defendant views Yoncalla as the primary “tax home” of Plaintiff. Plaintiff disagrees and focuses on the union hall location, although his wages were not paid by the union.

According to his witness:

“The nature of these temporary jobs made it impossible for him to establish his permanent residence close to his job site. The expenses that Joel incurred while travelling (sic) to these temporary jobs are deductible because they were assigned out of his place of work (union hall) and they were of a temporary nature.”<sup>2</sup>

(Statement of Karr, filed Jan 17, 2006.)

## II. ANALYSIS

The issue presented is Plaintiff’s entitlement to claim a mileage deduction for daily transportation expenses as an allowable ordinary and necessary business deduction. All jobs involved were of a temporary nature; the critical travel was to and from Yoncalla.

Internal Revenue Code (IRC) section 162(a) provides, in general, that there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. IRC section 262 generally disallows deductions for personal, living, or family expenses not otherwise expressly provided for in the IRC. Section 1.162-2(e) of the Treasury Regulations (regulations) provides that commuting expenses are not considered business expenses. Section 1.262-1(b)(5) of the regulations provides that commuting expenses are considered personal expenses.

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<sup>2</sup> Statement of Ed Karr, tax advisor, filed January 17, 2006.

Taxpayer expenses incurred in commuting between his home and place of business are usually personal and not deductible. *See Commissioner v. Flowers*, 326 U.S. 465, 473-4, 66 S Ct 250, 90 L Ed 203 (1946). Revenue Ruling 99-7, 1999-5 Internal Revenue Bulletin 4 encompasses numerous rules as to daily transportation expenses. The general rule, as stated above, does not allow daily transportation expenses to be deducted. However, an exception provides that a taxpayer may deduct those expenses incurred between the residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works.

Here, there is no dispute that Plaintiff had no jobs in the metropolitan area of Yoncalla. His nearest assignment was at least 40 miles away. He did not *live and work* in the area.

The case of *Aldea v. Commissioner*, TC Memo 2000-136, 2000 WL 371549 involved facts similar to this appeal. There the taxpayer lived in Yuba City, California, but did not work in that immediate area. Instead, she received her job assignments from a union hall in Sacramento and worked in various other California locations. In disallowing the claimed expenses, the court held:

“Respondent’s denial is consistent with his position in relevant revenue rulings. Respondent has not conceded that the temporary nature of a job in and of itself is a sufficient basis for transportation expenses to be deductible.

“Petitioner has not established any business reason for living in Yuba City; her decision to live there was entirely personal. \* \* \* The record does not indicate that petitioner ever worked in, had the prospect of work in, or had any other business tie to Yuba City.”

(*Id.* at 3, 4.) (Internal citations omitted.)

Similarly, Plaintiff had no work near his residence. Without normal work assignments in that general area, those expenses cannot be allowed.

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The findings in this case are consistent with another Oregon tax Court case. In *Massey v. Dept. of Rev.*, TC-MD No 050819A (April 12, 2006), transportation expenses were disallowed because the taxpayer did not work in the metropolitan area in which he resided. The court held that “the expenses of traveling to a job site in occupations that do not have a more or less fixed place of operations [] are not deductible.” *Id.* at 3.

The same conclusion must be drawn from the facts presented in the immediate case.

### III. CONCLUSION

Plaintiff does not perform work near his tax home; all expenses are not deductible. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s total requested relief is denied; and

IT IS FURTHER DECIDED that an additional \$2,796 in expenses shall be allowed for the 2001 tax year, pursuant to Defendant’s recommendation.

Dated this \_\_\_\_\_ day of February 2007.

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JEFFREY S. MATTSON  
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 Jeffrey S. Mattson on February 12, 2007. The Court filed and entered this document on February 12, 2007.***