

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ROBERT L. WHITE,)	
)	
Plaintiff,)	TC-MD 050911A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

At issue in this appeal is Plaintiff's ability to exempt his income from Oregon tax for the 2001 and 2002 tax years through the application of the Amtrak Reauthorization and Improvement Act, Public Law 101-322, 49 USC section 14503 (1990) (Amtrak Act). Plaintiff appeared and made his arguments. Defendant was represented by Jason Iverson. The only issue before the court is whether Plaintiff, under the application of the Amtrak Act, had regularly assigned duties in two or more states.

I. STATEMENT OF FACTS

Plaintiff is an employee of Yellow Freight Corporation, working as a City Driver/Dock Professional at the Portland terminal. As part of his job, he is required to maintain a Commercial Driver License and to move trailers to and from the loading docks and about the yard by using a yard tractor, to handle freight on the docks, and to serve as a driver. It is the course and scope of Plaintiff's duties as a driver that is the crux of this appeal. Plaintiff's argument is that, as part of his regularly assigned duties, he is required to drive in two or more states.

Defendant's position is that, although Plaintiff is occasionally required to drive in two or more states, it is not part of his regularly assigned duties, an instead is performed on an as-needed basis.

Plaintiff demonstrated, through job descriptions and statements from his employer, that he was required to drive, and that those duties would, on occasion, require him to travel between two or more states. Although Plaintiff was often required to drive to and from Yellow Freight's clients, Plaintiff drove into Washington only three times in 2000, and four times in 2001.

II. ANALYSIS

Plaintiff has demonstrated that he is regularly assigned to drive. There is no doubt on that point. However, in order for a Washington resident to exclude his or her Oregon source wages from Oregon tax through the Amtrak Act, that individual must have, among other requirements, duties that regularly require him or her to drive “*in more than one state.*” OAR 150-316.127-(E) (emphasis added). OAR 150-316.127-(E)(1)(c) states that “ ‘[r]egularly assigned duties in more than one state’ means duties that are performed on a regular basis in more than one state, e.g., daily, weekly, or monthly assignment.” *Butler v. Department of Revenue*, 14 OTR 195 (1997) and *Department of Revenue v. Hughes*, 15 OTR 316, 320-21 (2001) expanded the definition of “regular” to the extent of including normal, typical, or natural duties that may not occur on fixed or specific dates.

Butler, however, went on to specifically find that “as-needed” trips were not regular as the term is used in the Amtrak Act. In the *Butler* case, as here, the employee worked for Yellow Freight out of the Portland terminal. *See Butler*, 14 OTR at 196. On an “as-needed” basis, *Butler* traveled to Washington to pick up parts for particular jobs. *Id.* *Butler* made about three trips to Washington per year. *Id.* at 200. The court held that *Butler*'s trips were not part of his regularly assigned duties. *Id.* The trips were unusual and there was no established regularity involved. *Id.* His regularly assigned duties were to work in the Portland terminal. *Id.* at 199.

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Consequently, the court held that Butler was not eligible for the exclusion through the Amtrak Act. *Id.* at 200.

Other cases besides *Butler* have considered the application of the Amtrak Act to Yellow Freight employees. See *True v. Dept. of Rev.*, TC-MD No 030024F (Oct. 29, 2003). Mr. True, like Plaintiff, was a City Driver/Dock Worker out of the Portland terminal. In that instance, the court found that City Drivers/Dock Workers do not perform regularly assigned duties in two or more states because they perform their interstate travel on an as-needed basis.

Plaintiff argues that the court should consider other precedent, and presented the result in *Thompson v. Dept. of Rev.*, TC-MD No 000580E (June 30, 2000). That case was a stipulated judgment. There were no facts adjudicated by the court. Because of that, there is no yardstick that the court can use to compare it to other cases. Plaintiff went on to analyze *Department of Revenue v. Hughes*, 15 OTR 316 (2001) and *Tarabochia v. Department of Revenue*, 18 OTR 210 (2005), for the proposition that the fact that a small amount of interstate travel may nonetheless qualify a driver for the exemption. However, the critical point of these cases was that each of those instances were events set on the calendar at more or less regular intervals. By contrast, the few times Plaintiff traveled to Washington were done without any scheduling, on an as-needed basis.

Plaintiff pointed out another example. Defendant's Publication 101-601, as it existed in December 2002 gave a situation, at Example 6, that supports the exemption of Plaintiff. However, that example had been removed by the December 2005 revisions to the document, and is contradicted by Example 5 of OAR 150-316.127-(E)(3), which presents the situation of one who drives several times in and out of Oregon according to a particular schedule as one who does
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not qualify for the exemption. Plaintiff's presentation on that point is not so strong as to dictate the result of this appeal.

III. CONCLUSION

Plaintiff does not drive into Washington so often that the court can say it is a regular occurrence. Plaintiff's trips to Washington are not set by the calendar so that the court can say the intervals during which they take place are proofs of their regularity. Instead, the court is struck by the conclusion that it had the last time it examined the situation of Yellow Freight's Dock Workers/City Drivers. The conclusion reached then, and again today, is that interstate travel by these employees occurs on an as-needed basis without the regularity demanded by the Amtrak Act. Now, therefore,

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

Dated this _____ day of May 2006.

SCOT A. SIDERAS
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 Scot A. Sideras on May 19, 2006. The Court filed and entered this document on May 19, 2006.