

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MARY LEE STODOLA,)	
)	
Plaintiff,)	TC-MD 050953E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s adjustments to her 2002 personal income tax return. A telephone trial was held March 30, 2006. Mary Lee Stodola appeared on her own behalf. Keith Shribbs appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff has worked for Lulay Timber Co., Inc. since 1997.¹ Lulay Timber assigns Plaintiff to various logging sites where she serves as a watchperson over the equipment and logging site. While at each site, Plaintiff lives in her personal travel trailer. In 2002, Plaintiff worked at four different sites. (Ptf’s Ex 1 at 1.)

In 1993, Plaintiff purchased two lots in Prineville, Oregon. On one of the lots was a 1960 mobile home. Plaintiff planned to retire there but, after the death of her friend, she was required to return to work. The property is located in a remote area with no public utilities. As a result, Plaintiff uses a generator for light, propane gas for cooking, and a wood stove for heat. Plaintiff pays annual road dues of \$60 and a \$30 annual fee for water. The water is retrieved from a “community well.” Plaintiff pumps water from that well into a tank that she takes to the home. In 2002, Plaintiff paid \$103.15 in property taxes for the Prineville property. (Ptf’s Ex 3 at 6.)

¹ She worked for Lulay Timber previously but was laid off and not rehired until 1997.

When Plaintiff purchased the property, her daughter lived in Prineville. Her daughter has since moved to Salem, Oregon. Plaintiff has a brother and sister who live in Madras, Oregon.

During 2002, Plaintiff returned to the Prineville property approximately once a month.

Plaintiff claims she spent the following 35 days in Prineville:

January	4, 5, 6, 25, 26, 27
February	8, 9, 10
March	15, 16, 17
April	19, 20, 21
May	none
June	14, 15, 16
July	12, 13, 14
August	2, 3, 4
September	2, 3
October	10, 11, 12
November	1, 2
December	23, 24, 25, 26

(Ptf's Ex 1 at 4.)

Plaintiff's mail is not delivered to her Prineville property. Instead, she maintains a post office box in Mill City, Oregon. Her brother lives in Mill City and retrieves her mail for her. He takes the mail to her employer, which is located nearby, and her employer forwards the mail to her at the worksite. In 2005, Plaintiff sold the Prineville property. Since then, Plaintiff purchased a new travel trailer and vehicle, but no permanent home.

On her 2002 personal income tax return, Plaintiff deducted the unreimbursed employee business expenses she incurred while living at the various work sites. Defendant denied the deduction concluding Plaintiff's "tax home" was at the work sites.

II. ANALYSIS

The State of Oregon has adopted the federal definition of taxable income as the measure of a taxpayer's Oregon taxable income. ORS 316.048.² The Internal Revenue Code (IRC)

² All references to the Oregon Revised Statutes (ORS) are to 2001.

allows a deduction for “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.” IRC § 162(a) (2002). Deductible expenses include “traveling expenses (including amounts expended for meals and lodging * * *) *while away from home* in the pursuit of a trade or business.” *Id.* at (a)(2) (emphasis added). “The purpose of IRC section 162(a)(2) is to ameliorate the effects of business which requires taxpayers to duplicate personal living expenses.” *Harding v. Dept. of Rev.*, 13 OTR 454, 458 (1996).

In *Kelso v. Dept. of Rev.*, 15 OTR 175 (2000), the Tax Court discussed what the statute means when it refers to being away from home. The court stated:

“[F]or purposes of [section] 162, home does not have its usual and ordinary meaning. As a general rule, a taxpayer’s principal place of business is his tax home. Where there exists no principal place of business, a permanent place of residence at which taxpayer incurs substantial continuing living expenses may be considered a tax home. If such a residence does not exist, then taxpayer is an itinerant and has no tax home from which he can be away. His home is wherever he happens to be. The determination of the existence and location of a taxpayer’s tax home is a determination of fact.”

Kelso v. Dept. of Rev., 15 OTR 175 178-79 (2000) (footnote omitted; internal quotation marks omitted; citations omitted).

To summarize, a taxpayer may deduct traveling expenses incurred while “away from home.” A taxpayer’s “tax home” is his or her principal place of business. In the subject case, Plaintiff has no principal place of business. Instead, her employer assigns her to various logging sites to perform her work. When a taxpayer has no principal place of business, her tax home becomes her “permanent place of residence, in a real and substantial sense.” *Id.* Plaintiff claims the Prineville property was her tax home because it was her permanent place of residence. Plaintiff concludes, therefore, that she is entitled to deduct personal expenses incurred while away from that home.

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In Revenue Ruling 73-529, the Internal Revenue Service (IRS) addressed when a residence is truly a taxpayer's "tax home." The IRS observed:

"The fact that a taxpayer's trade or business is of such a nature that he has no regular or principal place of business will not preclude him from having a 'home' for traveling expense deduction purposes, but shifts the inquiry to whether such a taxpayer has a 'home' in the form of a 'regular place of abode in a real and substantial sense,' or whether he is an itinerant. Although such an inquiry basically is subjective, there are three objective factors that may be used to determine, with respect to the taxable year in question, the bona fide nature of a taxpayer's assertion that his claimed abode is his 'regular place of abode in a real and substantial sense.' They are:

"(1) Whether the taxpayer performs a portion of his business in the vicinity of his claimed abode and uses such abode (for purposes of his lodging) while performing such business there;

"(2) Whether the taxpayer's living expenses incurred at his claimed abode are duplicated because his business requires him to be away therefrom; and

"(3) Whether the taxpayer

"(a) has not abandoned the vicinity in which his historical place of lodging and his claimed abode are both located,

"(b) has a member or members of his family (marital or lineal only) currently residing at his claimed abode, or

"(c) uses his claimed abode frequently for purposes of his lodging.

"* * * If a taxpayer fails to satisfy at least two of the three objective factors set forth in the preceding paragraph, he will be regarded as an itinerant who has his 'home' wherever he happens to work, and thus cannot be 'away from home' for purposes of section 162(a)(2)."

Rev Rul 73-529, 1973-2 CB 37.

Plaintiff does not satisfy the first factor because she did not work within the Prineville area during the year in question. Plaintiff claims she satisfies the second factor because she incurred duplicate living expenses while at the work sites. Defendant claims the expenses incurred at the Prineville property were too minimal to be considered.

In *Kelso*, the Tax Court considered the requirement of duplicate expenses. In that case, the taxpayer was part of a “work gang” that provided railroad track maintenance. His employer assigned the work gangs from work site to work site. As a result, the taxpayer purchased a motor home to live in while at work. Notwithstanding his travels, the taxpayer alleged he maintained a permanent place of residence at his parents’ home in Albany. At that home, he had a separate telephone line and used that location as his mailing address. The taxpayer also paid his parents \$100 per month in rent. The court found that the Albany residence was not the taxpayer’s permanent place of abode and that, instead, the taxpayer was itinerant and not entitled to deduct his expenses. The court observed initially that the taxpayer spent the majority of his time in the motor home and not at the home. Second, the court held that “duplicative expenses [must] not merely exist, but they must be *substantial and continuous*.” *Kelso*, 15 OTR at 179 (emphasis added). In this case, Plaintiff’s expenses related to the Prineville property are minimal due to the primitive nature of the home. Plaintiff’s expenses can hardly be called substantial. As a result, Plaintiff fails to satisfy the second factor set forth in Revenue Rule 73-529. Because Plaintiff fails to satisfy at least two of the three factors, the court finds Plaintiff was itinerant and not entitled to the business expense deduction.

III. CONCLUSION

The court concludes that, in 2002, Plaintiff had no principal place of business and no permanent place of residence in a real and substantial sense. As a result, the court finds that Plaintiff was itinerant and not entitled to deduct her unreimbursed employee business expenses.

Now, therefore,

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

Dated this _____ day of April 2006.

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 April 24, 2006. The Court filed and entered this document on April 24, 2006.