

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ALBERT M. PORTER III and)	
CARLA A. PORTER,)	
)	
Plaintiffs,)	TC-MD 060550B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs appeal concerning certain personal income tax matters for the 2002 tax year.

A trial was held in this matter. Nolan A. Geraths, Licensed Tax Consultant, represented Plaintiffs. Albert M. Porter, III (Porter) testified as a witness. Shannon Ball (Ball) represented Defendant. Subsequently, written submissions were received. The record closed March 9, 2007.

I. STATEMENT OF FACTS

During 2002, Porter was employed as a pipe fitter. He lived in Scio, Oregon, about 25 miles from Salem. The union hall that he belonged to was in Portland. He received his job assignments or referrals via telephone from that Portland location.

During 2002, Porter worked on temporary jobs in Toledo, Milwaukie, and Hillsboro. He drove 36,462 miles that year according to daily logs he maintained. Porter testified “my regular job site was a temporary one.” There was no one metropolitan area where he normally worked. There were no jobs for Porter in the general Salem area, either of a permanent or temporary nature. He returned to his Scio residence at the end of each work day. Ball views Scio as the primary “tax home” of Plaintiff and Salem as within that same metropolitan area.

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Porter disagrees with Ball's analysis and focuses on the possibility of being assigned work in the Salem area. According to his representative:

“Porter has the potential to work in the area where he regular (*sic*) lives when assigned by the Union. During 2002 he did not work in his regular work area but he can work there at the option of his Union (in later years he did work in the Salem area).”

(Ptf's Analysis of *Massey v. Dept of Revenue*, filed Sept 8, 2006.)

II. ANALYSIS

The issue presented is Porter's entitlement to claim a milage 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 Scio.

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.

Taxpayer expenses incurred in commuting between his home and place of business are usually personal and not deductible. See *Commissioner v. Flowers*, 326 US 465, 473-74, 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

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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 Porter had no jobs in the metropolitan area of Salem. His nearest assignment was at least 50 miles away. He did not *live and work* in the area. Without the element of a regular work location, the exception for temporary work locations does not apply.

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

The findings in this case are consistent with another Oregon Tax Court case. In *Massey v. Dept. of Rev.*, TC-MD No 050819A (Apr 12, 2006), transportation expenses were disallowed because the taxpayer did not work in the metropolitan area in which he resided. The court held

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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

Porter does not perform regular work near his tax home; the disputed expenses are not deductible. Now, therefore,

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

Dated this ____ day of April 2007.

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 April 23, 2007. The Court filed and entered this document on April 23, 2007.