

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

KENNETH A. JURY and KAY L. JURY,	)	
	)	
Plaintiffs,	)	TC-MD 060818D
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant's denial of claimed transportation expenses for tax year 2002. A trial was held in the Oregon Tax Courtroom in Salem, Oregon on Tuesday, September 25, 2007. Nolan Geraths, Licensed Tax Consultant, appeared on behalf of Plaintiffs. Kenneth A. Jury (Jury) testified. Kevin Cole, Tax Auditor, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

For tax year 2002, Jury, who is a member of the United Brotherhood of Carpenters and Joiners of America (Union), was employed as a carpenter for two companies, Anderson Construction and Anderson Structures. Jury testified that Anderson Construction owns Anderson Structures. Jury describes all of his work locations as temporary because all job assignments “last less than one year.” (Jury Aff in Support of Supplemental Facts (Jury Aff) at 3.) Jury testified that, in 2002, he worked two to three weeks in Corvallis, Oregon, and for the remainder of 2002 he worked in Portland and St. Johns. After the Corvallis job was complete, Jury stated that instead of notifying the Union that he “needed work,” he found his next job in the Portland area “on his own.”

On his state income tax return, Jury deducted as transportation expenses all the mileage for the use of his automobile to various work locations. He estimated the distance to Corvallis

from his home in Turner to be 50 miles one way and the distance to Portland to be over 60 miles one way. According to Jury, the distance to St. Johns was 10 miles further than the distance to Portland. Citing Revenue Ruling 99-7 for authority, Jury concluded that he is entitled to deduct daily transportation expenses because each of the temporary work locations is outside the metropolitan area, which he defines to be 50 miles from where he lives in Turner and normally works. Defendant disputed Jury's claim that he normally works within 50 miles of his residence. Jury testified that he worked three jobs in Salem, but was unable to remember the dates or the names of the employers. Jury did not keep a contemporaneous log of his mileage; however, during the audit, he did provide to Defendant a calendar with dates and miles traveled.

Defendant denied Jury's claimed transportation expense deduction in the amount of \$8,623.<sup>1</sup> Defendant concludes that Jury's "tax home" is not where he lives, but rather Portland because Portland is his "center of activity." Relying on the response from Tina Hill (Hill), who is employed by Anderson Structures, LLC in its payroll department, Defendant supports its conclusion by stating that Jury has worked for Anderson Construction Company and Anderson Structures since July 22, 1992. According to Hill, Jury worked in the Portland area since 1999 with a three month transfer to Corvallis in the fall of 2003. (Def's Ex B1.) Defendant allowed Jury to deduct the transportation costs from his home in Turner to "his temporary job in Corvallis" because the work location was "not in the Portland metropolitan area," which is his tax home. (Def's Ex D3 (Stip Fact 8).) All other claimed travel expenses, with the exception of a small amount allowed for Jury's trips to the Anderson headquarter offices, were disallowed by

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<sup>1</sup> For tax year 2002, Plaintiffs claimed business deductions in the amount of \$13,520. (Jury Aff at 3.) Defendant allowed a business expense deduction in the amount of \$4,897. Total amount of claimed expense for transportation that was disallowed, which is the subject of this appeal is, \$8,623.

Defendant. Defendant explained the disallowance by stating that the amounts claimed were personal commuting expenses and not deductible business expenses.

Plaintiffs timely appeal Defendant’s determination and assessment.

## II. ANALYSIS

The Oregon legislature intended to make “the Oregon personal income tax law identical in effect to the provisions of the federal Internal Revenue Code relating \* \* \* to the definition of \* \* \* ‘deductions (business and personal).’ ” ORS 316.007.<sup>2</sup> Allowable deductions from taxable income are a “matter of legislative grace” and the burden of proof (substantiation) is placed on the individual claiming the deduction. *INDOPCO, Inc. v. Commissioner*, 503 US 79, 84, 112 S Ct 1039, 117 L Ed 2d 226 (1992). The federal definition of allowable deductions that are at issue in this case is found in IRC section 162(a).<sup>3</sup> This section allows a taxpayer to deduct transportation expenses incurred in connection with a business.<sup>4</sup> In certain circumstances, a taxpayer is allowed a transportation expense deduction when the expenses are incurred in traveling to a temporary job location that is beyond the general metropolitan area

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to year 2001, unless otherwise noted.

<sup>3</sup> All references to the Internal Revenue Code (IRC) and regulations are to year 2002.

<sup>4</sup> IRC section 262 disallows any deduction for personal living or family-related expenses. Transportation expenses between a taxpayer’s residence and work location are commonly referred to as commuting expenses, which are nondeductible personal expenses under IRC section 262. *See Commissioner v. Flowers*, 326 US 465, 473-4, 66 S Ct 250, 90 L Ed 203 (1946).

of where the taxpayer lives and normally works. The applicable law is Revenue Ruling 99-7, 1999-1 CB 361, which provides in pertinent part:

“(1) A taxpayer may deduct daily transportation expenses incurred in going between the taxpayer’s residence and a *temporary* work location *outside* the metropolitan area where the taxpayer lives and normally works. However, unless paragraph (2) and (3) [which are not applicable to the facts of this case] \* \* \* applies, daily transportation expenses incurred in going between the taxpayer’s residence and a *temporary* work location *within* that metropolitan area are nondeductible commuting expenses.”

(Emphasis in original.)

Even though courts often focus on defining metropolitan area, the court in this case begins its analysis with the Revenue Ruling requirement that Jury’s temporary work location must be outside the metropolitan area where he lives and normally works. There is no dispute that Jury lives in Turner, Oregon, and the work locations in Portland and Corvallis are outside the metropolitan area as Jury defined that term.<sup>5</sup> The question before the court is where does Jury “normally work.”

The court observes that Revenue Ruling 99-7 was enacted to allow a taxpayer who is employed for a *temporary* period of time at a location outside the metropolitan area to claim a transportation deduction. The Revenue Ruling does not offer the same benefit to a taxpayer who chooses to live at a distance from his *normal* work location. In this case before the court, Jury offered no evidence to persuade the court that he normally works within the metropolitan as he defined it. Jury testified that he worked “some jobs” in Salem, Oregon, but he could not remember when he worked in Salem or who employed him. In contrast, his employer’s payroll

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<sup>5</sup> Jury defined metropolitan area as a “50 mile radius.” Support for that distance is found in *Marple v. Commissioner*, TC Summ Op 2007-76, 2007 WL 1475269 (US Tax Ct) (holding that “the area within a 45- to 50-mile radius” was the defined metropolitan area.) A smaller distance has been accepted as reasonable. *Wheir v. Commissioner*, TC Summ Op 2004-11, 2004 WL 1921830 (US Tax Ct) (concluding that a 35-mile radius is not “unreasonable.”)

employee, Hill, wrote that Jury has been employed in the Portland area since 1999. Even though Jury worked at more than one job site in 2002, all of the jobs sites, with the exception of his work location in Corvallis, were in the Portland area. Jury defines the Portland area as outside the metropolitan area. He failed to prove that he normally worked within the metropolitan area.<sup>6</sup>

### III. CONCLUSION

After careful consideration, the court concludes that it lacks sufficient information to conclude that Jury's work locations were temporary and outside of the metropolitan area where he normally worked. Based on the evidence, Jury normally worked in Portland which cannot be both inside and outside the defined metropolitan area. Now, therefore,

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

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

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JILL A. TANNER  
PRESIDING 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 Jill A. Tanner on October 31, 2007. The Court filed and entered this document on October 31, 2007.***

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<sup>6</sup> "In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. *The burden of proof shall fall upon the party seeking affirmative relief.*" ORS 305.427 (2005) (emphasis added.) Plaintiffs must establish their claim "by a preponderance of the evidence, or the more convincing or greater weight of evidence." *Schaefer v. Dept. of Rev.*, TC No 4530 at 4 (July 12, 2001) (citing *Feves v. Dept. of Rev.*, 4 OTR 302 (1971)). Plaintiffs failed to carry their burden.

The court was asked to "read and reread" *Wheir v. Commissioner*, TC Summ Op 2004-11, 2004 WL 1921830 (US Tax Ct) which it did. The court notes that, in *Wheir*, the U. S. Tax Court was presented with detailed information, including work locations within and without the metropolitan area and distances traveled. A review of the facts reported in *Wheir* should be helpful in understanding the court's conclusion that Plaintiffs' failed to carry their burden of proof.