

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Income Tax

SAMUEL J. AND SALLY E. LAWYER,)
)
Plaintiffs,) No. 983074D
)
v.)
)
DEPARTMENT OF REVENUE,)
STATE OF OREGON,)
)
Defendant.) **DECISION**

Plaintiffs appeal defendant's tax assessments for tax years 1995, 1996 and 1997. A trial was held on February 9, 2000, in Salem. Samuel Lawyer and Sally Lawyer appeared for themselves. Wendy Sanderson represented defendant. David Zeh, Auditor, appeared as defendant's witness.

Plaintiffs assert that their income,¹ while earned in Oregon, is exempt from state income tax under Public Law 101-322, the Amtrak Reauthorization and Improvement Act of 1990 (Amtrak Act).

STATEMENT OF FACTS

Plaintiffs are residents of Vancouver, Washington. Samuel Lawyer was a registered longshoreman during the years at issue. He has worked as a longshoreman for forty years. As a longshoreman, he loads and unloads containers. Loading a container

¹ As residents of Washington, a community property state, the income legally is both plaintiffs' income. RCW 26.16.030 ("[p]roperty not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage by either husband or wife or both, is community property").

involves physically moving the container from ship to railroad or truck. He also stuffs and unstuffs containers. Stuffing a container involves physically putting items inside the container. He worked out of the Portland dispatch hall. The Portland dispatch hall is part of the Columbia River dispatch area. The Columbia River dispatch area includes the ports of Portland, Vancouver, Longview, Astoria and Newport. Each dispatch hall is operated jointly by the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA). (Ptf's Ex 21² at 46). ILWU is the union that represents longshore employees. PMA is a "multi-employer association of vessel operators and stevedoring and marine terminal operators[.]" *Aguilar v. International Longshoremen's Union*, 966 F2d 443, 444 (9th Cir 1992). (See also Def's Ex K at 2). PMA acts as a payroll agent and processes longshore employees' weekly payroll. PMA collects assessments from its members to fund employee benefits such as vacations, health benefits and the pay guarantee plan. PMA negotiates and administers the ILWU-PMA contract. PMA is not the longshore employees' employer; its members are. Its members in turn contract with motor carriers and railroads. Most PMA members are not motor carriers themselves. (See Def Ex Z).

There are three categories of longshore employees. The first is Class A or B registered longshore employees. Class A or B employees are entitled to the full benefit of the ILWU-PMA contract. For example, they are entitled to 38 hours pay per week, even if there is not sufficient work. Mr. Lawyer is a Class A employee. If there is more work than

² Plaintiffs marked their exhibits alphabetically. To be consistent with Magistrate Division Rules, the court shall refer to plaintiffs' exhibits by their corresponding number. See MDR 10A.

there are Class A or B employees available, the dispatch hall will dispatch any "casual" employees who may be available. (*See Id.*). Casual employees are not entitled to any guaranteed hours or other benefits of the ILWU-PMA contract. The third class of employees are referred to as "steady skilled men." These employees are employed and paid directly by a PMA member employer. Employers may employ these employees "without limit as to numbers or length of time in steady employment." (Pfts' Ex 21 at 52). "Steady skilled men" report directly to their employers and, as long as they are "steady skilled men," are not dispatched through the dispatch hall. (Def's Ex K at 23).

Most work in the industry is performed by Class A or B employees who work out of a dispatch hall. Generally, an employee must be physically present at the dispatch hall to be eligible for work.³ These employees are dispatched on a shift basis to the job site. The job site could be a ship, a dock, a marine terminal, a container freight station or other marine related site. (*Id.*).

On a daily basis, each employer notifies the dispatcher of its needs. If the work order involves loading or unloading a ship, the employer also notifies the PMA Allocator. The Allocator arranges those orders based on a certain priority. The priority is determined by separate rule. The Allocator sends the prioritized list to the dispatch hall. The work orders involving loading or unloading ships are dispatched first according to the determined priority. Non-ship work orders are prioritized by local rule. (*Id.*).

An employee may be dispatched as an individual or as part of a gang. A

³ If dispatched as part of a gang, an employee can call in by telephone.

gang is a work group of long shore employees that includes two crane operators, two sling men, four hold men and a gang boss. The gang will also include lift drivers or truck drivers as needed. A gang member's first obligation is to his gang. A gang may be ordered to travel. For example, the port of Longview may need six gangs but only have four gangs available. It would request two gangs from the closest available port. (See *Id.* at 196).

Mr. Lawyer is a full-time gang employee. This means that as long as there is work for his gang he works as part of the gang. If there is no work for his gang he may work as an individual and be dispatched accordingly. If he refuses work for which he is qualified he loses the benefit of the pay guarantee plan. (See *Id.* at 109).

The gang boss⁴ is "in complete authority and * * * shall have the responsibility to discharge from their gangs any man or men for incompetence, insubordination, or failure to perform work as required, in conformance with the provisions of the Contract Document." (Ptf's' Ex 21 at 54). The gang boss' supervisor is the superintendent. The superintendent is a full-time employee of the PMA member company. The chain of command continues to the super cargo. From there it extends to the shipping agent. The longshore employees have no direct contact with railroad or motor carrier employees whose cargo is being loaded or unloaded. As a practical

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matter, however, the longshore employees are often able to respond to requests made by the railroad or motor carrier employees.

⁴ If not working as part of a gang, the immediate supervisor of a longshore employee is the walking boss.

A longshore employee could work for more than one employer during a day. For example, on July 13, 1997, Mr. Lawyer worked eight hours for Marine Terminals Corporation and two hours for Portland Lines Bureau. (Def's Exs X at 1 and Y at 1). Not surprisingly, a longshore employee will work for multiple employers in a relatively brief period of time. During the periods of July 13 through July 25, 1997, September 14 through September 26, 1997, and October 18 through October 24, 1997, Mr. Lawyer worked for a total of six employers. Assignments lasted one to two days, excluding travel time. (Def's Ex Y). During the 24 work-days in those periods, he worked 22 days in Portland, two days in Vancouver and one day in Longview.⁵ Mr. Lawyer testified that he could not refuse an offered job in either Vancouver or Longview.

COURT'S ANALYSIS

The Amtrak Act exempts from state taxation, by any state other than the taxpayer's state of residence, the wages of employees who perform regularly assigned duties in two or more states, when their duties directly affect commercial motor vehicle safety in the course of their employment. The pertinent portion of the Amtrak Act, found in Title 49 of the United States Code, reads:

" (1) No part of the compensation **paid by a motor carrier * * *** to an employee who performs **regularly assigned duties in 2 or more States** as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

"(2) In this subsection, the term "employee" has the

⁵ These numbers total 25 because Mr. Lawyer worked in Portland **and** Vancouver on July 13, 1997.

meaning given such term in section 31132."

49 USC § 14503(a)⁶ (emphasis added).

The word "employee" is defined as follows:

"(2) 'employee' means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a **freight handler**, or an individual not an employer, who-

"(A) **directly affects commercial motor vehicle safety** in the course of employment; * * *."

49 USC § 31132⁷ (emphasis added).

The Amtrak Act was passed so that "rail and transportation workers will only have to pay State taxes to their State of residence." Testimony of Senator Slade Gorton, 136 Cong Rec S8676 (June 25, 1990). Prior to the Amtrak Act's passage "a truck driver or train engineer might pass through several states during a single day, technically earning income in each of the states. That could subject those employees to burdensome filing requirements and conflicting claims for tax credits." *Butler v. Dept. of Rev.*, 14 OTR 195, 197 (1997). The apparent goal of this part of the law "was to relieve those employees of unreasonable burdens by limiting their tax obligations." *Id.*

There are two issues in this case. The first is whether plaintiff is paid by a motor carrier. The second is whether an employee who works out of a dispatch hall and does not know from one shift to the next who his employer will be may ever have "regularly assigned duties."

⁶ This statute was originally codified at 49 USC § 11504(b)(1).

⁷ This statute was originally codified at 49 USC § 2503.

Paid by a Motor Carrier

Interpreting a federal statute requires the court to "be guided by the United States Supreme Court's principles of statutory construction." *Id.* at 199 (citations omitted). Further, "[u]nder the federal principles of construction, the court's function is to enforce the clear language of a statute according to its terms. In determining the meaning of the statute, the court considers the text and context of the statute." *Id.* (citations omitted).

Mr. Lawyer is paid by PMA. PMA is much more than a payroll agent for its member companies. PMA determines and collects assessments from its members to fund employee benefits such as vacations, health benefits and the pay guarantee plan. PMA also negotiates and administers the ILWU-PMA contract. It employs the Allocator who determines the priority of work orders involving the loading or unloading of ships. In conjunction with the ILWU, it pays for the dispatch halls. It also has the right to place a PMA employee in the dispatch hall. These functions are substantial.

The language of the statute is clear and unambiguous. If Congress had wished to require that the employee be employed by a motor carrier it could have said so. It did not.⁸ Instead it required that the employee be **paid** by a motor carrier. As mentioned

⁸ For an example of a federal statute where Congress was more precise in its wording exempting certain employees from state taxation, see 4 USC § 111(b).

"(b) Pay or compensation **paid by the United States** for personal services **as an employee of the United States** at a hydroelectric facility -

"(1) which is owned by the United States;

"(2) which is located on the Columbia River; and

"(3) portions of which are within the States of Oregon

earlier, PMA is an association of employers, most of whom are not motor carriers. The court finds that Mr. Lawyer was not paid by a motor carrier. His wages earned in Oregon are not exempt from Oregon income tax.

Regularly Assigned Duties

Even if the court found that Mr. Lawyer was paid by a motor carrier, the court would also have to find that he "perform[ed] regularly assigned duties in [two] or more States." 49 USC § 14503(a)(1). The nature of Class A or B longshore employees is such that they are on-call employees who work as needed. Unless they are assigned as part of a gang, they must physically report to the dispatch hall. They do not know from one shift to the next who their employer will be or where they will report to work. In *Butler*, the plaintiff worked out of state in response to unplanned occurrences. The court found that when plaintiff worked out of state on an as-needed basis, he did not have regularly assigned duties in two or more states within the meaning of the Amtrak Act. *Butler*, 14 OTR at 200. As in *Butler*, there was no "established regularity" to Mr. Lawyer working out of state. The court's decision in *Butler* is controlling. The court finds that Mr. Lawyer's duties as a Class A longshoreman do not involve "regularly assigned duties in two or more states."

CONCLUSION

Mr. Lawyer was not paid by a motor carrier; nor did he have regularly

and Washington, shall be subject to taxation by the State or any political subdivision thereof of which such employee is a resident."

(Emphasis added.)

assigned duties in two or more states. Plaintiffs' income is not exempt from state income tax under the Amtrak Act. Their income is exempt from state income tax only to the extent it was earned outside Oregon.

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

Dated this _____ day of June, 2000.

SALLY L. KIMSEY
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 SALLY L. KIMSEY ON JUNE 15, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 15, 2000.