SUPREME COURT OF OREGON

Etter v. Department of Revenue

360 Or. 46 (2016) · No. S063061 · Decided July 21, 2016

SUMMARY

The Oregon Supreme Court affirmed the Oregon Tax Court's judgment denying a Washington resident's refund claim for Oregon income taxes. The court held that the federal air-carrier tax provision, 49 U.S.C. § 40116(f)(2), applies only to employees whose duties in multiple states are normal, typical, or routine, and that the taxpayer's brief annual aircraft-observation flights did not qualify as regularly assigned duties. The court therefore concluded that the taxpayer was not exempt from Oregon taxation under the federal statute.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Baldwin, J.
JURISDICTION	Oregon
DECIDED	July 21, 2016
DOCKET	S063061
DISPOSITION	affirmed
PROCEDURAL POSTURE	Taxpayer appealed the Oregon Tax Court's grant of summary judgment to the Department of Revenue and denial of his claim for a refund of Oregon income taxes.
STANDARD OF REVIEW	The Supreme Court reviews Tax Court decisions for errors or questions of law or lack of substantial evidence in the record. Because the case was decided on cross-motions for summary judgment based on stipulated facts, the court considered whether a genuine issue of material fact existed and whether either party was entitled to judgment as a matter of law, viewing the record and inferences in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published, precedential opinion of the Oregon Supreme Court, decided en banc.
PARTIES	Stuart Etter v. Department of Revenue, State of Oregon

TOPICS

income tax | tax refunds | statutory interpretation | tax court procedure | appellate procedure

PRACTICE AREAS

Taxation | Appellate procedure | Federal statutory interpretation

QUESTIONS PRESENTED

1. Whether an aircraft dispatcher's federally required annual observation flights constituted regularly assigned duties on aircraft in at least two states under 49 U.S.C. § 40116(f)(2).
2. Whether the Oregon Tax Court properly granted summary judgment to the Department of Revenue on the stipulated facts.

HOLDINGS

1. The phrase regularly assigned duties requires duties that are normal, typical, or routine, not merely duties that occur at recurring intervals. An employee's occasional and incidental work in multiple states is insufficient unless the employee's regularly assigned duties require work in more than one state. Etter's approximately ten hours of required observation flights, constituting about 0.5 percent of his annual work hours, were not normal, typical, or routine duties; therefore, he did not qualify for the federal limitation on state taxation.
2. Summary judgment for the Department was proper because the stipulated facts presented no genuine issue of material fact and established as a matter of law that Etter did not meet the requirements of 49 U.S.C. § 40116(f)(2).

KEY QUOTATIONS

> *"In context, that does not seem to focus on the time intervals between the duties being assigned. Instead, the focus appears to be on whether the assigned duties are normal, typical, or routine."* (54)

> *"It is not sufficient for the employee to perform some work in different states to be protected. The only employees who are protected are those whose regularly assigned duties require them to work in more than one state."* (57)

FACTUAL BACKGROUND

Stuart Etter, a Washington resident, worked primarily as an aircraft dispatcher at Horizon Air's Portland operations center. His regular duties involved planning and monitoring flights on the ground in Oregon, while federal aviation regulations required him to spend approximately five hours observing flight-deck operations for each of two aircraft groups annually. In 2000, he completed approximately ten hours of observation flights, at least one of which crossed Oregon, Washington, Idaho, and Montana; that flight time represented about 0.5 percent of his annual work hours. Etter sought a refund of Oregon income taxes, arguing that the flights gave him regularly assigned duties on aircraft in at least two states under 49 U.S.C. § 40116(f)(2).

PROCEDURAL HISTORY

Etter sought a refund of 2000 Oregon income taxes, asserting that 49 U.S.C. § 40116(f)(2) exempted his compensation because he performed required observation flights over multiple states. The Department denied the refund. The Magistrate Division of the Oregon Tax Court ruled for the Department, and the Regular Division granted the Department's motion for summary judgment and denied Etter's motion. The Oregon Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Sarich, 352 Or. 601, 617, 291 P.3d 647 (2012)
- Julian v. Department of Revenue, 339 Or. 232, 235, 118 P.3d 798 (2005)
- Department of Revenue of Oregon v. ACF Industries, 510 U.S. 332, 339-46, 114 S. Ct. 843, 127 L. Ed. 2d 165 (1994)
- Kohring v. Ballard, 355 Or. 297, 304, 325 P.3d 717 (2014)
- Burkhart v. Farmers Insurance Co., 144 Or. App. 594, 599, 927 P.2d 1111 (1996)
- Department of Revenue v. Hughes, 15 Or. Tax 316 (2001)
- Butler v. Department of Revenue, 14 Or. Tax 195 (1997)
- Fink v. Commissioner of Revenue, 71 Mass. App. Ct. 677, 885 N.E.2d 859 (2008)
- Etter v. Department of Revenue, 22 Or. Tax 18, 22-27 (2015)