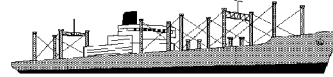




Rollin' On [®]



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OREGON SUPREME COURT, TRUCK DRIVERS AND TAXES

The big news on this end for the month is that yours truly got a great 7-0 decision from the Oregon Supreme Court. It was especially sweet since I did the case pro bono. If you're going to fight the fight for free, you want to win. Here's the story:

In 1990 Congress passed a law that states that if you're a truck driver or rail employee working in interstate commerce, you can be taxed only by the state of your residence. In 2001 the Oregon Dept. of Revenue decided that this law did not apply to truck drivers who worked for nonprofit corporations, if that nonprofit did not have a commercial operation that competed with private enterprise. For example, if you're driving for the thrift store operated by the Salvation Army, the law protects you.

Two truck drivers, residents of the State of Washington and who worked for the Oregon Food Bank, were notified by DOR that the law did not protect them. Think about it: If you're the poorest of the poor, you can get double or triple or whatever taxed, but if you drive for a for-profit company, you're protected.

I filed complaints on behalf of both truck drivers in the Magistrate Division of the Oregon Tax Court. I figured we'd put out that fire and go home. No such luck. The Magistrate Judge swallowed DOR's argument and ruled against the truck drivers. So then we appealed to the regular division of the Oregon Tax Court. Keep in mind that I didn't even hardly know there was such a court, since I can barely spell tax. I did know transportation law, however, and none of this made any sense, not that you would need to know transportation law for this not to make sense (hope you followed that double negative).

At this point DOR is represented by the

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Dept. of Justice, which is the Attorney General's office for the state. Both sides filed summary judgment motions with the Oregon Tax Court, with stipulated facts. At oral argument, the court seemed very annoyed that I was taking up his time. He had a good point: I'm in tax court and I know zilch about taxes. But the statute was in the transportation part of the federal code, and I do know something about transportation. Still, I was on his turf. This was not a pleasant experience. He seemed to imply that I had just fallen off the turnip wagon.

After a passage of 13 months, the tax court finally issued its decision, in which it upheld the tax assessment against these two truck drivers. So at this point we're 0 for 2. The next step is a direct appeal to the Oregon Supreme Court, which is unlike the normal course which would be an appeal to the Oregon Court of Appeals. The appeal is a matter of right, meaning that the Oregon Supreme Court is required to take the case, whereas usually it can pick and choose the small percentage of cases, primarily from the Oregon Court of Appeals, which it chooses to take.

Again, I was doing these cases pro bono, since these guys did not have the ability to otherwise go forward with their cases. I was really bothered by the position and attitude taken by these various state agencies. The experience in the Oregon Tax Court was like being in a company town. It reminded me of when we used to travel to Valsetz, a Boise Cascade company town, to play eight man football. Valsetz has since been disassembled. I fantasized about these state agencies likewise being disassembled.

Due to the discretionary nature of most appeals, as stated below, most attorneys never get to the Oregon Supreme Court, which is obligated to take certain other cases such as ballot measures, and some criminal appeals. The procedure, common knowledge to many people (such as my educated readers), is to file your brief and then, on a date certain as they say, appear before the court for oral argument.

In this regard, one can never take anything for granted. For example, you start thinking of things, like how much travel time to allow to Salem. It helps to allow extra time, to avoid the added pressure that rushing around brings with it. So on the day in question, I allowed 45 minutes extra, which was a good thing, since as I exit I-5 on Portland Road in Salem, I hear this clicking sound on my left rear wheel well. As it turned out, there was a three inch piece of chain link fencing sticking out of my tire, which prompts the first big decision of the day: To remove it or not to remove it, with probably three miles or so to go. I elected to leave it in, and after about 1/2 mile, the sound stopped. I saw later that the wire had disappeared.

No matter how much you prepare for oral argument, you can never anticipate all of the questions or comments, which start about 15 seconds after you take the floor. Being equal opportunity enthusiasts, the justices berate both attorneys, one at a time. You can feel like a whole chicken slowly being turned on the rotisserie. You get warm, mighty warm.

But when the decision arrives and it's favorable, you remember why you went through the ordeal.

As for that wire in my tire: After travelling to Central Oregon the following weekend, the tire began to lose air. The wire had gone completely inside the tire.

That's all for now. Until next time, keep the cargo *rollin'*!

The Obligatory Disclaimer
This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

Short Bio
Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 25 years and emphasizing transportation law, business law and related litigation