

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 86-01-31-03 / NON-PRECEDENTIAL  
**ID:** CR-85-002  
**DATE:** JANUARY 31, 1986  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**STATEMENT OF FACTS**

Protestants timely filed their 1979 income tax return showing residency in Oklahoma. They also timely filed their 1980 state income Tax return, but in 1984, they filed an amended 1980 income tax return and claimed a refund of Thirteen Thousand Three Hundred Five Dollars (\$13,305.00), which claim was denied by the Division. Protestants timely filed their 1981 income tax return as part-year residents from February 21, 1981, to December 31, 1981. The Division recomputed the 1981 tax liability, treating Protestants as full year residents of Oklahoma, resulting in an assessment of One Thousand Ninety-Four Dollars (\$1,094.00) additional income taxes for the year, 1981. At issue here are the protest against denial of refund for the tax year, 1980, and protest against the assessment for the tax year, 1981.

MR. was employed by DRILLING COMPANY of BIG CITY, Oklahoma, the worldwide headquarters of such company, and worked in various countries overseas from 1967 to June of 1978 for DRILLING COMPANY, and prior to that time for other companies from 1965 to 1967. In June of 1978, the Protestant moved to BIG CITY, Oklahoma. While residing there they purchased a home located at ADDRESS, BIG CITY, Oklahoma, where the family resided for approximately eighteen (18) months from June, 1978 to December, 1979, when MR. was transferred by his employer to Kuwait. The family resided in Kuwait from December, 1979 to February, 1981, when he was transferred back by his employer to BIG CITY and moved back into the home at ADDRESS.

While Protestants were in Kuwait, they leased their home in BIG CITY to RENTER for Seven Hundred Dollars (\$700.00) per month for a period of ten (10) months, at which time RENTER vacated the premises but continued to look after the property at the request of Protestants and attempted to secure another renter.

During the period from June, 1978 to December, 1979, MR. procured an Oklahoma driver's license and they maintained a checking account at the BANK OF BIG CITY. While in Kuwait from December, 1979, to February, 1981, they rented a duplex and did not attempt to purchase a home. MR. maintained a valid Oklahoma driver's license, and they maintained their checking account at the BANK OF BIG CITY. Upon their return to BIG CITY in February, 1981, they continued to maintain the checking account and MR. kept a current Oklahoma driver's license.

**ISSUES AND CONTENTIONS**

The issue is whether Protestants' domicile was in the State of Oklahoma for State income tax purposes during the years, 1980 and 1982 [sic].

Protestants contend that they had no intention of retaining an Oklahoma domicile when they went to Kuwait in December, 1979, and in support thereof point out that his Kuwaiti visa was issued for permanent residence status, that all of the family (husband, wife, child) went to Kuwait, and that they did not vote in any Oklahoma election during their absence.

The Division contends that Protestants were in fact domiciled in and residents of Oklahoma during the 1980 and 1981 tax years, and were subject to income tax liability by reason thereof. In support of such contention, the Division alleges that Protestants owned a residence in BIG CITY, maintained said residence during their absence and returned to the same residence upon returning to Oklahoma. The address of said residence, ADDRESS, BIG CITY, Oklahoma, was listed as the home address on both the state and federal income tax returns for 1980 and 1981. The Division also states the fact that they maintained a bank account at BANK, BIG CITY, Oklahoma, during their absence is another factor proving domicile.

**APPLICABLE LAW**

The law applicable to the issues in the present case is contained in Title 68, O.S.A., §§ 2353(4) and 2355. Section 2355 imposes a tax on the taxable income of "every resident ... individual" and § 2353(4) defines a resident individual as "a natural person who is domiciled in this state ...".

The Division cites Suglove v. Oklahoma Tax Commission, 605 P.2d 1315 (1979), as further authority for imposing a tax upon Protestants' income. The Supreme Court in Suglove stated:

"A person's domicile is the place where he has his true fixed and permanent home ... and to which whenever he is absent ... he has the intention of returning."

In attempting to determine whether a taxpayer who had moved indefinitely to Indonesia with his employer had given up his Oklahoma domicile, the Court stated:

"To effect a change of domicile, there must be (a) actual abandonment of the first domicile, coupled with (b) the intention not to return to it and (c) actual residence in another place with intention of making it a permanent home."

The Court further stated:

'Maintaining a current Oklahoma driver's license, in-state voting, having a local bank account, keeping property in storage within the State and ownership of Oklahoma--situated real estate--each perhaps a neutral factor in

isolation from others--when all added together show a pattern highly consistent with Taxpayer's intent not to abandon their Oklahoma domicile. When all the evidence is considered in its totality there is eloquent support in the record for the presence of animus revertendi.” (Emphasis Added)

“Taxpayer’s proof sought to show that their Indonesian-style was consistent with a permanent domicile there. OTC’s evidence, on the other hand, revealed an Oklahoma-related pattern of conduct strongly indicative of animus revertendi. OTC’s task under the law was to weigh the Indonesian-based facts against their Oklahoma-based counterparts. OTC no doubt decided that the latter were not persuasively overcome by the former. We find that decision free from legal error.” (Emphasis Added)

The following language is found in 85 CJS “Taxation”, § 1092 (1954):

“A resident of a state does not escape liability for income tax by a merely colorable change of domicile to a place outside the state, where in fact his place of residence remains within the State. In this connection, the intention of the Taxpayer is to be considered, and expressed intents and declarations to abandon the domicile must be considered in connection with the background of his acts, and, where his intentions and declarations seriously conflict with his acts and conduct, they are of such weakness that they may be disregarded in determining whether he has abandoned his domicile within the State.” (Emphasis Added)

### **CONCLUSIONS**

In view of the above findings of fact and conclusions of law, the Presiding Administrative Law Judge concludes as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the maintenance of an Oklahoma checking account, maintaining a valid Oklahoma driver’s license, ownership of Oklahoma real estate, their home, leasing such home for ten (10) months and arranging for the former lessee to look after the home thereafter during the time they were in Kuwait, returning in February of 1981 to live in such home after their arrival back in Oklahoma, and listing such home address on their 1980 and 1981 Federal and State income tax returns demonstrate conclusive intent of Protestants to maintain their domicile in BIG CITY, Oklahoma.
- (3) That the actions above cited reveal a pattern of conduct strongly indicative of animus revertendi.
- (4) That because Protestants did not abandon their Oklahoma domicile, they were domiciled in Oklahoma during the tax years of 1980 and 1981, and the Income Tax Division was correct in treating taxpayers as resident individuals in denying their claim for refund in the

amount of Thirteen Thousand Three Hundred Five Dollars (\$13,305.00) for the tax year, 1980, and in assessing an additional tax in the amount of One Thousand Ninety-Four Dollars (\$1,094.00) for the tax year, 1981.

(5) That the protest against denial of request for refund for the tax year of 1980 and the protest against the assessment of additional income taxes for the year, 1981, should be denied.

### **DISPOSITION**

It is the ORDER of the TAX COMMISSION that the protest against denial of request for refund for the tax year, 1980, and the protest against assessment of additional income taxes for the year, 1981, be denied, and that Protestants be required to pay the additional income taxes assessed for 1981 with penalty and interest from the due date until paid.

### **OKLAHOMA TAX COMMISSION**

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.