JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **86-04-23-03 / NON-PRECEDENTIAL**
ID: **P-85-284**
DATE: **APRIL 23, 1986**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, of the Oklahoma Tax Commission, and hearing had at which hearing the PROTESTANT appeared in person and was assisted by BROTHER, attorney, although BROTHER advised that he was not representing the Protestant in an official capacity as an attorney, but rather as her brother for moral support and to assist her in any matter deemed necessary, and the Income Tax Division of the Oklahoma Tax Commission represented by OTC ATTORNEY of the General Counsel's Office of the Oklahoma Tax Commission.

Opening statements were made by the respective parties, exhibits were identified and admitted into evidence, although not itemized herein. PROTESTANT, Protestant herein, testified on her own behalf and ASSISTANT DIRECTOR, Assistant Director of the Income Tax Division, testified on behalf of the Division. Closing arguments were made by each of the parties and the case was submitted for a decision.

STATEMENT OF FACTS

The PROTESTANT filed a 1982 Oklahoma individual income tax return listing her home address as ADDRESS, CITY, Oklahoma, XXXXX and did also file a 1982 United States individual income tax return form number 1040 reciting the identical address in CITY, Oklahoma, both the federal and the state individual income tax returns being filed timely.

On or about September 16, 1985, the Oklahoma Income Tax Division of the Oklahoma Tax Commission did assess PROTESTANT additional income tax and interest in the amount of One Thousand Four Hundred Forty-Eight Dollars and Fifty-five Cents ($1,448.55) representing additional individual income tax due for 1982 of Nine Hundred Ninety-Nine Dollars ($999.00) and interest to the date of the assessment of Four Hundred Forty-Nine Dollars and Fifty-Five Cents ($449.55). Subsequent to the issuance of the assessment by the Income Tax Division of the Oklahoma Tax Commission, PROTESTANT did, on October 10, 1985, file with the Income Tax Division her protest to said assessment and a request for a hearing regarding the additional individual income tax assessed for tax year 1982.

The assessment for the additional individual income tax and interest due on or about September 16, 1985 by the Income Tax Division of the Oklahoma Tax Commission was necessitated in view of the fact that the Protestant, having filed her Oklahoma individual income tax return, excluded from her income reported on line 1 of the Oklahoma individual income tax return the sum of Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00) on

line 7 as out-of-state income, therein reducing her Oklahoma adjusted gross income in said amount.

Prior to the Protestant making her home in the city of CITY, Oklahoma, she lived in NAME OF CITY, Texas until moving to Oklahoma following a divorce in 1978 from her husband, EX-HUSBAND.

ISSUES AND CONTENTIONS

It is the contention of the Protestant that the Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00) claimed as out-of-state income, in which she reduced her Oklahoma income by said amount, was in actuality income received from the state of Texas basing such on a property settlement from her ex-husband while residing in the state of Texas in 1978. Based upon the fact that this income is from the state of Texas, that said amount should not be burdened by Oklahoma income tax and therefore excluded.

It is the Income Tax Division's contention that Protestant's federal income tax return for the tax year 1982 reflects that the out-of-state income of Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00) represented alimony received and interest income and should have been included as Oklahoma income irrespective of the fact that said amount was generated from the state of Texas.

The issue is whether the amount claimed as out-of-state income on the Protestant's 1982 Oklahoma individual income tax return as per line 7 of said return of Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00) was properly excluded as out-of-state income.

APPLICABLE LAW

In determining whether or not the Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00) of out-of-state income should be excluded from the taxable income for the purposes of the filing of the Protestant's individual income tax and the levy of Oklahoma income tax thereon, one must first determine what type of income the Protestant received, which makes up the Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00).

The testimony at the hearing by the Protestant reflects that of the Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00), Eighty-Four Hundred Dollars ($8,400.00) of the said amount represented alimony paid by the Protestant's ex-husband to the Protestant and that although such was recited as support for the Protestant in their Agreement Incident to Divorce filed in COUNTY, State of Texas, that in reality it was part of a property settlement between the Protestant and her ex-husband. Review of Exhibit No. 6, entitled Agreement Incident to Divorce, which was adopted by the District Court of COUNTY, State of Texas, Thirty-First Judicial District, in the decree of divorce entered in this matter, paragraph III states that the Seven Hundred Dollars ($700.00) paid per month to the PROTESTANT, is alimony for future support of the PROTESTANT. Paragraph II of the Agreement Incident to Divorce does recite the division of property, but this provision is separate from the paragraph III previously discussed dealing with support of wife, as per the Exhibit No. 6.

Testimony reflects that when these documents were prepared by EX-HUSBAND and PROTESTANT during the divorce proceedings, that it was understood that Protestant's EX-HUSBAND, would be able to deduct from his federal income tax return the alimony payments to be made to PROTESTANT herein and likewise included on Protestant's federal income tax return.

The remaining portion of the Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00) at issue herein, after deducting the Eighty-Four Hundred Dollars ($8,400.00) is Ten Thousand Eight Hundred Twenty-Five Dollars ($10,825.00), which is made up of interest income received by the Protestant as recited on a schedule B of Protestant's United States individual income tax return for tax year 1982 which recites under schedule B part 1 interest income that she received Fifty-Four Hundred Dollars ($5,400.00) from a NAMED INDIVIDUAL, said interest income representing interest paid to the Protestant on the sale of her home in NAME OF CITY, Texas and in addition thereto, the sum of Fifty-Four Hundred Twenty-Five Dollars ($5,425.00) representing interest income received by the Protestant from COMPANY in NAME OF CITY, Texas.

The Oklahoma Income Tax Act, pursuant to the provisions of Section 2353 of Title 68 of the Oklahoma Statutes recites certain definitions which are to be used in the levy of Oklahoma income tax. Subsection 4 defines a resident individual as:

> "Resident individual" means a natural person who is domiciled in this state, and any other natural person who spends in the aggregate more than seven (7) months of the taxable year within this state shall be presumed to be a resident for purposes of this act in absence of proof to the contrary. A "nonresident individual" means an individual other than a resident individual.

and further, Subsection 12 of Section 2353 supra defines Oklahoma taxable income to mean:

> "Oklahoma taxable income" means "taxable income" as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided.

There is no question but that the Protestant would be deemed a resident with her domicile being the state of Oklahoma and as such, would be required to report income for inclusion in her individual income tax return of the Eighty-Four Hundred Dollars ($8,400.00) as alimony, just as the Protestant did for her 1982 United States individual income tax return as per line 11 of said return, which recites alimony received and in which the Protestant reported Eighty-Four Hundred Dollars ($8,400.00). In view of the fact there are no adjustments within the Oklahoma Income Tax Act for the adjustment of alimony income, this Eighty-Four Hundred Dollars ($8,400.00) should in fact be included for the purposes of calculating the Protestant's Oklahoma individual income tax, just as Protestant included and paid tax thereon as per her federal individual income tax return for 1982. (Exhibit No. 2)

The remaining Ten Thousand Eight Hundred and Twenty-Five Dollars ($10,825.00), represents interest income to the Protestant as previously recited from NAMED INDIVIDUAL, in the amount of Fifty-Four Hundred Dollars ($5,400.00) and interest income from COMPANY, NAME OF CITY, Texas in the amount of Fifty-Four Hundred and Twenty-Five Dollars ($5,425.00) and quite simply is interest income paid to the Protestant as reported on schedule B of her United States individual income tax return and included in the calculation of her federal income taxes. This Ten Thousand Eight Hundred and Twenty-Five Dollars ($10,825.00) of interest income, although received by the Protestant from outside the state of Oklahoma, would still be subject to Oklahoma individual income tax pursuant to the provisions of Section 2358(A)(4)(b) of Title 68 of the Oklahoma Statutes, which directs that:

> Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer.

Therefore, in view of the directives of the Oklahoma Income Tax Act, the Ten Thousand Eight Hundred and Twenty-Five Dollars ($10,825.00) of interest income received by the Protestant should be used in calculating the Protestant's Oklahoma taxable income, she being a resident and domicile within the state of Oklahoma.

CONCLUSIONS

In view of the above and foregoing factual situations and applicable law thereto, the Administrative Law Judge concludes as follows:

(1) That the Oklahoma Tax Commission has jurisdiction in this matter.

(2) That the evidence and testimony presented at the hearing reflect that the Nineteen Thousand Two Hundred and Twenty-Five Dollars ($19,225.00) excluded by the Protestant on her Oklahoma income tax return as out-of-state income should in fact be included for the purposes of computing Oklahoma taxable income, in that this out-of-state income is represented by Eighty-Four Hundred Dollars ($8,400.00) of alimony income received by the Protestant and Ten Thousand Eight Hundred and Twenty-Five Dollars ($10,825.00) of interest income reported by the Protestant on her 1982 United States individual income tax return and likewise should be reported for taxable purposes on her Oklahoma individual income tax return for tax year 1982.

(3) That the assessment by the Oklahoma Income Tax Division of the Oklahoma Tax Commission in the amount of Fourteen Hundred Forty-Eight Dollars and Fifty-Five Cents ($1,448.55) is correct and proper in view of the directives contained within the Oklahoma Income Tax Act pursuant to the provisions of Section 2351 et seq. of Title 68 of the Oklahoma Statutes.

(4) That the protest of PROTESTANT should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied and that the assessment for additional Oklahoma individual income tax issued by the Income Tax Division on September 16, 1985 be deemed correct and proper and interest continuing to accrue thereon from the date of said assessment until paid in full.

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.