JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **96-02-22-005 / NOT PRECEDENTIAL**
ID: **P9300168**
DATE: **02-22-96**
DISPOSITION: **SUSTAINED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner A was born and reared in the State of California.

2. Petitioner B was born in the State of Texas and reared in the State of California.

3. Petitioners moved to the State of Oklahoma in 1984 for the purpose of allowing Petitioner A to enroll and attend classes in the Petroleum Engineering Program at the University of Oklahoma.

4. Petitioner A graduated from the University of Oklahoma in May, 1988.

5. During the summers of these years, Petitioners returned to California and worked.

6. After graduation, Petitioners accepted employment with ANONYMOUS COMPANY headquartered in BIGCITY, Oklahoma. According to Petitioner, he accepted employment with ANONYMOUS COMPANY not only because of the company's reputation, but because of the potential for overseas assignments.

7. ANONYMOUS COMPANY designs, fabricates, and constructs drilling rigs. ANONYMOUS COMPANY also owns and operates drilling rigs and acts as a contractor for drilling wells.

8. Petitioner's first assignment with the company was a temporary training program in Western Oklahoma.

9. Petitioners moved to CITY Q, Oklahoma, where they purchased a home. According to Petitioners, they purchased the home because of the lack of rental properties. Petitioners also testified that it was cheaper to purchase than rent. Because of the nature of the assignment (a training program), Petitioners did not expect CITY Q to be their permanent home. Petitioners intended to live in CITY Q, Oklahoma only as long as the training program lasted.

10. Petitioners claimed a homestead exemption on their residence in CITY Q during the 1989 tax year.

11. In December, 1989, ANONYMOUS COMPANY extended an offer of employment to Petitioner A, with a wholly owned subsidiary of ANONYMOUS COMPANY, SUBSIDIARY XYZ, which required Petitioner to relocate himself and his family to Venezuela.

12. In preparing for the move to Venezuela, Petitioners sold the CITY Q residence and, except for the property they took with them, disposed of all of their personal property.

13. Petitioners continued to utilize a bank account with A Bank IN Oklahoma to which payroll checks were direct deposited and from which checks were written for monthly expenses.

14. Petitioners were totally relocated by early February, 1990.

15. In Venezuela, Petitioners rented a house from the company at the company-owned housing community. According to the letter from ANONYMOUS COMPANY, it is typical for the expatriates employed by the company and the expatriates' families to stay in the company-provided housing for the duration of their stay in Venezuela.

16. In accepting the position in Venezuela, Petitioner A received a promotion to tool pusher/rig manager of one (1) of the drilling rigs working in Venezuela. He expected the assignment in Venezuela to last at least four (4) to five (5) years. According to the letter from ANONYMOUS COMPANY, expatriates employed by the company in similar positions typically stay from two (2) to five (5) years or longer. The length of stay is not predetermined, however, due to the cost of relocating the families and their possessions, the company's economic interests are best served by minimizing the turnover of expatriates.

17. After approximately eight (8) months in Venezuela, PETITIONER A, received another promotion from the company and was assigned to CITYA, Louisiana, to design, fabricate, and construct drilling rigs for use in Venezuela.

18. Petitioner A relocated to Louisiana in late August, 1990. His family went to Pennsylvania to stay with relatives during the six-week period it took to get set up in CITY A.

19. After seven (7) months, the CITY A, LOUISIANA project was completed and Petitioner A was assigned to a project in CITY B, Louisiana. The assignment entailed the design, fabrication, and construction of drilling rigs for a domestic project.

20. Petitioner A has remained in the fabrication/construction area for the company since the Venezuela assignment.

21. After two (2) other domestic assignments, Petitioners purchased a residence in CITY Z, Oklahoma, on October 4, 1993. Petitioner A is currently assigned to a project in Texas. He returns to Oklahoma every other weekend.

22. At the time of moving to Venezuela, Petitioners had no attachments to the State of Oklahoma except for the company and the bank account with A Bank IN Oklahoma. Petitioners had no family or relatives in Oklahoma and had no roots with the State of Oklahoma.

23. Upon returning to the states in August, 1990, Petitioners did not renew their Oklahoma Drivers licenses, but obtained Louisiana drivers licenses. While in Venezuela, Petitioners obtained Venezuelan drivers licenses.

24. Petitioner A testified that among the myriad of possibilities, it was always a possibility that he and his family could move back to Oklahoma because of the company's operations in Oklahoma. Petitioners, however, had no idea that they would return to Oklahoma and instead intended to return overseas after the CITY A, LOUISIANA project.

25. Petitioners utilized a tax preparer CITY A, Louisiana, in preparing their income tax returns for the 1990 tax year. The preparer took the information from the W-2 prepared by ANONYMOUS COMPANY and reported all the income earned by Petitioner A in 1990 on the 1990 State of Oklahoma Individual Income Tax Return, Form 511. The Form 511 listed Petitioners address as CITY A, Louisiana, and reported that they were part-year residents for the period of January 1, 1990 to September 31 [sic], 1990. After crediting Oklahoma Income Tax Withheld of Five Hundred Eighty-two Dollars ($582.00), the return reported a tax due of Two Thousand Eight Hundred Eighty-six Dollars ($2,886.00).

26. An income tax warrant for the 1990 income tax was filed against Petitioners in ANONYMOUS County, Oklahoma, in the amount of Three Thousand Five Hundred Twenty Dollars and Thirteen Cents ($3,520.13), inclusive of interest in the amount of Four Hundred Eighty-nine Dollars and Eighty-three Cents ($489.83) and penalty in the amount of One Hundred Forty-four Dollars and Thirty Cents ($144.30). The income tax warrant lists the address of Petitioners as CITY B, Louisiana.

27. On or about February 20, 1993, Petitioners forwarded a letter of explanation with attached documents and a 1990 Amended Oklahoma Individual Income Tax Return, Form 511X, to the Division. The letter set forth the circumstances for Petitioners' argument that they were not residents of the State of Oklahoma during 1990 and owed no state income taxes. The letter also indicated that income taxes were paid to the State of Louisiana for the period of August 31, 1990 through December 31, 1990. The 511X reported Oklahoma taxable income as zero and no tax liability for the 1990 tax year.

28. By letter dated February 26, 1993, an auditor for the Division requested additional information concerning the corrected W-2s issued by ANONYMOUS COMPANY.

29. On or about March 31, 1993, ANONYMOUS COMPANY sent a letter of explanation for the corrected W-2s issued by the company. The corrected W-2s report income earned in the State of Louisiana as Fourteen Thousand Three Hundred Six Dollars and Fifty-six Cents ($14,306.56) and income tax withheld as Five Hundred Eighty-one Dollars and Sixty-seven Cents ($581.67), and income earned in the State of Oklahoma as Fifty-four Thousand Six Hundred Twenty-seven Dollars and Forty-nine Cents ($54,627.49) and income tax withheld as zero.

30. Utilizing this information, the auditor adjusted the amount of state income tax due by Petitioners for the 1990 tax year by allowing the subtraction of the income earned in the State of Louisiana in 1990 in arriving at Oklahoma adjusted gross income.

31. The auditor concluded that the Petitioners had not effectuated a change of domicile until establishing residency in the State of Louisiana.

32. On April 16, 1993, the Division caused to be issued a notice of proposed adjustment to Petitioners' 1990 511X. The notice proposes a total amount due of Three Thousand Four Hundred Fifty-seven Dollars and Twelve Cents ($3,457.12), inclusive of tax in the amount of Two Thousand Five Hundred Seventy-one Dollars ($2,571.00), interest in the amount of Seven Hundred Fifty-seven Dollars and Fifty-seven Cents ($757.57), and penalty in the amount of One Hundred Twenty-eight Dollars and Fifty-five Cents ($128.55).

33. By letter dated May 2, 1993, Petitioners timely protested the notice of proposed adjustment.

34. Petitioners subsequently paid the amount of tax in controversy in order to receive a release of the income tax warrant and lien.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Petitioners were "resident individuals" of the State of Oklahoma for the period of January 1, 1990 through August 31, 1990, thereby subjecting the income earned in Venezuela to Oklahoma income tax.

Petitioners contend that the assessment of Oklahoma income tax on the income earned while working in Venezuela is erroneous. In support of this contention, Petitioners argue that the facts and circumstances presented in this case prove they effected a change of domicile.

The Division contends that the assessment should be sustained. In support of this contention, the Division argues that Petitioners did not abandon Oklahoma as their domicile until they established a domicile in Louisiana.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, ∋207.

2. The Oklahoma Income Tax Act at 68 O.S. 1991, ∋2353(4) defines "resident individual" and "nonresident individual" as follows:

> "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 the absence of proof to the contrary. A "nonresident individual" means an individual other than a resident individual.
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> For all tax years beginning after December 31, 1981, a nonresident individual, with respect to foreign earned income and deductions, shall include an individual who:
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> a. during any period of twenty-four (24) consecutive months is out of the United States at least five hundred fifty (550) days,
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> b. during such period referred to in subparagraph a is not present in this state for more than ninety (90) days during any taxable year,
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> c. during any period of less than an entire taxable year, which period is contained within the period referred to in subparagraph a, is not present in this state for a number of days in excess of an amount which bears the same ratio to ninety (90) days as the number of days contained in the period of less than an entire taxable year bears to three hundred sixty-five (365), and
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> d. during such period referred to in subparagraph a does not maintain a permanent place of abode in this state at which the spouse of the individual, unless such spouse is legally separated, or minor children of the individual are present for more than one hundred eighty (180) days.

3. Domicile is a proper basis for the assessment of state income taxes on an individual.[1] *New York ex rel. Cohn v. Graves*, 300 U.S. 308, 313 (1937); *Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276, 279 (1932).

4. A person's domicile is judicially defined to mean, "the place where [a person] has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has intention of returning." *Suglove v. Oklahoma Tax Commission, 605 P.2d 1315, 1317 (Okl. 1979),* citing *Jones v. Reser*, 61 Okl. 46, 160 P.58, 59 (1916). In *Suglove*, the Court addressed domicile and set forth the following principles which have evolved in connection with the determination of domicile, to-wit:

> First, a person may have only one domicile at a time. Second, domicile, once fixed is presumed to continue until a new one is established. Third, 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. Indicia of a changed domicile are to be found in the habits of the person, his business and domestic relations, declarations, exercise of political rights, community activities and other pertinent objective facts ordinarily manifesting the existence of requisite intent. As a general principle, Oklahoma domicile is presumed to continue unless an individual can show that a change has occurred.

5. Whether a change of domicile has occurred is a question of fact to be determined in accordance with the facts and circumstances of each individual case. *Graham v. Graham*, 330 P.2d 1046 (Okl. 1958). The burden of proving a change of domicile is on the person attempting to show the same. *McKiddy v. State*, 366 P.2d 933 (Okl. 1961); *Jones v. Burkett*, 346 P.2d 338 (Okl. 1959). Where a taxpayer moves overseas on a foreign-situs job assignment as opposed to a move to another state continued in-state domicile is inferred until rebutted. *Suglove*, supra, at 1319. The inference of continued in-state domicile on a foreign-situs job assignment has a reasonable basis and is constitutionally permissible. *Id.*, at 1320. The Court in discussing the distinction between moves to another state and moves to foreign-situs job assignments found:

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[1] A person domiciled in this state is an Oklahoma resident. Rule 23.003.01(A) of the Oklahoma Tax Commission Permanent Rules. Rule 23.003.01 provides:

> A. An Oklahoma resident is a person domiciled in this state. "Domicile" is the place established as a person's true, fixed, and permanent home. A domicile, once established, remains until a new one is established. The state for which withholdings are referred on the Form W-2 shall be deemed evidence of State of Residence.
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> B. One is presumed to retain his Oklahoma residency if he has:
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> 1. An Oklahoma Homestead Exemption;
> 2. His family remains in Oklahoma;
> 3. He retains an Oklahoma drivers license;
> 4. He intends to return to Oklahoma; or
> 5. He has not abandoned his Oklahoma residence.

> On the other hand, a move to a foreign country entails a drastic change in one's life, thus making the intention to stay permanently in a foreign country less likely. Moving to a foreign country means leaving one's own culture, one's family and friends in a way which most people would be reluctant to do. It is hence not unreasonable to infer that when an individual moves abroad on a foreign-situs job assignment he is not necessarily adopting it as a new domicile. (Citation omitted).

6. Here, the undersigned finds that the evidence presented by Petitioners shows a change of domicile from the State of Oklahoma and overcomes the inference of continued in-state domicile. The determining fact is that Petitioners residency in the State of Oklahoma prior to their move to Venezuela was transitory. Petitioners had no roots with Oklahoma prior to their move and maintained no contact with Oklahoma after their move except for a bank account which had been used by them throughout their transitory stay in Oklahoma. Petitioners residency in Oklahoma was for definitive reasons and for definitive periods. Nothing in the record proves that Petitioners thought of Oklahoma as their home prior to their move. For these reasons, the undersigned finds that Petitioners did effect a change of domicile upon their move to Venezuela and were not residents of the State of Oklahoma subject to income tax on the income earned in Venezuela during the 1990 tax year.

7. Petitioners' protest to the assessment of income taxes on the income earned in Venezuela should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of Petitioners be sustained. It is DETERMINED that the amount of income tax, interest, and penalty paid by Petitioners be refunded.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.