JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-06-02-007 / NOT PRECEDENTIAL**
ID: **P9600212**
DATE: **06-02-98**
DISPOSITION: **SUSTAINED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On October 31, 1990, MR. PROTESTANT, retired from his job in ANOTHER STATE. MR. PROTESTANT had worked for the ANONYMOUS Water Authority, ANONYMOUS Division in ANOTHER STATE since 1977.

2. At the time of his retirement, Protestants were renting an apartment in ANOTHER STATE. Protestants had previously owned a home in ANOTHER STATE, but sold the home in 1988.

3. Upon retirement, Protestants moved to ANYTOWN, Oklahoma where they lived with MR. PROTESTANT'S parents until the middle of January, 1991.

4. From the middle of January, 1991, to sometime in February, 1991, Protestants stayed in a summer retreat owned by friends of MR. PROTESTANT'S parents. According to Protestants, they were permitted to live in the retreat until they decided what to do because of frequent break-ins.

5. On January 25, 1991, Protestants received a lump sum distribution of their retirement benefits in the amount of $64,535.97 from ANONYMOUS Water Authority.

6. In February, 1991, after Protestants decided to remain in Oklahoma, they purchased the summer retreat.

7. According to Protestants, prior to the purchase of the retreat, they had not unpacked their furniture and belongings. Protestants, however, had enrolled their daughter in school in ANYTOWN, OKLAHOMA.

8. By letter dated October 26, 1995, the Division notified Protestants that although information made available by the Internal Revenue Service indicated that Protestants had income sufficient to require the filing of a 1991 federal income tax return, the records of the Division did not show a 1991 Oklahoma income tax return on file.

9. Thereafter, Protestants filed their 1991 through 1995 Oklahoma income tax returns. On the 1991 income tax return, Protestants reported the income earned by them in the State of Oklahoma during 1991 and excluded the lump sum distribution as out of state income.

10. The income earned in Oklahoma is attributable to Protestants' employment subsequent to February, 1991. MR. PROTESTANT worked for one week in May, 1991 and MRS. PROTESTANT went to work in September, 1991.

11. The Division reviewed the 1991 income tax return, disallowed the exclusion of the lump sum retirement distribution from Oklahoma taxable income and assessed additional income tax in the amount of $3,369.00.

12. Protestants timely protested the assessment.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the disallowance of the exclusion of the lump sum retirement distribution from Oklahoma taxable income is erroneous. The resolution of this issue is dependent upon whether the evidence indicates that Protestants had changed their domicile prior to the receipt of the lump sum retirement distribution.

Protestant contends that the Division erred in disallowing the exclusion of their lump sum retirement distribution. In support of this contention, Protestants argue that they had not changed their domicile prior to the receipt of the lump sum retirement distribution. In the alternative, Protestants argue that notwithstanding whether they had changed their domicile prior to the receipt of the distribution, the distribution is not taxable by Oklahoma since the income was earned in ANOTHER STATE.

The Division contends that the disallowance of the exclusion of the lump sum retirement distribution from Oklahoma taxable income was proper. In support of this contention, the Division argues that domicile forms the basis for taxation of the distribution dispute the fact that the retirement was earned in ANOTHER STATE. The Division further argues that the evidence shows Protestants had established Oklahoma as their domicile in 1991.

CONCLUSIONS OF LAW

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

2. A "resident" is defined by statute to mean "a natural person who is domiciled in this state". 68 O.S. Supp. 1989, § 2353(4). A person's domicile is the place where he has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. ***Suglove v. Oklahoma Tax Commission***, 605 P.2d 1315, 1317 (Okl. 1979). ***Jones v. Reser***, 61 Okl. 46, 160 p. 58, 59 (1916). Domicile forms the basis for imposition of state income tax on the income of an individual, whether said income is earned without the state. ***Suglove***, supra at 1317. See, ***Davis v. Oklahoma Tax Commission***, 488 P.2d 1261 (Okl. 1971) and ***Colchensky v. Oklahoma Tax Commission***, 184 Okl. 207, 86 P.2d 329 (1939).

3. In ***Suglove***, the Court set forth the general principles which have evolved in connection with the determination of domicile, to-wit:

> First, a person may have only one domicile at a time. [Citation omitted]. Second, domicile, once fixed, is presumed to continue until a new one is established. [Citation omitted]. 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. [Citation omitted].

The Court in ***Suglove*** also recognized that a reasonable basis for distinguishing between moves abroad and moves to another state and the proof required for showing a change of domicile is constitutionally permissable. Id., at 1320. The Court held that "[I]n absence of countervailing factors, it is not unreasonable to infer that such a move [from one state to another] is permanent and constitutes a change of domicile." Id.

4. Here, the evidence adduced at the hearing does not support a finding that Protestants had abandoned ANOTHER STATE as their domicile prior to receipt of the lump sum retirement distribution. The facts corroborate Protestants' testimony that they had not decided whether to move back to ANOTHER STATE, stay in Oklahoma or move to some other state. Although Protestants move to Oklahoma was permanent in that it was indefinite, the countervailing factors belie a change of domicile. Accordingly, the Division's disallowance of the exclusion of the lump sum retirement distribution from Oklahoma taxable income was erroneous.

5. Protestant's protest should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of PROTESTANTS, be sustained.

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.