

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 98-09-29-005 / NOT PRECEDENTIAL
ID: P9700014
DATE: 09-29-98
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During 1995, Protestant had income from sources within the State of Oklahoma and OUT OF STATE, including a distribution of \$1,992.00 from the state retirement system OUT OF STATE. The income represents salaries or wages from employment in each of the states.

2. Protestant filed a nonresident income tax return with the State of Oklahoma for the 1995 tax year. On the return, Protestant deducted the amount of the retirement distribution from the calculation of "adjusted gross income from all sources". The Oklahoma adjustment utilized to deduct the distribution was "pensions exempted by statute".

3. The Division audited the return and disallowed the deduction. As a result of the disallowance, the Division proposed the assessment of additional income tax against Protestant in the amount of \$159.00.

4. Protestant timely protested the proposed adjustment and assessment.

ISSUE AND CONTENTIONS

Two issues are presented for decision. The first issue is whether the retirement distribution qualifies as a pension exempt from Oklahoma taxable income under the Oklahoma Income Tax Act. The second issue is whether the distribution is subject to Oklahoma income tax.

Protestant contends that the proposed adjustment and assessment of additional Oklahoma income tax is erroneous. In support of this contention, Protestant argues that the OUT OF STATE Retirement System is equivalent to the Oklahoma Public Employees Retirement System and is therefore exempt from Oklahoma taxable income. Protestant further argues that the distribution was earned and received prior to her becoming a resident of Oklahoma and therefore the distribution is not subject to Oklahoma income tax.

The Division contends that the proposed adjustment and assessment of additional income tax is correct. In support of this contention, the Division argues that the distribution is not exempt from Oklahoma taxable income under 68 O.S. Supp. 1993, § 2358(D)(9) since the source of the distribution is not expressly included therein. The Division further argues that whether the income was earned and received prior to Protestant becoming a resident of Oklahoma is irrelevant since such income is not subject to Oklahoma income tax.

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. The Oklahoma taxable income of a part-year resident or nonresident individual is calculated by following the provisions of Section 2358 of the Oklahoma Income Tax Act as if all income were earned in Oklahoma. 68 O.S. Supp. 1994, § 2362. "Oklahoma taxable income" is defined for purposes of the Oklahoma Income Tax Act to mean "'taxable income' as reported . . . 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." 68 O.S. 1991, § 2352(12). Therefore, whether the distribution was earned and received prior to her becoming a resident of Oklahoma, the income was distributed to her in 1995 and is included in the calculation of Protestant's Oklahoma taxable income.

3. Deductions [and exemptions from tax] are a matter of legislative grace and power. **Flint Resources Company v. Oklahoma Tax Commission**, 780 P.2d 665, 673 (Okl. 1989). In order to be allowed, authority for the deduction sought must be clearly expressed. **Home-State Royalty Corporation v. Weems**, 175 Okla. 340, 52 P.2d 806 (1935). None may be allowed in absence of a statutory provision therefor. *Id.* See, **New Colonial Ice Co. v. Helvering**, 292 U.S. 435, 440, 54 S.Ct. 788, 78 L.Ed. 1348 (1934).

4. Section 2358(D)(9) of the Oklahoma Income Tax Act exempts up to \$5,500.00 of retirement benefits received by an individual from certain enumerated sources of retirement. The OUT OF STATE Retirement System is not expressly included in the enumerated sources of exempt retirement. Where the language of a statute is plain and unambiguous and its meaning is clear, it must be followed without further inquiry. **Special Indemnity Fund v. Harold**, 398 P.2d 827 (Okl. 1964). Accordingly, the retirement distribution received by Protestant from the OUT OF STATE Retirement System is not exempt from the calculation of Protestant's Oklahoma taxable income.

5. Part-year resident and nonresident individuals shall determine the amount of income tax payable to the State of Oklahoma by multiplying the amount of tax computed on their Oklahoma taxable income by a fraction the numerator of which is adjusted gross income from Oklahoma sources and the denominator of which is adjusted gross income from all sources. 68 O.S. Supp. 1994, § 2362. The use of out-of-state income to calculate the tax rate for in-state income does not in any way impose tax on the out-of-state income. ***Walters v. Oklahoma Tax Commission***, 935 P.2d 398 (Okl.App. 1996).

6. Protestant's protest should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of PROTESTANT, be denied. It WAS further DETERMINED that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiency due and owing.

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.