JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-05-10-015 / NOT PRECEDENTIAL**
ID: **P9700208**
DATE: **05-10-99**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The subject of the current protest is the adjustment and assessment of additional income tax in the amount of $489.00 on Protestant's 1994 amended Oklahoma income tax return.

2. On the amended return, Protestant excluded from Oklahoma taxable income certain income earned in AN ANONYMOUS STATE ($9,915.74) and in an ANONYMOUS COUNTRY ($1,161.20) during 1994.

3. The evidence in the file indicates that Protestant accepted a position with COMPANY ONE of CITY A, IN AN ANONYMOUS STATE and moved to the ANONYMOUS STATE in June or July, 1994 on a temporary training basis. Protestant was scheduled to train for his job assignment in the ANONYMOUS STATE for a couple of months and then be transferred to AN ANONYMOUS COUNTRY on a permanent basis. The ANONYMOUS COUNTRY assignment was terminated after a couple of months and Protestant returned to the State of Oklahoma.

4. The Division, based on information received from Protestant during the audit of the return, denied the exclusion of the income earned in the ANONYMOUS STATE and THE ANONYMOUS COUNTRY from Oklahoma taxable income.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the evidence presented shows proof of a "change of domicile" by Protestant during 1994.

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 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.

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:

a. during any period of twenty-four (24) consecutive months is out of the United States at least five hundred fifty (550) days,

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,

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

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:

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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.

B. One is presumed to retain his Oklahoma residency if he has:

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.

> 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:

> 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 does not show proof of a change of domicile from the State of Oklahoma by Protestant during 1994. As a matter of fact, Protestant did not come forward with any evidence of indicia showing a change of domicile.

7. 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 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.