JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-02-22-012 / NOT PRECEDENTIAL**
ID: **P9800212**
DATE: **02-22-00**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the Joint Stipulation of Facts, the exhibits attached thereto and the position statements of the parties, the undersigned finds:

The parties stipulate to the following:

1. MR. PROTESTANT moved from OUT OF STATE to ANYTOWN, Oklahoma in October of 1993. His wife, MS. PROTESTANT, followed her husband to ANYTOWN, Oklahoma in December of 1993.

2. The protestants, have continued living in ANYTOWN and admit Oklahoma residency for the tax year 1994.

3. In 1994, MS. PROTESTANT received a lump sum payment of $21,976.35 from the OUT OF STATE Teacher's Retirement system. She also received wage income from ANONYMOUS OUT OF STATE School District in the amount of $5,691.29.

4. On April 15, 1995, the protestants filed a joint OUT OF STATE Nonresident Income Tax Return reporting this 1994 income. In it the protestants reported OUT OF STATE earnings of $27,668.00.

5. On April 15, 1995, the protestants also filed a joint Oklahoma Resident Individual Income Tax Return. In this return they claimed the income received from OUT OF STATE as exempt "out of state" income and arrived at their Oklahoma Adjusted Gross Income accordingly.

6. On April 13, 1998, the Audit Division of the Oklahoma Tax Commission (Division) sent a letter of assessment to the protestants based upon the Federal Adjusted Gross Income,[1] *including* the OUT OF STATE source income back into the Oklahoma Adjusted Gross Income. The new Oklahoma AGI resulted in the liability as follows:

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[1]Information provided by the Internal Revenue Service pursuant to section 6103(d) of the Internal Revenue Code for comparison shows a Federal AGI of $61,930.00. Protestants reported a Federal AGI of $61,569.00 on their Oklahoma

State Tax Return and a Federal AGI of $61,735 on their OUT OF STATE Tax Return. Protestants admit the Federal AGI reported to the Division by the IRS is correct.

Additional Tax Due	$1,931.00
Penalty	96.55
15% Interest	866.57
New Total Amount Due	$2,894.12

7. The protestants sent a letter of protest on April 23, 1998, with documentation showing the payment of OUT OF STATE Income Tax.

8. The Division then credited protestants the amount of tax paid OUT OF STATE and on May 18, 1998, sent a letter of adjusted assessment as follows:

Adjusted Tax Due	$1,894.00
Penalty	94.70
15% Interest	877.21
Adjusted Total Amount Due	$2,865.91

9. The protestants timely protested this assessment.

ISSUE AND CONTENTIONS

The issue presented for decision is whether income earned by an individual prior to becoming a resident of Oklahoma, but received subsequent to establishing Oklahoma as their domicile, is subject to Oklahoma income tax.

Protestants contend that income earned by them while residents OUT OF STATE should not be subject to Oklahoma income tax. In support of this contention, Protestants argue that it is not philosophically or logically reasonable to pay taxes on the same income in two states.

The Division contends that income at issue is subject to Oklahoma income tax. In support of this contention, the Division argues that the income at issue derives from intangible personal property and therefore, the income is subject to Oklahoma income tax in accordance with 68 O.S. 1991, § 2358(A)(4)(b).

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 state has the power to tax its own residents on their net incomes though derived wholly from activities carried on by them outside of the state. ***Davis v. Oklahoma Tax Commission***, 488 P.2d 1261 (Okl. 1971); ***Colchensky v. Oklahoma Tax***

Commission, 184 Okl. 207, 86 P.2d 329 (1939). Domicile itself establishes a basis for taxation. ***Colchensky***, supra at 184 Okl. 208.

3. Income received by a resident individual as compensation for personal services in a state other than Oklahoma is subject to Oklahoma income tax. 68 O.S. 1991, § 2357(B)(1). See, ***Oklahoma Tax Commission v. Benham***, 198 Okl. 384, 179 P2d 123 (1947). A credit against the tax imposed on such income by Oklahoma is allowed for the amount of tax paid on the income in the other state. Id.

4. In ***Benham***, supra, the Court in a syllabus to the decision concluded:

> The entire income of an individual Oklahoma resident derived from wages, salaries, commissions, professional or occupational earnings, or other compensation received from personal services is taxable in this state without regard to the place wherein the services were performed.

5. Here, the income was received by Protestants subsequent to them establishing Oklahoma as their domicile. Accordingly, the income at issue is subject to Oklahoma income tax.

6. Protestants' protest to the assessment of additional income tax, as adjusted, should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of Protestants be denied. It WAS further DETERMINED that the penalty and interest be waived and that the amount of tax, as adjusted, 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.