

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-03-14-006 / NOT PRECEDENTIAL
ID: P9800128
DATE: 03-14-00
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

1. In 1994 Protestant earned income in the amount of \$3,599.95 from ANONYMOUS STATE sources as well as \$35,528.98 from Oklahoma sources for a total federal gross income of \$39,128.93 and a federal adjusted gross income of \$36,273.00.

2. Protestant correctly reported her gross and adjusted gross income to AN ANONYMOUS STATE and the Internal Revenue Service.

3. On her 1994 ANONYMOUS STATE Tax Return, Protestant offset her ANONYMOUS STATE income of \$3,599.95 (rounded to \$3,600 on return) with a \$3,091 loss relating to real property located in ANONYMOUS STATE. As a result of this offset, Protestant paid no ANONYMOUS STATE income tax.

4. On her 1994 Oklahoma Tax Return, Protestant included neither her wages earned from ANONYMOUS STATE, nor her losses sustained in ANONYMOUS STATE, resulting in underreporting of Oklahoma income and an underpayment of Oklahoma Income Tax.

5. Upon comparison with information submitted by the Internal Revenue Service under the authority of 26 U.S.C. § 6103(d), the Oklahoma Tax Commission, Audit Division, determined that Protestant had incorrectly reported her income on her 1994 Oklahoma Tax Return, resulting in a tax deficiency of \$303.29.

6. In response, Protestant provided additional documentation to the Division. Based on this information, the Division on April 14, 1998 assessed the 1994 additional tax at \$422.00, plus interest of \$190.00 through April 14, 1998 and a penalty of \$21.00 or a total (as of April 14, 1998) of \$633.00.

Additional findings:

1. Protestant timely protested the proposed assessment.
2. The total amount of the proposed assessment of April 14, 1998, is in controversy.

3. Protestant moved to Oklahoma in 1993 and admits that she was an Oklahoma resident and domiciliary for the 1994 tax year. See, Protestant's 1994 ANONYMOUS STATE Nonresident Income Tax Return.

ISSUE AND CONTENTIONS

Two issues are presented for decision. The first issue is whether the income earned by Protestant in ANONYMOUS STATE is subject to Oklahoma income tax. The second issue is whether the loss sustained by Protestant in 1994 on the sale of real property in the ANONYMOUS STATE is required to be added back to federal adjusted gross income to arrive at Oklahoma adjusted gross income.

Protestant contends that income earned while a resident of the ANONYMOUS STATE is not be subject to Oklahoma income tax. Protestant further contends that the loss sustained from the sale of real property located in ANONYMOUS STATE is not subject to inclusion in Oklahoma adjusted gross income. In support of these contentions, Protestant argues that she should not be legally required to file and pay taxes to two different states on the same money.

The Division contends that the Commission has statutory authority to include in Oklahoma adjusted gross income: a.) wages earned by Oklahoma residents while in other states as well as b.) losses incurred by Oklahoma residents on the sale of real property located outside Oklahoma.

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. Gains or losses from the sale of real and tangible personal property shall be allocated in accordance with the sites of such property. 68 O.S. 1991, § 2358(A)(4)(a). Losses sustained from such property located outside the State of Oklahoma must be added to federal adjusted gross income to arrive at Oklahoma adjusted gross income. Rule 710:50-15-52(b) of the *Oklahoma Administrative Code*.

6. The income earned by Protestant as compensation for personal services performed in the ANONYMOUS STATE is subject to Oklahoma income tax since the income was received by Protestant subsequent her establishing Oklahoma as her residence and state of domicile.

7. The loss sustained by Protestant in 1994 on the sale of real property in the ANONYMOUS STATE is required to be added back to federal adjusted gross income to arrive at Oklahoma adjusted gross income.

8. Protestant's protest to the assessment of additional income tax, interest and penalty 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.