JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-05-08-002 / NOT PRECEDENTIAL**
ID: **P9900323**
DATE: **05-08-00**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. PROTESTANTS, timely filed a 1996 Form 511EZ joint income tax return, showing a federal adjust gross income of $28,977.00.

2. By letter dated September 6, 1999, the Audit Division of the Oklahoma Tax Commission corrected Protestants adjusted gross income to reflect an amount of $43,115.00 and issued a proposed assessment to Protestants for additional income tax due in the amount of $1,444.59. The assessment was based upon an adjusted gross income comparison with information submitted by the Internal Revenue Service.

3. In response, Protestants advised the Division that MS. PROTESTANT was a part-year resident of ANOTHER STATE during tax year 1996.

4. The Division recalculated the amount of tax due by including in Oklahoma taxable income, Protestants income from all sources less the deduction and exemptions available to Protestant, then pro-rating the amount of income tax after the deduction of allowable credits based on a percentage, the numerator of which is "Oklahoma source income" and the denominator of which is "all sources income."

5. Only Oklahoma source income was subjected to Oklahoma income tax.

6. By letter dated October 15, 1999, the proposed assessment was amended and Protestants were advised of tax due in the amount of $1,214.00, less tax previously reported in the amount of $823.00, leaving an aggregate amount due of $576.81, consisting of $391.00 tax, $146.71 interest through October 15, 1999, and $39.10 penalty.

7. Protestants filed a timely protest to the amended assessment, stating that MS. PROTESTANT'S Oklahoma income for 1996 was $6,558.00 and her OUT OF STATE income was $14,139.00 and that the Division incorrectly reversed these amounts when making its assessment.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the assessment of additional income tax on Oklahoma source income based on a method whereby income from all sources is utilized in calculating the tax rate on the Oklahoma source income is erroneous.

Protestants contend that in 1996 MS. PROTESTANT was a part-year resident of ANOTHER STATE, but that the Tax Commission did not exclude the correct amount of income earned while a non-resident on Form 511-NR, and that the Form 511EZ was appropriately filed. The Division contends that the income tax liability was correctly calculated using Form 511-NR and that Protestants have not sustained their burden of proving that the action or proposed action of the Tax Commission is incorrect.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. § 221.

2. The Oklahoma taxable income of part-year resident individuals and nonresident individuals shall be calculated as if all income were earned in Oklahoma. 68 O.S. Supp. 1994, § 2362. The amount of tax payable to the State of Oklahoma is computed by multiplying the applicable percentage (adjusted gross income from Oklahoma sources divided by adjusted gross income from all sources) with the amount of tax computed on Oklahoma taxable income after the deduction of all allowable credits. *Id*. The use of out-of-state income to calculated 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).

3. The Division properly computed Protestants' income tax liability to the State of Oklahoma for tax year 1996. 68 O.S. Supp. 1994, §2362.

4. The protest should be denied.

DISPOSITION

It WAS the DETERMINED, based upon the specific facts and circumstances of this case, that the income tax protest of PROTESTANTS be denied.

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.