JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-06-20-022 / NOT PRECEDENTIAL**
ID: **P9900090**
DATE: **06-20-00**
DISPOSITION: **SUSTAINED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and the record of the proceedings, including the exhibits received into evidence, the undersigned finds:

1. That Protestants filed Federal income tax returns for years 1995, 1996, 1997, and 1998. That Protestants' filing status for these years was "married filing joint return."

2. That MRS. PROTESTANT filed Oklahoma Form 511-NR (Nonresident, Part-Year Resident) for the years 1995, 1996, 1997, and 1998. That the "State of Residence" was marked "OUT OF STATE" for Husband and "Oklahoma" for Wife.

3. That on December 31, 1998, the Division issued proposed assessments of additional income tax to Protestants for the 1995, 1996, and 1997 tax years, as follows:

	Tax	Interest (To 12-31-98)	Penalty	TOTAL
1995	$1079.00	$ 438.40	$107.90	$1625.30
1996	1499.00	384.19	149.90	2033.09
1997	1793.00	190.60	179.30	2162.90
TOTAL	$4371.00	$1013.19	$437.10	$5821.29

4. That on August 16, 1999, the Division issued a proposed assessment of additional income tax to Protestants for the 1998 tax year, as follows:

	Tax	Interest (To 08-16-99)	Penalty	TOTAL
1998	$1759.00	$88.91	$175.90	$2023.81

5. That the total aggregate amount in controversy is $7845.10, plus accruing interest.

6. That the proposed assessments are based on the Division's position that both Protestants were domiciled in the State of Oklahoma and MR. PROTESTANT'S income earned OUT OF STATE should not have been excluded from Oklahoma taxable income.

7. MR. PROTESTANT timely protested the assessments, contending that he is a resident OUT OF STATE.

8. That a Prehearing Conference was held in this matter on May 6, 1999. MR. PROTESTANT was in attendance, as was the Division. At that Prehearing Conference, Protestant advised that he and his wife are separated and that he is a resident OUT OF STATE and his wife is a resident of the State of Oklahoma.

9. That subsequent to the Prehearing Conference, a hearing was set in this matter and was held on September 13, 1999. That Protestants neither appeared at the hearing nor responded to the notice thereof.

10. That MR. SENIOR TAX AUDITOR testified on behalf of the Division at the hearing held on September 13, 1999. MR. SENIOR TAX AUDITOR testified that it was the Division's position that MR. PROTESTANT maintains his domicile in Oklahoma. In support of this testimony, the Division offered the following:

a. Copy of a "Residential Lease Agreement" between MR. PROTESTANT and MR. LANDLORD for the lease of property in CITYONE, OUT OF STATE, for the period of June, 1994 through June, 1995 (unless renewed). The "Agreement" was dated June 1, 1994, but the form was generated in 1998.

b. Copy of Protestants' check signed by MRS. PROTESTANT and payable to the Oklahoma Tax Commission. The check shows the account at the ANONYMOUS National Bank and Trust Company, ANYTOWN, Oklahoma, in the names of MR. AND MRS. PROTESTANT. The check shows an Oklahoma address and phone number.

c. Copy of a statement dated July 15, 1998, from MR. LANDLORD, CITYTWO, OUT OF STATE, stating that MR. PROTESTANT rented a room from him from June, 1994 until January, 1998, and that he tended the farming and ranching to pay his rent. The Division asserts this is in contradiction to the above-mentioned "Residential Lease Agreement."

11. That Protestant called the Office of the Administrative Law Judges in January, 2000,

to inquire about the status of his case. When he learned he that he had failed to appear for the September 13, 1999 hearing, he advised the Court by letter filed January 25, 2000, that he had not received notice of the hearing and ask that another hearing be scheduled.

12. That Protestant's request was granted and a hearing was set in this matter and was held on April 12, 2000. Both MR. PROTESTANT and the Division were in attendance.

13. That MR. PROTESTANT testified at the hearing held on April 12, 2000. MR. PROTESTANT testified that he does not live in Oklahoma; that he separated from his wife and moved OUT OF STATE in April, 1985; that they do not believe in divorce and that he moved back to Oklahoma two (2) or three (3) times during this period for no more than seven (7) months when they tried unsuccessfully to reconcile; that they maintain separate banking accounts in Oklahoma, but both are signatories on each account; that they are now considering an attempt to reconcile, with MRS. PROTESTANT planning to move to MR. PROTESTANT'S OUT OF STATE residence. In support of this testimony, Protestant offered the following:

a. Copy of a letter dated January 20, 1999 from MR. PROTESTANT'S CPA, MR. CPA, CITYONE, OUT OF STATE, to the Audit Division, providing requested information.

b. Copy of Voter Registration Certificate issued to MR. PROTESTANT, 11 ANYSTREET, CITYONE, OUT OF STATE. The Certificate was valid from 02/06/99 through 12/31/99. MR. PROTESTANT noted on the copy that a new card is sent each year, but he had not kept copies of his previous cards.

c. Copy of Driver's License No. ZZZZZZZZ from the OUT OF STATE Department of Public Safety issued to MR. PROTESTANT, P.O. Box MMM, CITYONE, OUT OF STATE. The license expiration date is 08/31/01.

d. Copy of application for AN OUT OF STATE County Library Card dated 08/11/94 for MR. PROTESTANT, Box RRR, City. The application showed MR. PROTESTANT'S Driver's License NUMBER. and Library Card NUMBER.

e. Copy of AN OUT OF STATE County Library Card issued to MR. PROTESTANT, Box RRR, City.

f. Copy of Post Office Box Fee Register for MR. PROTESTANT, CITYONE, OUT OF STATE, showing fees paid on 04/94, 05/95, 05/96, 05/97, and 05/98.

g. Copy of a "Residential Lease Agreement" between Tenant MR. PROTESTANT and MR. LANDLORD for the lease of property at 11 ANYSTREET, CITYONE, OUT OF STATE, for the period of 06/01/94 through 06/01/95 (unless renewed). MR. PROTESTANT testified that this was an oral agreement from the beginning and the parties filled out the written lease only when this tax matter was brought up.

14. That MR. PROTESTANT was born and raised OUT OF STATE and that his wife, MRS. PROTESTANT, was born and raised in Oklahoma.

15. That the Oklahoma residence is in MRS. PROTESTANT'S name only.

16. That the account for the Rural Electric Cooperative for the residence in Oklahoma is in the name of MR. PROTESTANT. That MR. PROTESTANT testified that he didn't get some of the accounts in his name, including the Oklahoma checking and savings accounts and the rural electric cooperative account, changed over.

17. That MR. PROTESTANT is employed by the FEDERAL GOVERNMENT in CITYONE, OUT OF STATE.

18. That MR. PROTESTANT also owned and operated a cattle business during this period. That the cattle operations are located in CITYTHREE, OUT OF STATE, north of CITYONE, OUT OF STATE, and in SMALLTOWN, Oklahoma.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the evidence presented shows proof of a "change of domicile" by MR. PROTESTANT for the years in question.

Protestant contends that the assessments are erroneous for the reason that he is a resident OUT OF STATE and that the facts and evidence presented prove he has effected a change of domicile.

The Division contends that the assessments should be sustained for the reason that MR. PROTESTANT never abandoned his Oklahoma domicile and is, therefore, still an Oklahoma resident and subject to the income tax laws of the State of 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. 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.

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 the place where he has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the 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). Domicile forms the basis for imposition of state income tax on the income of an individual, whether said income is earned without the state. ***Suglove***, supra at 1317. See, ***Davis v. Oklahoma Tax Commission***, 488 P.2d 1261 (Okl. 1971) and ***Colchensky v. Oklahoma Tax Commission***, 184 Okl. 207, 86 P.2d 329 (1939).

5. In ***Suglove***, the Court set forth the general principles which have evolved in connection with the determination of domicile, to-wit:

> First, a person may have only one domicile at a time. Second, domicile, once fixed

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1A 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.
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> B. One is presumed to retain his Oklahoma residency if he has:
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> 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.

> 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.

The Court in ***Suglove*** also recognized that there is a reasonable basis for distinguishing between moves abroad and moves to another state. Id., at 1320. The Court held that "[I]n absence of countervailing factors, it is not unreasonable to infer that such a move [from one state to another] is permanent and constitutes a change of domicile." Id.

6. Here, the evidence supports a finding that MR. PROTESTANT abandoned Oklahoma as his domicile during the years in question and made OUT OF STATE his true, fixed and permanent home and principal establishment. Accordingly, the Division's proposed assessments of additional income tax for the years in question are erroneous.

7. Protestants' protest should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of Protestants, MR. AND MRS. PROTESTANT be sustained.

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.