JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-08-29-011 / NOT PRECEDENTIAL**
ID: **P9900246**
DATE: **08-29-00**
DISPOSITION: **SUSTAINED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION / EXCISE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, the undersigned finds:

(1) That on July 28, 1999, the Division caused to be issued a proposed assessment against Protestants as follows:

1999 Registration Fees	$6,217.00
1999 Registration Fee Penalty	25.00
2000 Registration Fees	5,598.00
2000 Registration Fee Penalty	25.00
Excise Tax	19,893.00
Excise Tax Penalty (a/o 07-28-99)	274.25
TOTAL	$ 32,032.25

(2) That the assessment was based on information that Protestants had titled and registered a 1996 Angola Prevost Motor Home (hereinafter "MH"), Vehicle Identification No. XXX, with ANONYMOUS STATE ONE, even though they were residents of Oklahoma.

(3) That Protestants representative filed a timely protest, asserting Protestants have not been domiciled in Oklahoma since on or about January 22, 1996.

(4) That a Prehearing Conference was held on December 13, 1999. Both parties appeared and agreed to submit this case for decision on briefs. That a Prehearing Conference Order was issued setting out a briefing schedule.

(5) That on December 13, 1999, an Affidavit from MR. X and MRS. X, was filed with the Office of the Administrative Law Judges. The Affiants stated the following:

(a) That they are husband and wife.

(b) That MRS. X is the daughter of Protestants.

(c) That on or about January 22, 1996, they purchased Protestants' residence and 160 acres upon which it is located.

(d) That Protestants have not purchased, leased, or occupied other real estate in the State of Oklahoma since selling the residence and acreage to Affiants.

(e) That Protestants have visited the Affiants on occasion. Affiants stated that Protestants visited them in 1999 for a total of 29 days.

(6) That on December 13, 1999, Oklahoma Tax Commission, an Affidavit from MRS. PROTESTANT, was filed with the Office of the Administrative Law Judges. The Affiant stated the following:

(a) That she was a resident of ANONYMOUS County, State of Oklahoma, for in excess of 30 years.

(b) That she acquired a fifty percent (50%) interest in a farming partnership with her husband, MR. PROTESTANT, which operated under the name of COMPANY ONE.

(c) That in 1993, Affiant and her husband decided that they would make their permanent home in ANONYMOUS STATE TWO and they sold most of their personal furniture and possessions. That since this time, Affiant did not nor does she ever intend to return to Oklahoma to live.

(d) That since 1993, Affiant and her husband have only returned to Oklahoma on occasion to visit their daughter and have spent no more than 40 days in total in the State of Oklahoma in any subsequent year.

(e) That in 1996, Affiant and her husband purchased a 1996 Angola Prevost, and the motor home was licensed and applicable taxes paid in ANONYMOUS STATE ONE, where they were then located. That the motor home has been consistently relicensed there as renewal licenses become necessary.

(7) That on December 13, 1999, an Affidavit from MR. PROTESTANT, was filed with the Office of the Administrative Law Judges. The Affiant stated the following:

(a) That he was a resident of ANONYMOUS County, State of Oklahoma, for in excess of 30 years.

(b) That he and his wife conducted a farming operation as a partnership under the trade name, COMPANY ONE.

(c)That he and his wife decided to make ANONYMOUS STATE TWO their retirement home during the fall of 1992 and the spring of 1993, and returned to ANONYMOUS County Oklahoma, and sold their furniture, fixtures, and personal belongings. That at that time, they leased their residence to their daughter and son-in-law.

(d) That in January, 1996, Affiant and his wife sold their residence and the 160 acres upon which it was located to their daughter and son-in-law.

(e) That in June, 1996, Affiant and his wive purchased a 1996 Angola Prevost motor home which was licensed in ANONYMOUS STATE ONE, the state where they were living when the motor home was purchased. That said motor home has continually been licensed there since such time.

(f) That the only property Affiant now owns in Oklahoma is farmland, held in the name of COMPANY ONE. That said farmland is leased, with a majority of the leases containing an option to purchase.

(g) That Affiant does not intend to return to Oklahoma, except to visit his daughter. That he has not returned to Oklahoma since the close of 1993 except for such purpose, and that the cumulative number of days spent in Oklahoma since that time would not exceed 40 days per year.

(8) That on December 17, 1999, Protestants filed the following documents with the Office of the Administrative Law Judges:

(a) Supplemental Affidavits from each Protestant setting forth their family history.

(b) Copy of the filed deed dated January 22, 1996, conveying their residence in COUNTY ONE, Oklahoma, to their daughter and son-in-law.

(c) Copy of the ad valorem statement from COUNTY ONE for the year 1997, reflecting that Protestants' daughter and son-in-law filed for homestead exemption.

(d) Copy of an Oklahoma Driver's License for MR. PROTESTANT, issued September 8, 1997, reflecting no photo and a CITYTHREE, ANONYMOUS STATE THREE address.

(e) Copy of motor home pad lease in CITYONE, ANONYMOUS STATE TWO, commencing in September, 1996.

(9) That in addition to the above, Protestants' Brief filed with the Office of the Administrative Law Judges on January 21, 2000, provides the following:

(a) That in 1990, in anticipation of retirement, the Protestants purchased an MCI Motor Coach and began taking extended trips sponsored by the Family Motor Coach Association (FMC).

(b) During 1990, 1991, and early 1992, the MCI Motor Coach, when not in use, was parked at their residence in COUNTY ONE, Oklahoma. The motor coach was licensed in the State of Oklahoma during this time.

(c) That when not on a sponsored tour with FMC, Protestants spent the summer and fall of 1992 and all of 1993 in the CITYTWO, ANONYMOUS STATE TWO, area, where the sister of MR. PROTESTANT resided. That in 1993, 1994, and 1995, the Motor Coach was licensed in ANONYMOUS STATE TWO, since that was where they were and where the coach was kept when not in use.

(d) That during June, 1996, Protestants traded their MCI Motor Coach in on a 1996 Angola Prevost Motor Coach, which was licensed in ANONYMOUS STATE ONE where they were then located participating in a rally sponsored by FMC. That ANONYMOUS STATE ONE licenses a motor coach for two (2) years at a time, that the licensing can be done by mail, and that Protestants have licensed the motor coach in ANONYMOUS STATE ONE since it was purchased.

(e) That Protestants lease a mobile home pad with a related storage building in CITYONE, ANONYMOUS STATE TWO, where they store items which cannot be carried in the coach and where they locate the coach between rallies. This is the location Protestants now intend and consider as home and where they intend to purchase a permanent residence when they no longer participate in sponsored tours.

(f) Protestants use a mailing address provided by FMC in CITYTHREE, ANONYMOUS STATE THREE, because of the mail forwarding service.

(g) That Protestants do not intend to discontinue or reduce their touring activities within the foreseeable future.

(h) While Protestants do not own any personal property located in Oklahoma, are no longer employed in Oklahoma, and have not spent more than an aggregate of 40 days per year in Oklahoma since 1992, they continue to file income tax returns in Oklahoma because the bulk of their income consist of income from leased land rentals and installment sales proceed which will continue to be taxable in Oklahoma so long as they occur.

(i) That both Protestants have declared that CITYONE, ANONYMOUS County, ANONYMOUS STATE TWO, is where they presently reside when not touring and the place to which, when absent they intend to return. That they lease property there, store excess personal property there, and intend to spend full time there when they no longer tour by motor coach.

(j) That "residence" as defined by statute is generally considered substantially the equivalent of "domicile."

(k) That the only nexus the Protestants have had and continue to have with Oklahoma is their pasture lands which are under lease and the fact that their daughter and son-in-law continue to live in Oklahoma.

(10) That on February 9, 2000, the Division filed its reply brief with the Office of the Administrative Law Judges, providing the following:

(a) That Protestants filed income tax as residents of Oklahoma from 1992 through 1998.

(b) The vehicle at issue is used in the State of Oklahoma at least forty (40) days out of a year; therefore, Oklahoma registration is applicable.

(c) That it is the Division position that Protestants are domiciled in Oklahoma for the following reasons:

(1) Protestants maintain current Oklahoma drivers licenses.

(2) Protestants filed 1997 and 1998 income tax returns as Oklahoma residents.

(3) Protestants own property in the State of Oklahoma.

(4) Protestants stated owners' resident as Oklahoma on the application for title and registration in ANONYMOUS STATE ONE.

(5) Protestants listed an Oklahoma address on the retail sales order of the vehicle at issue.

(6) Protestants are in Oklahoma at least forty (40) days each year.

(7) Protestants have not established actual residence in another place outside of Oklahoma.

(8) Protestants have not presented any evidence that they are registered to vote in ANONYMOUS STATE TWO.

(9) Protestants conduct business in Oklahoma, not in ANONYMOUS STATE TWO.

(11) That on February 25, 2000, Protestants filed their response brief with the Office of the Administrative Law Judges, providing the following:

(a) That Protestants daughter and son-in-law have purchased Protestants' former residence and have filed and received homestead exemption.

(b) That Protestants used their former address on the purchase documents because of the importance of the documents and they knew their daughter and son-in-law would hold them in safe-keeping.

(c) That Protestants, while they do not own real property, do own personal property in ANONYMOUS STATE TWO. In addition, Protestants lease more than a storage space. They lease a space where, when the vehicle in question is parked on the site, it is converted into a stationary unit, comparable with an apartment or condo.

(d) That Protestants have not spent more than forty (40) days total in any subsequent year since 1993.

(e) That Protestants are merely leasing farmland and not operating a business in the State of Oklahoma.

(f) That Protestants have abandoned their Oklahoma domicile and moved to ANONYMOUS STATE TWO and both their statements and their actions are consistent with this.

(g) That Protestants have established their domicile in ANONYMOUS STATE TWO and, although they may be away for long periods, it is their intent to return.

(h) Protestants are part of new phenomena unheard of 50 years ago. That being people who own motor coaches and travel during the greater part of the year.

(i) That Protestants chose not to maintain their Oklahoma domicile and began the process by selling their cattle operation, the retirement of MRS. PROTESTANT, by first leasing their residence for three (3) years and then selling the residence to their daughter and son-in-law; and, by leasing the balance of their land.

(j) That the fact that Protestants maintain Oklahoma drivers license, file Oklahoma income tax returns, and continue to own land in Oklahoma does not add up to overcome the fact that Protestants are now domiciled in ANONYMOUS STATE TWO.

(k) That Protestants have met the burden of proof necessary to establish their residence in ANONYMOUS STATE TWO and the protest should be granted.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Oklahoma statute requires that Protestants register the subject vehicle with the State of Oklahoma and pay applicable tax and fees.

Protestants contend that they should not have to register the subject vehicle with the State of Oklahoma because they have changed their domicile from Oklahoma to ANONYMOUS STATE TWO.

The Division contends that Protestants are Oklahoma residents and, as such, are required to title and register the subject vehicle in 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 intent of the legislature as expressed by the provisions of the Oklahoma Vehicle License and Registration Act, 47 O.S. 1991, § 1101 et seq., and the Oklahoma Vehicle Excise Tax Act, 68 O.S. 1991, § 2101, et seq., is that residents of the State of Oklahoma shall register their vehicles with the State of Oklahoma and pay the appropriate registration fees and excise taxes on said vehicles. See, 47 O.S. 1991, §§ 1103 and 1125 and 68 O.S. 1991, §§ 2103 and 2105.

(3) Registration fees and penalties for the year or years a vehicle has not been registered shall be assessed by the Tax Commission. 47 O.S. 1991, § 1115(E). The registration fees and penalties for a vehicle not registered for two or more years shall be due only for the current year and one (1) previous year. Id.

(4) A proposed assessment is presumed correct and the taxpayer bears the burden of proving that it is incorrect, and in what respect. ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988).

(5) Here, Protestants have presented sufficient evidence to overcome their burden of proving by a preponderance of the evidence that they are not residents of the State of Oklahoma and therefore the vehicle in question is not subject to registration in the State of Oklahoma.

(6) Protestants' protest to the assessment of motor vehicle excise tax and registration fees on the subject vehicle 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 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.