

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-12-12-014 / NOT PRECEDENTIAL
ID: P9600430
DATE: 12-12-00
DISPOSITION: SUSTAINED IN PART / DENIED IN PART
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the Division's Verified Response to Protest, the Addendum to the Division's Verified Response to the Protest and the exhibits attached to each of the pleadings, the undersigned finds:

FINDINGS OF FACT

1. At all times relevant herein, Protestants were residents and domiciliaries of the State of Oklahoma.
2. MR. PROTESTANT is a professional bowler.
3. During the relevant time periods, Protestant received income from bowling tournaments in states other than the State of Oklahoma. For federal income tax purposes, Protestants reported the income on Schedule C - Profit or Loss From Business (Sole Proprietorship).
4. Protestants timely filed their 1994 and 1995 State of Oklahoma Resident Individual Income Tax Returns.
5. On the 1994 return, Protestants originally reported out of state income of \$44,000.00. The \$44,000.00 represents income received by Protestant from a bowling tournament in STATE NO. 2. Protestants reported the income to STATE NO. 2 and paid income taxes of \$3,153.00 on such income.
6. Protestants filed an amended 1994 state income tax return on January 12, 1996. The return was amended to reported an additional \$34,000.00 as out of state income and to claim a refund of \$2,180.00. The \$34,000.00 represents income received by Protestant from a bowling tournament in STATE NO. 3. Protestants originally reported the income on their Oklahoma income tax return. After notification by STATE NO. 3 that the income was subject to STATE NO. 3 state income tax, Protestants filed a STATE NO. 3 state income tax return and paid income taxes of \$1,879.00 to STATE NO. 3 on the income.
7. The Division audited the amended return, denied the exclusion of the \$78,000.00

and assessed an additional \$2,774.00 of income taxes against Protestants. The explanation for the denial of the exclusion is "Oklahoma based business income is taxed in Oklahoma."

8. On the 1995 return, Protestants originally reported out of state income of \$122,545.00. A portion of the \$122,545.00 represents income received by Protestant from bowling tournaments in STATES 4, 5, 6, 7, 8, 9, 10, 11 and 12. Protestants reported the income to the states in question and paid income taxes in the aggregate amount of \$1,924.00.

9. The Division audited the return and on September 30, 1996, caused to be issued against Protestants an assessment of additional income tax, interest and penalty in the aggregate amount of \$8,799.90, consisting of tax in the amount of \$7,529.00, interest accrued through September 30, 1996, in the amount of \$518.00 and penalty in the amount of \$752.90.

10. Protestants timely protested the proposed assessment.

11. On October 27, 1997, Protestants filed an amended 1995 state income tax return. On the amended return, Protestants reported the income from out of state sources as taxable income on the Oklahoma return, claimed a credit for the taxes paid to the other states and reported a tax liability of \$5,605.00. The return was accompanied by a Schedule E and a supporting tax return for each of the states in question.

12. The Division denied the amended return. The explanation for the denial is "Outstanding assessment is correct and will remain valid. Oklahoma based income will not qualify as 'out of state' income, and will not qualify for a Schedule E Credit."

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestants are entitled to a credit for the income taxes paid to other states on income received in the other states from bowling tournaments.

Protestants admit that the income received from out of state bowling tournaments is taxable income on the Oklahoma tax return. Protestants contend that they are entitled to a credit for income taxes paid to other states on such income. In support of this contention, Protestants cite 68 O.S. 1991, § 2357(B)(1) and argue that the income represents professional or occupational earnings.

The Division contends that Protestants are not entitled to a credit for the income taxes paid to the other states on such income. In support of this contention, the Division argues that the income is Oklahoma based business income which is allocable to the state pursuant to 68 O.S. 1991, § 2358(A)(4)(c).

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. That portion of the income, however, derived from 'business transacted' outside the state as distinguished from 'professional' or 'personal' services is nontaxable in this state.

5. Net income or loss from a business activity which is not a part of business carried on within or without the state of a unitary character shall be separately allocated to the state in which such activity is conducted. 68 O.S. 1991, § 2358(A)(4)(c). See, Rule 23.007.05(A) of the *Oklahoma Tax Commission Permanent Rules*.¹ The provisions of Section 2358(A)(4)(c) apply equally to corporations and individuals. See, *Oklahoma Tax Commission Order No. 92-07-14-003*.

¹Adopted March 3, 1989. Currently codified as Rule 710:50-15-52 of the *Oklahoma Administrative Code*. This rule provides, "[F]or resident individuals, 'out-of-state income' consists of income from real or tangible personal property or business income in another state. Any amount deducted must be substantiated with the appropriate Federal schedule which sets out the Oklahoma portion."

6. A "business activity" is one in which capital, time, attention, labor, and intelligence are invested for gain and profit for private benefit, purposes and use. *Black's Law Dictionary* 179 (5th ed. 1979). A "business activity" entails a possibility of a personal profit or loss.

7. In *Benham*, supra at 386, the Court found:

We think the terms 'business' and 'profession' are best defined by the New York court in *Iselin et al. v. Flynn*, 154 N.Y.S. 133, 90 Misc. 164, wherein it is said:

' . . . It is not necessary to enter upon an ethical discussion of the difference between a livelihood gained by the practice of a profession and that by a business vocation. The law is practical. It is not concerned with abstractions, but with the actual affairs of men, and it recognizes the distinction between the practice of a profession and the conduct of a mercantile business. One is purely personal, depending upon the skill or art of the individual. . . .'

8. The income at issue is professional or occupational earnings. Protestant is a professional bowler. The income was received from his participation in bowling tournaments in states other than the State of Oklahoma. Accordingly, Protestants are entitled to a credit for the income taxes paid to other states on such income.

9. Protestants' protest to the disallowance of the credit for income taxes paid to other states on the income received from bowling tournaments 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. PROTESTANT and MS. PROTESTANT, be sustained. It WAS further DETERMINED that the assessments be revised in accordance herewith and that the resultant amount be fixed as the deficiency due and owing.

ADDENDUM TO FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 15TH day of November, 2000, the Findings, Conclusions and Recommendations issued on November 3, 1999, in the above styled and numbered cause

come on for consideration of additional findings of fact and a recommendation as to the amount of the deficiency which should be confirmed by an order of the Tax Commission.

The Division, as directed by the Findings, Conclusions and Recommendations, revised the proposed income tax assessment and provided notice of the revision to Protestants. Protestants have not challenged the revision proposed by the Division.

Upon consideration of the Findings, Conclusions and Recommendations, and the revision to the assessment, the undersigned finds that the following Findings of Fact should be added to and incorporated in the Findings, Conclusions and Recommendations:

1. That the Division revised the income tax assessment to an amount of \$9,387.22, inclusive of tax in the amount of \$5,605.00 and interest accrued through October 13, 2000, in the amount of \$3,782.22.
2. That the aggregate amount in controversy is \$9,387.22.
3. That the revision complies with the recommendations set forth in the Findings, Conclusions and Recommendations.
4. That by letter dated October 13, 2000, Protestants were provided notice of the revision.
5. That Protestants did not file a response to the revision.

The undersigned further finds that the following Recommendation should be added to and incorporated in the Findings, Conclusions and Recommendations:

It is further recommended that the amount in controversy, inclusive of any additional accrued and accruing interest, be respectively fixed as the deficiency due and owing.

THEREFORE, the Findings, Conclusions and Recommendations issued on November 3, 1999, WERE amended to include and incorporate the above and foregoing findings of fact and recommendation.

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.