JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-01-25-006 / NOT PRECEDENTIAL**
ID: **P0000044**
DATE: **01-25-01**
DISPOSITION: **SUSTAINED IN PART / DENIED IN PART**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

1. Protestant is a long time (now retired) U.S. GOVERNMENT employee. Leaving THE U.S., PROTESTANT worked in Germany from 1979 through 1985. He moved back to the United States to Oklahoma, where he lived from July 1985 through July 1987. He moved back to Germany, where he worked from July 1987 through September 1993. In 1991, he married Protestant SPOUSE who is originally from Oklahoma. In September 1993, Protestants moved from Germany to ANOTHER STATE. They remained there until January 4, 1994, on which date PROTESTANT retired from the U.S. GOVERNMENT EMPLOYMENT and Protestants moved to Oklahoma. They have lived here ever since that date.

2. By letter dated April 15, 1998, the Division proposed to assess income tax, interest, and penalty against Protestants for 1994. The proposed assessment was based on an examination of Protestants' Oklahoma income tax return for that year and comparison with information submitted by the Internal Revenue Service. As a result of the comparison, the Division determined that additional income tax was due on the return.

3. The additional income represents accrued vacation pay and moving expense reimbursement connected with PROTESTANT's retirement and Protestants' 1993 move from Germany to ANOTHER STATE. The income was received in 1994, following PROTESTANT's retirement, and was reported on a 1994 Form W-2.

4. On May 22, 1998, Protestants wrote the Division stating the additional income had already been taxed by ANOTHER STATE. On June 19, 1998, a hold was placed on their account pending resolution. On December 6, 1999, Protestants provided the Division evidence of tax paid on the income in question to ANOTHER STATE.

5. By letter dated December 15, 1999, the Division amended its original assessment by: (1) adjusting downward Protestants' 1994 Federal adjusted gross income from $64,667.00 to $53,967.00; and, (2) giving Protestants credit for $960.00 in ANOTHER STATE'S income tax paid. An additional $374.80 in ANOTHER STATE'S income tax had been withheld, which was not, but now should be credited to Protestants on the amended assessment.

6. By letter dated January 13, 1999, Protestants timely protested the amended assessment.

7. Jurisdiction over the parties and the subject matter herein is vested in the Oklahoma Tax Commission, Office of Administrative Proceedings.

8. It is Protestants' position that: (1) approximately $14,000.00 of the additional money was not income because it was paid to a third party for shipment of belongings from Germany to Oklahoma; and, (2) all the additional money was ANOTHER STATE'S taxable income, and should not be taxed in two different states.

Additional findings:

1. Based on a review of the exhibits attached to the Joint Stipulation of Facts, the following stipulations either mischaracterize the facts or are incorrect:

> 3. The additional income represents accrued vacation pay and moving expense reimbursement connected with MR. PROTESTANT'S retirement and Protestants' 1993 move from Germany to ANOTHER STATE. The income was received in 1994, following MR. PROTESTANT'S retirement, and was reported on a 1994 Form W-2.
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> 5. By letter dated December 15, 1999, the Division amended its original assessment by: (1) adjusting downward Protestants' 1994 Federal adjusted gross income from $64,667.00 to $53,967.00; and, (2) giving Protestants credit for $960.00 in ANOTHER STATE'S income tax paid. An additional $374.80 in ANOTHER STATE'S income tax had been withheld, which was not, but now should be credited to Protestants on the amended assessment.

2. Corrected statements of these facts are as follows:

> 3. The 1994 W-2 from the EMPLOYER, shows that Protestant received "Wages, Tips, Other Compensation" of $24,810.38 and "Nontax Moving Reimbursement" of $15,818.78. Only the $24,810.38 was subjected to Oklahoma income tax by the Division.
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> 5. The Division amended its original assessment by allowing credit for the income tax paid to ANOTHER STATE on such income in the amount of $906.00. The Division did not adjust Protestants' federal adjusted gross income downward. The $64,667.00 and $53,967.00 represent Protestants' federal adjusted gross income and Oklahoma taxable income, Method 1, as adjusted by the Division, respectively. The $374.80 in withholding for the ANOTHER STATE is included in the $960.00 of income tax paid to ANOTHER STATE. No further credit for taxes paid to ANOTHER STATE is allowed.

3. By letter dated August 21, 2000, Protestants submitted additional information in the form of an "Employee Master Record." The record reflects that of the $24,810.38 of "Wages-year to date", $10,384.06 is "Wages-cumulative pay period." The record also reflects $15,818.78 Nontaxable PCS and $10,384.06 Taxable PCS. Protestants state that the $10,384.06 represents reimbursed moving expenses.

4. The amount in controversy is $2,142.06, inclusive of income tax in the amount of $1,298.00, interest accrued through December 15, 1999, in the amount of $714.26, and penalty in the amount of $129.80.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the Division's adjustment of Protestants' Oklahoma return to include the income at issue is erroneous.

Protestants contend that the income at issue was subject to tax in ANOTHER STATE and should not be subject to tax in the State of Oklahoma. Protestants further contend that a portion of the income at issue represents a reimbursement for moving expenses which is deductible and should not be taxed by Oklahoma.

The Division contends that the adjustment to Protestants' Oklahoma return is correct. In support of this contention, the Division argues that the income at issue is subject to Oklahoma income tax regardless of ANOTHER STATE's taxation of it.

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. Oklahoma income tax is imposed upon the Oklahoma taxable income of every resident individual. 68 O.S. 1991, § 2355(A).

3. 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.

4. 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.*

5. 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.

6. The income earned by Protestants as compensation for personal services in ANOTHER STATE is subject to Oklahoma income tax. The income received by Protestants as reimbursed moving expenses is not subject to Oklahoma income tax.

7. Protestants' protest should be sustained in part and denied in part.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest be sustained in part and denied in part. It is further DETERMINED that the amended assessment be corrected in accordance herewith and that the resultant amount, exclusive of the penalty and interest, be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

ADDENDUM TO
FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 11th day of January, 2001, the ***Findings, Conclusions and Recommendations*** ("Findings") issued in the above-styled and numbered cause on August 22, 2000, come on for consideration of additional findings of fact, conclusions of law 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, adjusted the income tax assessment and provided notice to Protestants. Protestants have challenged the adjustment proposed by the Division.

Upon consideration of the Findings, the adjustment to the assessment, and Protestants' response to the adjustment, the undersigned finds that the following Findings of Fact should be added to and incorporated in the Findings:

1. That the Division revised the assessment by excluding from Oklahoma taxable income, the moving expense reimbursement received by Protestants.

2. That notice of the revision was filed of record in this cause on November 3, 2000.

3. That the revision results in a proposed amount due of $1,818.08, inclusive of tax in the amount of $948.00, interest accrued through September 27, 2000, in the amount of $775.28, and penalty in the amount of $94.80.

4. That by letter dated December 1, 2000, Protestants challenged the calculation of the tax and the denial of a credit for the taxes paid to ANOTHER STATE on the moving expense reimbursement.

5. That the revision complies with the recommendations set forth in the Findings.

The undersigned further finds that the following Conclusion of Law should be added to and incorporated in the Findings:

1. The credit allowed by 68 O.S. 1991, § 2357(B)(1) is limited to the taxes paid to another state upon the income received as compensation for personal services in such other state by a resident individual. The moving expense reimbursement received by Protestants does not represent compensation for personal services. Further, the moving expense reimbursement is not subject to Oklahoma income tax. Accordingly, the Division properly denied as a credit against the taxes imposed by Oklahoma, the taxes paid to ANOTHER STATE on the moving expense reimbursement.

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

> It is further recommended that the amount in controversy, as revised, exclusive of the penalty and interest, be fixed as the deficiency due and owing.

THEREFORE, the ***Findings, Conclusions and Recommendations*** issued on August 22, 2000, are amended to include and incorporate the above and foregoing findings of fact, conclusion of law 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.