JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-03-08-006 / NOT PRECEDENTIAL**
ID: **P0000025**
DATE: **03-08-01**
DISPOSITION: **SUSTAINED IN PART / DENIED IN PART**
TAX TYPE: **MOTOR VEHICLE EXCISE / REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records in this matter, including the protest filed by Protestants and the verified response to the protest filed by the Motor Vehicle Division, the undersigned Administrative Law Judge makes the following findings of fact and conclusions of law:

1. By letter dated August 10, 1999, the Motor Vehicle Division assessed PROTESTANTS excise tax and registration fees on their 1996 Toyota as follows:

2000 Registration Fees	$233.00
Excise Tax	209.00
Total	$442.00

2. The assessment was based on information that Protestants, although residents of Oklahoma, titled and registered the vehicle at issue in Oregon.

3. Protestants' objection was plainly expressed in the time allowed to protest an assessment, based on the reported exchange of documents and communications between the Division and Protestants within thirty (30) days of the assessment.

4. In a letter received by the Division January 28, 2000, PROTESTANT stated that he was not an Oklahoma resident, had not ever been an Oklahoma resident and that he was in Oklahoma due to military assignment.

ISSUES AND CONTENTIONS

Whether the assessment of motor vehicle excise tax and registration fees on the vehicle in question is erroneous.

Protestant contends that he is a resident of Oregon, that his Military Leave and Earning Statement reflects Oregon as his state of residence, and that the military allows an individual to choose any place as his state of residence if he has served in that location.

The Division contends that Protestant has failed to provide documentation to support his contention that his residence or domicile was in Oregon upon registration of the vehicle. In support of their contention the Division argues that at the time the vehicle was registered in Oregon, PROTESTANT's Military Leave and Earnings Statement reflected Texas as his residence. Further, PROTESTANT changed his November, 1999, Military Leave and Earnings Statement to reflect Oregon as his state of residence. Division argues that during these periods Protestants were living in Oklahoma.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. § 207.

2. Motor vehicle excise tax is levied and shall be collected upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicles registered for the first time in this state; 68 O.S. Supp. 1997, § 2103(A)(1). The tax is due at the time or transfer of legal ownership or first registration and shall be collected at the time of the issuance of a certificate of title. 68 O.S. Supp. 1997, § 2103(A)(2). The value of any new vehicle manufactured in the United States shall be determined as of the date of sale or other transfer or ownership, and assignment of the certificate of title shall include the manufacturer's price of such a vehicle delivered at the factory plus the value of all extra or optional equipment or accessories minus any portion of the value of such optional equipment deducted by the dealer at the time of the sale if such optional equipment and accessories are sold by the dealer as a discount package. 68 O.S. Supp. 1992, § 2104(B).

3. Every owner of a vehicle possessing a certificate of title shall, before using the same in this state, make an application for the registration of such vehicle. 47 O.S. 1991, § 1112.

4. Any vehicle owned by active duty military or their spouses who are either residents of this state or stationed in Oklahoma, which is not registered or licensed for the current year in the state of residence or domicile of the serviceman or of the spouse owning the vehicle, must be registered in Oklahoma. 47 O.S. § 1127. A special, armed forces annual registration rate of $15.00 is imposed upon registration of these vehicles. *Id*.

5. Residence comprehends no more than a fixed abode where one actually lives for the time being. *Catalanotto v. Pulazzolo*, 46 MISC. 2d 381, 259 N.Y.S. 2d 473, 475 (1965). Domicile is a place where a person 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).

6. The burden of proof in all proceedings is on Protestants to show in what respect the action or proposed action of the Commission is incorrect. *Oklahoma Administrative Code* 710:1-5-47. Protestants have not provided any evidence that Oregon was their residence or domicile at the time the vehicle in question was registered and have failed to meet their burden of proving that they were not required to register the vehicle in Oklahoma and be subject to the excise tax and registration fees.

7. Protestants' protest to the proposed assessment should be sustained to the extent of the reduction in registration fees assessed. Otherwise, Protestants' protest should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of Protestants be sustained in part and denied in part. It is further DETERMINED that the registration fee in controversy be revised in accordance herewith and the resultant registration fee and excise tax be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

ADDENDUM TO FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 20th day of February, 2001, the *Findings, Conclusions and Recommendations* issued on November 14, 2000, in the above styled and numbered cause, comes on for consideration of an amendment 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*, revised the proposed registration fee assessment and provided notice of the revision to Protestants by its Notice of Registration Fee Adjustment dated January 10, 2001. Protestants have not challenged the revisions proposed by the Division.

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

1. That notice of the revisions to the assessment was filed of record in this cause on January 10, 2001.

2. That the Division revised the registration fee assessment to an amount of $20.00.

3. That the revisions comply with the recommendation set forth in the *Findings*.

4. That Protestant was provided notice of the revisions.

5. That Protestant did not file a response to the revisions.

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

> It is further recommended that the amount in controversy be fixed as the deficiency due and owing.

THEREFORE, the *Findings, Conclusions and Recommendations* issued on November 14, 2000, are 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.