JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-12-19-012 / NOT PRECEDENTIAL**
ID: **P0000098**
DATE: **12-19-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 26th day of June, 2001, the above styled and numbered cause comes on for decision pursuant to Section 221(d) of the ***Uniform Tax Procedure Code***.

PROTESTANT is represented by A **CERTIFIED PUBIC ACCOUNTANT**. The Audit Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Protestant did not comply with a ***Scheduling Order*** issued on January 3, 2001, setting out a procedural schedule to submit this cause for decision on briefs pursuant to Rule 710:1-5-38 of the ***Oklahoma Administrative Code***. Thereafter, notice was served on the parties that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division. Protestant did not respond to this notice.

Upon review of the file and records, including the letter of protest, and the Division's Verified Response to Protest and attachments, the undersigned finds:

1. That on or about August 3, 1999, Protestant filed an Oklahoma income tax return, Form 511, for the 1998 tax year, reporting Oklahoma adjusted gross income of $15,493.00 and remitting the resultant tax due of $459.00. Protestant reported an address of Route X, Box XX, ANONYMOUS, Oklahoma on the return. Remittance of the tax due was made by draft drawn on an account at the U.S. Employees O.C. Federal Credit Union located IN Oklahoma City, Oklahoma. The account is held in the name of PROTESTANT with an address of Route X, Box XX, ANONYMOUS, Oklahoma.

2. That on or about February 8, 2000, Protestant filed an amended Oklahoma income tax return, Form 511NR, for the 1998 tax year, reporting Oklahoma source adjusted gross income of $510.00 and claiming a refund of $445.00. Protestant reported the address of Route X, Box XX, ANONYMOUS, Oklahoma on the amended return, but listed his Non-Resident(s) State of Residence as FOREIGN COUNTRY. The amended return was accompanied by a letter indicating "Form 511 rather than Form 511NR was mistakenly filed".

3. That by letter dated March 31, 2000, the Division notified Protestant of its decision to deny the claim for refund. The basis for the denial was indicated to be "FOREIGN COUNTRY does not qualify as a state of residency."

4. That Protestant's representative timely protested the denial of the refund.

5. That Protestant's 1998 U.S. Individual Income Tax Return, Form 1040, reports his gross income for 1998 as $15,720.00, consisting of wages in the amount of $39,150.00 which wages were allowed to be excluded from gross income as Foreign Earned Income by Form 2555, taxable interest of $6,298.00, ordinary dividends of $1,297.00, business income of $3,213.00, capital gain of $4,402.00 and supplemental income from rental real estate of $510.00. The business income was reportedly earned as a "Teacher." The address for the business is listed as Route X, Box XX, ANONYMOUS, Oklahoma. The kind and location of the rental real estate property is listed on Schedule E as "Residential Rental, 0000 NW 00." There is no indication in the record when Protestant purchased the real estate, however, Protestant has owned the property since at least 1997 as reported on his 1997 federal income tax return.

6. That Protestant submitted documentation indicating he was admitted or entered FOREIGN COUNTRY in April, 1984 and has continuously, except for short visits once a year to Oklahoma, resided in FOREIGN COUNTRY since such date. The documentation reflects that Protestant is an instructor at the FOREIGN COUNTRY College and that he intends to reside permanently in THE FOREIGN COUNTRY. Protestant also reported on the documentation that for FOREIGN COUNTRY'S tax purposes, he was a non-permanent resident taxpayer who did not have income from sources abroad.

7. That the address listed on Protestant's tax returns is his father's address.

8. That Protestant holds a valid Oklahoma driver's license and he registered to vote in Oklahoma on July 25, 1996.

9. That Protestant contends the claim for refund of income taxes erroneously paid should be granted because he was not a resident of the State of Oklahoma during the relevant time period.

10. That the Division contends the claim for refund should be denied because Protestant was a resident of Oklahoma for purposes of the Oklahoma Income Tax Act during the 1998 tax year. In support of this contention, the Division relies on the following evidence: (1) that Protestant listed his address as ANONYMOUS, Oklahoma, on his federal and state income tax returns; (2) that on his 1998 federal return, Protestant claimed to have earned self-employment income, listing a business address of ANONYMOUS, Oklahoma; (3) that on his 1998 federal schedule E, Protestant lists rental property at "0000 NW 00"; (4) that Protestant declared himself to be a Non-Permanent

Resident Taxpayer of FOREIGN COUNTRY for the year 1999; (5) that Protestant does not report his U.S. income from interest, investments, etc., to FOREIGN COUNTRY, but only on his U.S. returns; (6) that Protestant has a bank account in Oklahoma; (7) that Protestant holds a valid Oklahoma Driver's license; and, (8) that Protestant registered to vote in Oklahoma on July 25, 1996.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes that the Commission is vested with jurisdiction of this action, 68 O.S. 1991, § 207; that an Oklahoma domicile, once established, is presumed to continue unless an individual can show a change has occurred, ***Suglove v. Oklahoma Tax Commission***, 605 P.2d 1315, 1318 (Okl. 1979); that 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, Id., at 1317; that "post-departure acts of voting in federal elections and keeping current one's state driver license will not, by themselves and without more, afford a basis for an inference of one's continued in-state domicile", Id. at 1319; "that ownership of Oklahoma-situated real estate [is] ordinarily . . . viewed as a fairly neutral factor", Id.; that, here the evidence shows Protestant's post-departure links with Oklahoma are no stronger than those which co-extend with claimed benefits reasonably to be expected from incidents of national citizenship; Protestant has resided in THE FOREIGN COUNTRY for more than fourteen (14) years; Protestant has declared by an extemporaneous public record his intent to reside permanently in THE FOREIGN COUNTRY; further, Protestant's declaration of his taxpayer status in THE FOREIGN COUNTRY and his denial of income from sources abroad is not relevant in the determination of his status as an Oklahoma domiciliary; that "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); that the net business income was reported by Protestant to be from a business activity conducted in Oklahoma, as such, the income is allocable to Oklahoma notwithstanding whether Protestant was a domiciliary of Oklahoma in 1998, Id.; that Protestant's protest should be sustained in part and denied in part; and that the denial of Protestant's claim for refund should be adjusted in accordance herewith.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest to the denial of the claim for refund of Protestant be sustained in part and denied in part. It is further DETERMINED that the refund claim be adjusted in accordance herewith.

ADDENDUM TO
DETERMINATION SUSTAINING IN PART AND DENYING IN PART PROTEST

1. That notice of the revision to the refund adjustments was filed of record in this cause on October 23, 2001.

2. That the Division revised the proposed refund for the audited year to a total aggregate amount of $347.00.

3. That the revision complies with the recommendations set forth in the ***Recommendation***.

4. That Claimant was provided notice of the revision.

5. That Claimant did not file a response to the revision.

It is further DETERMINED that the aggregate amount of $347.00, together with any interest under 68 O.S. Supp. 1998, § 217(H), be fixed as the refund due and owing.

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.