JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-12-03-003 / NOT PRECEDENTIAL**
ID: **P0200039**
DATE: **12-03-02**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In 2001, Protestant moved from CITY A, Oklahoma, to CITY B, Missouri. On Federal Form 3903, Protestant figured his moving expense deduction in the amount of $3,194.00, which he included on line 26 of his 2001 Federal Form 1040.

2. Protestant filed Oklahoma Form 511NR (Nonresident or Part-Year Resident) for the 2001 tax year, reported "Adjusted gross income: Okla. Source" as $18,179.00 and claimed a refund of $132.00.

3. On line 17 of the Form 511NR, "Total Federal adjustments to income", Protestant entered the amount of $3,194.00 and identified the amount as "Moving (3903)".

4. By letter dated March 13, 2002, the Division adjusted the return by disallowing the moving expense deduction, which changed the amount of "Adjusted gross income: Okla. Source" reported by Protestant on his 2001 511NR to $21,373.00 and resulted in tax due of $20.00.

5. Protestant, by letter dated March 19, 2002, protested the assessment, stating that the moving expense deduction "is a federal adjustment and should be recognized by Oklahoma"; that his "income percentage is increased from 73% to 86%; and that because of this denial of adjustment, that means I'm paying 86% in Oklahoma and 27% in Missouri for a total of 113%." Protestant paid, under protest, the $20.00 assessed.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 1991, ϑ 207.

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

3. Section 2358(D)(3) of Title 68 specifically disallows the deduction of allowable moving expenses incurred by a taxpayer moving out of Oklahoma as follows:

> In the case of resident and part-year resident individuals having adjusted gross income from sources both within and without the state, the itemized or standard deductions and personal exemptions shall be reduced to an amount which is the same portion of the total thereof as Oklahoma adjusted gross income is of adjusted gross income. To the extent itemized deductions include allowable moving expense, proration of moving expense shall not be required or permitted but allowable moving expense shall be fully deductible for those taxpayers moving within or into Oklahoma and no part of moving expense shall be deductible for those taxpayers moving without or out of Oklahoma. All other itemized or standard deductions and personal exemptions shall be subject to proration as provided by law. [Emphasis added.]

4. Here, Protestant's moving expenses in the amount of $3,194.00 were incurred pursuant to his moving from Oklahoma to Missouri. Therefore, the Division properly disallowed the adjustment taken for those expenses by Protestant on his 2001 Oklahoma income tax return, Form 511NR.

5. The protest to the proposed assessment should be denied.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the protest be denied.

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.