JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-01-30-005 / NOT PRECEDENTIAL**
ID: **P0200037**
DATE: **01-30-03**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STIPULATION OF FACTS

1. Protestants were assessed additional income taxes by letter dated the 15th day of February, 2002, for tax year 2000 by the Individual Audit Section, Audit Division, Oklahoma Tax Commission.

2. Protestants timely protested the assessment by letter dated the 10th day of March, 2002.

3. Protestant A was an active member in the military until he retired in the year 1997. His last placement of duty was at ANONYMOUS Air Force Base, BIGCITY, Oklahoma.

4. In the year 1998 and after retirement PROTESTANTS purchased a home at 99999 ABC Drive, ANYCITY, Oklahoma.

5. PROTESTANTS had not purchased a home during prior military placements.

6. The home at 99999 ABC Drive, ANYCITY, Oklahoma, has not been placed on the real estate market for sale subsequent to the purchase in 1998 by PROTESTANTS, nor is it for sale now.

7. No claim for homestead exemption was filed on the ABC Drive home until the year 2002, at which time PROTESTANTS filed for the homestead exemption.

8. PROTESTANT A has possessed an Oklahoma drivers license since 1997 and renewed the same during calendar year 2001. His new Oklahoma drivers license expires in the year 2004.

9. PROTESTANT A has been registered to vote in the State of Oklahoma since 1997 and was registered to vote in the State of Oklahoma during calendar year 2000.

10. BOTH PROTESTANTS register and tag their cars in the State of Oklahoma.

11. PROTESTANT A has rented and maintained an apartment in CITY A, Texas, since January of 1999.

12. Sixty-four percent (64%) of PROTESTANT's income during the calendar year 2000 was earned in the State of Texas, $66,815.00.

13. PROTESTANT A received mail at both the ANYCITY, Oklahoma, address and the CITY A, Texas, address during calendar year 2000. The bulk of his mail was mailed to the CITY A, Texas, address during calendar year 2000.

14. PROTESTANT B and the Protestants' daughter live in the home at 99999 ABC Drive, ANYCITY, Oklahoma.

15. PROTESTANT B worked for AN ESTABLISHMENT in BIGCITY, Oklahoma, during the year 2000.

16. PROTESTANT'S daughter was in High School during the calendar year 2000 at LOCAL HIGHSCHOOL.

17. For tax year 2000, Oklahoma was the home state of PROTESTANT A per the records of the Department of Defense Finance and Accounting Services although his mailing address is CITY A, Texas.

ADDITIONAL FACTS

18. Protestants timely filed their 2000 income tax return, Form 511NR, claiming Texas as their state of residence. The return showed a balance due of $1,299.00.

19. The adjustment to Protestants' 2000 Oklahoma income tax return, by letter dated February 15, 2002, resulted in an aggregate amount due of $4,805.06, consisting of tax in the amount of $4,358.00, interest through February 15, 2002, in the amount of $11.26, and delinquency penalty of $435.80.

20. To explain why some of the W-2s issued by his employers and other documents show an Oklahoma address, PROTESTANT A stated that he did not change his address until he had leased an apartment in Texas. Once that had occurred, he changed his address to Texas for all purposes, including employment and military. PROTESTANT A stated that this shows his intention to leave Oklahoma.

21. PROTESTANT B was domiciled in Oklahoma for tax year 2000.

22. PROTESTANTS both testified that the decision for PROTESTANT B and Protestants' daughter to live at the home in ANYCITY was made to allow their daughter to graduate high school THERE. PROTESTANT B further testified that they are getting the house ready to sell, now that their daughter has graduated.

23. PROTESTANT B testified that she knew PROTESTANT A had no intention or plans to move back to Oklahoma. Additionally, she testified and that some weekends he would visit them in Oklahoma and some weekends they would visit him in Texas.

24. PROTESTANT A received and paid utilities for the Texas apartment.

25. PROTESTANT A stated that they filed for a homestead exemption on the ANYCITY home for the first time in 2002 based on advise from their financial counselor.

26. PROTESTANT B explained that it is her responsibility to tag and obtain insurance for the family vehicles, and that is the reason PROTESTANT A's vehicle is currently registered in Oklahoma.

27. PROTESTANT A stated that on a weekend he was visiting, he renewed his Oklahoma drivers license as a matter of convenience.

28. PROTESTANT A had no bank accounts in Oklahoma.

ISSUE AND CONTENTIONS

Whether Protestants sustained their burden of proof showing that PROTESTANT A was not domiciled in Oklahoma for tax year 2000.

Protestants contend that PROTESTANT A was a resident of Texas for more than 75% of the year 2000, that he has no intentions of returning to Oklahoma to live, and that he should only be required to pay taxes on income earned in Oklahoma. Additionally, Protestants contend that drivers licenses, voter registration and vehicle registration should not be proof of residency for retired military personnel.

The Division contends that, although PROTESTANT A worked and resided in Texas, he never abandoned his Oklahoma domicile, and therefore the assessment of additional income taxes for tax year 2000 is proper.

CONCLUSIONS OF LAW

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

2. The Oklahoma Income Tax Act at 68 O.S. 1991, ϶ 2353(4) defines "resident individual" and "non-resident individual" as follows:

> "Resident individual" means a natural person who is domiciled in this state, and any other natural person who spends in the aggregate more than seven (7) months of the taxable year within this state shall be presumed to be a resident for purposes of this act in the absence of proof to the contrary. A "non-resident individual" means an individual other than a resident individual.

3. Domicile is a proper basis for the assessment of state income taxes on an individual.[1] *New York ex rel. Cohn v. Graves*, 300 U.S. 308, 313 (1937); *Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276, 279 (1932).

4. A person's domicile is the place where he 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), citing *Jones v. Reser*, 61 Okl. 46, 160 P. 58, 59 (1916). Domicile forms the basis for imposition of state income tax on the income of an individual, whether said income is earned without the state. *Suglove*, *supra* at 1317. See *Davis v. Oklahoma Tax Commission*, 488 P.2d 1261 (Okl. 1971) and *Colchensky v. Oklahoma Tax Commission*, 184 Okl. 207, 86 P.2d 329 (1939).

5. In *Suglove*, the Court set forth the following principles, which have evolved in connection with the determination of domicile, to-wit:

> First, a person may have only one domicile at a time. Second, domicile, once fixed is presumed to continue until a new one is established. Third, 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. Indicia of a changed domicile are to be found in the habits of the person, his business, and domestic relations, declarations, exercise of political rights, community activities and other pertinent objective facts ordinarily manifesting the existence of requisite intent. As a general principle, Oklahoma domicile, once established, is presumed to continue unless an individual can show that a change has occurred. One's intent with respect to domicile presents a question of fact. [Citations omitted]. *Id*. at 1317.

6. Whether a change of domicile has occurred is a question of fact to be determined in accordance with the facts and circumstances of each individual case. *Graham v. Graham*, 330 P.2d 1046 (Okl. 1958). The burden of proving a change of domicile is on the person attempting to show the same. *McKiddy v. State*, 366 P.2d 933 (Okl. 1961); *Jones v. Burkett*, 346 P.2d 338 (Okl. 1959).

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[1] A person domiciled in this state is an Oklahoma resident. *Oklahoma Administrative Code 710:50-3-36*. *Oklahoma Administrative Code 710:50-3-36* provides:

(a) An Oklahoma resident is a person domiciled in this state. "**Domicile**" is the place established as a person's true, fixed, and permanent home. A domicile, once established, remains until a new one is established.

(b) One is presumed to retain his Oklahoma residency if he has:

(1) An Oklahoma Homestead Exemption;
(2) His family remains in Oklahoma;
(3) He retains an Oklahoma drivers license;
(4) He intends to return to Oklahoma; or
(5) He has not abandoned his Oklahoma residence.

7. While Protestant A worked in Texas and leased an apartment there, as well as received mail and utilities at a Texas address, factors which would indicate the abandonment of his Oklahoma domicile are lacking. A home was purchased in Oklahoma following his retirement from the military and his family continues to reside there. The house has not been offered for sale. Homestead exemption is currently claimed on the house. In addition, Protestant continues to be registered to vote in Oklahoma. He has an Oklahoma drivers license, which he renewed in 2001, and his vehicles are registered and tagged in Oklahoma.

8. The protest should be denied.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the income tax protest of Protestants 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.