

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-02-06-002 / NOT PRECEDENTIAL
ID: P0000179
DATE: 02-06-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 8th day of January, 2003, the above styled and numbered cause comes on for consideration. PROTESTANT is represented in this matter by A Tax Advocate. The Audit Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission. A *Recommendation of Dismissal and Recommendation of Denial of Protest* was filed on November 22, 2000, but withdrawn by order dated June 15, 2001. Subsequently, a hearing was held and upon conclusion of the hearing, the case was submitted for decision.

FINDINGS OF FACT

1. Protestant filed an Oklahoma Individual Income Tax Return, Form 511EZ, for the 1998 tax year, bearing a file stamped date of August 23, 1999. The address utilized by Protestant was "PO Box XXX, FIRSTTOWN, OK"
2. On the return, Protestant reported zero taxable income.
3. By letter dated August 8, 2000, the Oklahoma Tax Commission assessed income tax, interest and penalty against Protestant for the 1998 tax year in the aggregate amount of \$2,695.26, including interest accrued through August 8, 2000.
4. The assessment is based on an Internal Revenue Service Transcript dated August 2, 2000, and W-2s submitted by Taxpayer.
5. By letter sent by UPS Next Day Air dated September 8, 2000, and stamped received by the Oklahoma Tax Commission on September 11, 2000, Protestant disagreed with the proposed assessment.
6. On April 15, 2000, Protestant filed an Oklahoma Individual Income Tax Return, Form 511, for the 1999 tax year. The address utilized by Protestant was "XXXX E. STREET, SECONDTOWN, OK"

7. The Division adjusted Protestant's 1999 income tax return, based on a W-2 submitted by Protestant, and by letter dated June 27, 2000, advised Protestant of the adjustment to her 1999 Oklahoma Income Tax Return. The adjustment resulted in tax due in the amount of \$1,073.00.

8. Protestant responded to the notice of adjustment by letter postmarked July 26, 2000, and stamped received by the Audit Division on August 1, 2000.

9. The address reflected on Protestant's 1998 and 1999 Wage and Tax Statements from EMPLOYER was "P.O. Box XXX, FIRSSTOWN, OK". Protestant explained that the reason these reflect an Oklahoma address is that as a truck driver, and Oklahoma's central location, she was in Oklahoma more than Florida, and therefore determined it was easier to pick up her mail in this State.

10. Protestant provided further explanation of her use of two different Oklahoma addresses and her claim that she has been domiciled in Florida since 1997. She testified that she provided a place for her high school age son to live until his graduation, left her furnishings and appliances for her son to use and continued to have her mail sent to that Oklahoma address, with the intention of the mail being forwarded to her. The majority of the time she is on the road as a truck driver. When her son failed to timely forward the mail to her, she had her mail sent to another relative in FIRSSTOWN, OK, but later determined that was not satisfactory either. Since that time, she has had her mail sent to West Virginia, and that person contacts her and/or forwards the mail.

11. Additionally, Protestant provided several affidavits from family and friends affirming that during 1998 and 1999 she did not live in Oklahoma, but in Florida. Protestant also provided copies of voided checks for Florida bank accounts.

12. Protestant also testified that she attended A Truck Driving School in Oklahoma and obtained her commercial drivers license in Oklahoma. She explained that for financial reasons and concerns regarding the Florida exam requirements for a commercial license she did not obtain a commercial drivers license in Florida until the Oklahoma license expired in May or June of 2001. Protestant stated that she changed her Voter Registration to Florida at that same time.

13. Protestant's vehicle is registered in Oklahoma. Protestant stated that she uses it when she is in Oklahoma.

ISSUES

I. Whether Protestant was domiciled in the State of Oklahoma during the 1998 and 1999 tax years.

II. Whether Protestant timely filed protests to the assessment for the 1998 tax year or to the adjustment for the 1999 tax year.

III. If the protests were timely filed, whether Protestant sustained the burden of proof showing in what respect the action or proposed action of the Tax Commission is incorrect.

CONTENTIONS

Protestant contends that the State of Florida was Protestant's domicile for the 1998 and 1999 tax years.

For the 1998 tax year, Protestant contends that on her Form 1040 with the IRS she had zero taxable income, and that since the Oklahoma income tax return is based on the federal, no income was reported to the State of Oklahoma. Additionally, Protestant alleges, "Since taxes are based on income, and income (for income tax purposes) means 'a corporate profit' and since private citizens do not generate 'profit' nor, could they be made to keep books from which a contrived 'Profit' could even be estimated, they can have no 'income' that is subject to an income tax."

For the 1999 tax year, Protestant asserts that, "My 1040 return was zero (-0-) income therefore, my state is zero (-0-) income. Therefore, I filed a claim for refund on all Oklahoma income taxes withheld and I shall not be subject to the provisions of Section 2358 of this title. My refund was for \$1,595.00." Additionally, she asserts that, "you have no legal authority to 'change' my return, nor to assess any amount other than what is shown on my return - and if any State employee attempts to do otherwise, they will do so at their on [sic] criminal and/or civil peril."

Division contends that Protestant was a resident of the State of Oklahoma during tax years 1998 and 1999.

Division further contends that Protestant's letters of protest to the 1998 and 1999 tax years were not timely filed.

Division also contends that, if the protests are deemed timely, Protestant's argument "lacks any merit. 'Income' may be derived from any source including labor. 'Wages' clearly constitute income for purposes of Federal, and therefore Oklahoma, taxation."

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. 1991, Section 207.

2. Where a protest is not filed within the periods prescribed by 68 O.S. 1991, Section 221(c) or (f), the proposed assessment is deemed final and absolute under 68 O.S. 1991, Section 221(e) and the Tax Commission is without jurisdiction to consider the merits of the protest. *Matter of Phillips Petroleum Co.*, 652 P.2d 283 (Okla. 1982).

3. Protestant's letter of protest to the proposed assessment for tax year 1998 was not timely filed. Therefore, the proposed assessment is final and absolute.

4. Protestant's letter of protest to the adjustment of her 1999 income tax return bore a postmark within the 30 days allowed for filing of a protest. Documents are considered timely filed if the date of the postmark on the envelope containing such documents shows a date on or before the last day for filing. 68 O.S. Supp. 1999, Section 221.1; *Oklahoma Administrative Code 710:1-3-30(b)*. Thus, Protestant's protest to the 1999 adjustments was timely filed.

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

6. The Oklahoma Income Tax Act at 68 O.S. 1991, Section 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.

7. 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).

¹¹ 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.

8. 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).

9. 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.

10. 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).

11. Protestant's evidence submitted in support of a Florida domicile for 1998 and 1999 was not sufficient to show abandonment of her Oklahoma domicile during the years in question.

12. The Commission shall examine a filed return and make an audit or investigation as it deems necessary. 68 O.S. 1991, Section 221. If upon examination the Commission determines that the tax disclosed by the return is less than the tax disclosed by the examination, it shall assess additional tax. *Id.*

13. It has been well-established by statutory and case law that wages are income and are taxable under the income tax laws:

i. Internal Revenue Code (1954)

Sec. 61. Gross income defined. (a) General definition. - Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items; [Emphasis added]

* * * * *

ii. The U.S. Supreme Court defined income in *Eisner v. Macomber*, 1 USTC 32, 252 U.S. 189 (1920) as "the gain derived from capital, from labor, or from both combined."

iii. In *Jones v. U.S.*, 551 F.Supp. 578 (D.C. N.Y. 1982), the Court specifically held that wages are "gross income" within the meaning of Section 61.

iv. In *Lovell v. U.S.*, 579 F.Supp. 1047 (D.C. Wis. 1984), the Court held that compensation for labor or service is taxable income, and no deduction is allowed for value of labor expended.

v. In *Oklahoma Tax Commission v. Smith*, 610 P.2d 794 (1980), the Court provided that for state income tax purposes:

Income relates to total receipts of a taxpayer and is in no way dependant on what part, or how much, of that income a taxpayer must pay for various expenses he is obligated to meet unless those various expenses are as a matter of legislative policy declared to be exempt from taxation, thereby constituting a deduction from income, and made to be so by the Legislature. . . .

vi. In *Casper v. Commissioner of Internal Revenue*, 805 F.2d 902 (10th Cir. 1986), the Court held that "value received in exchange for services constitutes taxable income pursuant to I.R.C. Section 61(a)(1)."

14. Protestant has failed to meet her burden of proving in what respect the adjustment to her income tax return for tax year 1999 is incorrect. *Oklahoma Administrative Code 710:1-5-47*.

15. The protest to the proposed assessment for 1998 should be dismissed and the protest to the proposed assessment for tax year 1999 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 be dismissed as to tax year 1998 and that the protest as to tax year 1999 be denied. It is further DETERMINED that the amount of the proposed assessments, inclusive of any additional accrued and accruing interest, be fixed as the deficiency 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.