

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-09-02-03 / NOT PRECEDENTIAL
ID: P0200100
DATE: 09-02-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

1. On September 15, 1999, the IRS adjusted Protestant's 1997 federal tax return.
2. Protestant failed to file an Amended Oklahoma return for 1997.
3. On March 13, 2002, the Division assessed the Protestants for tax, penalty, and interest in the amount of \$820.01, consisting of \$479.00 of additional tax relating to tax year 1997, interest of \$293.11, and penalty of \$47.90.
4. The Division's assessment included tax for both i.) the protested issue of tax relating to \$5,500.00 payment from FDIC and ii.) the unprotested issue of tax relating to additional income of \$1,134.00 for early pension distribution.
5. The income at issue in this protest is \$5,500.00.
6. The \$5,500.00 was reported as paid to PROTESTANT in 1997 by his former employer.
7. Pursuant to the Affidavit in Lieu of Testimony, PROTESTANT would present the following testimony at hearing if one were to be held. *Division does not stipulate to the veracity or accuracy of any statement(s) made by Protestant but simply acknowledges that Protestant's testimony, if taken at hearing would be as follows:*
 - a. He earned the \$5,500.00 of income at issue during the tax years 1989-1994, even though the income was paid in 1997;
 - b. During the years 1989-1994, Protestant was a resident of the State of Texas;
 - c. During the years 1989-1994, Protestant was not a resident of the State of Oklahoma; and,
 - d. All work performed by the Protestant for the PROTESTANT'S EMPLOYER which entitled him to the 1997 wage payment of \$5,500.00 was performed during tax years 1989-1994 outside the State of Oklahoma.

8. In support of the Affidavit in Lieu of Testimony of PROTESTANT, PROTESTANT would present the following documents in support of his testimony at hearing if one were to be held. *Division does not stipulate to the veracity of accuracy of any record(s) submitted by Protestant but simply acknowledges that Protestant's evidence in support of testimony, if taken at hearing, would be as follows:*

- a. Copy of Texas driver's license with expiration date of 1995 showing a Texas address;
- b. A copy of business card for an unknown time period, indicating PROTESTANT'S affiliation with PROTESTANT'S EMPLOYER at some time indefinite; and,
- c. W-2 wage statements from PROTESTANT'S EMPLOYER to PROTESTANT at various Texas addresses for 1992-1995.

Additional findings:

1. Protestants admit that they were residents of Oklahoma during the 1997 tax year.

ISSUE AND CONTENTIONS

The issue presented for decision is whether income earned by an individual prior to becoming a resident of Oklahoma, but received subsequent to establishing Oklahoma as the individual's domicile, is subject to Oklahoma income tax.

Protestants contend that income earned by PROTESTANT while they were residents of Texas should not be subject to Oklahoma income tax. In support of this contention, Protestants argue that the State of Oklahoma cannot tax a nonresident for income earned outside the state and that the State of Oklahoma did not have jurisdiction over PROTESTANT at the time the income in question was earned.

The Division contends that the income at issue is subject to Oklahoma income tax. In support of this contention, the Division argues that the income in question should be reported and tax paid when received rather than when earned.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. A state has the power to tax its own residents on their net incomes though derived wholly from activities carried on by them outside of the state. ***Davis v. Oklahoma Tax Commission***, 488 P.2d 1261 (Okl. 1971); ***Colchensky v. Oklahoma Tax Commission***, 184 Okl. 207, 86 P.2d 329 (1939). Domicile itself establishes a basis for taxation. ***Colchensky***, supra at 184 Okl. 208.

3. Income received by a resident individual as compensation for personal services in a state other than Oklahoma is subject to Oklahoma income tax. 68 O.S. 1991, § 2357(B)(1). See, ***Oklahoma Tax Commission v. Benham***, 198 Okl. 384, 179 P.2d 123 (1947). A credit against the tax imposed on such income by Oklahoma is allowed for the amount of tax paid on the income in the other state. *Id.*

4. In ***Benham***, supra, the Court in a syllabus to the decision concluded:

The entire income of an individual Oklahoma resident derived from wages, salaries, commissions, professional or occupational earnings, or other compensation received from personal services is taxable in this state without regard to the place wherein the services were performed.

5. Protestants report their income on a cash basis as shown by the fact that the IRS assessed the income at issue in the year in which it was received rather than over the years in which it was earned. As a cash basis taxpayer, Protestants are required to report and pay tax on their income when it is received rather than when it is earned. See, e.g., 26 U.S.C. § 451; ***Healy v. C.I.R.***, 345 U.S. 278, 73 S.Ct. 671 (1953); ***Stranahan's Estate v. C.I.R.***, 472 F.2d 867 (C.A. 6th 1973); ***Boyce V. U.S.***, 405 F.2d 526 (1968); ***Edelman v. U.S.***, 329 F.2d 950 (1964); ***Blake v. C.I.R.***, 20 T.C. 721 (1953).

6. Protestants were residents of the State of Oklahoma during the 1997 tax year, the year in which the income at issue was received. Accordingly, the income at issue is subject to Oklahoma income tax.

7. Protestants' protest to the assessment of additional income tax is denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest be denied. It is further DETERMINED that the amount in controversy, 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.