JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-10-30-06 / NOT PRECEDENTIAL**
ID: **P0300057**
DATE: **10-30-03**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 30th day of September, 2003, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. By agreement of the parties, this matter was submitted for decision without a hearing. Protestant and the Audit Division, by and through its representative, General Counsel's Office of the Oklahoma Tax Commission, filed briefs in support of their respective positions, all in accordance with *Oklahoma Administrative Code 710:1-5-38*.

FINDINGS OF FACT

1. Protestant filed an Oklahoma resident individual income tax return, Form 511, for 1996 on April 15, 1997, indicating tax due in the amount of $2,791.00. The check submitted with the return in payment of the tax was in the amount of $27.91. Division records reflect a payment of $27.00 on the account. Protestant's address given on Form 511 and on the 1996 W-2s was P.O. Box XXX, ANYTOWN, Oklahoma 99999. The 1996 W-2 forms reflect "NV" in box 16. The address printed on the check submitted in payment was in BIGCITY, Nevada.

2. On April 3, 2001, the Tax Commission filed Tax Warrant No. ITI999999999999 against Protestant for tax year 1996 in the aggregate amount of $4,998.30, consisting of tax in the amount of $2,764.00, interest through March 7, 2001, in the amount of $1,615.24, penalty in the amount of $398.06, warrant penalty in the amount of $200.00, and fees in the amount of $21.00.

3. On October 21, 2002, Protestant filed an Oklahoma amended individual income tax return for 1996, Form 511X, claiming he "was not a resident of Oklahoma during the entire year of 1996 and thus did not require filing an Oklahoma return except for the amount of unemployment drawn during 1996." Tax due in the amount of $17.00 was reflected on the return. Protestant's address given on Form 511X was P.O. Box XXX, ANYTOWN, Oklahoma 99999.

4. By letter dated December 21, 2002, the Division requested Protestant provide poof of Nevada residence for 1996 and the filing of Form 511NR, if he claimed
Nevada residence.

5. Protestant filed an Oklahoma nonresident, part-year resident individual income tax return, Form 511-NR, for 1996 on January 22, 2003, claiming tax due in the amount of $109.00. Protestant's address given on Form 511-NR was P.O. Box XXX, ANYTOWN, Oklahoma 99999.

6. The amended return was not accepted by the Division. A copy of the amended return containing the notation "DENIED PROOF OF OUT OF STATE RESIDENCE NOT ESTABLISHED" was forwarded to Protestant along with a letter dated February 13, 2003, referencing the adjusted 1996 amended return and advising Protestant of his protest rights.

7. By letter dated February 24, 2003, Protestant filed a protest and requested a hearing, stating he lived in Nevada from March 1996 to November 1998.

8. A letter from MR. X, Business Manager, BUSINESS A, states that Protestant worked at SMALLTOWN, Nevada, for two different contractors, one from February 26, 1996, to March 9, 1996, and the other from April 30, 1996, to March 19, 1997.

9. Copies of various statements of earnings and deductions from the same companies as listed in the letter from Mr. X and reflecting dates in 1996 were submitted by Protestant.

10. Protestant provided copies of numerous receipts and statements reflecting Nevada addresses for motels, apartments, telephone service, purchases, repairs and medical providers for the period at issue.

11. Copies of checks written by Protestant to establishments in Nevada reflect that his account is with a credit union located in BIGCITY, Nevada. The address for Protestant printed on the checks was P.O. Box XXX, ANYTOWN, Oklahoma 99999.

12. In written statements signed and filed by Protestant, he stated that he stayed with a brother for a time, but had no home in Oklahoma after 1991; the only family he had in Oklahoma during 1996 were brothers and a sister; he was in Oklahoma early in 1996 for 96 days due to medical conditions and a required court appearance; he sought work in Nevada due to the high availability of jobs and the rate of pay; he chose BIGCITY, Nevada, as his home base because that was where his local union is located; he had renewed his drivers license prior to December 1995; he purchased a vehicle in Oklahoma in December 1995 and the lien holder required that he tag it in the state until paid for; it was his understanding that his drivers license was required to be the same state as his car tag; he purchased a travel trailer at a financial institution in Oklahoma, which required that his checking account with them remain open; he also had a checking account in BIGCITY, Nevada; he stayed in various motels or apartments until a trailer became available in January 1997 where he wanted to reside; due to his medical condition, he was forced to take disability retirement in June 1998; he moved back to Oklahoma in November 1998; and his intent had been to continue working in Nevada until he was 65 and then retire and move back to Oklahoma.

ISSUE AND CONTENTIONS

Whether Protestant was domiciled in Oklahoma for the period at issue.

Protestant contends he had no home to abandon in Oklahoma when he moved to Nevada and that he intended to reside there until his retirement, some seven years in the future. Further, he contends he kept his Oklahoma drivers license, car tag and bank account due to restrictions imposed upon him by lien holders.

The Division contends that, although Protestant worked and resided in Nevada, he never abandoned his Oklahoma domicile, and therefore the assessment of additional income taxes for tax year 1996 is proper.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 1991, ϶ 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. *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 domiciled in this state is an Oklahoma resident. *Oklahoma Administrative Code 710:50-3-36*. This Code provision promulgated by the Tax Commission 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.[1]

[1] Although *Oklahoma Administrative Code 710:50-3-36(a)* was amended in 1997, to delete language that specifically looked to the state referenced on W-2s as evidence of domicile, the omitted language would not have been determinative in this case, since the facts and evidence suggest otherwise.

(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.

5. 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 (Okla. 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 (Okla. 1971) and *Colchensky v. Oklahoma Tax Commission*, 184 Okl. 207, 86 P.2d 329 (1939).

6. 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.

7. 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 (Okla. 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 (Okla. 1961); *Jones v. Burkett*, 346 P.2d 338 (Okla. 1959).

8. While Protestant worked in Nevada and leased an apartment there, as well as received mail and utilities at a Nevada address, factors which would indicate the abandonment of his Oklahoma domicile are lacking. He has an Oklahoma drivers license; his vehicle is registered and tagged in Oklahoma; he maintained the same mailing address in Oklahoma during the period at issue as he did previously and subsequently; although he opened a bank account in Nevada, he also maintained his bank account in Oklahoma. He stated his intent to return to Oklahoma upon his anticipated retirement in seven years, and he did return to Oklahoma after disability retirement in 1998.

9. The protest should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the income tax 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.