JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-12-04-18 / NOT PRECEDENTIAL**
ID: **P0200147**
DATE: **12-04-03**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Protestant A AND PROTESTANT B filed a joint Oklahoma individual income tax return for 2001, Form 511, showing no federal adjusted gross income and a refund due in the amount of $1,127.00[1]. The current address stated on the return is "99999 W. ANONYMOUS Ave., ANYTOWN, AZ 88888". Attached is a letter signed by PROTESTANT A stating that his family moved to Arizona in December 2000 and established residence and a copy of military orders ordering Protestant A to an active duty assignment in BIGCITY, Arizona, beginning on December 20, 2000. Additionally, Wage and Tax Statements for both Protestants are attached, showing Oklahoma as their state of residence. The letter indicates the designation of Oklahoma as their state of residence is in error, and those are the funds they sought to have refunded.

2. By letter dated June 11, 2002, Protestants were notified that their 2001 Oklahoma income tax return had been adjusted to reflect Oklahoma-source income as reported on the Wage and Tax Statements. The adjustment resulted in tax due in the amount of $2,028.00, less Oklahoma withholding in the amount of $1,227.00, leaving a balance due of $801.00.

3. A protest was filed by letter dated June 18, 2002, in which Protestants state they did not live in Oklahoma during 2001.

4. The Division reviewed the file and advised by letter of July 25, 2002, that if the Wage and Tax Statements were incorrect, the entity issuing them should issue a corrected Form W-2 and explain the error. However, the Division reaffirmed, they believed the June 11, 2002, adjustment to be correct.

5. Protestant B filed a Resident Personal Income Tax Return, Arizona Form 140, for 2001, reporting her entire amount of income including the amount shown as Oklahoma-source income and showing Arizona state tax for 2001 in the amount of $5.00.

[1] The amount stated on Line 34 of Protestants' return under amount to be refunded is $1,127.00; however, the amounts shown on the W-2's as Oklahoma withholding totals $1,227.48.

6. A Defense Finance and Accounting Service Military Leave and Earnings Statement, for the month of September 2001, reflects Texas as the state of record for state taxes for PROTESTANT A.

7. By letter dated July 25, 2002, from THE Supervisor, the Account Maintenance Division advised PROTESTANT A that an examination of the W-2's issued by DFAS for the year 2001 indicate $33,682.33 of wages were paid while he was classified as an Oklahoma resident, while the remaining $22,902.00 was paid while he was classified as a resident of Texas. Further, the letter advising that the 2001 Form W-2 for Protestant B, indicates $9,176.87 of her total wages for the year of $17,575.51 were designated as Oklahoma income. PROTESTANT A testified that she also notified her employer of her change in designation to Arizona, but it was later in 2001 before the change appeared on her earnings statements.

8. By letter of August 27, 2002, Protestants were requested to provide their 2001 federal income tax returns and W-2 forms. While W-2's and a federal return for PROTESTANT B are a part of the file, no federal return was provided for PROTESTANT A.

9. Protestants submitted a copy of DD Form 2058, State of Legal Residence Certificate, signed by PROTESTANT A on December 20, 2000, showing his legal residence/domicile as BIGCITY, Texas. The Certification instructions provide in pertinent part:

> The formula for changing your State of legal residence/domicile is simply stated as follows: physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile. In most cases, you must actually reside in the new State at the time you form the intent to make it your permanent home. Such intent must be clearly indicated. Your intent to make the new State your permanent home may be indicated by certain actions such as: (1) registering to vote; (2) purchasing residential property or an unimproved residential lot; (3) titling and registering your automobile(s); (4) notifying the State of your previous legal residence/domicile of the change in your State of legal residence/domicile; and (5) preparing a new last will and testament which indicates your new State of legal residence/domicile.

10. On cross-examination, PROTESTANT A testified that he did not register to vote or purchase a home or register any vehicle in Texas in 2001. He added that he did make changes to his will, but he could not recall if he designated Texas as his state of residence.

11. PROTESTANT A testified that previously, for 10 to 15 years, he lived in Texas, then four or five years in Oklahoma, where he graduated from high school, and then attended and graduated from college in Texas. Prior to receiving military orders in Oklahoma, he was a resident of Oklahoma. He stated his intent to return to Texas to attend graduate school when he is discharged from active military duty, scheduled for June 2003.

12. At the hearing, THE SUPERVISOR, ACCOUNT MAINTENANCE DIVISION testified that the Form 511 return filed by Protestants was not processible, due to the omission of income, exemptions, exclusions, calculation of tax liability or proper calculation of a refund, and that Form 511NR would have been the appropriate return to file, since Protestants no longer claim Oklahoma as their state of residence. Additionally, THE SUPERVISOR testified that since the federal returns were not received, no deductions were taken into account on the Oklahoma return. Therefore, the Division adjusted the return using non-resident guidelines, the figures provided on their W-2's and standard deductions. Additionally, THE SUPERVISOR stated that the Division generally accepts as the effective date of change of residency in the state, the date the change is actually made by the Department of Defense.

13. A one-year Residential Lease for the property at 9999 ANONYMOUS Lane, SMALLTOWN, Oklahoma, was signed by PROTESTANT A as Lessor on December 9, 2001. The document, as well as testimony of PROTESTANT A, establish that this is a lease purchase agreement for the property. PROTESTANT A also testified that the buyer had rented the property for about six months before entering into the lease/purchase agreement.

14. Various documents relating to motor vehicles were submitted into evidence.

- ∀ 1997 Ford pickup truck Oklahoma title, reflecting a 9999 ANONYMOUS Lane, SMALLTOWN, Oklahoma, address, with last registration date of March 13, 2002;

- ∀ 1998 Ford Explorer Oklahoma title, reflecting a 9999 W. ANONYMOUS Avenue, ANYTOWN, Arizona, address, with last registration date of May 23, 2002[2];

- ∀ *Affidavit to Secure a Replacement for an Undelivered Oklahoma Title* for the 1998 Ford Explorer, dated May 12, 2001, reflecting a 99999 W. ANONYMOUS Avenue, ANYTOWN, Arizona, address; and

- ∀ 2002 Ford Pickup Arizona title, reflecting a 99999 W. ANONYMOUS, Arizona, address, with a registration date of September 16, 2002.[3]

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[2] PROTESTANT A testified that the registration for this vehicle was changed the day of the hearing to reflect the ANYTOWN, Arizona address.

[3] The lienholder given on the title was "BIGCITY Federal Employ CU", 9999 E. XXst St., BIGCITY, OK 99999.

15. PROTESTANT A holds a valid Oklahoma drivers license, last renewed on December 28, 2001. PROTESTANT B holds a valid Oklahoma drivers license, last renewed on April 2, 2001.

16. A Driver License Traffic Record for PROTESTANT B substantiates she was in AN OKLAHOMA County on May 19, 2001.

17. PROTESTANT A testified that they continued to register the vehicles in Oklahoma due to the financial institutions being in Oklahoma and for ease. Likewise, he stated they continued to renew their Oklahoma drivers licenses, utilizing the notices sent through the mail. Additionally, he testified that the traffic record for his wife and the purchase of a vehicle occurred when they returned to Oklahoma to visit family.

ISSUE AND CONTENTIONS

Whether Protestants sustained their burden of proof showing in what respect the action or proposed action of the Tax Commission is incorrect.

Protestants contend that for tax year 2001, PROTESTANT A'S legal residence was the State of Texas, and PROTESTANT B'S legal residence was the State of Arizona, and therefore any state tax withheld by Oklahoma should be refunded. Alternatively, should they be liable for income in Oklahoma, Protestants contend they should be allowed to utilize deductions to offset the liability. Further, they contend that although the military pay office and employer were notified of the change in state of residence, the payroll offices of each continued to collect Oklahoma taxes until much later. PROTESTANT A contends that by filing DD Form 2058 and advising the State of Oklahoma about March 2001 of his change in residence, he did all that was required to establish his change in residence.

The Division contends that for 2001 Protestants failed to submit sufficient evidence to show that they abandoned their Oklahoma residence and establish domicile in other states.

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, э 207.

2. The Oklahoma Income Tax Act at 68 O.S. э2353(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.[4] *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 (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).

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.

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[4] 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.

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 (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).

7. In this matter, the evidence presented does not establish that Protestants abandoned their Oklahoma domicile. Further, the evidence does not demonstrate that PROTESTANT A established actual residence in Texas with the intention of making it his permanent home. During 2001, PROTESTANT A did not reside in Texas, register to vote, purchase a home or register any vehicle in Texas. Although PROTESTANT B did actually reside in Arizona, evidence presented does not demonstrate her intention of making Arizona her permanent home.

8. Protestants argued in the alternative that certain deductions be allowed to offset their Oklahoma liability for tax year 2001. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *Oklahoma Administrative Code 710:1-5-47*. Protestants failed to provide information to support the requested revisions and therefore failed to meet their burden of proof.

9. 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.