

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2013-01-29-07 / NON-PRECEDENTIAL
ID: P-12-122-H
DATE: JANUARY 29, 2013
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND and WIFE (“Protestants”) appear through CPA, FIRM. The Account Maintenance Division (“Division”) of the Oklahoma Tax Commission appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On June 13, 2012, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*¹ and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.² On June 19, 2012, the Court Clerk³ (“Clerk”) mailed a letter to CPA that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-12-122-H. The letter also advised that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.⁴ On June 20, 2012, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On June 25, 2012, the Clerk mailed the Notice of Prehearing Teleconference to the parties, setting the prehearing conference for July 30, 2012, at 2:30 p.m.⁵

On July 30, 2012, the Division filed a Status Report In Lieu Of Prehearing Conference advising that the parties had communicated and continued to discuss a resolution of this matter. On July 31, 2012, the Clerk mailed a letter to the parties advising that a status report was due on or before August 30, 2012, advising how the parties wished to proceed.

On August 31, 2012, the Division filed the Status Report and Request for Scheduling Order. OTC ATTORNEY had not heard from CPA concerning a possible resolution of this matter or how the Protestants wished to proceed.

On September 4, 2012, the Clerk mailed the letter directing the parties to file a proposed Scheduling Order on or before October 1, 2012.

¹ OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2001).

² OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

³ OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

⁴ *Id.*

⁵ OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). The Clerk mailed the notice to CPA at CPA ADDRESS.

On October 1, 2012, OTC ATTORNEY filed the Division's Status Report and Hearing Request in Lieu of Proposed Scheduling Order. On October 3, 2012, the Clerk mailed the letter to the parties that this matter was set for hearing on November 13, 2012, at 9:30 a.m., with position letters and/or memorandum briefs due on or before November 6, 2012.

On November 6, 2012, the Division filed its Memorandum Brief, with Exhibits 1 through 7, attached thereto. On November 13, 2012, at 9:30 a.m. the undersigned convened the hearing as scheduled. OTC ATTORNEY appeared on behalf of the Division. Neither CPA nor the Protestants appeared at the hearing. The Division called AUDITOR, Auditor, Account Maintenance Division of the Oklahoma Tax Commission, who testified about the review and adjustment of the Protestants Oklahoma Nonresident/Part-Year Income Tax Return for the 2011 Tax Year and as custodian of the Division's records. The Division's Exhibits 1 through 8, were identified, offered, and admitted into evidence. At the conclusion of the hearing, the undersigned closed the record in this matter and the case submitted for decision on November 13, 2012.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence and the Division's Brief, the undersigned finds:

1. On March 1, 2010, the Protestants electronically filed their Oklahoma Resident Income Tax Return for 2009 Tax Year. The address listed was OKLAHOMA ADDRESS.⁶

2. On February 3, 2011, the Division received the Protestants' Oklahoma Nonresident/Part Year Income Tax Return (05/01/10 to 12/31/10) for the 2010 Tax Year. HUSBAND'S W-2 reflects Oklahoma Income as \$34,202.17, with \$1,370.00 in withholding, and a refund of \$677.00. The address listed was OKLAHOMA ADDRESS.⁷

3. On February 13, 2012, the Division received the Protestants' Oklahoma Nonresident/Part-Year Tax Return (08/15/11 to 12/31/11) for the 2011 Tax Year, along with a copy of the Protestants' Federal Income Tax Return for the 2011 Tax Year. On both returns, the Protestants' address was OKLAHOMA ADDRESS. HUSBAND'S W-2 reflects Oklahoma Income as \$14,921.17, with \$356.00 in withholding, which the Protestants claim as a refund.⁸

⁶ Testimony of Auditor. Division's Exhibit 6. Attached to the return are copies of the Protestants W-2s, along with a copy of Schedule F (Profit or Loss From Farming) from the federal return for the 2009 Tax Year.

⁷ *Id.* Division's Exhibit 7. Boxes one (1) and sixteen (16) of the W-2 reflect HUSBAND'S wages as \$34,202.17. The return reflects STATE as the Protestants' State of Residence. From the copy of the Income Tax Inquiry Browse Screen attached, it appears the return processed as filed.

⁸ *Id.* Division's Exhibits 1 through 2. On HUSBAND'S W-2, his address is OKLAHOMA P.O. BOX. Oklahoma wages are \$14,921.17 with total wages of \$57,002.21. This is the only W-2 attached to the exhibit. The return does not reflect another state of residence. Attached to the Protestants' federal return for the 2011 Tax Year is a Schedule F (Profit or Loss From Farming).

4. On March 20, 2012, the Division mailed an adjustment letter to the Protestants, as follows,⁹ to-wit:

| FORM 511 | | REPORTED | ADJUSTED |
|----------|---------------------------|----------|-----------|
| LINE 07 | OKLAHOMA AGI | 0.00 | 47,324.00 |
| LINE 09 | INCOME AFTER ADJUSTMENTS | 0.00 | 47,324.00 |
| LINE 10 | DEDUCTION AMOUNT | 0.00 | 11,600.00 |
| LINE 12 | DEDUCTIONS & EXEMPTIONS | 0.00 | 13,600.00 |
| LINE 13 | OKLAHOMA TAXABLE INCOME | 0.00 | 33,724.00 |
| LINE 14 | OKLAHOMA INCOME TAX | 0.00 | 1,425.00 |
| LINE 17 | OTHER CREDITS (511 CR) | 0.00 | 25.00 |
| LINE 18 | BALANCE | 0.00 | 1,400.00 |
| LINE 21 | BUSINESS ACTIVITY TAX | 0.00 | 25.00 |
| LINE 30 | OVERPAYMENT OF INCOME TAX | 356.00 | 0.00 |
| LINE 34 | REFUND | 356.00 | 0.00 |
| LINE 35 | INCOME TAX DUE | 0.00 | 1,069.00 |
| LINE 39 | TOTAL BALANCE DUE | 0.00 | 1,069.00 |

RETURN WAS CHANGED FROM NON RESIDENT TO RESIDENT. DOMICILE IS THE PLACE ESTABLISHED AS A PERSONS TRUE, FIXED AND PERMANENT HOME. A DOMICILE ONCE ESTABLISHED REMAINS UNTIL A NEW ONE IS ADOPTED.

***ADDITIONAL TAX DUE DOES NOT INCLUDE PENALTY OR INTEREST THAT MAY APPLY.

***PAYMENTS MAY BE REMITTED TO THE ADDRESS BELOW.

5. On April 2, 2012, CPA timely filed the protest,¹⁰ along with copies of letters from the Protestants, RV PARK, and COMPANY (HUSBAND'S employer). The Protestants' letter states, "...we were residence [sic] in STATE in May 2010 through July 2011 our intensions were to reside in STATE until company transferred him back to Oklahoma. I'm submitting attached letters from my employer and residence address from STATE." The letter from RV PARK¹¹ states, "This letter is to serve as proof of residency for [Protestants] from Oct 5, 2010 until April 25, 2011." The letter from COMPANY states in pertinent part, "[Protestant] was a resident of and worked in STATE until July 2011, at which time [Protestant] moved to Oklahoma. [Protestant] has resided and worked in Oklahoma since that time."

6. On April 6, 2012, the Division mailed a letter to the Protestants regarding their Oklahoma Nonresident/Part-Year Income Tax Return for the 2010 [sic]¹² Tax Year,¹³ which states as follows, to-wit:

⁹ *Id.* Division's Exhibit 3. The lines correspond to an Oklahoma Resident Income Tax Return (Form 511) for the 2011 Tax Year.

¹⁰ *Id.* Division's Exhibit 4. The Protestants' protest letter is unsigned as is the letter from COMPANY. According to the Oklahoma Secretary of State's website at <https://www.sos.ok.gov>, COMPANY was formerly known as FORMER NAME. See OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999).

¹¹ The undersigned is taking judicial notice of the RV PARK website to complete the factual details of this matter. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). According to the website at <http://www.RVPARK.com>, the Protestants could rent a site, Camping Cabin, Apartment, or Trailer on a daily, weekly, or monthly rate. The record is silent on which option they chose.

¹² See Note 7, *supra*.

¹³ Testimony of Auditor. Division's Exhibit 5.

- Since you have used the same address of OKLAHOMA ADDRESS on previous returns since 2007, please provide copies of your drivers' licenses.
- A copy of your voter's registration cards.

7. On April 17, 2012, the Division received copies of the Oklahoma Driver's Licenses of the Protestants. The issues dates were January 4, 2010 and March 2, 2010. The Protestants' address on both licenses is OKLAHOMA ADDRESS.¹⁴

8. On November 8, 2012, by facsimile, the County Assessor's Office provided copies of computer screens which reflect that the Protestants own real property, with a manufactured home on the property located at OKLAHOMA ADDRESS. The Protestants claim a homestead exemption on the property at this address.¹⁵

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.¹⁶

2. For the purposes of the Oklahoma Income Tax Act,¹⁷ "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 in absence of proof to the contrary.¹⁸

3. A natural person who resides less than seven (7) months of the taxable year within this state is presumed to be a "part-year resident individual" in absence of proof to the contrary.¹⁹ An Oklahoma Income Tax Return (Form 511 NR) must be completed and filed by those individuals who move into or out of the State of Oklahoma during the year.²⁰

4. A "nonresident individual" means an individual other than a resident individual or a part-year resident individual.²¹ A "Nonresident" is required to file an Oklahoma Income Tax Return (Form 511 NR) if \$1,000.00 of gross receipts is from Oklahoma sources.²²

¹⁴ *Id.*

¹⁵ *Id.* Division's Exhibit 8. The exhibit contains a photo of the "mobile home" on the one-half (½) acre property. There is a handwritten notation by the County Assessor's Office that the Protestants re-acquired the homestead exemption for the 2010 Tax Year.

¹⁶ OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2012).

¹⁷ OKLA. STAT. ANN. tit. 68, § 2351 *et seq.* (West 2001).

¹⁸ OKLA. STAT. ANN. tit. 68, § 2353(4) (West 2008).

¹⁹ *Id.*

²⁰ OKLA. ADMIN. CODE § 710:50-3-39 (June 25, 2000).

²¹ *See* Note 18, *supra*.

²² OKLA. ADMIN. CODE § 710:50-3-38(a) (June 25, 2000).

5. The Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to income.²³

6. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.²⁴

7. 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.²⁵

8. One is presumed to retain his Oklahoma residency²⁶ if he has:

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

9. One’s intent with respect to domicile presents a question of fact.²⁷

10. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²⁸ A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.²⁹

DISCUSSION

The Protestants’ position is that it was their intention to reside in STATE and that they were STATE residents from May 2010 through July 2011, but HUSBAND’S employer transferred him back to Oklahoma.³⁰ In support of their position, the Protestants submitted copies of letters from RV PARK and HUSBAND’S employer, COMPANY.³¹

²³ OKLA. ADMIN. CODE § 710:50-1-1.

²⁴ OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

²⁵ OKLA. ADMIN. CODE § 710:50-3-36(a) (June 26, 1997).

²⁶ OKLA. ADMIN. CODE § 710:50-3-36(b) (June 26, 1997).

²⁷ *See Note 33, infra.*

²⁸ OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999). *See OKLA. ADMIN. CODE § 710:1-5-77(b)* (June 25, 1999).

²⁹ *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.

³⁰ *See Note 10, supra.*

³¹ *Id.*

The Division responds, “The dispositive issue in this case is whether Protestants had abandoned their Oklahoma domicile for the 2011 tax year. An examination of the Division’s exhibits attached hereto and to be offered as evidence in this cause reveals that Protestants did not abandon their Oklahoma domicile established prior to the 2011 tax year in question in this cause.”³² In support of its position, the Division cites to the *Suglove*³³ case in which the Oklahoma Supreme Court set forth the test for determining Oklahoma domicile, and therefore an individual’s residency for Oklahoma income tax purposes, as follows, to-wit:

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. Domicile has been held to form a constitutional basis for the imposition of state income tax on an individual.

...

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.

The Protestants assert that it was their intention to change their domicile from Oklahoma to STATE *beginning May 2010*,³⁴ but that HUSBAND’S employer transferred him back to Oklahoma during July 2011. The letter from RV PARK indicates the Protestants “rented” from *October 5, 2010 until April 25, 2011*, which does not support their “intention” to change domicile, as stated in the protest letter.³⁵ The letter from HUSBAND’S employer is unsigned, but the letter does indicate that HUSBAND worked in STATE until July 2011, but the letter does not indicate HUSBAND ever changed his domicile from Oklahoma to STATE, or acknowledge that HUSBAND ever worked in Oklahoma prior to the transfer.³⁶

According to the Protestants’ Oklahoma Nonresident/Part-Year Income Tax Returns for the 2010 and 2011 Tax Years, prepared by CPA, the Protestants were Part-Year Residents in Oklahoma from May 1, 2010 to December 31, 2010 and August 15, 2011 to December 31,

³² Division’s Brief at 3-4.

³³ Division’s Brief at 3. *See Suglove v. Oklahoma Tax Commission*, 1979 OK 168, 605 P.2d 1315. (Citations omitted.) *See also* Note 26, *supra*.

³⁴ *See* Note 10, *supra*.

³⁵ *Id.*

³⁶ *Id.*

2011.³⁷ Although HUSBAND'S W-2³⁸ for the 2011 Tax Year tends to support the Protestants' position, the following factors support the Division's position that the Protestants did not intend to change their domicile from Oklahoma to STATE:

- The Protestants claimed a homestead exemption during the 2010 and 2011 Tax Years on the property located at OKLAHOMA ADDRESS.³⁹
- Both Protestants have Oklahoma Driver's Licenses issued in 2010 using the OKLAHOMA ADDRESS.⁴⁰
- The Protestants did not abandon their Oklahoma domicile. The Protestants had used the OKLAHOMA ADDRESS for filing purposes since the 2007 Tax Year, and according to the protest letter and the returns for the 2010 and 2011 Tax Years, the Protestants returned to this address in Oklahoma.⁴¹
- The letter from RV PARK contradicts the Protestants' position that they changed their domicile beginning May 2010. The letter indicates the Protestants only "rented" from October 5, 2010 until April 25, 2011. The letter also contradicts the time-line on the Protestants' return for the 2011 Tax Year.⁴²

CONCLUSION

The Protestants have failed to meet their burden of proof, by preponderance of the evidence, that they changed their domicile to STATE for the 2011 Tax Year and that the Division's adjustments to the return for the 2011 Tax Year were incorrect and in what respects.

³⁷ See Notes 7 and 8, *supra*. Although CPA prepared the return for the 2010 Tax Year, it appears that the return should have indicated that the Protestants were part-year residents of Oklahoma from 01/01/2010 to 04/30/2010.

³⁸ See Note 8, *supra*.

³⁹ See Note 15, *supra*.

⁴⁰ See Note 13, *supra*.

⁴¹ See Notes 8 and 10, *supra*.

⁴² *Id.* Although a minor point, the intent to change their domicile to STATE is not supported by the transient nature of the campground itself.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest should be denied.

It is further ORDERED that the amount of income tax and penalty assessed for the 2011 Tax Year be fixed as the deficiency due and owing, including interest, accrued and accruing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.

NOTE: The distinction between a Commission Order designated as “Precedential” or “Non-Precedential” has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just “Precedential” Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is “clear and unambiguous.”