

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2017-11-28-04 / NON-PRECEDENTIAL
ID: P-17-035-H
DATE: NOVEMBER 28, 2017
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE TAKEN

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 31st day of October, 2017, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

Now on this 31st day of October 2017, the above-styled and numbered cause comes on for consideration under assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. HUSBAND AND WIFE, (“Husband and Wife, collectively Protestants”) appear through PREPARER, Tax Preparer. The Compliance Division (“Division”) of the Oklahoma Tax Commission appears through AGC, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On March 27, 2017, the protest file¹ was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*² and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.³ On March 28, 2017, the Court Clerk (“Clerk”)⁴ mailed the Introductory Letter to the Protestants’ Representative that ALJ, Administrative Law Judge (“ALJ”) had been assigned to this matter, and docketed as Case Number P-17-035-H. The letter also advised the Protestants that a Prehearing Teleconference Notice would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.⁵

On April 4, 2017, AGC filed an Entry of Appearance as Division’s Counsel. On April 4, 2017, the Clerk mailed the Prehearing Teleconference Notice to the Protestants’ Representative, setting the Prehearing Teleconference for June 1, 2017, at 9:30 a.m.⁶

On May 31, 2017, the Division filed a Status Report In Lieu of Prehearing Conference.

¹ The Division file is stamped:

CONTAINS IRS FTI INFORMATION
DO NOT DUPLICATE CONTENTS
MUST BE DESTROYED IN ACCORD
WITH IRS PUB. 1075 GUIDELINES

However, the only federal information contained in the file, the Division received from the Protestants, which is not FTI.

² OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2014).

³ OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-49.

⁴ OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (August 27, 2015).

⁵ *Id.* Unless otherwise noted herein, the ALJ notified the parties by letter.

⁶ OKLA. STAT. ANN. tit. 68, § 208 (West 2014). The Clerk mailed the notice to PREPARER at ADDRESS.

On June 1, 2017, the ALJ directed the parties to file a status report by June 30, 2017. On June 21, 2017, the parties filed a Proposed Scheduling Order. On June 22, 2017, the ALJ issued the Scheduling Order submitting this matter on stipulations and briefs.⁷

On July 20, 2017, the Division filed a Status Report requesting time to audit the Protestants' 2014 Income Tax Return, which would include the same issue, which is the subject of this matter. On July 20, 2017, the ALJ struck the Scheduling Order and directed the parties to file a status report by August 21, 2017. On July 27, 2017, PREPARER filed a protest to the Division's assessment for the 2014 Tax Year.⁸ On July 28, 2017, the parties submitted a Proposed Scheduling Order. On July 31, 2017, the ALJ issued the First Amended Scheduling Order submitting this matter on stipulations and briefs.⁹

On August 4, 2017, the parties filed Joint Stipulation of Facts and Issues, with Exhibits 1 through 9, attached. On August 31, 2017, the Protestants filed their Brief.

On September 19, 2017, the Division filed its Reply Brief.

On October 3, 2017, the Protestants filed their Response to Division's Reply Brief ("Response Brief"). On October 3, 2017, the ALJ advised the parties the record closed and this matter submitted for decision.

JOINT STIPULATION OF FACTS AND ISSUES

On August 4, 2017, the parties filed Joint Stipulation of Facts and Issues, with Exhibits 1 through 9,¹⁰ as follows, to-wit:

⁷ OKLA. ADMIN. CODE § 710:1-5-38 (July 11, 2013).

⁸ PREPARER attached a copy of the assessment dated July 20, 2017 for the 2014 Tax Year.

⁹ See Note 7, *supra*.

¹⁰ The text of the stipulated facts is set out verbatim, unless otherwise noted.

1. On May 13, 2014, the Protestants filed their 2013 Original Joint Oklahoma Resident Income Tax Return (“2013 Original Return”). *See* Exhibit 1.

2. The Division sent the Protestants a letter dated May 14, 2014[,] that the Division adjusted the Protestants’ Original Return. *See* Exhibit 2

3. On February 23, 2015, the Protestants filed their 2014 Original Joint Oklahoma Resident Income Tax Return (“2014 Original Return”). *See* Exhibit 3.

4. In September 2015, the Representative for the Protestants was in contact with the OTC regarding the 2012 income tax year. The 2012 income tax year is not [at] issue. However, in the conversations between the OTC and the Representative, the OTC suggested that the Protestants should amend their 2013 and 2014 income taxes to married [filing] separately since [Husband] claimed to be a non-resident and [Wife] claimed to be a resident.

5. On September 28, 2015, [Wife] submitted an Amended 2013 Oklahoma Resident Income Tax Return to the OTC, married [filing] separate. *See* Exhibit 6(a).

6. The Division could not locate an Amended 2014 Oklahoma Resident Income Tax Return for [Wife]. The Representative for Protestant states she mailed the 2013 and 2014 Amended Returns at the same time to the OTC. Attached copy was provided by the Protestants. *See* Exhibit 6(d).

7. The Division could not locate either of the Amended 2013 or 2014 Oklahoma Non-Resident Income Tax Returns for [Husband]. The Representative for Protestant states she mailed the 2013 and 2014 Amended Returns at the same time to the OTC. Attached copies were provided by the Protestants. *See* Exhibits 6(c) & 6(e).

8. The Division sent the Protestants an Assessment Letter dated February 2, 2017 regarding the 2013 Original Return. The Assessment Letter informed the Protestants that the

Division used information from the Internal Revenue Service (“IRS”) and compared it to their 2013 Original Return resulting in an assessment of additional income tax owed in the amount of \$2,348.00, interest of \$1,034.41 (through March 28, 2017), and penalty of \$234.80 for a total of \$3,617.21. *See Exhibit 4.*

9. In its February 2, 2017 Assessment Letter, the Division referenced the Protestants 2013 U.S. Individual Income Tax Return. *See Exhibit 5.*

10. The Protestants submitted a Protest Letter dated February 17, 2017 in response to the 2013 Original Return Assessment. *See Exhibit 6(a).*

11. The Division sent the Protestants an Assessment Letter dated July 20, 2017 regarding the 2014 Original Return. The Assessment Letter informed the Protestants that the Division used information from the Internal Revenue Service (“IRS”) and compared it to their 2014 Original Return resulting in an assessment of additional income tax owed in the amount of \$1,719.00, interest of \$622.38 (through September 18, 2017), and penalty of \$171.90 for a total of \$2,513.28. *See Exhibit 7.*

12. In its July 20, 2017 Assessment Letter, the Division referenced the Protestants 2014 U.S. Individual Income Tax Return. *See Exhibit 8.*

13. The Protestants submitted a Protest Letter dated July 26, 2017 in response to the 2014 Original Return Assessment. *See Exhibit 9.*

14. [Husband] began employment in Dallas, Texas in October 2012.

15. [Husband] physically resided in Texas for employment from October 2012 through December 2014.

16. [Husband] came back to Oklahoma less than sixty [days (60)] during the 2013 calendar year.

17. [Wife] continued to reside in Oklahoma from 2012 to present and would occasionally go to Texas to visit [Husband].

18. The Protestants remained married and only resided separately out of the necessity for [Husband's] [employment] during the [period] at issue.

STIPULATED STATEMENT OF ISSUES

1. Whether the Division erred in determining [Husband] did not change his domicile from Oklahoma to Texas for the 2013 and 2014 income tax years.

ADDITIONAL FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence and the briefs, the undersigned finds:

1. On the Protestants Oklahoma Resident Income Tax Returns for the 2013 and 2014 Tax Years, the Protestants' address is OKLAHOMA ADDRESS.¹¹

2. Husband's W-2 for the 2014 Tax Year reflects Husband's address as OKLAHOMA ADDRESS, with Oklahoma withholding of \$1,716.00.¹²

3. The Protestants claimed a Homestead Exemption on the property at OKLAHOMA ADDRESS for the 2013 and 2014 Tax Years.¹³

4. Husband retained his Oklahoma Driver's License, Oklahoma License Plate, and Oklahoma Voter's Registration during the 2013 and 2014 Tax Years.¹⁴

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.¹⁵

2. For the purposes of the Oklahoma Income Tax Act,¹⁶ "Resident individual" means a natural person who is domiciled in this state, and any other natural person who spends in the

¹¹ Stipulated Exhibits 1 and 3.

¹² Stipulated Exhibit 6(c).

¹³ See Division's Brief at 5.

¹⁴ Protestants' Response Brief at 2.

¹⁵ OKLA. STAT. ANN. tit. 68, § 221(C) (West 2014).

¹⁶ OKLA. STAT. ANN. tit. 68, § 2351 *et seq.* (West 2017).

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.¹⁷

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.¹⁸ 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.¹⁹

4. A “nonresident individual” means an individual other than a resident individual or a part-year resident individual.²⁰ 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.²¹

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.²²

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.²³

¹⁷ OKLA. STAT. ANN. tit. 68, § 2353(4) (West 2017).

¹⁸ *Id.*

¹⁹ OKLA. ADMIN. CODE § 710:50-3-39 (June 25, 2000).

²⁰ *See* Note 17, *supra*.

²¹ OKLA. ADMIN. CODE § 710:50-3-38(a) (June 25, 2000).

²² OKLA. ADMIN. CODE § 710:50-1-1.

²³ 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.

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.²⁴

8. One is presumed to retain his Oklahoma residency²⁵ 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.²⁶

10. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²⁷ A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.²⁸

DISCUSSION

Husband could not find work in the State of Oklahoma, but in October 2012, Husband accepted a job in Texas, which required his physical presence. Husband moved to Texas, but Wife stayed in Oklahoma at their residence (OKLAHOMA ADDRESS). Husband retained his Oklahoma Driver’s License, Oklahoma License Plate, and Oklahoma Voter’s Registration,²⁹ and the Protestants claimed a Homestead Exemption on their residence for the 2013 and 2014 Tax

²⁴ OKLA. ADMIN. CODE § 710:50-3-36(a) (June 26, 1997). *See Suglove v. Oklahoma Tax Commission*, 1979 OK 168, 605 P.2d.

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

²⁶ *See Note 24, supra.*

²⁷ OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999). OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999).

²⁸ *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.

²⁹ *See Note 14, supra.*

Years. Husband considered moving to Texas permanently, but Wife did not want to move.³⁰ The Protestants argue, “Under IRC code once you have been in any given area for at least 18 months makes you domiciled in that area.”³¹

The Division responds, “The Protestants may only have one domicile at a time. In this case, the parties remained married and lived in different states to allow [Husband] to obtain employment. The Protestants’ address in Oklahoma remains the same before, during, and after the 2013 and 2014 income tax years. [Wife] continued to reside in the marital home while [Husband] was in Texas for employment. [Husband] did not abandon the first domicile with the intention of not returning and making Texas his permanent home.”³² The Division cites to *Suglove*,³³ 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,

³⁰ Stipulated Exhibit 6(a).

³¹ Protestants’ Brief at 2. The Brief contains only this statement and the Protestants cite no authority in support of this position or how the Internal Revenue Code applies to the determination of domicile for state income tax purposes.

³² Division’s Brief at 4.

³³ See Note 24, *supra*.

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.³⁴

From a review of the record, Husband did not intend to abandon his Oklahoma domicile for the 2013 and 2014 Tax Years. The Husband's move to Texas was necessary for employment only. The Protestants claimed a Homestead Exemption on their Oklahoma residence for the 2013 and 2014 Tax Years, and Husband retained his Oklahoma Driver's License, Oklahoma License Plate, and Oklahoma Voter's Registration.³⁵

After the Division issued the adjustment for the 2013 Tax Year, the Protestants' Representative spoke to an Assistant General Counsel, who advised the Protestants' Representative, to file "Amended" Returns for the 2013 and 2014 Tax Years, with the Protestants married filing "separately."³⁶ Estoppel generally does not apply against the state acting in its sovereign capacity because of the unauthorized acts of its officers,³⁷ or because of mistakes or errors of its employees.³⁸ Application of estoppel is not allowed against state, political subdivisions, or agencies, unless the interposition of estoppel would further some principal of public policy or interest.³⁹ Where there is no power to act, a public official cannot bind a

³⁴ *Id.* (Citations omitted.)

³⁵ *See* Note 14, *supra*.

³⁶ *See* Stipulations 4-7. *See also* Protestants' Reply Brief at 1.

³⁷ *State ex rel. Cartwright v. Dunbar*, 1980 OK 15, 618 P.2d 900.

³⁸ *Id.* *See State, ex rel. Oklahoma Tax Com'n v. Emery*, 1982 OK CIV APP 13, 645 P.2d 1048.

³⁹ OTC Order No. 2003-12-16-06 (December 16, 2006). *See Burdick v. Independent School Dist. No. 52 of Oklahoma County*, 1985 OK 49, ¶5, 702 P.2d 48:

Generally, Oklahoma jurisprudence does not allow the application of estoppel against the state, the political subdivisions or agencies, unless its interposition would further some principle of public policy or interest. The rationale for recognizing a government shield from estoppel is to enable the

government entity even if he or she mistakenly or falsely asserts such authority.⁴⁰ Unfortunately, the advice was incorrect, and the Division did not process the “Amended” Returns for the 2013 and 2014 Tax Years.⁴¹

CONCLUSION

The Protestants have failed to meet their burden of proof, by preponderance of the evidence, that Husband changed his domicile to Texas for the 2013 and 2014 Tax Years and that the Division’s adjustments to the returns for the 2013 and 2014 Tax Years were incorrect and in what respects.

state to protect public policies and interests from being jeopardized by judicial orders preventing full performance of legally-imposed duties.

⁴⁰ *Hiland Dairy Foods Co., LLC v. Oklahoma Tax Com’n*, 2006 OK CIV App 68, ¶ 11, 136 P.3d 1072, *citing Indiana Nat’l Bank v. State Dept. of Human Services*, 1993 OK 101, 857 P.2d 53.

⁴¹ On the Federal Returns for the 2013 and 2014, the Protestants filed as “Married Filing Jointly.” *See* Stipulated Exhibits 5 and 8. The Protestants cannot change their filing status on the state level for the 2013 and 2014 Tax Years. *See also* OKLA. ADMIN. CODE § 710:50-3-35:

For the purpose of determining any income tax liability, a taxpayer’s filing status, and any elections, such as itemized deductions, shall be the same as on the Federal Income Tax Return. In cases where no return has been filed, any information made available by the I.R.S., whether a Revenue Agents Report (R.A.R.), or other related return information, shall constitute the filing status and elections for the purpose of the determination, assessment, and collection of any Oklahoma Income Tax liability.

RECOMMENDATIONS

The ALJ recommends denying the protests to the Division's adjustments to the Protestants' Returns for the 2013 and 2014 Tax Years.

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 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).