

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 87-04-07-53 / NON-PRECEDENTIAL  
**ID:** P-86-544  
**DATE:** APRIL 7, 1987  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above styled cause comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. The parties agreed to submit the cause without a hearing. PROTESTANTS (hereinafter Protestants) submitted letters asserting their objection to the assessment. The Income Tax Division (hereinafter the Division) submitted a brief through its representative, OTC ATTORNEY, Attorney, of the General Counsel's Office of the Oklahoma Tax Commission.

**STATEMENT OF FACTS**

The Protestants, during 1979, prior to moving to Oklahoma, took a worthless security deduction on a tax exempt bond for Federal tax purposes. The deduction was taken because the Protestants, along with approximately one hundred (100) other bond purchasers, were denied class action status in an action alleging fraud in the issuance of the bonds in question. Since recovery on an individual basis was not cost effective, the Protestants simply took the worthless security deduction on their 1979 federal income tax return.

After moving to Oklahoma, the Protestants were able to secure an out-of-court settlement from the county which issued the bonds. In 1984, while residents of the State of Oklahoma, the Protestants received Five Thousand One Hundred Fifty Dollars (\$5,150.00) for the bonds. The Protestants thus realized a gain of Five Thousand One Hundred Fifty Dollars (\$5,150.00) for federal income tax purposes and reported the amount on their 1984 federal income tax return.

Protestants, believing that such a gain should not be subject to Oklahoma income tax, took a deduction on line 4 of their 1984 Oklahoma income tax return. Additionally, the Protestants attached an addendum to the tax return explaining the reason for their taking the deduction, as follows: "Line 4: Recovery of a loss which was written off in 1979 prior to us becoming residents of Oklahoma."

On their 1984 Oklahoma income tax return, the Protestants listed CITY, Oklahoma address as their residence and checked the resident status on the return.

On October 3, 1986, the Oklahoma Tax Commission disallowed this deduction and assessed an additional tax with interest of Six Hundred Thirty-Seven Dollars and Forty-Seven Cents (\$637.47). By letter dated October 13, 1986, the Protestants conceded liability for One Hundred Twenty-Nine Dollars and Twenty-Four Cents (\$129.24), however, they protested

liability for the remaining Five Hundred Eight Dollars and Thirteen Cents (\$508.13), since the amount related solely to the above described deduction.

The Protestants made full payment of the Income Tax Division's assessment and requested judicial review of their protest, alleging a right to refund.

The Protestants have requested that a decision be rendered by an Administrative Law Judge without a formal hearing, due principally to the cost of traveling to Oklahoma from California. Instead, the Protestants request that the Administrative Law Judge review their letters of October 13, 1986, December 15, 1986, and January 21, 1987, and from these documents, determine the validity of their claim. The Legal Division has no objection to this procedure.

### **ISSUE**

Whether the Five Thousand One Hundred Fifty Dollars (\$5,150.00) received in 1984 is taxable by the State of Oklahoma?

### **APPLICABLE LAW**

(1) This action arises under Title 68 O.S. 1981, § 2351 et seq. (The Oklahoma Income Tax Act), and this agency has jurisdiction under 68 O.S. 1981, § 207.

(2) Protestants, during 1984, were residents of the State of Oklahoma, and were subject to its income tax laws under 68 O.S. 1981, § 2351 et seq.

(3) Title 68 O.S. 1981, § 2355(A) imposes a tax upon the Oklahoma taxable income of Oklahoma residents.

(4) Oklahoma taxable income is defined in 68 O.S. 1981, § 2353(12) as "taxable income' as reported . . . to the federal government . . . adjusted further as hereinafter provided."

(5) Title 68 O.S. 1981, § 2358 sets out certain adjustments to "Oklahoma taxable income". There is no provision within Section 2358 which would allow the income in question to be excluded.

(6) Therefore, since the Protestants were residents of Oklahoma in 1984, they are subject to tax on their taxable income as reported to the federal government.

(7) Accordingly, the Five Thousand One Hundred Fifty Dollars (\$5,150.00) in question is properly includable in the 1984 Oklahoma income tax return.

### **CONCLUSIONS**

In view of the above and foregoing findings of fact and applicable law relevant thereto, the undersigned Administrative Law Judge concludes as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the Five Thousand One Hundred Fifty Dollars (\$5,150.00) in question is properly taxable by the State of Oklahoma in tax year 1984.
- (3) That the assessment, dated October 3, 1986, in the total amount of Six Hundred Thirty-Seven Dollars and Forty-Seven Cents (\$637.47) is proper.
- (4) That the Protest and Claim for Refund of PROTESTANTS should be denied.

**DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION that the Income Tax Protest and Claim for Refund of PROTESTANTS be denied.

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.