JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **89-04-18-11 / PRECEDENTIAL**
ID: **P-88-388-P / P-88-480-P / P-89-036-P**
DATE: **APRIL 18, 1989**
DISPOSITION: **SUSTAINED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was had, at which hearing the Protestants appeared on their own behalf and OTC ATTORNEY, Assistant General Counsel, and INTERN, Legal Research Assistant, appeared on behalf of the Income Tax Division. Exhibits not herein itemized were received into evidence and this case was submitted for a decision.

STATEMENT OF FACTS

The Protestants are retired from the Foreign Service of the Department of State of the United States government. The Protestants timely filed their income tax returns for the 1985, 1986 and 1987 tax years. For the 1985 and 1986 tax years they did not originally claim the civil service retirement exemption on their returns, but filed amended income tax returns claiming the exemption. The Income Tax Division issued a refund based on the amended returns. After Protestants cashed the refund voucher, the Income Tax Division issued a statement of delinquent tax based on a denial of the exemption. The Protestants timely protested the additional tax.

For the tax year 1987 the taxpayers timely filed their income tax return claiming an exemption for the retirement income of civil service employees of the United States government. The Income Tax Division sent Protestants a statement for delinquent tax, which the Protestants timely protested.

HUSBAND AND WIFE testified at the hearing in this matter that they had entered federal government service in 1952 and 1950, respectively. WIFE paid into the Civil Service Retirement System for twelve of the fifteen years that she was employed by the federal government. HUSBAND also paid into the Civil Service Retirement System at one point in his career.

Through competitive examination HUSBAND was appointed to the Foreign Service of the Department of State. As an employee of the Foreign Service, he was in the officer corp and was employed in U.S. embassies. As a retired employee of the Foreign Service of the Department of State, HUSBAND receives benefits from the Foreign Service Retirement System.

According to the testimony, the difference in the retirement systems is the age for retirement. The contribution by the employee for both retirement systems is the same, according to the testimony of WIFE, but the retirement age is younger for those in foreign service because of the hardship of foreign service.

ISSUE AND CONTENTIONS

The sole issue in this case is whether Protestants as retirees of the Foreign Service of the United States government are eligible to receive the $4,000.00 exemption from their Oklahoma income tax provided to individuals for retirement benefits received from the United States government as former civil service employees.

The Protestants contend that they are civil service employees of the United States government, who are now retired. They maintain that 68 O.S. Supp. 1988, §2358(D)(9) as it is written refers to the United States civil service as a whole and does not address itself in any way to a specific retirement system within the civil service; thus, any retired civil servant is entitled to the exemption. Protestants contend the language of 68 O.S. Supp. 1988, §2358(D)(9) is clear and that this case should be determined by the letter of the law and not by vague intent.

To support their contention that they are civil servants and as such are entitled to the exemption provided in 68 O.S. Supp. 1988, §2358(D)(9) they rely on 5 U.S.C. §2105(a)(1)(2), which defines "civil service employee" in part as "persons engaged in the performance of a Federal function under authority of law or an Executive act."

The Income Tax Division's position is that the language of Section 2358(D)(9) refers only to federal employees who are a part of the Civil Service Retirement System and receive benefits therefrom. The Income Tax Division asserts that the term "civil service of the United States" is a specific term describing the nature of the retirement benefits to which a person is entitled. To support this contention the Income Tax Division relies on the definition of "civil service" contained in that subchapter of the United States code that addresses the Civil Service Retirement System.

APPLICABLE LAW

Title 68 O.S. Supp. 1988, §2358(D)(9) provides a four thousand dollar ($4,000.00) exemption from income tax for retirement benefits received "by an individual from the civil service of the United States." A well established rule of statutory construction is that words are given their usual and ordinary meaning. See Loffland Brothers Equipment v. White, 689 P.2d 311 (Okl. 1984) and Riffe Petroleum Co. v. Grant Nation Corp. Inc., 614 P.2d 576 (Okl. 1980). Webster's Ninth New Collegiate Dictionary (1987) defines civil service as: the administrative service of a government or international agency exclusive of the armed forces; esp: one in which appointments are determined by competitive examination. Black's Law Dictionary (5th Ed. 1979) defines civil service as: Term generally means employment in federal, state, city and town government with such positions filled on merit as a result of competitive examinations. Such employment carries with it certain statutory rights to job security, advancement, etc.

The subject of Title 5 of the United States Code is "Government Organization and Employees." Section 2101 of Title 5 defines "civil service" for the purpose of that title as: all appointed positions in the executive, judicial, legislative branches of the Government of the United States, except positions in the uniformed services; [Emphasis added].

Protestants were appointed to their positions in the executive branch of the Government of the United States and therefore fall within the definition of "civil service" in Section 2101. Protestants also fall within the definition of civil service employees in Section 2105, which defines "employee" for the purpose of Title 5 to mean an officer and an individual who is:

> (1) appointed in the civil service by one of the following acting in an official capacity
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> * * *
>
> (D) an individual who is an employee under this section;
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> * * *
>
> (2) engaged in the performance of a Federal function under authority of law or an Executive act; and (3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

To support its position that the exemption provided by 68 O.S. Supp. 1988, §2358(D)(9) is available only to beneficiaries of the Civil Service Retirement System, the Income Tax Division relies only upon definitions which are found in the subchapter of Title 5 of the United States Code, which addresses the Civil Service Retirement System. Naturally those definitions of "civil service" and "employee" are tailored to the specific purposes of the statute which grants the retirement benefits.

Where "civil service" is used to indicate the general concept, Protestants' employment fall within all definitions of the term civil service. The term "civil service", within the Section 2358 income tax exemption, are not capitalized and therefore the term is not punctuated as a proper noun, indicating that it does not refer to a specific retirement system but rather to the broader concept of civil service. "Civil service" when not capitalized includes all civil servants of the United States government, not only those who are eligible to participate in a particular retirement system. To draw a distinction between Civil Service Retirement System participators and other civil service employees is not justified by the language of 68 O.S. Supp. 1988, §2358(D)(9).

CONCLUSIONS OF LAW

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

1. The Oklahoma Tax Commission has jurisdiction in this matter.

2. Individuals employed by the Foreign Service Division of the Department of State of the United States are civil service employees.

3. The Protestants are retired from the civil service of the United States and are entitled to the $4,000.00 exemption from income tax for retirement benefits provided in 68 O.S. Supp. 1988, §2358(D)(9).

4. The protests of HUSBAND and WIFE should be sustained.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts of this case, that the income protests of HUSBAND and WIFE be sustained.

OKLAHOMA TAX COMMISSION