

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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August 22, 2014

Re: LR 12-0100

Dear

This is in response to your inquiry of November 20, 2012 wherein you requested a ruling concerning Oklahoma income tax residency status for tax years 2010 and 2011. What follows is verbatim your facts and requested ruling and our response thereto.

Facts:

Bruce Smith from the Oklahoma Tax Commission suggested that we request a letter ruling on our Oklahoma residency status for tax purposes during 2010 and 2011. During those years, was living in Argentina. He was working as an expatriate for a company headquartered in Texas. During the same time, was working and continues to work as a teacher for the Texas. Other than some interest income earned at the Bank of Oklahoma, almost none of our income was earned in the state of Oklahoma for part of 2010 and all of 2011.

moved to Argentina in March, 2010 and returned in March, 2012. During those two years he was not in Oklahoma or in the United States for even one day. We jointly own a house in but to complicate matters we have been separated by 'Agreed Temporary Orders' since June, 2007. Under this order may not enter the house so he did not live there for almost three years prior to leaving for Argentina. He was living in an apartment and quit his lease and sold his automobile. did not vote in Oklahoma elections during that time. He applied for and received a DNI, an Argentine identity card and work permit from the immigrations office in Argentina. As did not own or drive a car while in Buenos Aires he felt no need at the time to obtain an Argentina driver's license. During early 2012, business circumstances brought back to Oklahoma with his company. Upon his return he had to take a new lease on an apartment. The home jointly owned is not residence.

took a job with the in August, 2010 and continues to work there. She maintains an apartment in Texas and has licensed her car with Texas plates. We still own the home in but neither of us lives there on a permanent basis. Since job in Dallas has lasted longer than one year, this job is considered indefinite as opposed to temporary. We believe this would make Texas her tax home for August, 2010.

Both of us lived out of the state of Oklahoma for part of 2010 and all of 2011. Please let us know your ruling on our Oklahoma residency status as soon as possible. We have had conflicting opinions and would like to get this taken care of as soon as possible. Federal returns have been filed for 2010 and 2011 with married filing joint status. An Oklahoma 2010 return was incorrectly filed for John with a single filing status and needs to be amended. We feel that we have valid reasons to be considered part year Oklahoma residents for 2010 and Oklahoma nonresidents for 2011 based on our circumstances. If you need additional information, please contact us.

Response:

Title 68 O.S. §2888 allows an exemption for an Oklahoma "homestead." A homestead is the actual residence of a person who is a citizen of Oklahoma. Pursuant to OAC 710:10-5, in order to obtain a homestead exemption, the applicant must be the record actual owner of the property on January 1st and must actually be residing there. Temporary absence for the purpose of making a visit or temporary absence for other purposes, where the home is not rented and the owner intends to return to the home within a reasonable length of time and does not establish what could properly be considered to be a permanent residence elsewhere, will not serve to deprive the owner of a homestead exemption.

According to OAC 710:50-3-35, an individual is an Oklahoma resident if that individual is domiciled in Oklahoma. A 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. It is the place you intend to return to whenever you are away (as on vacation abroad, business assignment, educational leave or military assignment). Residency status for Oklahoma income taxation purposes is not based on the location the income is earned; it is based on the individual's domicile. One is presumed to retain his or her Oklahoma residency if he or she has: 1) an Oklahoma Homestead Exemption, 2) his or her family remains in Oklahoma, 3) he or she retains an Oklahoma drivers license, 4) he or she intends to return to Oklahoma, or 5) he or she has not abandoned his Oklahoma residence.

Based on the facts presented in the above mentioned November 20, 2012 letter and the above stated regulations, it has been determined that both were Oklahoma residents for all of tax years 2010 and 2011.

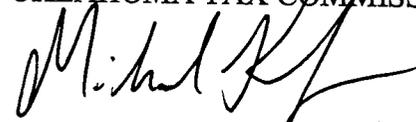
This response applies only to the circumstances set out in your request of November 20, 2012. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

Please be advised that the issuance of this ruling does not preclude the Oklahoma Tax Commission from conducting an audit or examination under 68 Okla. Stat. §206 of any report or return claiming a credit for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 Okla. Stat. §221.

If I can be of further assistance, please feel free to call me at (405) 521-3133.

Sincerely,

OKLAHOMA TAX COMMISSION



Michael C. Kaufmann
Tax Policy Analyst