

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-06-10-04 / NON-PRECEDENTIAL
ID: P-85-322
DATE: JUNE 10, 1986
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: DISMISSED / S.CT. 66,923

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration, pursuant to assignment regularly made to ALJ, Presiding Administrative Law Judge by the Oklahoma Tax Commission, and hearing had on March 28, 1986, at which PROTESTANT ONE and PROTESTANT TWO, Protestants, appeared on their own behalfs and the Income Tax Division of the Oklahoma Tax Commission appeared by and through OTC ATTORNEY for the Oklahoma Tax Commission. Exhibits were offered by the Protestants and the Income Tax Division and received into evidence as follows:

A. Protestants' Exhibits:

- (1) 1982 Oklahoma Individual Income Tax Forms and Instructions;
- (2) A blank 1982 Form 511, Oklahoma Income Tax Return;
- (3) Written protest of PROTESTANT ONE and PROTESTANT TWO.

B. Income Tax Division's Exhibits:

- (1) Protestants' 1982 Form 511, Oklahoma Income Tax Return;
- (2) Income Tax Division's internal audit work sheet;
- (3) Proposed assessment letter of the Income Tax Division to PROTESTANT ONE and PROTESTANT TWO, dated November 1, 1985.
- (4) Written protest of PROTESTANT ONE and PROTESTANT TWO.

No opening statement nor testimony was offered by the Protestants. An opening statement was made by OTC ATTORNEY on behalf of the Income Tax Division requesting that the case be dismissed in accordance with Rule 26 of the Rule of Practice and Procedure before the Oklahoma Tax Commission on the grounds of lack of sufficient evidence. The case was then submitted.

STATEMENT OF FACTS

Protestants jointly filed their 1982 state income tax return signed by them on or about March 27, 1985. The return was filed with zero (0) appearing on practically every line of the return except for line forty-six (46) which reflected Three Hundred Ten Dollars and Twelve Cents (\$310.12) as Oklahoma Income Tax Withheld. A refund in the amount of Three Hundred Dollars (\$300.00) was issued by the Income Tax Division.

An audit of the Protestants' 1982 return was conducted by the Income Tax Division after it was notified of a change to the Protestants' 1982 federal income tax return by way of a Revenue Agent's Report, dated August 31, 1984. As a result of such audit, the Income Tax Division adjusted the Protestants' 1982 income tax return to reflect Twenty-three Thousand Four Hundred Seven Dollars and No Cents (\$23,407.00) as Oklahoma Taxable Income.

On November 1, 1985, the Income Tax Division of the Oklahoma Tax Commission issued a proposed assessment against PROTESTANT ONE and PROTESTANT TWO in an amount of One Thousand Two Hundred Six Dollars and No Cents (\$1,206.00) for taxes and an amount of Six Hundred Forty-nine Dollars and Forty-five Cents (\$649.45) for interest, for a total aggregate amount of One Thousand Eight Hundred Fifty-five Dollars and Forty-five Cents (\$1,855.45).

PROTESTANT ONE and PROTESTANT TWO, on or about November 15, 1985 filed what was accepted by the Income Tax Division as a written protest to the proposed assessment of additional income tax and interest.

CONCLUSIONS

The Administrative Law Judge concludes as follows:

- (1) The Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the Oklahoma Tax Commission, an administrative agency, must interpret the laws as written by the Oklahoma Legislature, has only the authority and jurisdiction vested in it by act of the Legislature, and, therefore, is without jurisdiction to determine the constitutionality of a state or federal law.
- (3) Title 68, Sections 2351 et seq., known as the Oklahoma Income Tax Act, imposes an income tax upon the Oklahoma taxable income of every resident or non-resident of this state who earns income within the state, sets the amount of penalty and interest for failure to pay the deficiency and provides a method of prosecution through the appropriate District Attorney of this state of any person who fails to file a state income tax return with intent to defraud the state or evade the payment of income tax or any person who, with the intent to defraud this state, or evade the payment of any income tax, files a state income tax return which is false in any material items or particular. Section 2376 further states any person who files a false return with the intent to defraud the state or evade the payment of any income tax "shall be guilty of a

felony, and upon conviction, any such person shall be punished by the punishment provided by law for felonies”.

(4) That the assessment of unpaid taxes in the amount of One Thousand Two Hundred Six Dollars and No Cents (\$1,206.00) for the year 1982 is correct, and that the Protestants should be required to pay such amount of money plus the interest assessed and accrued from the due date until paid.

(5) That the Protest should be denied and the total amount of the assessment sustained.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the Protest of PROTESTANT ONE and PROTESTANT TWO be denied, that the assessment of the Income Tax Division be sustained, and that the Protestants, PROTESTANT ONE and PROTESTANT TWO, be required to pay the amount of delinquent tax for the year 1982, plus the interest assessed and accrued from the due date until paid.

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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.