

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-03-31-09 / NON-PRECEDENTIAL
ID: CR-86-037
DATE: MARCH 31, 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. A hearing was had, at which hearing Protestant, the Honorable PROTESTANT, Retired, appeared on his own behalf, and the Income Tax Division of the Oklahoma Tax Commission appeared by OTC ATTORNEY, Attorney. The Protestant testified on his own behalf and ASSISTANT DIRECTOR, Assistant Director of the Income Tax Division, testified on the behalf of the Income Tax Division of the Oklahoma Tax Commission. Exhibits, not herein itemized, were received into evidence and upon conclusion of the hearing, this case was submitted for a decision.

STATEMENT OF FACTS

The Protestant and his wife, subsequent to the filing of their original 1984 and 1985 Oklahoma individual income tax returns, did in fact amend their 1984 and 1985 Oklahoma individual income tax returns for those respective tax years. The Income Tax Division of the Oklahoma Tax Commission, upon review of the income tax returns for the tax years 1984 and 1985, issued an assessment for additional Oklahoma income tax for tax years 1984 and 1985, dated September 19, 1986. On or about September 19, 1986, the Protestant filed amended 1984 and 1985 Oklahoma individual income tax returns and remitted One Thousand Two Hundred Eighty-Eight Dollars and Fifty-Four Cents (\$1,288.54) which was acknowledged by the Income Tax Division of the Oklahoma Tax Commission on November 7, 1986.

The Income Tax Division of the Oklahoma Tax Commission did thereafter, on November 7, 1986, amend the original assessment for additional Oklahoma income tax for tax years 1984 and 1985 upon review of the amended 1984 and 1985 Oklahoma individual income tax returns and made an assessment in the amount of Seven Hundred Nineteen Dollars and Ninety Cents (\$719.90), said amount representing additional 1984 individual income tax of Four Hundred Thirty-Two Dollars and Fifty-Nine Cents (\$432.59) and interest computed thereon of Two Hundred Dollars and Eighty-Six Cents (\$200.86), and additional interest computed on the 1985 Oklahoma individual income tax of Eighty-Six Dollars and Forty-Five Cents (\$86.45). The additional individual income tax assessed by the Income Tax Division of the Oklahoma Tax Commission for tax year 1985 was paid by Protestant on September 19, 1986, but interest as above mentioned remained due thereon of Eighty-Six Dollars and Forty-Five Cents (\$86.45). On or about November 14, 1986, the Protestant paid the Seven Hundred Nineteen Dollars and Ninety Cents (\$719.90), representing additional Oklahoma income tax for tax year 1984 plus the interest due thereon and additional interest computed on the 1985 additional Oklahoma income

tax. The Protestant, along with remitting the Seven Hundred Nineteen Dollars and Ninety Cents (\$719.90), did protest the amended assessment and request a refund of the Seven Hundred Nineteen Dollars and Ninety Cents (\$719.90) if his protest was sustained by the Oklahoma Tax Commission.

ISSUES AND CONTENTIONS

It is the Protestant's contention that the Social Security benefits received for tax year 1984 were not in fact subject to Oklahoma individual income tax and that the assessment of additional Oklahoma individual income tax for tax year 1984 and the interest computed thereon should in fact be withdrawn, as well as the interest computed on the additional Oklahoma individual income tax for tax year 1985 in the amount of Eighty-Six Dollars and Forty-Five Cents (\$86.45), representing a total refund due of Seven Hundred Nineteen Dollars and Ninety Cents (\$719.90).

It is the Income Tax Division of the Oklahoma Tax Commission's contention that pursuant to Section 2358(C)(10) of Title 68 of the Oklahoma Statutes, that the Social Security benefits received by the Protestant were not in fact exempt from taxable income until taxable years beginning after December 31, 1984, The Income Tax Division of the Oklahoma Tax Commission had no alternative but to include the Social Security benefits received by the Protestant as Oklahoma individual income and therefore assess Oklahoma individual income tax thereon pursuant to statute.

The sole issue to be determined is whether or not, pursuant to statute, that Social Security benefits received by the Protestant for tax year 1984 are in fact subject to Oklahoma individual income tax.

APPLICABLE LAW

Section 2358(C)(10) of Title 68 of the Oklahoma Statutes specifically provides as follows, to-wit:

(C) The Oklahoma adjusted gross income of any individual taxpayers shall be further adjusted as follows to arrive at Oklahoma taxable income:

...

(10) In taxable years beginning after December 31, 1984, Social Security benefits received by an individual shall be exempt from taxable income, to the extent such benefits are included in the federal adjusted gross income pursuant to the provisions of Section 86 of the Internal Revenue Code.

It is incumbent upon the Income Tax Division of the Oklahoma Tax Commission to comply with the legislation enacted by the Oklahoma Legislature and in the case at bar, it is quite clear that the specific section directs that Social Security benefits are not exempt from Oklahoma taxable income for tax year 1984. The Protestant was assessed additional Oklahoma individual income tax for tax year 1984 for the reason that Protestant failed to include on the 1984 Oklahoma individual income tax return the Social Security benefits received for tax year 1984

and in view of the fact this was not included, the Income Tax Division of the Oklahoma Tax Commission, upon review of the 1984 individual income tax return and the amended individual income tax return of the Protestant, did in fact include that amount and assess the applicable rate on the additional taxable income of the Protestant as well as the statutorily required interest due from the date said return was due until the assessment of November 7, 1986.

The Protestant did in fact take issue with the additional interest assessed for tax year 1985, representing an amount of Eighty-Six Dollars and Forty-Five Cents (\$86.45), said interest attributable to Protestant's additional income tax for tax year 1985. The Protestant had failed to include judicial retirement from the State of Oklahoma as Oklahoma taxable income and did upon review remit the additional individual income tax due thereon on November 7, 1986, but did not remit the accrued interest on the additional Oklahoma individual income tax based upon the inclusion of the judicial retirement for tax year 1985. Protestant would request that this amount be remitted in view of the fact he was unaware at the time of the filing of the return that the judicial retirement was subject to Oklahoma income tax for tax year 1985. The statutes are quite clear concerning the applicable interest set by statute, and as such, the Income Tax Division of the Oklahoma Tax Commission does not have the authority to withdraw and/or waive the interest assessed.

CONCLUSIONS

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

- (1) The Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the assessment of additional Oklahoma individual income tax for tax year 1984 and the accrued interest computed for tax years 1984 and 1985 in the amount of Seven Hundred Nineteen Dollars and Ninety Cents (\$719.90) is correct and proper and in compliance with the directives of Section 2358(C)(10) of Title 68 of the Oklahoma Statutes and the interest provision of Section 217 of Title 68 of the Oklahoma Statutes.
- (3) That the income tax protest of PROTESTANTS and request for refund contained therein be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the income tax protest of PROTESTANTS and the claimed refund contained therein 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.