

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-05-07-39 / NON-PRECEDENTIAL
ID: P-86-208
DATE: MAY 7, 1987
DISPOSITION: DENIED
TAX TYPE: DOCUMENTARY STAMP
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 above styled cause was originally set for hearing, however by agreement of the parties, this matter was submitted on the written briefs.

Brief of the Ad Valorem Division of the Oklahoma Tax Commission (hereinafter Division) was filed on November 12, 1986. Brief of Protestant was filed on February 9, 1987, and the case was considered submitted for a decision.

STATEMENT OF FACTS

On February 2, 1984, the Division sent a certified letter to PROTESTANT, Protestant herein. In this letter, the Division stated that an examination, on May 19, 1982, of the Registry of Deeds for COUNTY, Oklahoma, Book XXX, page XXX, showed Protestant's deed from GRANTOR, conveying property described as Pt XX Lot Block X NAME Addition, CITY. The Division's letter requested the Protestant to either submit evidence that an authorized exemption from the documentary stamp tax is claimed or to affix the proper amount of documentary stamps to the deed and forward a copy to the Division.

The Protestant sent a letter to the Division, dated February 14, 1984, advising that the conveyance described above was not an outright sale but rather was a conveyance to a wholly-owned corporation and therefore exempt from documentary stamp tax. Protestant included a copy of the deed in question and an affidavit to the effect that: (1) GRANTOR is a successor to the merger to CORPORATION; (2) That the property conveyed to Protestant was for corporate convenience; and, (3) All the stock of Protestant is owned by GRANTOR.

The Division responded to Protestant's February 14th letter on February 23, 1984, and indicated to Protestant that corporate convenience is not a valid exemption from documentary stamp tax. Again, the Division requested Protestant to show exemption from documentary stamp tax or to affix the proper amount of documentary stamps to the deed in question.

The Division again corresponded with Protestant on May 30, 1984, and requested a response to the Division's February 23rd letter.

On August 3, 1984, the Division sent a certified letter to Protestant proposing assessment in the amount of Three Hundred Forty-Two Dollars and Seventy-Five Cents (\$342.75), plus penalty and interest. No response was made to the proposed assessment.

Thereafter, the Division caused Tax Warrant No. XX-XX-XXXX to be issued against Protestant for indebtedness of documentary stamp taxes with penalties and interest therein, for the period of May 19, 1982 through November 27, 1984, as follows:

Tax:	\$342.75
Penalty:	34.28
Interest:	<u>137.11</u>
Total:	\$514.14

ISSUES

(1) Whether the Oklahoma Tax Commission has jurisdiction of this matter, since no protest to the Division's assessment was filed.

(2) If jurisdiction does exist, whether documentary stamp tax is due on the subject transaction.

APPLICABLE LAW

The provisions of 68 O.S. 1981, § 221, which are pertinent to the first issue are as follows:

(c) Within thirty (30) days after the mailing of the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a written protest under oath...

...

(e) If the taxpayer fails to file a written protest within the thirty-day period herein provided for or within the period as extended by the Commission, then the proposed assessment, without further action of the Tax Commission, shall become final and absolute at the expiration of thirty (30) days from the date same is mailed to the taxpayer or at the expiration of the period as extended by the Tax Commission.

(f) The Tax Commission may in its discretion extend the time for filing a protest for any period of time not to exceed an additional ninety (90) days.

By letter dated August 3, 1984, the Division issued its proposed assessment in the amount of Three Hundred Forty-Two Dollars and Seventy-Five Cents (\$342.75) plus penalty and interest. The assessment letter included the following language:

If you do not agree to the proposed assessment, you may, within thirty (30) days, file a verified protest to the Oklahoma Tax Commission per 68 O.S.

1971, § 207; if requested therein, a hearing will be granted before the Commission. If you do not do so, this assessment will become final at the expiration of thirty (30) days from the date of this letter; if the delinquent tax has not been satisfied, steps will be taken in compliance with 68 O.S. 1971, § 234, to effect the collection of the tax, penalty, interest and sheriff's fees for serving the tax warrant.

The Division received no response from the Protestant within the statutorily prescribed thirty (30) day period, and accordingly, issued its Tax Warrant No. 03-84-0048 on November 27, 1984.

While it is clear that the Protestant did indeed correspond with the Division prior to the assessment letter of August 3, 1984, and that the Protestant did indeed correspond with the Division after the assessment letter of August 3, 1984, it is equally clear that no letter of protest or any correspondence whatsoever was filed with the Division within the statutorily prescribed thirty (30) day period.

The Oklahoma Supreme Court has addressed the jurisdictional issue as presented in this case. In In the Matter of Phillips Petroleum Company, 652 P.2d 283 (Okla. 1982), the taxpayer took no action within the statutorily prescribed thirty (30) day period for the filing of a protest, and only on the forty-first and forty-third day did the taxpayer request an extension of time pursuant to 68 O.S. 1981, § 221(f). After setting out the statutory provisions of § 221, the Oklahoma Supreme Court stated:

A clear reading of the statute indicates that any protest against a tax assessment must be made within thirty (30) days from the mailing date or the assessment becomes final and absolute. In the case at bar, Phillips made no communication, informal or otherwise, with the Oklahoma Tax Commission within the thirty (30) day limitation. By operation of the statute, the assessment became final after the thirtieth day of silence by Phillips.

Phillips, 652 P.2d at 284.

The Court continued:

Section 221(e) required Phillips to preserve its administrative remedy within the thirty (30) day limitation by either giving notice of protest or requesting an extension. Phillips failed to take either action, and both the Commission and this Court are powerless to transform an assessment which has become final and absolute by mandate of the Legislature into anything less than final.

Phillips, 652 P.2d at 285 (Emphasis Added).

In In the Matter of Hamm Production Company, 671 P.2d 50 (Okla. 1983), the Supreme Court again addressed the issue of the jurisdiction of the Oklahoma Tax Commission. In that case, the taxpayer properly requested a ninety (90) day extension of time in which to file a

protest pursuant to 68 O.S. 1981, § 221(f). However, the assessment to which the extension was requested was later withdrawn by the Commission and a new audit was instituted. A second assessment, similar to the first proposed assessment, was later issued and the taxpayer took no action within the statutorily prescribed thirty (30) day period, but did file an application for an extension of time within one hundred twenty (120) days of the proposed assessment. The Oklahoma Tax Commission denied the application for an extension of time on the basis that it did not have jurisdiction to consider the application.

The Court began its analysis as follows:

At the outset, we observe that the timely filing of a protest to the first proposed assessment does not relate to or become a part of the second proposed assessment so as to make taxpayer's purported protest of the second assessment timely by relation back to the first protest. The second proposed assessment must be treated as a new assessment. Ladd Petroleum Corp. v. Oklahoma Tax Commission, Okl., 619 P.2d 602 (604) (1980); Estate of Kasishke v. Oklahoma Tax Commission, Okl., 541 P.2d 848 (1975).

Hamm, 671 P.2d at 51.

Applying the above analysis to the instant case leads the undersigned Administrative Law Judge to conclude that the correspondences prior to the actual proposed assessment of August 3, 1984, had no bearing on the assessment at issue.

The Court ultimately held:

We hold that failure of the taxpayer to file either its protest or application for extension to file its protest within the thirty (30) day period allowed by Section 221(c) resulted in a proposed assessment becoming final and the Commission was without jurisdiction thereafter to grant an extension of time in which to file a protest under the provisions of Section 221(f).

Hamm, 671 P.2d at 50-51.

From the above and foregoing, it is clear that the Oklahoma Tax Commission does not have jurisdiction to provide the relief which the Protestant seeks, since the proposed assessment became final after thirty (30) days from the date of the issuance.

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) That the Oklahoma Tax Commission does not have jurisdiction to provide the relief requested, since no protest nor extension of time was filed within the legislatively mandated thirty (30) day period.

(2) Having determined that the Oklahoma Tax Commission has no jurisdiction to entertain this matter, no jurisdiction exists to review the merits of the proposed assessment.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the request for relief be denied and that the assessment letter of August 3, 1984 is final and absolute.

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.