JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-04-02-007 / NOT PRECEDENTIAL**
ID: **P9700280**
DATE: **04-02-98**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the proposed income tax assessment of August 18, 1997, the letter of protest, and the Division's Verified Response to Protest and attachments, the undersigned finds:

1. That PROTESTANT'S 1996 Oklahoma Income Tax Return reports a filing status of "head of household with qualifying person" and two (2) exemptions, one for himself and one for a dependent child.

2. That in addition to the filing status and number of exemptions, PROTESTANT claimed a sales tax relief credit on the 1996 return in the amount of $80.00.

3. That the Division upon review of the return denied the exemption and sales tax relief credit for the dependent child.

4. That the Division's action is based on PROTESTANT'S former spouse's previous filing of a 1996 return claiming an exemption for the dependent child.

5. That as a result of the Division's action, a proposed assessment of additional income tax, interest and penalty was issued against PROTESTANT for the 1996 tax year in the total amount of $96.71, inclusive of tax in the amount of $87.00, interest accrued through August 15, 1997, in the amount of $5.36 and penalty in the amount of $4.35.

6. That PROTESTANT filed a timely protest to the assessment, asserting the Decree of Divorce from his former spouse was not final until August 21, 1996 and the dependent child lived with him up to the date the divorce decree was final. PROTESTANT also asserts that although his former spouse is the custodial parent under the divorce decree, the dependent child lives with him more than one-half of the year.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. 1991, § 207; that a proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988); that several requirements must be satisfied before an individual can be claimed as a dependent of the taxpayer one of which is that the dependent must receive over one-half of his or her support from the taxpayer which is measured by economic value rather than elapsed time, I.R.C. §§ 151(c) and 152(c); and that PROTESTANT has failed to come forward with any evidence to show the dependent child received one-half or more of his or her support from PROTESTANT during 1996.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of PROTESTANT, be denied. It WAS further DETERMINED that the amount in controversy, plus any additional accrued and accruing interest, be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.