

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 98-04-07-013 / NOT PRECEDENTIAL
ID: P9600387
DATE: 04-07-98
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That by letter dated April 28, 1995, the Division assessed income tax, interest and penalty against Taxpayers for the 1990 tax year.
2. That the assessment is based on an Internal Revenue Service Revenue Agent Report dated August 17, 1994 and numbered XXX.
3. That Taxpayers did not file an amended return with the state subsequent to the changes made by the Internal Revenue Service.
4. That the aggregate amount assessed against Taxpayers for the 1990 tax year, inclusive of penalty and interest accrued through April 28, 1995, is \$67,995.66.
5. That Taxpayer timely responded to the assessment, asserting that the amount of the deficiency reported by the IRS was in dispute.
6. That by Order dated February 22, 1995, a United States District Judge for the Northern District of Oklahoma dismissed Taxpayers' action based on a lack of subject matter jurisdiction. In the Order, the Court found that Taxpayers' had failed to file a claim for refund with the IRS which is a prerequisite to maintaining an action in the courts.

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 except in those circumstances where an IRS revision affects items or matters relating to allocation or apportionment, the Tax Commission is bound by the changes made by the IRS, Rule 710:50-3-8(d) of the ***Oklahoma Administrative Code***; that the information furnished by the IRS shall be that upon which any tax liability is computed, Rule 710:50-5-10(a) of the ***Oklahoma Administrative Code***; and that Taxpayer has neither

asserted any cognizable factual errors nor presented any justiciable issues of law in regard to the proposed action of the Division, Rule 710:1-5-47 of the *Oklahoma Administrative Code*.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of TAXPAYERS, be denied. It WAS further DETERMINED that the amount in controversy, plus any additional accrued and accruing interest, be fixed jointly and severally 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.