JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-12-03-006 / NOT PRECEDENTIAL**
ID: **P9500070**
DATE: **12-03-98**
DISPOSITION: **SUSTAINED IN PART / DENIED IN PART**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The parties stipulate to the following:

PROCEDURAL FACTS

1. The Division, by letters dated July 17, 1992 and July 20, 1992, proposed the assessment of additional Oklahoma income taxes, together with interest thereon, against Protestant for the taxable years 1988, 1989 and 1990, all as set forth in three (3) letters of the Division by THE Corporate Auditor, in the following amounts:

YEAR	TAX	INTEREST	TOTAL
1988	$13,335.00	$6,932.00 03/15/89-08/31/92	$20,267.00
1989	$5,774.00	$2,136.00 03/15/90-08/31/92	$7,910.00
1990	$3,978.00	$875.00 03/15/91-08/31/92	$4,853.00

2. The basis for the referenced assessments was a re-weighting [sic] of the apportionment factors because only two (2) were applicable to Oklahoma, and an N.O.L. carryforward from 1987 was deleted from the computation of the taxable income because the taxpayer's return indicated that business began in Oklahoma in 1984. All pre-1984 losses in the carryforward were deleted. The net result of this adjustment was that only Sixty-six Thousand Six Hundred Seven Dollars ($66,607.00) of the N.O.L. was applied to the return resulting in no additional N.O.L. carryforward.

3. Protestant requested additional time to protest in a letter dated August 12, 1992.

4. THE Auditor advised Mr. Y of THE ACCOUNTING FIRM, that amended returns would be proper and that the amended returns should have a copy of the partnership K-1s attached. Such telephone conversation took place on or about August 13, 1992.

5. On or about August 17, 1996 [sic], the Division received a letter from THE ACCOUNTING FIRM discussing the taxpayer's situation.

6. On or about August 7, 1992, the Division received a Power of Attorney from taxpayer appointing MR. X and MR. Y of THE ACCOUNTING FIRM, Oklahoma City, as their representative.

7. The Division, by letter dated August 20, 1992, granted Protestant additional time to November 11, 1992, to reply to the proposed assessments, all as set forth in a letter by Corporate Auditor.

8. The Division received a letter [dated October 26, 1992] from the Protestant indicating original and amended returns were being filed to properly reflect Oklahoma taxable income. Original returns for taxable years 1976-1984, and amended returns for 1985-1990 [sic].

9. On November 6, 1992, the auditor met with Mr. Y of THE ACCOUNTING FIRM. Mr. Y delivered the original returns for 1976-1984 and amended returns for 1985-1990. Partnership K-1s were not attached to the original returns filed. K-1s were attached to the amended returns as requested. The K-1s indicated the partnership interest was from ANONYMOUS Corporation. ANONYMOUS had never filed an income tax return with Oklahoma.

10. The original returns which did not have K-1s attached (1976-1984) indicated large losses that were brought forward and applied to subsequent years. In order to allow the carryforward of the losses, the auditor had to confirm that the Oklahoma losses were correct on the original returns. The Division, by letter dated November 13, 1992, requested Oklahoma income tax returns for 1976 through and including 1991 from ANONYMOUS, all as set forth in a letter from the Corporate Auditor.

10A. Protestant received, on or about December 20, 1992, a notice from the Oklahoma Tax Commission that Protestant's 1991 refund had been applied to the 1988 and 1989 assessments.

11. The Division, by letter dated December 22, 1992, informed Protestant that MR. Y of THE ACCOUNTING FIRM had delivered original returns for 1976-1984 and amended returns for 1985-1990. The auditor stated that a review of partnership returns, as filed with the Internal Revenue Service, would be necessary to process the referenced returns and that the audit would be held in abeyance until the partnership returns were received and reviewed, all as set forth in a letter by THE Corporate Auditor.

12. On December 29, 1992, the auditor received a call from Mr. X of THE ACCOUNTING FIRM. She advised him that she needed copies of the partnership returns before she could proceed with the audit. He indicated he thought she had requested them from the IRS. She told him she had not received them yet and she would notify him when they were received.

13. On February 5, 1993, the auditor received a call from MR. Y of THE ACCOUNTING FIRM. He was inquiring as to whether the requested returns had been received by the Division. He was advised the returns had not been received. He said he would work on getting them from the general partner.

14. On May 10, 1993, the auditor received another call from MR. Y, inquiring as to whether the partnership returns had been received. He was advised by the auditor that the returns had not been received. He was to relay that information to the Protestant.

15. On August 12, 1993, the auditor received a telephone message that MR. Y had called. He wanted to know if the auditor had received the requested partnership returns. The auditor returned the call on August 24th, and left voice mail that she had not received the returns.

16. On August 24, 1993, the auditor called MR. Y and advised him that she had not yet received the requested partnership returns.

17. On March 1, 1994, the auditor received a telephone call from THE Assistant Corporate Tax Officer for the Protestant. The auditor advised her that she had not yet received the requested returns. THE CORPORATE TAX OFFICER was also informed that the auditor would have to review the requested returns before the amended returns could be processed. PROTESTANT'S CORPORATE TAX OFFICER was to check with the Trustees of the partnership to see where the returns were.

18. On March 2, 1994, the auditor received a telephone call from Mr. Z of ANONYMOUS indicating he had the information for the partnership, and that Oklahoma income tax returns had not been filed. He also indicated that ANONYMOUS had sold their partnership interest on March 22, 1993. He stated that ANONYMOUS had always filed franchise tax returns with Oklahoma, but he was unaware of any Oklahoma income tax returns ever being filed. Mr. Z agreed to send the auditor copies of the federal returns for 1976-1992 with the K-1s attached. He was also to check and see if all the requested years were available.

19. On March 10, 1994, the Division received a letter from ANONYMOUS dated March 4, 1994. The letter indicated that copies were enclosed for PARENT CORPORATION for 1982-1991, excluding 1983. The letter stated that ANONYMOUS was unable to locate returns for 1983 and all years prior to 1982.

20. On November 3, 1994, the auditor received a letter [dated November 1, 1994] from PROTESTANT'S CORPORATE TAX OFFICER indicating that she understood the auditor still needed the 1976-1980 partnership information to be able to process the amended returns. PROTESTANT'S CORPORATE TAX OFFICER further indicated:

> "Since you never received any information from the partnership, we searched through our off-site storage and finally found copies of the K-1s and the 1065 Partnership Returns [sic] for years 1978-1980. Attached is a schedule stating the partnership loss per the K-1s and the resulting Oklahoma NOL carryforward to 1981. You will note some of the years do not exactly agree with the original returns filed as we had to reconstruct the information."

21. The Division, by letter, issued a revised assessment dated February 14, 1995, disallowing the Protestant's claim for refund for the 1989 taxable year as being time barred; and allowing a refund for 1990, 1991, and 1992 taxable years. The reason given by the Division for disallowing the 1989 claim for refund was:

> "Your 1989 Oklahoma Income Tax Refund has been BARRED by Statute since your return (claim) was not filed within the allocated time of three (3) years from the date the tax was paid.
> 68 O.S. §2373 and Permanent Rule 710:50-9-2,"

all as set forth in a letter by THE Corporate Auditor. Note: The Auditor's letter contains typographical errors. The revised assessment actually time barred taxable year 1988 and allowed refunds for 1989, 1990, and 1991 taxable years.

22. On February 21, 1995, the auditor received a call from PROTESTANT'S CORPORATE TAX OFFICER indicating that the Protestant had received its refunds, but no interest was received on the amounts refunded.

23. The Protestant timely filed a formal protest, objecting to the 1988 refund disallowance, on February 24, 1995. Protestant's objection was based on 68 O.S. §2375(H) and Permanent Rule 710:50-90-2 and the fact that the Protestant had extended the time to assess federal income tax for the 1988 taxable year through June 30, 1993.

24. After a review of the interest allowance issue, it was determined that interest was warranted on the amounts refunded. The Division issued checks [dated February 25, 1995] covering interest on the amounts refunded (1989, 1990, and 1991).

25. On March 3, 1995, a 512X Form was generated by the auditor to issue the refund for the 1988 taxable year, with interest from November 3, 1994 (the date all the K-1 information was finally received).

26. On March 6, 1995, the Division received a letter from the Protestant, dated March 1, 1995, protesting the computation of interest. Protestant contends that interest is due from the due date of the returns as originally filed October 29, 1992, for 1988, 1989, and 1990, and for 1991, March 15, 1992, not from November 3, 1994, the date all the necessary information was finally received.

B. Additional findings:

1. Protestant filed its Oklahoma Corporation Income tax return for the taxable year ending December 31, 1991, on September 15, 1992.

2. A refund of the overpaid income tax in the amount of $25,796.00 was requested by the 1991 income tax return.

3. The 1991 income tax return was never audited nor amended by the Division.

4. The 1991 income tax overpayment was refunded to Protestant in 1995 with interest paid from November 3, 1994.

ISSUES AND CONTENTIONS

The issue presented for decision is whether the interest payable on the refunds is to be calculated from date the returns were filed or due whichever is later or the date the documents required by the Division for verifying the refunds were filed. The above issue is only relevant for the 1988, 1989 and 1990 tax years. The evidence indicates that the refund of the overpayment claimed by the 1991 tax return was not dependant on the documents requested by the Division. In fact, the Division applied the reported 1991 overpayment to the taxes assessed for 1988 and 1989 tax years without further inquiry.

Protestant contends that the Division erred in the calculation of the interest due on the refunds for the 1988 through 1991 tax years. In support of this contention, Protestant argues that the 1988 through 1990 amended returns filed on October 29, 1992 were correct, processible and contained all the additional information subsequently requested by the Division. Protestant also argues that no changes were made to the information or the computations reported on the original 1991 tax return and, therefore, interest on the claimed overpayment should be calculated from the due date of the return or March 15, 1992.

The Division contends that it properly calculated the interest due on the refunds claimed on the returns. In support of this contention, the Division argues that it could not determine whether the losses reported on the amended returns were Oklahoma losses and correctly reported without reviewing the federal partnership returns.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Commission. 68 O.S. 1991, § 207.

2. The provision of the Oklahoma Statutes applicable to this proceeding is 68 O.S. 1991, § 217(h) of the Uniform Tax Procedure Code[1] which provides in pertinent part:

> Whenever an income tax refund is not paid to the taxpayer within ninety (90) days after the return is filed or due, whichever is later, with all documents as required by the Commission, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund, at the same rate specified for interest on delinquent tax payments. The payment of interest on refunds provided for by this section shall apply to tax year 1987 and subsequent tax years.

The Commission has construed the language of Section 217(h) to require a "processible" return. Rule 23.010.02 of the Oklahoma Tax Commission Permanent Rules.[2] "To be `processible', all information on the return, including the computations, must be correct." Id.

3. An amended corporate income tax return must be filed on form 512X and must have attached, where applicable or an explanation when not applicable, the following information: (1) copy of the federal form 1120X or 1139; (2) proof of disposition by the Internal Revenue Service; (3) copy of complete Revenue Agent's Report; or (4) schedule of NOL carryback/carryover. Rule 23.015.00 of the Oklahoma Tax Commission Permanent Rules.[3]

4. The taxpayer bears the burden of showing in what respect the action or proposed action of the Tax Commission is incorrect. Rule 710:1-5-47 of the Oklahoma Administrative Code. See, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988).

5. Here, Protestant failed to present any evidence to show that the partnership returns for the 1976 through 1984 tax years were not necessary to process the amended returns for the 1988 through 1990 tax years. The stipulated facts indicate that such information was required to verify the Oklahoma portion of the NOL carryover. Accordingly, interest was properly calculated on the refunds for the 1988 through 1990 tax years from the date the schedule of partnership losses was submitted by Protestant.

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[1] 68 O.S. 1991, § 201 et seq.

[2] Currently codified as Rule 710:50-9-3(a) of the Oklahoma Administrative Code.

[3] Currently codified as Rule 710:50-17-7 of the Oklahoma Administrative code.

The Division, however, erred in the calculation of interest on the refund for the 1991 tax year. The evidence indicates that this return was processible as filed. Accordingly, interest is payable from the date the return was filed or September 15, 1992.

6. Protestant's protest to the calculation of interest on the income tax refunds for the 1988 through 1990 tax years should be denied. Protestant's protest to the calculation of interest on the income tax refund for the 1991 tax year should be sustained.

DISPOSITION

Based on the above and foregoing, it WAS DETERMINED that the protest of Protestant be sustained in part and denied in part in accordance with the above.

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.