

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 99-01-14-002 / NOT PRECEDENTIAL  
**ID:** P9800060  
**DATE:** 01-14-99  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the record of the proceedings and the exhibits received into evidence, the undersigned finds:

1. By letter dated September 9, 1994, Taxpayers notified the Division that the Internal Revenue Service ("IRS") had audited their 1991 and 1992 Federal income tax returns. Attached to the letter was a copy of the IRS income tax examination changes. Taxpayers also requested state tax forms for purposes of amending their 1991 and 1992 Oklahoma income tax returns in the event the IRS changes affected their state income taxes.

2. On November 26, 1997, the Division caused to be issued an assessment of additional income tax, interest and penalty against Taxpayers for the 1991 tax year in the total aggregate amount of \$2,585.25, inclusive of tax in the amount of \$1,330.00, interest accrued through November 26, 1997, in the amount of \$1,122.25 and penalty in the amount of \$133.00.

3. The 1991 assessment is based on a Revenue Agents/Service Center Report dated December 1, 1994.

4. Taxpayers timely protested the 1991 assessment.

5. On July 31, 1998, the Division caused to be issued an assessment of additional income tax, interest and penalty against Taxpayers for the 1992 tax year in the total aggregate amount of \$1,200.67, inclusive of tax in the amount of \$634.00, interest accrued through July 31, 1998, in the amount of \$503.27 and penalty in the amount of \$63.40.

6. The 1992 assessment is based on a Revenue Agents/Service Center Report dated February 6, 1995.

7. Taxpayers timely protested the 1992 assessment.

8. On September 18, 1998, Taxpayers were notified that their 1997 state income tax refund had been applied to the income taxes assessed for the 1991 tax year. The total amount applied was \$648.00.

### **ISSUE AND CONTENTIONS**

The issue presented for decision is whether the assessments of additional income tax for the 1991 and 1992 tax years are barred by reason of Taxpayers' letter of notification filed with the Division.

Taxpayers contend that the assessments should be barred. In support of this contention, Taxpayers argue that the 1993 amendment to Section 2375(H)(2) is applicable to this proceeding. In the alternative, Taxpayers request that the assessed penalty and interest be waived. In support of this request, Taxpayers assert that the length of time between the date they notified the Tax Commission of the changes and the date the assessments were issued is unreasonable.

The Division contends that the assessments are not barred. In support of this contention, the Division argues that the 1994 amendment of Section 2375(H)(2) is applicable to this proceeding.

### **CONCLUSIONS OF LAW**

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

2. The Oklahoma adjusted gross income of any individual taxpayer is computed by starting with the amount reported as adjusted gross income to the federal government or in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code. See, 68 O.S. 1991, §§ 2353(13) and 2358.

3. Prior to the 1994 amendment of Section 2375(H)(2), a taxpayer had the option, within one year of any change or correction to the taxpayer's federal taxable income, of either filing an amended return reporting his corrected Oklahoma taxable income or filing a letter notifying the Tax Commission that the information was available. 68 O.S. Supp. 1993, § 2375(H)(2). In the event the taxpayer complied with the statute, the Tax Commission was required to make assessment or refund within two (2) years of the filing of the amended return or the notice. *Id.*

4. A taxpayer's option of filing a letter notice of any federal changes or corrections was removed by the 1994 amendment to Section 2375(H)(2). 68 O.S. Supp. 1994, § 2375(H)(2). On and after the effective date of the 1994 amendment a taxpayer was required to file an amended return reporting the corrected Oklahoma taxable income. *Id.*

5. Where an amendment to a statute contains a provision making it effective at a fixed future date, the statutory changes become effective on the date designated. **Cities Service Oil Co. v. Oklahoma Tax Commission**, 191 Okl. 303, 129 P.2d 597 (1942). The 1994 amendment to Section 2375(H)(2) was effective September 1, 1994.

6. No person has a vested right in any particular mode of procedure, and if, a new law of procedure goes into effect, it governs, unless the statute itself provides otherwise. **Independent Cotton Oil Co. v. Beacham**, 31 Okl. 384, 120 P. 969 (1911).

7. Here, Taxpayers notice of the changes to their federal taxable income for the 1991 and 1992 tax years was made subsequent to the effective date of the amendment to Section 2375(H)(2). The notice did not comply with the then current provisions of the statute. Therefore, the assessments of additional income tax for the 1991 and 1992 tax years are not barred.

8. Taxpayers' protest should be denied.

#### DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of TAXPAYERS, be denied. It WAS further DETERMINED that the interest accrued from the date of the filing of the notice by the Taxpayers to the date of the assessments be waived. It WAS further DETERMINED that amounts in controversy, inclusive of any additional accruing interest, but less the interest DETERMINED to be waived, be fixed as the deficiency due and owing.

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**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.