**JURISDICTION:** **OKLAHOMA TAX COMMISSION - DECISION**
**CITE:** **99-07-13-004 / NOT PRECEDENTIAL**
**ID:** **P9700133**
**DATE:** **07-13-99**
**DISPOSITION:** **DISMISSED**
**TAX TYPE:** **INCOME**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about June 12, 1995, Form 511 for 1985 was filed jointly by PROTESTANT and his former spouse.

2. By letter dated January 3, 1997, the Division caused to be issued against PROTESTANT a proposed assessment of additional income tax, interest and penalty for the 1985 tax year. The assessment proposed a total additional amount due of $1,214.00 for the 1985 tax year, inclusive of tax in the amount of $427.00 and interest accrued through January 3, 1997, in the amount of $716.00 and penalty in the amount of $71.00. The assessment letter indicates that payments in the amounts of $39.00, $89.00 and $353.00 were applied to PROTESTANT'S 1985 tax liability, leaving a balance of $733.00. PROTESTANT stated that these payments should have been applied to delinquencies for other tax years. The Division's representative indicated that he was unaware that PROTESTANT owed income tax for other tax years.

3. The proposed assessment is based on information received from the Internal Revenue Service that indicated PROTESTANT reported $30,911.00 as federal adjusted gross income on his 1985 federal return but only reported $23,138.00 as adjusted gross income on his 1985 Oklahoma return.

4. By letter dated February 10, 1997, and marked received by the Division on February 12, 1997, PROTESTANT protested the Division's proposed assessment.

5. PROTESTANT submitted a copy of his Wage and Tax Statement ("W-2") for 1985 and a letter dated March 17, 1997, received from the Internal Revenue Service, acknowledging PROTESTANT'S request for W-2's for tax year 1985 and advising PROTESTANT that all W-2 forms prior to 1986 had been destroyed. Further, PROTESTANT testified that a copy of his 1985 federal return was not available.

## CONTENTIONS

PROTESTANT contends that he does not know the source of the additional income and that because of the lapse of time before being contacted by the Division is unable to obtain proof to disprove the assessment of additional income tax.

The Division contends that the PROTESTANT'S letter of protest was not timely filed with the Commission. If the protest was timely and the Commission has jurisdiction to consider the merits, the Division contends that Oklahoma adjusted gross income and adjusted gross income as reported to the federal government should be the same figure.

## ISSUES

The first issue for determination is whether PROTESTANT timely filed a letter of protest to the proposed assessment. The second issue is whether PROTESTANT sustained his burden of coming forward with evidence to show in what respect the proposed action of the Division is incorrect.

## APPLICABLE LAW

Before proceeding with the merits of the protest, the jurisdictional issue must be considered. The Uniform Tax Procedure Code provides in 68 O.S. ∋ 221 for the proposed assessment of taxes and the protest thereto by the taxpayer. 68 O.S. ∋ 221. The protest must be filed with the Tax Commission in writing within thirty (30) days of the mailing of the proposed assessment or it will be untimely and the Commission will not have jurisdiction to inquire into the merits of the protest. The date of mailing of the proposed assessment was January 3, 1997, and the protest was dated February 10, 1997, and was stamped received by the Commission on February 12, 1997. Consequently, PROTESTANT did not file a timely protest to the
proposed income tax assessment. Therefore, the assessment is final and absolute and the Tax Commission is without jurisdiction to consider the merits of the protest. See, 68 O.S. ∋ 221(e).

## DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of PROTESTANT be dismissed. It WAS further DETERMINED that the amount in controversy, inclusive of 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.