JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **1999-10-07-006 / NOT PRECEDENTIAL**
ID: **P9700114**
DATE: **10-07-99**
DISPOSITION: **SUSTAINED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In June 1996, Protestant received a letter from the Tax Commission notifying her that there was no record of her filing her 1991 and 1992 state income tax returns.

2. Upon receipt of the letter, Protestant proceeded to the Lawton office of the Tax Commission and spoke with MS. ANONYMOUS. According to Protestant, MS. ANONYMOUS informed her that there were no records of any tax returns filed under her name or social security number prior to 1995, including the 1986 and 1987 joint returns filed with her ex-husband.

3. Protestant produced copies of her original 1990 through 1993 income tax returns which MS. ANONYMOUS copied and forwarded to the Tax Commission offices in Oklahoma City. The 1990 and 1993 returns show original execution dates of January 26, 1991 and March 3, 1994, respectively. These returns were not executed again by Protestant. According to Protestant, she signed and dated the 1991 and 1992 returns in the Lawton office upon Ms. ANONYMOUS instructions.

4. The 1990 and 1993 returns report balances due of zero. The 1991 and 1992 returns report balances due of $8.00 and $9.00, respectively. On each of these returns, Protestant claimed a low income sales tax credit of $40.00.

5. The Division audited and adjusted the returns by denying the low income sales tax credit on each of the returns.

6. The Division did not issue proposed assessments against Protestant, but instead caused billing statements to be issued against Protestant in September, October, November and December, 1996.

7. The original billing statements indicated an aggregate amount due for the audit period of $295.16, inclusive of income tax in the amount of $179.00, penalty in the amount of $8.95 and interest in the amount of $107.21.

8. In November, 1996 and January, 1997, Protestant forwarded letters to the Tax Commission indicating her disagreement with the billing statements.

9. By letter dated November 1, 1996, Protestant was notified that her 1994 income tax

refund in the amount of $32.00 had been applied to the balance due for the 1990 tax year.

10. By letter dated February 13, 1998, Protestant was notified that her 1997 income tax refund in the amount of $136.00 had been applied to the income taxes due for the tax years 1990 through 1993 as follows: $8.00 to 1990; $50.00 to 1991; $49.00 to 1992 and $29.00 to 1993.

ISSUE

The issue presented for decision is whether the Division's action of attempting to collect the tax and interest without the previous assessment of said tax and interest is erroneous.

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. Section 223(a) of the Uniform Tax Procedure Code, 68 O.S. 1991, § 202 et seq., provides:

> No assessment of any tax levied under the provisions of any state tax law except as provided in the following paragraphs of this section, shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return was filed, whichever period expires the later, and no proceedings by tax warrant or in court without the previous assessment for the collection of such tax shall be begun after the expiration of such period. No assessment shall be required if a report or return, signed by the taxpayer, was filed and the liability evidenced by the report or return has not been paid.

3. Here, the Division is attempting to collect the tax and interest resulting from its adjustments to the returns without the previous assessment of the tax and interest. The Division's action is in direct violation of the above cited statutory provision.

4. Protestant's protest should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest be sustained. It WAS further DETERMINED that the Findings, Conclusions and Recommendations issued on July 15, 1999, be withdrawn from consideration by the Commission.

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.