

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 1999-10-26-006 / NOT PRECEDENTIAL
ID: P9900152
DATE: 10-26-99
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant did not appear at the Prehearing Conference scheduled in this cause for July 12, 1999. Thereafter, notice was served upon the parties that the record in this cause would be closed and the matter submitted for decision upon the filing of a verified response to protest by the Division. Protestant did not file a response to this notice.

Upon review of the file and records, including the proposed income tax assessment of December 31, 1998, the amended income tax assessment of March 15, 1999, the letter of protest, and the verified response to protest, the undersigned finds:

1. That on December 31, 1998, the Division caused to be issued a proposed assessment of additional income tax against Protestant for the 1991 tax year.
2. That the assessment is based on Internal Revenue Service Revenue Agent Report No. XXXXX-XX, issued to Protestant on October 4, 1994. That the Report notifies Protestant of a change to the amount of federal taxable income reported by her on her return for the 1991 tax year.
3. That Protestant did not file an amended return with the state subsequent to the Revenue Agent Report.
4. That on March 15, 1999, the Division caused to be issued an amended proposed assessment for the 1991 tax year.
5. That the amended assessment is based on a revision to the Internal Revenue Service findings and their issuance of a "Statement of Account" to Protestant on January 1, 1996.
6. That the amended proposed assessment of additional income tax, interest, and penalty for the 1991 tax year is \$566.49, inclusive of tax in the amount of \$265.00, interest accrued through March 15, 1999, in the amount of \$274.99, and penalty in the amount of \$26.50.
7. That Protestant timely protested the amended proposed assessment, asserting that the amount of capital gain assessed by the Internal Revenue Service was incorrect.

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 (Okla. 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 the statute of limitation upon the assessment of income tax is tolled pending the filing of an amended return where the taxable income of a taxpayer is changed or corrected by the IRS and the change or correction affects the Oklahoma taxable income of the taxpayer, 68 O.S. 1991, § 2375(H)(3).

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest be denied. It is further DETERMINED that the amount in controversy, plus 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.