

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 1999-11-16-023 / NOT PRECEDENTIAL  
**ID:** P9500273  
**DATE:** 11-16-99  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

1. Protestants are, and were at all times relevant herein, residents of the State of Oklahoma.
2. On or about April 15, 1990, Protestants timely filed an Oklahoma income tax return, Form 511, for the 1989 calendar income tax year.
3. By Notice of Deficiency dated March 27, 1992, the Internal Revenue Service ("IRS") alleged that Protestants owed additional Federal income taxes for the 1989 calendar income tax year.
4. Protestants timely filed suit in the United States Tax Court contesting the proposed assessment by the IRS.
5. On March 22, 1993, by the agreement of Protestants and the IRS, the case was settled by and through a stipulation between Protestants and the IRS and approval of the same by the United States Tax Court as set forth in a Decision document filed with the United States Tax Court.
6. On May 31, 1995, the Oklahoma Tax Commission proposed to assess Protestants additional Oklahoma income tax for the 1989 calendar tax year based on the adjustments, as reflected in the Decision, agreed to by the IRS and Protestants.
7. On June 16, 1995, Protestants timely filed a protest of the proposed assessment claiming that the assessment was invalid or barred because the statute of limitation had run on the 1989 calendar income tax year.
8. There has never been any allegation that Protestants' 1989 calendar income tax return was either false or fraudulent.

9. At no time since filing the 1989 calendar income tax return have Protestants entered into a written agreement with either the Oklahoma Tax Commission or the IRS extending the time in which additional State or Federal income tax for the 1989 calendar year could be assessed.

Additional findings:

1. The aggregate amount in controversy is \$2,900.10, consisting of income tax in the amount of 1,552.00, interest accrued through May 31, 1995, in the amount of \$1,193.10 and penalty in the amount of \$155.00.

2. Protestants did not file an amended return with the state subsequent to the IRS audit and agreed Decision nor a letter notifying the Tax Commission the information was available.

### ISSUE AND CONTENTIONS

The issue presented for decision is whether the assessment of additional 1989 income taxes against Protestants in 1995 is barred by the statute of limitations on assessments where Protestants did not consent to an extension of time for assessment.

Protestants contend that the assessment of additional 1989 income taxes in 1995 is barred by the provisions of Section 223(a) of the Uniform Tax Procedure Code, 68 O.S. 1991, § 201 et seq. In support of this contention, Protestants would show that the 1991 return was timely filed, that they did not consent to an extension of the three (3) year assessment period and that the Division has not allege the return was false or fraudulent. Protestants further contend that the provisions of Section 2375(H) of the Oklahoma Income Tax Act, 68 O.S. 1991, § 2351 et seq., do not revive the assessment since they did not consent to an extension of the assessment period with the IRS. In support of this contention, Protestants cite *Fort Howard Paper Co. v. Oklahoma Tax Commission*, 792 P.2d 87 (Okla.App. 1989).

The Division contends that the assessment is not barred. In support of this contention, the Division argues that Section 2375(H)(5) provides an additional exception to the statute of limitations on assessments under Section 223(a) for all tax years beginning after June 30, 1988, where the taxpayer and the Commission have not entered into a closing, settlement or resolution agreement. The Division further argues that the exception is applicable whether or not the taxpayer consents to an extension of the assessment period with the IRS.

**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 decision of the Supreme Court of Oklahoma in ***O'Carroll v. Oklahoma Tax Commission***, 1998 OK 6, 952 P.2d 45 (Okla. 1998), is controlling. In response to a certified question of state law from the United States District Court for the Northern District of Oklahoma, the Court in ***O'Carroll*** held:

We answer that § 2375(H)(2) of Title 68 of the Oklahoma Statutes imposes a duty upon Oklahoma tax reporters to notify the Oklahoma Tax Commission, by amended state income tax report or by letter, of any adjustment or correction in the returned federal net income or taxable income within one year after the federal adjustment or correction has been finally determined; and, the filing duty arises anytime a taxpayer's income is adjusted by the Internal Revenue Service, whether the adjustment or correction has been made pursuant to an agreement to extend the federal assessment period or pursuant to a procedure initiated within the applicable federal limitation period. Id. 1998 OK 6, ¶ 2, 952 P.2d 45, 47.

Citing their decision in ***In re Holt***, 1997 OK 12, 932 P.2d 1130 (Okla. 1997), the Court found:

Reading § 2375(H)(1) and (2) so as to include all taxpayers whose federal returns have been lawfully adjusted or corrected by the IRS does not create unrelated fragments. It preserves the uniformity in the levy in the Oklahoma Income Tax Act by reference to federal income tax, and uniformity in the application of the procedure for assessment or refund of state income tax based upon adjustment or correction of the federal return. (Footnotes omitted). Id. 1998 Ok 6, ¶ 9, 952 P.2d 45, 50.

The Supreme Court further found that the exposition of the law in ***Fort Howard***, *supra* was incorrect and overruled any part of the opinion inconsistent with its decision in ***In re Holt***, *supra*. Id. 1998 OK 6, ¶ 14, 952 P.2d 45, 51.

3. Here, Protestants' 1989 federal net income was adjusted or corrected by the IRS. Protestants did not file an amended return reporting the corrected net income or a letter notifying the Tax Commission the information was available. Accordingly, the assessment of additional 1989 income taxes against Protestants in 1995 is not barred. See, 68 O.S. Supp. 1990, § 2375(H)(3).

4. Protestants' protest to the proposed assessment of additional income taxes should be denied.

### **DISPOSITION**

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest be denied. 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.