JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **1999-11-16-024 / PRECEDENTIAL**
ID: **P9700232**
DATE: **11-16-99**
DISPOSITION: **SUSTAINED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Protestants are married, and for tax year 1996 were residents and domiciliaries of Oklahoma for the entire calendar year.

2. Protestants filed a joint Oklahoma individual income tax return, Form 511EZ, for the 1996 tax year.

3. The return was received by the Tax Commission on June 25, 1997.

4. Protestants had sufficient income from all sources ($11,864.00) to require the filing of the Oklahoma income tax return.

5. Accompanying the return was Form 538-S, Oklahoma claim for credit or refund of sales tax.

6. Protestants claimed a credit or refund of sales tax on Form 538-S and the Oklahoma income tax return of $240.00.

7. By Letter dated July 31, 1997, the Division denied the sales tax credit or refund in the amount of $240.00 and allowed a refund of the Oklahoma income tax withheld in the amount of $36.00.

8. A review of the return shows that Protestants reported an income tax liability of zero and a refund of $276.00. Protestants, however, mistakenly claimed eight (8) personal exemptions rather than the six (6) personal exemptions they were entitled to. With this adjustment to the return, Protestants would have an income tax liability of $22.00 for the 1996 tax year.

9. Protestants timely protested the denial of the sales tax credit or refund.

ISSUE

The issue presented for decision is whether the Division erred in denying Protestants' claim for the sales tax relief authorized by the Sales Tax Relief Act[1] (hereinafter "Act").

The Division contends that the sales tax relief was properly denied as being untimely filed. In support of this contention, the Division cites the instructions to Form 538-S and argues that where a taxpayer is required to file an Oklahoma income tax return, the relief under the Act must be claimed on the return and the return claiming the relief must be filed no later than April 15th following the close of the tax year.

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 claim for the sales tax relief, if taken as a direct credit against the income taxes owed by the taxpayer, must be filed with the taxpayer's income tax return on or before the 15th day of April following the close of the taxable year. 68 O.S. Supp. 1992, § 5013(A). If the sales tax relief is not taken as a direct credit against the income taxes owed by the taxpayer, the claim for relief must be received by and in the possession of the Tax Commission by June 30 of each year for the sales taxes paid for the preceding calendar year. Id. Nothing in the provisions of the Act suggests that the claim for sales tax relief must be filed with the state income tax return if the taxpayer is required to file a state return.

3. Here, Protestants did not claim the sales tax relief authorized by the Act as a direct credit against the income taxes owed on their 1996 state income tax return. Protestants' withholding for the 1996 tax year was sufficient to offset their 1996 income tax liability. Further, the claim for sales tax relief was received by and in the possession of the Tax Commission prior to June 30, 1997. Accordingly, the Division erred by denying the sales tax relief authorized by the Act.

4. Protestants' 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 amount of $218.00 be fixed as the amount of refund due and owing to Protestants.

OKLAHOMA TAX COMMISSION

[1] 68 O.S. Supp. 1992, § 5011 et seq.