

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-08-29-008 / NOT PRECEDENTIAL
ID: P9900179
DATE: 08-29-00
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Protestant filed 1992 and 1993 income tax returns reporting a filing status of "head of household with qualifying person" and two (2) exemptions, one for herself and one for a dependent adult.

2. By letters dated April 30, 1999, the Division caused to be issued against Protestant proposed assessments of additional income tax, interest and penalty for the 1992 and 1993 tax years.

3. The assessment for the 1992 tax year assesses a total of \$736.31, consisting of tax in the amount of \$367.00, interest through April 30, 1999, in the amount of \$332.61, and penalty in the amount of \$36.70.

4. The assessment for the 1993 tax year assesses a total amount of \$651.56, consisting of tax in the amount of \$351.00, interest through April 30, 1999, in the amount of \$265.46, and penalty in the amount of \$35.10.

5. The proposed assessments are based on Revenue Agents Reports/ Service Center Reports which changed Protestant's filing status from head of household to single, disallowing the exemption for the claimed dependent, and adjusted her federal net income for the 1992 and 1993 tax years. The reports were received by the Division from the Internal Revenue Service ("IRS"). The Division utilized information from the reports to determine Protestant's Oklahoma taxable income for those years.

6. By letter dated May 18, 1999, Protestant filed a timely protest to the assessments, stating that the "figures contained on the documents are in error" and that the "determined adjustment(s) to my Federal return for these years were non-substantiated by itemization or statute."

ISSUES

The first issue presented for decision is whether the assessment of 1992 and 1993 income taxes against Protestant in 1999 is barred by the provisions of 68 O.S. 1991, § 223(a). The second issue is whether Protestant sustained her burden of proof showing in what respect the action or proposed action of the Tax Commission is incorrect.

CONTENTIONS

Protestant contends that the assessments issued for tax years 1992 and 1993 are barred by Section 223 of Title 68. Additionally, Protestant contends that if the additional tax assessed for tax years 1992 and 1993 is not barred by the statute of limitations and is found to be due and owing, the Protestant requests that all penalty and interest be waived and that she be allowed to pay the tax in small monthly payments.

Division contends that Protestant has failed to show that the assessments for tax years 1992 and 1993 are incorrect. Further, Division contends that the assessments are not barred by the statute of limitations for the reason that Protestant failed to file an amended state return reporting the federal changes for tax years 1992 and 1993 as required by Section 2375 (H)(2) of Title 68.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. § 221.
2. 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 (Okl. 1998).
3. The Oklahoma adjusted gross income of any individual taxpayer is computed by starting with the amount reported as adjusted gross income to the federal government, or in the event of adjustments thereto by the federal government, as finally ascertained under the Internal Revenue Code. See, 68 O.S. 1991, §§ 2353(13) and 2358.
4. The tax status and all elections of all taxpayers shall be the same for Oklahoma income tax purposes as they are for federal income tax purposes, unless the Oklahoma Income Tax Act provides otherwise. 68 O.S. 1991, § 2353(3); *Oklahoma Administrative Code* 710:50-3-35.
5. 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. *Oklahoma Administrative Code* 710:50-3-8(d).

6. The information furnished by the IRS shall be that upon which any tax liability is computed. *Oklahoma Administrative Code* 710:50-5-10(a).

7. An assessment of tax made more than three (3) years after the later of the filing date or required filing date of a return is barred unless (1) the Commission and taxpayer consent to the assessment thereof in writing, (2) a false or fraudulent return is filed, (3) no return is filed, or (4) in the case of the assessment of income taxes, taxpayer's federal taxable income is changed or corrected and such change or correction affects taxpayer's Oklahoma taxable income. 68 O.S. 1991, § 223 and 68 O.S. Supp. 1994, § 2375(H).

8. In the event the IRS has changed or corrected a taxpayer's net income for a particular year, the taxpayer is required to file, within one year of notification from the IRS of the change or correction in net income, an amended return reporting the corrected net income. 68 O.S. Supp. 1994, § 2375(H)(2). The Commission is authorized to make an assessment within two (2) years from the date the return is filed. *Id.* If the taxpayer does not file the required amended return, the two-year statute of limitation is tolled. 68 O.S. Supp. 1994, § 2375(H)(3).

9. Protestant has not presented any evidence that she filed an amended 1992 or 1993 state income tax return reporting the corrected federal net income. Accordingly, the proposed assessments are not barred by the statute of limitations.

10. The Division's proposed assessment of taxes is based on the information provided by the Internal Revenue Service to the Oklahoma Tax Commission. The Division has acted within the applicable law and rules in determining the Protestant's income tax liability for the years at issue.

11. Protestant has failed to meet her burden and the protest to the proposed assessment should be denied.

12. Protestant's requests for waiver of interest and penalty and for a payment agreement and the Division's recommendation should be reserved for ruling by the Tax Commission.

DISPOSITION

It WAS the DETERMINED based upon the specific facts and circumstances of this case, that the income tax protest of PROTESTANT be denied.

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.