

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-08-29-016 / NOT PRECEDENTIAL
ID: P9900205
DATE: 08-29-00
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. By letters dated April 30, 1999, the Division caused to be issued against Protestants proposed assessments of additional income tax, interest and penalty for the 1986 and 1991 tax years.

2. The assessment for the 1986 tax year assesses a total amount of \$4,631.50, consisting of tax in the amount of \$1,574.00, interest through April 30, 1999, in the amount of \$2,900.10 and penalty in the amount of \$157.40.

3. The assessment for the 1991 tax year assesses a total amount of \$3,141.73, consisting of tax in the amount of \$1,457.00, interest through April 30, 1999, in the amount of \$1,539.03, and penalty in the amount of \$145.70.

4. The proposed assessments are based on Revenue Agents Reports/ Service Center Reports. The reports were received by the Division from the Internal Revenue Service ("IRS"). After review of Tax Commission records, it was determined that Protestant had not filed Oklahoma income tax returns for 1986 or 1991. The Division utilized information from the reports to determine Protestants' Oklahoma taxable income for those years.

5. By letter postmarked May 28, 1999, Protestants filed a timely protest to the assessments, stating that they no longer have records that go back that far.

6. Protestants are residents of the State of Oklahoma.

ISSUE AND CONTENTIONS

The first issue presented for decision is whether the assessment of 1986 and 1991 income taxes against Protestants in 1999 is barred by the provisions of 68 O.S. 1991, § 223(a). The second issue is whether Protestants sustained their burden of proof showing in what respect the action or proposed action of the Tax Commission is incorrect.

Protestants contend that the assessments for 1986 and 1991 are beyond the statute of limitations and thus the Oklahoma Tax Commission has no authority to bring the assessments. They maintained their records for six years beyond the tax period, as required by law, and now do not have the ability to defend themselves. Further, Protestants assert that they filed income tax returns for the years 1986 and 1991 and that the combined income for both parties was \$39,000.00.

The Division asserts that in cases where no return has been filed, the Tax Commission may at any time compute, determine and assess the estimated amount of tax due from any information in its possession.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. 1991, § 221.
2. An income tax is imposed in Section 2355 of Title 68 on the Oklahoma taxable income of every resident or nonresident individual.
3. Individuals who are subject to Oklahoma income tax are required to file an income tax return specifically stating taxable income and must remit the amount of tax due at the time such return is filed. 68 O.S. §§ 2368 and 2375.
4. When a taxpayer failed to make a report or return as required by state tax law, the Tax Commission is authorized to determine the amount of tax due for such period based on any information which is in its possession or is otherwise obtainable. 68 O.S. 1991, § 221.
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 2375(H).

8. The burden of proof in all proceedings is on the taxpayer to show that the assessment is erroneous. *Oklahoma Administrative Code 710:1-5-47*. See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission*, 768 P.2d 359 (Okl. 1988). The standard burden for administrative proceedings is "preponderance of the evidence." Oklahoma Tax Commission Order No. 91-10-17-061. Preponderance of the evidence means "[E]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probably than not" or "that best accords with reason and probability." *Id.*

9. The evidence presented by the Division indicated that the Protestants failed to file state income tax returns for tax years 1986 and 1991. Protestants failed to appear at the hearing. Other than unsworn statements filed with the office of the Administrative Law Judge, Protestants did not produce any evidence to show that income tax returns were filed for the years at issue. The statements offered by the Protestants are not sufficient to meet their burden of showing that the returns were filed for tax years 1986 and 1991. Accordingly, Section 223(a) does not bar the proposed assessments. See 68 O.S. 1991, § 223(c).

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 his burden and the protest to the proposed assessment should be denied.

DISPOSITION

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