JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-10-31-007 / NOT PRECEDENTIAL**
ID: **P0000144**
DATE: **10-31-00**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That Protestants are, and were at all times relevant herein, residents of the State of Oklahoma.

2. That during 1998 and 1999, MR. PROTESTANT, received "wages, tips or other compensation" from his employer, AN ANONYMOUS Hospital, in the amount of $119,980.80 and $132,790.05, respectively.

3. That on April 15, 2000, Protestants filed Oklahoma Forms 511 for the 1998 and 1999 tax years, showing "zero" as Federal and Oklahoma Adjusted Gross Income. Attached to the Oklahoma Forms 511 were W-2s for PROTESTANT, showing wages earned for both years.

4. That by utilizing the information from the W-2 Forms, the Division adjusted the amount of state income tax due by Protestants for the 1998 and 1999 tax years, arriving at the following figures:

	1998	1999
Oklahoma Income Tax Due	$1,353.00	$535.00
5% Penalty	67.65	26.00
Interest thru 06/06/00	232.42	11.43
TOTAL	$1,653.07	$572.43

5. That the total amount in controversy is $2,225.50, plus accruing interest.

6. That by letters dated June 6, 2000, the Division notified Protestants of the adjustments and advised them that the adjustments would become final within 30 days from the date of the letter unless protested and a hearing requested.

7. That by letter dated July 3, 2000, Protestants timely protested the notice of proposed adjustment and requested a hearing.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestants are subject to Oklahoma income tax based on "wages" earned during 1998 and 1999.

Protestants contend they have zero income, as defined by federal law, and that "wages" do not constitute income.

The Division contends that every Oklahoma resident is required to make an income tax return stating his or her taxable income and must transmit the return to the Oklahoma Tax Commission and remit the amount of tax due. The Division further contends that "wages" clearly constitute income for purposes of taxation.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. Oklahoma income tax is imposed upon the Oklahoma taxable income of every resident individual. 68 O.S. 1991, § 2355(A).

3. A "resident individual" is defined by statute to mean "a natural person who is domiciled in this state". 68 O.S. 1991, § 2353(4).

4. Its a well-established principal of law that wages are income and are taxable under the income tax laws, as the following statutory and case law distinctly shows:

i. **Internal Revenue Code (1954)**
Sec. 61. Gross income defined. (a) General definition. - Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items; [Emphasis Added]

* * * * *

ii. The U.S. Supreme Court defined income in ***Eisner v. Macomber***, 1 USTC 32, 252 U.S. 189 (1920) as "the gain derived from capital, from labor, or from both combined."

iii. In ***C.I.R. v. Daehler***, 281 F.2d 823 (C.A. Fla. 1960), the Court held that compensation for services rendered by employee to employer is taxable income of whatever kind and in whatever form it is received, short of specific exception to broad statutory definition of gross income.

iv. In ***Jones v. U.S.***, 551 F.Supp. 578 (D.C. N.Y. 1982), the Court specifically held that wages are "gross income" within the meaning of Section 61.

v. In ***Painter v. Campbell***, 110 F.Supp. 503 (D.C. Tex. 1953), the Court held that the intent of the income tax law is that all receipts whatever that come to an employee because of labor and service, whether payment is compelled or not, shall be taxed as arising from labor.

vi. In ***Lovell v. U.S.***, 579 F.Supp. 1047 (D.C. Wis. 1984), the Court held that compensation for labor or service is taxable income, and no deduction is allowed for value of labor expended.

vii. In ***Oklahoma Tax Commission v. Smith***, 610 P.2d 794 (1980), the Court provided:

> "For state income tax purposes, 'income' relates to total receipts of a taxpayer and is in no way dependant on what part, or how much, of that income a taxpayer must pay for various expenses he is obligated to meet unless those various expenses are as a matter of legislative policy declared to be exempt from taxation, thereby constituting a deduction from income, and made to be so by the legislature."

viii. In ***Casper v. Commissioner of Internal Revenue***, 805 F.2d 902 (10th Cir. 1986), the Court held that "value received in exchange for services constitutes taxable income pursuant to I.R.C. § 61(a)(1)."

5. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. Rule 710:1-5-47 of the ***Oklahoma Administrative Code***. See, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988).

6. Protestants' argument is frivolous.

7. Protestants' protest to the adjustments to their 1998 and 1999 Oklahoma income tax returns should be denied.

DISPOSITION

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