JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-11-07-011 / NOT PRECEDENTIAL**
ID: **P9800203**
DATE: **11-07-00**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Protestants filed their 1994 Oklahoma income tax return form 511 on or about July 31, 1995, in which Protestants claimed a refund of $1801.00. The income tax return was reviewed by the Account Maintenance Division of the Oklahoma Tax Commission, "Division" hereafter. The Division determined that the return was incorrect and nonprocessible. The Division made adjustments to the return which resulted in a tax liability and notified Protestants of these adjustments. In order to process an income tax return, the return must be mathematically correct, tax payments must be verifiable and the data entered on the return must have federal substantiation in that income and deductions on the Oklahoma return should correspond to items accepted by the Internal Revenue Service on the federal return.

2. The Protestants' refund claim was based on the claim of right doctrine. The 1994 return filed by Protestants was insufficient as a basis upon which the Division could calculate a refund. After the Division adjusted their return, the Protestants contacted several employees of the Division to discuss their return. The Division requested additional information which was provided by the Protestants and reviewed by the Division.

3. On or about September 3, 1997, Protestants filed an amended 511 X income tax form for the year 1994, which claimed a refund of $1801.00 on the basis of the claim of right doctrine. The Division reviewed this amended return and made further corrections and determined a refund of $1681.00. On November 7, 1997, a net refund of $1349.85 (reflecting set offs for income tax owed by Protestants for 1995 and 1996) was issued to Protestants by the Tax Commission.

4. By letter of October 31, 1997, the Protestants filed this protest in which they request interest on their refund from the time of original filing on July 31, 1995, and compensation for amending returns plus reimbursement for excessive expenses. The Protestants did not present any evidence as to what amount of interest, compensation or reimbursement they might be entitled to nor did Protestants present any authority as to a statutory, legal or contractual basis upon which their claim might rest.

5. On February 2, 1999, the Division filed a Motion to Dismiss in Part. In its motion the Division maintains that the Tax Commission lacks subject matter jurisdiction to determine the claims for monetary damages asserted by Protestants regarding Protestants' compensation and reimbursement of expenses.

ISSUES

1. Whether Protestants are entitled to compensation and reimbursement of expenses incurred by Protestants to claim a refund of taxes from the Oklahoma Tax Commission.

2. Whether Protestants are entitled to interest on their refund from the date of filing of their original 1994 income tax return.

CONCLUSIONS OF LAW

I. JURISDICTION

1. Subject matter jurisdiction is an issue which may be raised at any time in a legal proceeding to test the authority of the tribunal to act. A judgment is void on its face if the trial court lacked either jurisdiction over the parties, jurisdiction over the subject matter, or jurisdictional power to render the particular judgment, Estate of *Mouse v. Cornell*, 864 P.2d 1284 (Okl. 1993). The Oklahoma Tax Commission is a statutory tribunal of limited jurisdiction which has only such cognizance as is conferred upon it by law. Title 68 O.S.§207 limits the jurisdiction of the conduct of hearings before the Tax Commission to matters incident to the administration of any state tax law. The term "protest" is defined in OAC 710:1-5-10 as a formal, written challenge to a proposed tax assessment or to the denial of a claim for refund of taxes paid. This jurisdiction does not extend to determining whether a taxpayer is entitled to compensation or reimbursement of expenses for filing a claim or producing records or reports at the request of the Tax Commission. Pursuant to 68 O.S. §206, it is the duty of every taxpayer to exhibit to the Commission their books and records to facilitate any examination. The Division's motion to dismiss the Protestants' claim for monetary damages for compensation and reimbursement of expenses on the grounds of lack of subject matter jurisdiction should be granted.

2. The Oklahoma Tax Commission has jurisdiction to determine the Protestants claim for interest on their refunded income taxes, 68 O.S. §207.

II. CLAIM FOR INTEREST ON REFUNDED TAXES

3. Oklahoma law requires the Tax Commission to pay interest on income tax refunds in certain circumstances. Title 68 O.S.§217(H) provides that interest shall be paid as follows:

> Whenever an income tax refund is not paid to the taxpayer within ninety (90) days after the return is filed or due, whichever is later, with all documents as required by the Commission, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund, at the same rate specified for interest on delinquent tax payments.

The OAC 710:50-9-3(a) provides for interest on refunds as follows:

> Interest will be paid on 1987 and subsequent years' income tax refunds that are not processed within ninety (90) days from the date a processible return is filed or due, whichever is later. To be "processible," all information on the return, including the computations, must be correct. In the case of an Amended Oklahoma Income Tax Return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the IRS accepted the requested change. Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter.

4. The evidence presented at the hearing in this case demonstrates that the Protestants' 1994 original form 511 income tax return filed on July 31, 1995, was not processible. The Protestants filed an amended 1994 form 511 X income tax return on September 3, 1997. The Division did process this return and issued a refund to Protestant on November 7, 1997. The refund was issued within ninety (90) days from the date that the Protestants filed a processible return and therefore, the Protestants are not entitled to interest on their refund.

5. The protest filed herein by MR. PROTESTANT AND MS. PROTESTANT should be denied.

DISPOSITION

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