JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-12-12-021 / NOT PRECEDENTIAL**
ID: **P9900253**
DATE: **12-12-00**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. By letter dated October 30, 1998, the Division assessed income tax, interest and penalty against Protestants for the 1992 tax year.

2. The assessment for the 1992 tax year assesses a total of $2,221.00, consisting of tax in the amount of $1,150.00, interest accrued through October 30, 1998, in the amount of $956.00 and penalty in the amount of $115.00.

3. The proposed assessment is based on a Revenue Agents Report/ Service Center Report dated December 20, 1995, and numbered XXXXX-XX. The report was received by the Division from the Internal Revenue Service ("IRS").

4. Protestants had not filed an Oklahoma income tax return for 1992.

5. On November 30, 1998, Protestants timely responded to the assessment, asserting that they never received a copy of the Revenue Agents Report and that the IRS claims were denied per judgment of the United States Tax Court.

6. A comparison confirms that Revenue Agents Report numbered YYYYY-YY designated as a settlement computation is in agreement with the United States Tax Court decisions which dealt with MR. AND MS. PROTESTANT'S 1992 federal income tax liability.

7. Additionally, on November 30, 1998, Protestants filed a 1992 Oklahoma income tax return and paid $239.00.

8. Based on information that the IRS only allowed Protestants the standard deduction for tax year 1992, the Division disallowed the itemized deduction claimed on their 1992 Oklahoma income tax return, gave Protestants credit for the standard deduction and recalculated the tax due.

9. By letter dated June 30, 1999, the Division issued a revised assessment. The aggregate amount in controversy is $558.70, consisting of tax in the amount of $275.00, interest accrued through June 30, 1999, in the amount of $256.20 and negligence penalty in the amount of $27.50.

10. Protestants timely filed a protest to the revised assessment by letter dated July 28, 1999.

ISSUE AND CONTENTIONS

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 correct tax for 1992 is $869.00. The amount due after a credit for withholding is $239.00, which was remitted when the 1992 tax return was filed. Additionally, Protestants contend that "no penalty is due pursuant to House Bill 2426 effective November 1, 1998."

The Division contends that Protestants received a copy of the Revenue Agents Report, that the correct tax for 1992 is $1,144.00 based on the information received from the IRS and that the United States Tax Court judgment verifies the revised Revenue Agents Report number ZZZZZ-ZZ. The Division asserts that the negligence penalty was assessed pursuant to Section 2375(D) of Title 68, not a delinquent penalty addressed in House Bill 2426.[1] Further, the Division contends that the determination at the federal level is final, that the Oklahoma Tax Commission is bound by that determination and that Protestants have failed to sustain their burden of proving that the assessment is incorrect.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 1991, § 207.

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. 1988).

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).

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[1]Enacted by Laws 1998, p. 1790 § 10 and codified in Title 68 of the Oklahoma Statutes in Section 2375(B).

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. The determination at the federal level as to Protestants' income tax liability for tax year 1992 is final. Since the changes do not affect items or matters which relate to allocation or apportionment, the Tax Commission is bound by the determination of the IRS.

8. Protestants have failed to meet their burden and the protest to the proposed assessment should be denied.

DISPOSITION

It WAS the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the income tax protest of MR. AND MS. PROTESTANT be denied. It WAS further DETERMINED that the amounts in controversy set forth in the revised assessment dated June 30, 1999, plus 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.