JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-12-19-002 / NOT PRECEDENTIAL**
ID: **P0000041**
DATE: **12-12-00**
DISPOSITION: **DISMISSED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, the undersigned finds:

1. That by letter dated August 31, 1999, the Division assessed income tax, interest and penalty against Protester for the 1994 tax year.

2. That the assessment is based on an Internal Revenue Service Revenue Agent Report dated December 1, 1997, and numbered XXXXX-XX.

3. That Protester did not file an amended return with the state subsequent to the changes made by the Internal Revenue Service.

4. That the aggregate amount assessed against Protester for the 1994 tax year, inclusive of interest accrued through August 31, 1999, is $9,229.36.

5. That on September 9, 1999, the Division received a copy of the assessment letter by return mail from Protester. Additionally, on January 18, 2000, the Tax Commission received a notation stating, "I hereby refute and invalidate this unsigned presentment without dishonor. I do not owe this or any amount of money. All rights reserved, without prejudice, UCC 1-207." The notation was written on a Tax Commission prewarrant letter dated November 17, 1999. By letter dated January 14, 2000, and stamped received by the Tax Commission on January 18, 2000, Protester also responded to the prewarrant letter and attached a document entitled *Notice of Defense: Demand to Quash Notice of Amount Due for Lack of Jurisdiction and Discharge for Fraud; Demand for Adjudicatory Hearing of Record, if Denied*.

6. Accordingly, a hearing in this matter was set for March 28, 2000. Protester responded to the notice of hearing by advising he now lives OUT OF STATE and requesting that the hearing be stricken and the matter submitted on briefs. The parties each submitted briefs and documentation on April 28, 2000, and this matter was submitted for decision.

CONCLUSIONS OF LAW

A protest to a proposed assessment must be filed within thirty (30) days of the mailing of the proposed assessment or, if the time to protest is extended by the Tax Commission, within the period as extended. 68 O.S. § 221 (c) and (f). Pursuant to Section 221(c) of Title 68, a protest is to be signed by the taxpayer or the taxpayer's duly authorized agent and is to contain the following:

1. A statement of the amount of deficiency as determined by the Tax Commission, the nature of the tax and the amount thereof in controversy;

2. A clear and concise assignment of each error alleged to have been committed by the Tax Commission;

3. The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in such hearing, or on appeal, to the arguments and legal authorities contained and cited in the application;

4. A statement of relief sought by the taxpayer; and

5. A verification by the taxpayer or the taxpayer's duly authorized agent that the statements and facts contained therein are true.

The Supreme Court addressed the sufficiency of a protest to a proposed tax assessment stating:

> [T]he notice of protest of a taxpayer to the taxing authority of his intention to protest the assessment of taxes need not be in any particular form. The notice or protest is sufficient if it apprises the taxing authority that the assessment is protested and the reasons for the protest.

Oklahoma Tax Commission v. Oklahoma Coca-Cola Bottling, 494 P.2d 312 citing *Jones v. Kennedy*, 118 Okl. 224, 247 P. 53 (Okl. 1926).

Where a protest is not filed within the periods prescribed by Section 221(c) or (f), the proposed assessment becomes final and absolute and the Tax Commission is without jurisdiction to consider the protest. 68 O.S. 1191, § 221(e). See, *Matter of Request of Hamm Production Co.*, 652 P.2d 283 (Okl. 1982).

Here, the mere act of returning by mail the assessment issued in the matter to the Division did not serve to apprise the Division that Taxpayer intended to protest the proposed income tax assessment or the reasons for the protest. Accordingly, the proposed assessment is final and absolute and the Tax Commission is without jurisdiction to consider the protest. Protestant's protest to the proposed assessment should be dismissed.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of PROTESTANT be dismissed. Further, it WAS DETERMINED that PROTESTANT'S statement received January 18, 2000, be considered a timely filed request for abatement pursuant to 68 O.S. 1991, § 221(e).

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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.