

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-12-19-004 / NOT PRECEDENTIAL
ID: P0000088
DATE: 12-19-00
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 on February 17, 2000, the Division caused to be issued a proposed assessment of additional income tax, interest, and penalty against Protestants for Calendar year 1991. That the resulting liability of the proposed assessment is \$1,193.14, inclusive of tax in the amount of \$524.00, interest accrued through February 17, 2000, in the amount of \$616.74, and penalty in the amount of \$52.40.

2. That on February 17, 2000, the Division caused to be issued a proposed assessment of additional income tax, interest, and penalty against Protestants for Calendar year 1994. That the resulting liability of the proposed assessment is \$2,627.85, inclusive of tax in the amount of \$1,439.00, interest accrued through February 17, 2000, in the amount of \$1,044.95, and penalty in the amount of \$143.90.

3. That on March 6, 2000, the Division caused to be issued a proposed assessment of additional income tax, interest, and penalty against Protestants for Calendar year 1992. That the resulting liability of the proposed assessment is \$4,127.90, inclusive of tax in the amount of \$1,934.00, interest accrued through March 6, 2000, in the amount of \$2,000.50, and penalty in the amount of \$193.40.

4. That the total amount in controversy in this proceeding is \$7,948.89, plus accrued and accruing interest.

5. That each of the proposed assessments were forwarded to Protestants' last known address as reflected in the records of the Division.

6. That the assessments are based on Internal Revenue Service Revenue Agent Reports No. XXXXX-XX, YYYYYY-YY, and ZZZZZ-ZZ, dated June 30, 1998.

7. That Protestants did not file amended state income tax returns reflecting the IRS adjustments or corrections to their 1991, 1992, and 1994 federal returns.

8. That by letter dated April 10, 2000, and marked received by the Division on April 20, 2000, Protestants protested the proposed assessments.

9. That a hearing was held in this matter on November 2, 2000.

10. That Protestants did not appear at the hearing and did not respond to the notice thereof.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law, that Protestants' protest was not timely filed within the relevant statutory provisions, 68 O.S. 1991, § 221(c); and that the Tax Commission lacks jurisdiction to consider the protest, 68 O.S. Supp. 1999, § 221(E). See, *Matter of Request of Hamm Production Co.*, 671 P.2d 50 (Okl. 1983) and *Matter of Phillips Petroleum Co.*, 652 P.2d 283 (Okl. 1982). Further, the undersigned concludes that to the extent the Division assessed a penalty of ten percent (10%) pursuant to 68 O.S. Supp. 1998, § 217(D), rather than five percent (5%) pursuant to 68 O.S. Supp. 1998, § 2375(B), the proposed assessments are erroneous.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of Protestants, be dismissed. It WAS further DETERMINED that the assessed penalty be adjusted from ten percent (10%) to five percent (5%), as set forth above, and the resultant amount, inclusive of any additional accrued and accruing interest, be fixed as the amount 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.