JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-01-25-004 / NOT PRECEDENTIAL**
ID: **P9900093**
DATE: **01-25-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Stipulated Facts

The parties stipulated to the following facts in the Joint Stipulation of Facts filed herein on September 10, 1999:

1. That or the taxable years 1990 and 1991, PROTESTANT timely filed Oklahoma income tax returns.

2. That or the taxable years 1990 and 1991 PROTESTANT reported amounts of Federal Adjusted Gross Income on Part I, Line 1 of Forms 511.

3. That for the taxable years 1990 and 1991 PROTESTANT reported amounts of Oklahoma Adjusted Gross Income on Part V, Line 25 of Forms 511.

4. That for the taxable years 1990 and 1991 PROTESTANT reported amounts of Oklahoma Income after Adjustments on Part V, Line 32 of Forms 511.

5. That for the taxable years 1990 and 1991 PROTESTANT reported Oklahoma Income Tax figures on Part VI, Line 39 of Forms 511.

6. That the Internal Revenue Service, on April 17, 1995, issued changes in income for 1990 and 1991.

7. That search of Oklahoma Tax Commission records did not locate any amended income tax returns subsequent to the IRS changes for taxable years 1990 and 1991.

8. That PROTESTANT and the Tax Commission did not enter into waivers for tax years 1990 and 1991.

9. That he Oklahoma Tax Commission did not within two years assess any additional Oklahoma income tax against PROTESTANT.

10. That in May 31, 1996, PROTESTANT filed a Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the Western District of Oklahoma.

11. That PROTESTANT listed the Oklahoma Tax Commission as a creditor on Schedule F of the Bankruptcy Petition.

12. That PROTESTANT listed the Oklahoma Tax Commission on the "Matrix" filed with the Voluntary Petition in Bankruptcy.

13. That PROTESTANT, without objection, received her "Discharge of Debtor" order entered by United States Bankruptcy Judge on September 6, 1996.

B. Other Facts Contained in the Record

The Administrative Law Judge finds that the following facts are contained in the record but not stipulated by the parties:

14. PROTESTANT did not have any evidence of ever filing a 1989 income tax return with the Oklahoma Tax Commission and the Audit Division "Division" hereafter, did not have any record of a 1989 income tax return filed by PROTESTANT. Therefore, based on the record of this case, the factual conclusion must be that PROTESTANT did not file a 1989 income tax return.

15. On October 30, 1998, the Division issued a proposed assessment of additional income taxes to PROTESTANT for the 1991 tax year. This assessment was based on the Internal Revenue Service, Revenue Agents Report of Adjustments made to PROTESTANT's 1991 federal return which was provided to the Division. The Oklahoma income taxes assessed:

1991 Tax	$10,143.00
Interest	9,953.00
Penalty	1,014.30
TOTAL	$21,110.63

PROTESTANT timely filed a protest to this assessment by letter of November 16, 1998.

16. On December 31, 1998, the Division issued a proposed assessment of additional income tax to PROTESTANT for the 1990 tax year. This assessment was based n the Internal Revenue Service, Revenue Agents Report of Adjustments made to PROTESTANT's 1990 federal return. The Oklahoma income taxes assessed are:

1990 Tax	$10,641.00
Interest	12,304.19
Penalty	1,064.10
TOTAL	$24,009.29

PROTESTANT timely filed a protest to this assessment by letter of January 29, 1999.

17. On December 31, 1998, the Division issued a proposed assessment of additional income tax to PROTESTANT for the 1989 tax year. This assessment was based n the Internal Revenue Service, Revenue Agents Report of Adjustments made to PROTESTANT's 1989 federal return. The Oklahoma income taxes assessed are:

1989 Tax	$ 6,888.00
Interest	8,997.79
Penalty	688.80
TOTAL	$16,574.59

PROTESTANT timely filed a protest to this assessment by letter of January 29, 1999.

ISSUES

1. Whether the Oklahoma Tax Commission is time barred from making any assessment against PROTESTANT for the taxable years 1989, 1990, and 1991.

2. Whether the "Discharge of Debtor" order entered by the United States Bankruptcy Judge on September 6, 1996, discharged the tax debt of PROTESTANT, if any there was, to the Oklahoma Tax Commission.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest, 68 O.S. § 207.

A. The Timeliness of the Assessments

2. Title 68 O.S. § 223(A) provides that no assessment shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return as filed, whichever period expires later. Section 223(C) provides that in the case of a failure to file a return as required by law the Tax Commission is authorized to compute and assess the tax due from any information in its possession at any time. Because PROTESTANT did not file a 1989 tax return, the three year limitation period was tolled and the Division timely assessed the 1989 income taxes based on the information provided in the IRS/RAR.

3. PROTESTANT did file Oklahoma income tax returns for the year 1990 and 1991 and the three year limitation period of Section 223 has expired for those returns. However, the Internal Revenue Service made adjustments to PROTESTANT's federal 1990 and 1991 returns as stated on the Revenue Agents Report dated April 17, 1995. That RAR was provided to the Division, however, PROTESTANT did not file amended Oklahoma income tax returns for 1990 and 1991 after the federal adjustments were made. Title 68 O.S. § 2375(H)(1) tolls the Section 223 three year limitation period until the amount of taxable income for any year of a taxpayer under the Internal Revenue Code has been finally determined under applicable federal law. Because PROTESTANT's 1990 and 1991 federal returns were adjusted by the Internal Revenue Service, the Section 223 time limitation period is tolled by Section 2375(H)(1).

4. Section 2375(H)(2) further provides that if the amount of taxable income for any year of a taxpayer under the Internal Revenue Code is changed by the IRS and such change affects Oklahoma taxable income of the taxpayer for such year, the taxpayer shall file a amended return reporting the corrected Oklahoma taxable income, within one yea of the Revenue Agents Report from the IRS. The Division must assess the additional taxes within two years of the filing date of the amended return. However, PROTESTANT never filed an Oklahoma amended tax return for 1990 and 1991 as required by Section 2375(H)(2). Therefore, Section 2375(H)(3) provides that
in the event of such failure of a taxpayer to file the required amended return, the Statute of Limitations is tolled until the amended return required by Section 2375(H)(2), is actually filed. Since PROTESTANT never filed her required amended returns, the time limitation period was tolled and never expired. The Division timely issued its proposed assessments of additional income taxes for 1990 and 1991 to PROTESTANT.

B. The Discharge of Debtor in Bankruptcy

5. PROTESTANT received a Discharge of Debtor in U.S. Bankruptcy Court on September 6, 1996, after the IRS had adjusted her income taxes in the RAR dated April 17, 1995. At the time of her bankruptcy discharge, PROTESTANT had an income tax filing requirement with the Tax Commission which she did not fulfill for the years 1989, 1990, and 1991. The tax liabilities for these years did not arise until the Division issued its assessment after PROTESTANT had received her discharge in bankruptcy. Under applicable provisions of the U.S. Bankruptcy Code, these taxes are not dischargeable. Title 11 U.S.C. § 523(a)(1)(B)(i) provides that a bankruptcy discharge does not discharge an individual from any debt for a tax with respect to which a return, if required, was not filed. PROTESTANT did not file her State income tax return for 1989 and did not file her State amended income tax return for 1990 and 1991 as required by state law and therefore, the subsequent taxes assessed were not discharged by the prior Order of the Bankruptcy Court pursuant to federal law.

6. PROTESTANT argues with regard to the assessments for 1990 and 1991 that since an original return was filed in those years that filing is sufficient to allow PROTESTANT to avoid Section 523(a)(1)(B)(i)) so that the later assessed taxes would be discharged. PROTESTANT relies on *In re Dryer*, 158 BR 904 (Bkrtcy W.D.N.Y. 1995), for its holding that ". . . dischargeable taxes are not converted into non-dischargeable taxes by a State's 'requiring' successive return . . . addressing the same basic information, or by a State's labeling all 'amendments' or 'notifications' as 'returns'." PROTESTANT's authorities are not on point with Oklahoma law. First, Oklahoma law does not require successive returns addressing the same basic information. Rather, Oklahoma law requires new information to be reported on an amended return when the taxpayer's federal return is adjusted by the IRS. In this case, the assessments show PROTESTANT reported taxes due on he 1990 return of $4.00 which was corrected to $10,645.00 based on the RAR. PROTESTANT reported taxes due on her 1991 return of $64.00 which was corrected to $10,207.00 based on the RAR. Therefore, PROTESTANT failed to report significant information that was not reported before. In a case on point, the Oklahoma Supreme Court has held that the filing requirement in 68 O.S. § 2375(H)(2) is a required return for purposes of the U.S. Bankruptcy Code in the case of *O'Carroll v. Oklahoma Tax Commission*, 952 P. 2d 45, 1998 OK 6, in which the Supreme Court answered a question of law certified by the United States District Court for the Northern District of Oklahoma as follows:

> Is the requirement to file an amended Oklahoma income tax return under Okla. Stat. Tit. 68, § 2375(H)(2)(1991), after adjustment of a taxpayer's federal income tax liability, dependent upon Okla. Stat. Tit., 68, § 2375(H)(1)(1991) to the extent at the requirement arises only if the taxpayer executed a agreement with the Internal Revenue Service extending a statute of limitations for assessment of additional tax within the Oklahoma three year statute of limitation period specified in Okla. Stat. Tit. 68 § 233; or does Okla. Stat. Tit. 68, § 2375(H)(2) operate as an independent requirement to file an amended Oklahoma return anytime a taxpayer's income is adjusted by the Internal Revenue Service?

The Oklahoma Supreme Court answered the question as follows:

> We answer that § 2375(H)(2) of Title 68 of the Oklahoma Statutes imposes a duty upon Oklahoma tax reporters to notify the Oklahoma Tax Commission, by amended state income tax report or by letter, of any adjustment or correction irk the returned federal net income or taxable income within one year after the federal adjustment or correction has been finally determined; and, the filing duty arises anytime a taxpayer's income is adjusted by the Internal Revenue Service, whether the adjustment or correction teas been made pursuant to an agreement to extend the federal assessment period, or pursuant to a procedure initiated within the applicable federal limitation period.

Since PROTESTANT had a filing requirement that she left unfulfilled, her discharge in bankruptcy is unavailable to relieve her liability for subsequently assessed income taxes.

7. The protest should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the income tax protest of 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.