JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-03-15-008 / NOT PRECEDENTIAL**
ID: **P0000132**
DATE: **03-15-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On December 4, 1992, Protestant filed a 1990 resident State of Oklahoma joint return with his wife.

2. By correspondence dated December 2, 1997, the Division was notified by the Internal Revenue Service ("IRS") of adjustments made to Protestant's federal adjusted gross income for the 1990 tax year.

3. By letter dated March 20, 2000, the Division caused to be issued against Protestant and his wife a proposed assessment of additional income tax, interest and penalty for the 1990 tax year.

4. The amount assessed inclusive of interest accrued through March 20, 2000, is as follows:

Tax:	$ 2,626.00
Interest:	3,520.28
Penalty:	262.60
Total:	$ 6,408.88

5. The proposed assessment is based on the adjustments made to Protestant's federal adjusted gross income by the IRS.

6. THE auditor for the Division, testified that the IRS disallowed several business expenses claimed by Protestant on Schedule C to his 1990 federal income tax return.

7. Protestant timely protested the proposed assessment by letter dated June 26, 2000. In the letter, Protestant wrote that he disputed the adjustments with the IRS, the IRS agreed to a change for 1990 and no additional taxes were owed. He also wrote that a settlement was agreed upon with the IRS which included the years 1990, 1992, 1995 and 1996. He further wrote that his wife died in 1994.

8. By letter dated August 26, 2000, Protestant wrote that he and his wife elected to file tax returns as Oklahoma residents for the years 1988 through 1994. According to the letter, Protestant's business failed in the oil crisis of 1984, so he started doing business in ANOTHER STATE. His wife elected to stay in Oklahoma, so Protestant spent his time going to and from ANOTHER STATE to Oklahoma to finalize the Oklahoma failed business and run the OUT OF STATE business.

His wife's income was from social security and teacher's retirement. His income was from social security and the OUT OF STATE business, after expenses.

In 1994, the IRS notified Protestant that they were auditing the 1990 return. After the audit, the IRS assessed additional taxes. The assessment was due to the disallowance of the expenses claimed for doing business in ANOTHER STATE. The disallowance was based on the IRS's determination that ANOTHER STATE was Protestant's "tax home." The expenses disallowed included mileage, rent on and repairs to a residence in ANOTHER STATE, and travel, meals and entertainment.

Protestant disputed the adjustment. However, because of financial reasons, Protestant dropped the appeal and made an Offer in Compromise for the tax years 1996, 1995, 1992 and 1990 which the IRS accepted.

9. According to the auditor, there is no indication Protestant filed a 1990 income tax return IN THE OTHER STATE.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant sustained his burden of proving that the proposed income tax assessment is incorrect.

Protestant contends that the Offer in Compromise constitutes an acceptance by the IRS of his dispute to the disallowance of the business expenses. Protestant further contends that the IRS's determination of his "tax home" equates to a determination of his residency in ANOTHER STATE.

The Division contends that the assessment is based on the final, non-appealable determination by the IRS and the Tax Commission is bound by those changes. The Division further contends that Protestant elected to file a joint Oklahoma return and have the Oklahoma income determined and taxed on the basis of a joint Oklahoma return as if both were residents.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. 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.

3. "Oklahoma accepts all "lawful deductions" taken on a taxpayer's federal return, pursuant to the Internal Revenue Code, as adjustments to "adjusted gross income", as defined by 68 O.S. 1981, § 2353(11) and (13), prior to the determination of "Oklahoma taxable income", defined in § 2352(12), supra, in addition to those exemptions and/or deductions statutorily allowed by Oklahoma in accordance with 68 O.S. 1981, § 2358." 82 *Op. Att'y Gen.* 137 (1982). "Itemization of deductions by taxpayers for the purpose of reporting and paying Oklahoma income tax, if allowed, is done on the taxpayer's federal return." *Id.*

4. Except in those cases where an IRS revision to a federal return affects items or matters relating to allocation or apportionment between Oklahoma and some other state or the federal government, the Commission is bound by the changes made by the IRS to the federal return. 68 O.S. Supp. 1992, § 2375(I).[1] See, Rule 710:50-3-8(d) of the *Oklahoma Administrative Code.*

5. Generally, married individuals shall file joint or separate returns in accordance with the manner in which they filed their federal return. 68 O.S. 1991, § 2361. An exception applies where one is a resident and the other is a nonresident. Id. In such cases the adjusted gross income as returned to the federal government is allocated between the husband and wife. Id. An exception to the exception applies where both have net income and they elect to have their Oklahoma income determined and taxed on the basis of a joint Oklahoma return as if both were residents. Id. See, *OAC*, Rule 710:50-3-40.

6. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *OAC*, Rule 710:1-5-47. See, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988).

[1] Currently codified as § 2375(H)(4).

7. Here, Protestant failed to present any evidence to show the IRS accepted the business expense claimed on his 1990 federal income tax return. Accordingly, the Tax Commission is bound by the IRS adjustments and the expenses are not deductible on Protestant's 1990 Oklahoma income tax return. 68 O.S. Supp. 1992, 2375(I). 82 *Op. Att'y Gen.* 137 (1982). In addition, Protestant failed to present any evidence to show the Offer in Compromise reduced his federal adjusted gross income.

Accordingly, Protestant's federal adjusted gross income as finally ascertained under the Internal Revenue Code constitutes the starting point for determining Protestant's Oklahoma adjusted gross income. 68 O.S. 1991, §§ 2353(13) and 2358. Finally, a taxpayer's "tax home" for federal income tax purposes does not equate to a taxpayer's residence for state income tax purposes. See, I.R.C. § 162. A taxpayer's "tax home" is considered to be the taxpayer's regular or principal place of business for purposes of the deduction of business expenses related to travel, meals and lodging. See, *U.S. Master Tax Guide*, § 950. Accordingly, the IRS's determination of Protestant's tax home for federal income tax purposes did not affect Protestant's residency status for Oklahoma income tax purposes. See, 68 O.S. 1991, § 2353(4).

8. Protestant's protest should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest be denied. It is further DETERMINED that the amount in controversy, 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.