JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-11-20-004 / NOT PRECEDENTIAL**
ID: **P9900129**
DATE: **11-20-01**
DISPOSITION: **DISMISSED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 30th day of October, 2001, the *Motion to Dismiss* filed by the Audit Division of the Oklahoma Tax Commission (hereinafter "Division") in the above-styled and numbered cause comes on for consideration. Upon review of the file and records, including the record of the proceeding held on April 11, 2001, to consider the *Motion to Dismiss*, the undersigned finds:

1. On February 11, 1987, Protestant filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Oklahoma. On June 11, 1987, the United States Bankruptcy Court ordered that Protestant be released from all dischargeable debts.

2. On March 31, 1999, the Audit Division issued against PROTESTANT proposed assessments of income tax, interest and penalty for tax years 1982, 1983, 1984, 1985 and 1986.

3. The assessments are based on Internal Revenue Service Revenue Agent Reports dated July 30, 1996, and numbered 99999-99, 88888-88, 77777-77, 66666-66 and 55555-55, respectively.

4. The Protestant had not previously filed Oklahoma income tax returns with the State of Oklahoma for the 1982, 1983, 1984, 1985 and 1986 tax years and did not file amended returns with the state subsequent to the changes made by the Internal Revenue Service ("IRS").

5. The aggregate amount assessed against Protestant for the 1982, 1983, 1984, 1985 and 1986 tax years, inclusive of interest accrued through March 31, 1999, is $74,947.83.

6. By letter dated April 30, 1999, Protestant protested the Division's proposed assessments, denying any Oklahoma state tax liability for those years.

7. On December 14, 2000, Protestant appeared before the Commission and requested settlement of the taxes at issue herein. The Commission denied Protestant's request.

8. On February 20, 2001, the Division filed a *Motion to Dismiss* on the grounds and for the reason that Protestant raised no grounds for protest over which the Court has jurisdiction. Notice of the hearing scheduled to consider the *Motion to Dismiss* was sent to the parties to this proceeding by letter dated February 23, 2001. Upon request of Protestant for additional time to pursue either a rehearing of his settlement offer before the Commission or to seek a payout agreement, the hearing was continued by letter dated March 14, 2001.

9. By letter dated April 10, 2001, Protestant responded to the *Motion to Dismiss* stating that he is unable to pay the substantial proposed assessment; that the assessment is improper as no relevant tax is owed; that he "took Chapter 7 'no asset' bankruptcy in 1987, without objection or exception, having suffered consistent financial losses in the several years prior;" and that he has no tax liability for the years claimed.

10. A ruling on the *Motion to Dismiss* was stayed until June 11, 2001, for the Protestant to pursue a payout arrangement.

11. The Protestant, by letter dated June 11, 2001, advised that he had contacted the Collections Division requesting an installment agreement to pay the outstanding tax and a wavier of penalty and interest. Because of some medical difficulties, Protestant requested an additional 90 days to resolve the matter.

12. The Division filed an objection to the requested continuance.

13. The Protestant, by letter dated June 20 2001, was granted an additional 30 days in which to finalize a payment agreement. The Protestant was advised that if an agreement had not been reached by July 20, 2001, the matter would be submitted for decision.

14. As of this date, Protestant has not entered into a payout agreement for the years in question.

CONCLUSIONS OF LAW

WHEREFORE, premises considered the undersigned concludes that the Tax Commission is vested with jurisdiction to consider the *Motion to Dismiss*, 68 O.S. §§ 207 and *Oklahoma Administrative Code 710:1-5-46*; that 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); that 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)*; that the information furnished by the IRS shall be that upon which any tax liability is computed, *Oklahoma Administrative Code 710:50-5-10(a)*; that Protestant's debt to the Tax Commission falls within the exceptions to dischargeability found in the United States Bankruptcy Code; that tax debts "with respect to which a return, if required - was not filed," are not dischargeable debts, 11 U.S.C. § 523(1)(B)(i); that Protestant's debt arose from his failure to file required tax returns and, therefore, the Order granting Protestant's release from dischargeable debts under Chapter 7 of the Bankruptcy Code has no impact on the assessments made by the Tax Commission; and that Protestant has wholly failed to come forward with any evidence to show he is entitled to the relief requested.

DISPOSITION

THEREFORE, it is DETERMINED that the income tax protest of Protestant be dismissed. It is further DETERMINED that the amount of the proposed assessments, and 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.