JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-12-06-003 / NOT PRECEDENTIAL**
ID: **P0100056**
DATE: **12-06-01**
DISPOSITION: **DISMISSED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 28th day of August, 2001, the above styled and numbered cause comes on for decision pursuant to a hearing held on August 15, 2001. Protestants appear pro se. The Audit Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's office of the Tax Commission.

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

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

2. That by letters dated October 22, 1996, the Oklahoma Tax Commission assessed income tax, interest, and penalty against Protestants for the 1991 and 1992 tax years.

3. That the assessments are based on information made available to the Tax Commission from the Internal Revenue Service which indicated that during 1991 and 1992, Protestants had income from Oklahoma sources sufficient to require the filing of Oklahoma income tax returns.

4. That notices of the proposed assessments were mailed to Protestants at their last known address, pursuant to 68 O.S. Supp. 1993, § 208.

5. That the aggregate amount assessed against Protestants for the 1991 and 1992 tax years, inclusive of interest accrued through October 19, 1996, is $5,705.24.

6. That the amount in controversy was made the subject of a tax warrant which was filed of record on December 1, 1998, in Oklahoma County.

7. That by letter dated February 18, 2000, the Division notified Protestants that their 1999 income tax refund in the amount of $100.00 was delayed due to the 1991 and 1992 income tax liability and would be applied to the liability if they did not respond to the notice within ten (10) days.

8. That by letter to the Oklahoma Tax Commission dated January 14, 2001, Protestant stated that he disputed the alleged balance for the 1991 and 1992 tax years and refuted any penalties as this put a hardship on his family.

9. That neither a timely protest to the proposed assessments nor the Division's notice of application of Protestants' 1999 income tax refund to the income tax liability was filed by Protestants.

ISSUES AND CONTENTIONS

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and the subject matter of this proceeding, 68 O.S. 1991, § 207 and Rule 710:1-5-46 of the ***Oklahoma Administrative Code***; that where a protest is not filed within the periods prescribed by 68 O.S. 1991, § 221(c) or (f), the proposed assessment is deemed final and absolute under 68 O.S. 1991, § 221(e) and the Tax Commission is without jurisdiction to consider the merits of the protest, ***Matter of Phillips Petroleum Co.***, 652 P.2d 283 (Okla. 1982); and that Protestants have failed to come forward with any evidence to show either a written protest to the proposed assessments or the Division's notice of application of the 1999 income tax refund to the liability was timely filed.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest of PROTESTANTS be dismissed.

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.