JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-01-29-014 / NOT PRECEDENTIAL**
ID: **P0100238**
DATE: **01-29-02**
DISPOSITION: **DENIED / DISMISSED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That at all times relevant herein, Protestant admits he was a resident of the State of Oklahoma.

2. That on August 31, 2001, Protestant filed Amended Oklahoma Individual Income Tax Returns, Forms 511X, for the 1998 and 1999 tax years.

3. That Protestant's original Oklahoma Individual Income Tax Return, Form 511, for the 1999 tax year reported Federal Adjusted Gross Income of $44,922.00, Oklahoma Taxable Income (Method 2) of $8,544.00 and an Oklahoma income tax liability of $121.00.

4. That Protestant's 1999 Form 511X reported Federal Adjusted Gross Income of zero, Oklahoma Taxable Income of zero and claimed a refund of Oklahoma income tax of $121.00.

5. That by letter dated October 8, 2001, Protestant was notified of the Division's adjustment to his 1999 amended return and denial of the claim for refund.

6. That according to the testimony of the auditor, Protestant's amended return was adjusted and the claim for refund was denied because Protestant failed to provide substantiation of acceptance by the Internal Revenue Service of the change to Protestant's Federal Adjusted Gross Income for 1999.

7. That during the pendency of Protestant's protest to the denial of his 1999 income tax claim for refund, the Division caused to be issued against Protestant a proposed assessment of income tax, interest and penalty for the 1998 tax year in the aggregate amount of $138.65, consisting of tax in the amount of $94.00, interest accrued through October 15, 2001, in the amount of $35.25 and thirty (30) day delinquency penalty in the amount of $9.40.

8. That according to the testimony of the auditor, Protestant's 1998 income tax refund claim as reported on his 1998 511X was automatically issued without review or audit by the Division.

9. That the auditor testified that Protestant's 1998 511X was thereafter audited by the Division, the income tax refund was denied and the assessment was issued because, according to the auditor, Protestant failed to provide substantiation of acceptance by the Internal Revenue Service of the change to Protestant's Federal Adjusted Gross Income for 1998.

10. That Protestant's original Oklahoma Individual Income Tax Return, Form 511, for the 1998 tax year reported Federal Adjusted Gross Income of $32,231.00, Oklahoma Taxable Income (Method 2) of $7,626.00 and an Oklahoma income tax liability of $94.00.

11. That Protestant's 1998 Form 511X reported Federal Adjusted Gross Income of zero, Oklahoma Taxable Income of zero and claimed a refund of Oklahoma income tax of $94.00.

12. That accompanying Protestant's 1998 and 1999 Forms 511X were Protestant's Asseveration of Claimed Gross Income and IRS Forms 4852 and 8275, which stated, under penalty of perjury, Protestant had no adjusted gross income, nor any income from a taxable source on both the state and federal level.

13. That by Due Process Hearing Request signed and dated October 22, 2001 and marked received by the Tax Commission on October 25, 2001, Protestant timely protested the denial of his 1999 income tax claim for refund.

14. That by Due Process Hearing Request neither signed nor dated, but marked received November 16, 2001, by the Tax Commission, Protestant protested the proposed assessment of income tax, interest and penalty for the 1998 tax year.

ISSUES AND CONTENTIONS

The proposed issues as set forth in Protestant's position statement filed in this cause on November 26, 2001, are:

a. Did the OTC have the lawful authority to arbitrarily alter the properly completed 511X [sic] Returns [sic] for 1998/1999 [sic] submitted by [Protestant]?

b. Did the OTC grant [Protestant] the opportunity for Due Process prior to its actions taken by OTC to arbitrarily assess [Protestant] a [sic] state income tax for 1998/1999 [sic]?

c. Can [Protestant] get an impartial and fair Due Process Hearing from an OTC Administrative Law Judge that is paid by the same source as the Attorney representing the same agency, the OTC?

d. Are the altered 1998/1999 [sic] 511X [sic] Returns supported by hearsay evidence or competent witnesses as evidence?

Also at issue in this cause is whether Protestant timely protested the 1998 proposed assessment.

CONCLUSIONS OF LAW

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

2. Oklahoma income tax is imposed upon the Oklahoma taxable income of every resident individual. 68 O.S. 1991, § 2355(A).

3. "Oklahoma adjusted gross income" and "Oklahoma taxable income" are respectively defined to mean "'adjusted gross income' [and] 'taxable income' as reported to the federal government, or in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as" provided in the Oklahoma Income Tax Act. 68 O.S. 1991, § 2353(12) and (13).

4. The period of time for the assessment of income tax shall be tolled and extended 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. 68 O.S. 1991, § 2375(H)(1). If the amount of taxable income for any year of a taxpayer under the Internal Revenue Code is changed or corrected from the amounts included in the federal return of the taxpayer for such year and such change or correction affects the Oklahoma taxable income of the taxpayer for such year, the taxpayer, within one (1) year after such final determination of the corrected taxable income, shall file an amended return reporting the corrected Oklahoma taxable income, and the Commission shall make assessment or refund within two (2) years from the date the return is filed. 68 O.S. 1991, § 2375(H)(2). The Commission is authorized to audit each and every item of income, deduction, credit or any other matter related to allocation or apportionment involving an amended return of a taxpayer. 68 O.S. 1991, § 2375(H)(4). Where such items do not relate to allocation or apportionment, the Commission is bound by the change or correction finally determined under the Internal Revenue Code. Id.

5. Where a taxpayer files an amended Oklahoma income tax return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. Rule 710:50-9-3 of the Oklahoma Administrative Code.

6. The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless the rules and regulations are beyond the scope of the statute, are in conflict with the statute or are unreasonable. See, Boydston v. State, 277 P.2d 138 (Okl. 1954); Arkansas Louisiana Gas Co. v. Travis, 682 P.2d 225 (Okl. 1984); Rutherford v. United States, 438 F. Supp. 1287 (D.C. Okl. 1977). As a general rule, it is presumed that administrative rules and regulations are fair and reasonable and that the complaining party has the burden of proving the contrary by competent and convincing evidence. Stiner v. Califano, 438 F. Supp. 796 (D.C. Okl. 1977); State ex rel. Hart v. Parham, 412 P.2d 142 (Okl. 1966).

7. Rules promulgated pursuant to the Administrative Procedures Act[1] are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 1991, § 306(C). They are valid and binding on the persons they affect and have the force of law. 75 O.S. 1991, § 308.2(C). They also are prima facie evidence of the proper interpretation of the matter to which they refer. Id.

8. The Tax Commission is empowered by statutory authority to audit or investigate, as it deems necessary, any filed report or return and assess, correct or adjust said report or return in accordance with its audit or investigation. 68 O.S.1991, § 221(a) and (b).

9. The procedures and remedies for challenging an action by the Tax Commission whether the same is the denial of an income tax claim for refund, 68 O.S. 1991, § 207(c) and (d)[2]; or the assessment of income tax, 68 O.S. 1991, § 221(c) and (d); are set forth in the Uniform Tax Procedure Code, 68 O.S. 1991, § 201 et seq. Such procedures and remedies satisfy the requirements of the due process clause, Article 2, Section 7 of the Oklahoma Constitution. See, Stallings v. Oklahoma Tax Commission, 880 P.2d 912 (Okl. 1994) and In re Thomas' Estate, 192 Okl. 409, 136 P.2d 929 (1943).

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

[1] 75 O.S. Supp. 1987, § 250 et seq., § 301 et seq.

[2] See, Oklahoma Tax Commission Order No. 2000-09-19-041.

11. Here, Protestant's amended Oklahoma income tax returns were not accompanied by documentation substantiating the I.R.S.'s acceptance of the change to his federal adjusted gross income for the years at issue. Rule 710:50-9-3 requires that such documentation accompany an amended Oklahoma income tax return. Accordingly, Protestant failed to show that the Division's adjustments to his 1998 and 1999 amended Oklahoma income tax returns are incorrect.

12. Within thirty (30) days after the mailing of a proposed assessment, a taxpayer may file a written protest thereto under oath, signed by the taxpayer. 68 O.S. 1991, § 221(C). The failure of a taxpayer to file either a written protest within the thirty (30) day period or within the period as extended by the Commission shall result in the proposed assessment becoming final and absolute. 68 O.S. 1991, § 221(E). See, Matter of Phillips Petroleum Co., 652 P.2d 283 (Okla. 1982). Where a proposed assessment has been allowed to become final and absolute by reason of the taxpayer's failure to protest the proposed assessment within the time allowed, the Commission is without jurisdiction to consider the appeal. Id.

13. Here, Protestant failed to file a written protest to or request an extension of time to protest the proposed assessment issued against him for the 1998 tax year within the time allowed by Section 221(C). Accordingly, the proposed assessment for the 1998 tax year is final and absolute, and the Commission is without jurisdiction to consider his appeal of the assessment.

7. Protestant's protest to the denial of his income tax claims for refund for the 1998 and 1999 tax years should be denied. Protestant's protest to the 1998 proposed income tax assessment should be dismissed.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protests to the denial of the income tax claims for refund of Protestant be denied. It is further DETERMINED that the protest of the 1998 income tax assessment of Protestant be dismissed. It is further DETERMINED that the amount of income tax, interest and penalty assessed for the 1998 tax year, inclusive of 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.