JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-03-19-006 / NOT PRECEDENTIAL**
ID: **P0100164**
DATE: **03-19-02**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 12th day February, 2002, the above styled and numbered cause comes on for decision pursuant to Section 221(d) of the Uniform Tax Procedure Code. PROTESTANT appears 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, including the proposed income tax assessment of July 19, 2001, the letter of protest, and the Division's Verified Response to Protest and attachments, the undersigned finds:

1. That by letter dated July 19, 2001, the Division assessed income tax, interest, and penalty against Protestant for the 1998 tax year.

2. That the assessment is based on information which indicated Protestant had income from Oklahoma sources sufficient to require the filing of an Oklahoma income tax return for the 1998 tax year.

3. That Protestant had not previously filed an Oklahoma income tax return for the year in question.

4. That the aggregate amount assessed against Protestant for the 1998 tax year, inclusive of interest accrued through April 15, 1999, is $5,901.80.

5. That Protestant filed a timely protest to the proposed assessment, asserting that he is a resident of Florida and is not required to pay Oklahoma income tax, that the Oklahoma income he received is produced by a trust which belongs to his children and represents payment for services rendered, that he owns no property in Oklahoma and that the amount of the tax assessed is erroneous.

6. That Protestant did not request a hearing.

7. That the parties filed a "Prehearing Conference Report" in lieu of appearing at the Prehearing Conference scheduled in this cause for October 4, 2001, requesting a thirty (30) day continuance and advising that they had conferred by telephone and the Division was forwarding certain documentation requested by Protestant.

8. By letter dated October 11, 2001, the parties' request for continuance was granted and they were directed to file a status report on or before November 13, 2001.

9. That by memorandum filed on November 16, 2001, the Division advised that Protestant had not submitted a response to the forwarded documentation or its inquiry regarding how Protestant wished to proceed with his protest.

10. That by letter dated November 16, 2001, the parties were served with notice of the opportunity to file on or before December 17, 2001, additional information, documentation and/or written arguments in support of their respective positions, at which time the record would be closed and the matter submitted for decision.

11. That Protestant did not file a response to this notice.

12. That the 1998 State of Oklahoma Resident Fiduciary Return of Income, Form 513, of the ANONYMOUS Trust H reports a distribution of "Rental Real Estate Income" to PROTESTANT, the Nonresident Beneficiary, in the amount of $65,448.00.

13. That the fiduciary return of income indicates there is only one beneficiary of the Trust and the income represents rents received from commercial rental property in Oklahoma City, Oklahoma.

14. That the amount of tax assessed in this cause is based on the $65,448.00 distribution of income from the ANONYMOUS Trust H to PROTESTANT.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. 1991, § 207; that the Oklahoma Income Tax Act, 68 O.S. 1991, § 2351, et seq., imposes an income tax on the Oklahoma taxable income of every resident or nonresident individual, 68 O.S. 1991, § 2355(A); that the Oklahoma taxable income of a nonresident individual shall include the Oklahoma part of a distribution of income from a resident or nonresident trust, 68 O.S. 1991, § 2362(5); that the Oklahoma part of a distribution of income from a resident or nonresident trust includes income from real property having a situs in Oklahoma, including rents from the real property, 68 O.S. 1991, § 2358(A)(4)(a); that every nonresident individual having Oklahoma gross income of $1,000.00 or more is required to make a return of income, 68 O.S. 1991, § 2368(A)(4),

transmit the return to the Tax Commission, 68 O.S. 1991, § 2368(I) and remit the amount of tax due, 68 O.S. 1991, § 2375(A); 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); and that Protestant has failed to come forward with any evidence to show he is entitled to the relief requested, Rule 710:1-5-47 of the Oklahoma Administrative Code.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest be denied. It is further DETERMINED that the amount in controversy, 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.