

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-03-19-007 / NOT PRECEDENTIAL  
**ID:** P0000141  
**DATE:** 03-19-02  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. PROTESTANTS filed a joint Oklahoma individual income tax return for tax year 1991 on April 14, 1992, claiming a refund of \$85.00. The Tax Commission paid the refund to the Protestants on May 18, 1992.

2. On April 15, 1993, Protestants filed a joint Oklahoma individual income tax return for tax year 1992, claiming a refund of \$505.00. The Commission paid the refund to the Protestants on May 8, 1993.

3. On April 15, 1994, Protestants filed a joint Oklahoma individual income tax return for tax year 1993, and made payment of the balance due in the amount of \$49.00.

4. By letter dated February 21, 2000, the Division issued a proposed assessment of additional income tax, interest and penalty for tax year 1991 in the aggregate amount of \$3,454.40, consisting of tax in the amount of \$1,516.00, interest accrued through February 21, 2000, in the amount of \$1,786.80, and penalty in the amount of \$151.60.

5. By letter dated February 28, 2000, the Division issued a proposed assessment of additional income tax, interest and penalty for tax year 1992 in the aggregate amount of \$2,564.20, consisting of tax in the amount of \$1,203.00, interest accrued through February 28, 2000, in the amount of \$1,240.90, and penalty in the amount of \$120.30.

6. By letter dated February 28, 2000, the Division issued a proposed assessment of additional income tax, interest and penalty for tax year 1993 in the aggregate amount of \$7,278.08, consisting of tax in the amount of \$3,673.00, interest accrued through February 28, 2000, in the amount of \$3,237.78, and penalty in the amount of \$367.30.

7. The proposed assessments are based on Revenue Agents Reports dated January 22, 1998, and numbered 9999999, 8888888 and 7777777. The reports were received by the Division from the Internal Revenue Service ("IRS"). The Division utilized information from the reports to make adjustments to Protestants' Oklahoma taxable income for tax years 1991, 1992 and 1993.

8. Protestants did not file amended Oklahoma returns subsequent to the notice of federal changes for tax years 1991, 1992 and 1993.

9. A timely protest to the proposed assessments was filed.

10. At the December 12, 2001, hearing, PROTESTANT testified that a decision on his request for an offer in compromise with the IRS has been pending for three and a half years, and that there are no further appeals available. Further, he acknowledged that at the time of hearing, no modification of the IRS income tax examination changes has been made.

### **ISSUE AND CONTENTIONS**

Whether the Division is bound by statute to utilize changes reported by the IRS in adjusted gross income for the computation of an individual's income tax liability, other than in matters relating to allocation or apportionment.

Protestants contend that the changes made by the IRS to the adjusted gross income and tax liability for tax years 1991, 1992 and 1993 are based on incorrect information, and thus are wrong, and that documentation provided to the IRS for 1993 has been lost. Further, Protestants contend that even if the Tax Commission is required to base changes in state income tax upon the IRS adjustments, the state liability should be based upon the amount of the offer in compromise rather than the initial figures. In addition, Protestants contend that the Tax Commission assessments were made outside of the statute of limitations.

The Division contends that the Commission lacks authority to disregard the federal adjusted gross income as determined by the IRS. The Division further contends that Protestants have failed to provide any evidence that their federal adjusted gross income was further adjusted subsequent to the Revenue Agents Reports or that an appeal of the RAR's is still available. The Division contends that the statute of limitation in this matter was tolled by Protestants' failure to file amended Oklahoma individual tax returns within one year of the notification of adjustments made by the IRS.

### **CONCLUSIONS OF LAW**

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. § 221.
2. 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).
3. 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).
4. The information furnished by the IRS shall be that upon which any tax liability is computed. Oklahoma Administrative Code 710:50-5-10(a).
5. The determination at the federal level as to Protestants' income tax liability for tax years 1991, 1992 and 1993 is final. Since the changes do not affect items or matters which relate to allocation or apportionment, the Tax Commission is bound by the

determination of the IRS.

6. An assessment of tax made more than three (3) years after the later of the filing date or required filing date of a return is barred unless (1) the Commission and taxpayer consent to the assessment thereof in writing, (2) a false or fraudulent return is filed, (3) no return is filed, or (4) in the case of the assessment of income taxes, taxpayer's federal taxable income is changed or corrected and such change or correction affects taxpayer's Oklahoma taxable income. 68 O.S. 1991, § 223 and 68 O.S. Supp. 1994, § 2375(H).

7. In the event the IRS has changed or corrected a taxpayer's net income for a particular year, the taxpayer is required to file, within one year of notification from the IRS of the change or correction in net income, an amended return reporting the corrected net income. 68 O.S. Supp. 1994, § 2375(H)(2). The Commission is authorized to make an assessment within two (2) years from the date the return is filed. *Id.* If the taxpayer does not file the required amended return, the two-year statute of limitation is tolled. 68 O.S. Supp. 1994, § 2375(H)(3).

8. Protestants have not presented any evidence that they filed an amended 1991, 1992 or 1993 state income tax return reporting the corrected federal net income. Accordingly, the proposed assessments are not barred by the statute of limitations.

9. The Division's proposed assessment of taxes is based on the information provided by the IRS to the Oklahoma Tax Commission. The Division has acted within the applicable law and rules in determining the Protestants' income tax liability for the years at issue.

10. Protestants have failed to meet the burden and the protest to the proposed assessments should be denied.

### **DISPOSITION**

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the income tax protest of Protestants be denied.

### **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.