JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-04-23-015 / NOT PRECEDENTIAL**
ID: **P0100213**
DATE: **04-23-02**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 27th day of March, 2002, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. Protestant represents himself in this matter. The Audit Division is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. A hearing was held. Notice of the hearing was mailed to Protestant at his last known address, yet he did not appear. At the conclusion of the hearing, this matter was submitted for decision.

FINDINGS OF FACT

1. The 1998 State of Oklahoma Resident Fiduciary Return of Income for the XYZ Estate, filed on July 2, 1999, reports as taxable to Oklahoma a distribution of income[1] to PROTESTANT, a Nonresident Beneficiary, in the amount of $4,185.00.

2. By letter dated September 11, 2001, Protestant was notified of a proposed assessment of income tax for tax year 1998 in the aggregate amount of $398.89, if paid within thirty days, consisting of tax in the amount of $292.95 and interest through September 11, 2001, in the amount of $105.94. The notice also advised that Oklahoma Tax Commission records reveal no filing of an Oklahoma tax return for that year by Protestant, although sufficient income was received to require one. The notice was sent to Protestant at P.O. Box 999999, ANONYMOUS, TX by certified mail, and Protestant signed the certified mail receipt.

3. Protestant, by letter dated October 5, 2001, protested the proposed assessment and paid the amount assessed of $398.89 under protest.

ISSUE AND CONTENTIONS

Whether Protestant sustained his burden of proof showing in what respect the action or proposed action of the Tax Commission is incorrect.

Protestant contends that since he has no vote in electing representatives nor influence as to how they vote on the laws precipitating the proposed assessment, he should not be assessed. Additionally, he contends that the proposed assessment does not reflect his business losses and negative income, which might reduce the amount assessed.

[1] The fiduciary return of income does not indicate what the income represents.

The Division contends that the proposed assessment is valid and correct based on Protestant's receipt of taxable income from an Oklahoma estate distribution during tax year 1998 and failing to file an Individual Income Tax return with the Oklahoma Tax Commission for that year.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and the subject matter of this action. 68 O.S. 1991, § 207.

2. 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.

3. The Oklahoma taxable income of a nonresident individual shall include the Oklahoma part of a distribution of income from an estate, 68 O.S. 1991, § 2362(5).

4. Every nonresident individual having an Oklahoma gross income for the taxable year of one thousand dollars 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(1), and remit the amount of the tax due at the time such return is filed, 68 O.S. 1991, § 2375(A).

5. The burden of proof in all proceedings is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. Oklahoma Administrative Code 710:1-5-47.

6. Protestant failed to present any evidence to show that the proposed assessment is erroneous. Therefore, Protestant's protest to the proposed assessment 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 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.