

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-06-04-003 / NOT PRECEDENTIAL
ID: P0100167
DATE: 06-04-02
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

**RECOMMENDATION DENYING MOTION TO DISMISS
AND DENYING PROTEST**

NOW on this 2nd day of May, 2002, the above styled and numbered cause comes on for decision pursuant to 710:1-5-38 of the *Oklahoma Administrative Code*. PROTESTANT (hereinafter "Protestant") represents himself in this matter. The Audit Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission. A hearing was held, at which Protestant filed a *Motion to Dismiss OTC Claim of Tax Liability* and a brief in support thereof. Upon review of the file and record in this cause, the undersigned finds as follows:

FINDINGS OF FACT

1. By letters dated April 30, 2001, the Division issued against Protestant proposed assessments of income tax, interest and penalty for the 1997 and 1998 tax years. The records of the Division indicate that Protestant had not filed income tax returns with the State of Oklahoma for the years at issue.
2. The aggregate amount assessed against Protestant for the 1997 and 1998 tax years, inclusive of interest accrued through April 30, 2001, is \$13,826.64.
3. The assessments are based on Internal Revenue Service Revenue Agents Reports dated January 10, 2001, and numbered XXXXX-XX and YYYYY-YY.
4. The Revenue Agents Reports show Protestant received wage income in the amount of \$71,053.00 and interest income in the amount of \$7.00 for the 1997 tax year, and Protestant received wage income in the amount of \$66,473.00 and IRA premature distribution in the amount of \$9,768.00 for the 1998 tax year. The Revenue Agents Reports also show Protestant's filing status for these years as "married separate".
5. On May 24, 2001, Protestant responded to the assessments by filing Oklahoma individual income tax returns, Form 511, for tax years 1997 and 1998. For each year, Form 511 shows zero federal adjusted gross income and zero income tax due. Attached to each return is Protestant's Wage and Tax Statement for the respective year showing wage income, as well as Oklahoma state income tax withheld. On the forms, Protestant requested a refund of Oklahoma income tax withheld in the amount of \$3,251.00 and

\$3,589.00, respectively.

6. Accompanying Protestant's 1997 and 1998 Forms 511 were Protestant's *Asseveration of Claimed Gross Income* and IRS Forms 4852 and 8275, which stated, under penalty of perjury, that Protestant had no gross income, nor any income from a taxable source on both the state and federal level.

7. Based upon the filing of Oklahoma individual income tax returns, the assessments for tax years 1997 and 1998 were canceled.

8. Protestant's Oklahoma individual income tax returns for tax years 1997 and 1998 were adjusted by the Division in accordance with the Internal Revenue Service Revenue Agents Reports. According to the testimony of the auditor, the wage income changes made by Protestant for 1997 and 1998 were disregarded in light of the Revenue Agents Reports and the fact that Protestant did not present any evidence that the income changes were accepted by the Internal Revenue Service.

9. By letter dated July 16, 2001, the Division advised Protestant of the adjustments to his 1997 return, which resulted in a balance due of \$1,586.00.

10. By letter dated July 12, 2001, the Division advised Protestant of the adjustments to his 1998 return, which resulted in a balance due of \$890.00.

11. By letter filed July 31, 2001, Protestant timely protested the adjustments and demanded a due process hearing, contending that the amendments violated his *Asseveration of Claimed Gross Income*, IRS Forms 4852 and 8275 and Oklahoma individual income tax, Form 511, and that the amendments were made without verified evidence and ignored his sworn testimony.

12. At all times relevant herein, Protestant was a resident of the State of Oklahoma.

13. On the day of the hearing in this matter, Protestant filed a *Motion to Dismiss OTC Claim of Tax Liability* alleging a lack of subject matter jurisdiction because of an absence of competent evidence and witnesses by the Oklahoma Tax Commission.

14. The auditor testified that the Revenue Agents Reports are submitted once a month bundled with a batch cover and number and hand carried from the IRS, Oklahoma City downtown office, and given to one of the five people designated at the Division to receive them. The reports are logged, assigned to individual auditors and stored in a secure area.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant has sustained his burden of proving that the proposed income tax assessments are incorrect.

Protestant contends that the proposed assessments are invalid because the Division's proposed assessments are not substantiated by competent witness and are based on unverified, irrelevant and inadmissible documents.

The Division contends that every Oklahoma resident is required to make an income tax return stating his or her taxable income and must transmit the return to the Tax Commission and remit the amount of tax due. Division further contends that Oklahoma taxable income is calculated based on federal adjusted gross income, and that upon receipt of an Oklahoma income tax return, the Division is authorized to audit or investigate the return as it may deem necessary and make an assessment, correction or adjustment as a result of the audit.

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, Section 207.

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

3. The Oklahoma adjusted gross income of any individual taxpayer is computed by starting with the amount reported as adjusted gross income to the federal government, or in the event of adjustments thereto by the federal government, as finally ascertained under the Internal Revenue Code. See, 68 O.S. 1991, Sections 2353(13) and 2358.

4. 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, Sections 221(a) and (b).

5. 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)*.

6. The information furnished by the IRS shall be that upon which any tax liability is computed. *Oklahoma Administrative Code 710:50-5-10(a)*.

7. The tax status and all elections of all taxpayers shall be the same for Oklahoma income tax purposes as they are for federal income tax purposes, unless the Oklahoma Income Tax Act provides otherwise. 68 O.S. 1991, Section 2353(3); *Oklahoma Administrative Code 710:50-3-35*.

8. The burden of proof in all proceedings is upon the Protestant to show in what

manner the action or proposed action of the Tax Commission is incorrect. *Oklahoma Administrative Code 710:1-5-47.*

9. Protestant has not shown that a modification of the income tax examination changes reflected on the Revenue Agents Reports has been made by the IRS or that the IRS has accepted the changes to federal adjusted gross income for 1997 and 1998 made by Protestant.

10. The Oklahoma Tax Commission has jurisdiction of protests to the proposed assessment of state income taxes. 68 O.S. 1991, Sections 207 and 221. The income tax assessments issued in this matter against Protestant are supported by substantial evidence. Finally, Protestant has failed to present evidence to show that the assessments are erroneous. Therefore, the Protestant's *Motion to Dismiss* and protest should be denied.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the income tax protest of PROTESTANT 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.