**JURISDICTION:** **OKLAHOMA TAX COMMISSION - DECISION**
**CITE:** **2002-07-23-005 / NOT PRECEDENTIAL**
**ID:** **P9900139**
**DATE:** **07-23-02**
**DISPOSITION:** **DENIED**
**TAX TYPE:** **INCOME**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 31st day of May, 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 herself in this matter. The Audit Division is represented by Senior Deputy General Counsel, General Counsel's Office of the Oklahoma Tax Commission. A hearing was held in this matter, wherein the Division appeared through its Assistant General Counsel. Upon conclusion of the hearing, this case was submitted for decision. Thereafter, on October 18, 1999, Protestant submitted two letters as evidence in this matter. *Division's Motion to Strike* was filed concerning the letters, and Protestant responded by filing an *Objection to Division's Motion to Strike*.

## FINDINGS OF FACT

1. Protestant filed a head of household Oklahoma individual income tax return for tax year 1991 on April 10, 1992, claiming a refund of $1,736.00. The Tax Commission paid the refund to the Protestant on May 21, 1992.

2. Protestant filed a head of household Oklahoma individual income tax return for tax year 1992 on February 24, 1993, claiming a refund of $390.00. The Tax Commission paid the refund to the Protestant on April 28, 1993.

3. By letter dated March 31, 1999, the Division issued a proposed assessment of additional income tax, interest and penalty for tax year 1991 in the aggregate amount of $2,231.70, consisting of tax in the amount of $1,041.00, interest accrued through March 31, 1999, in the amount of $1,086.60, and penalty in the amount of $104.10.

4. By letter dated March 31, 1999, the Division issued a proposed assessment of additional income tax, interest and penalty for tax year 1992 in the aggregate amount of $352.90, consisting of tax in the amount of $177.00, interest accrued through March 31, 1999, in the amount of $158.20, and penalty in the amount of $17.70.

5. The proposed assessments are based on Revenue Agents Reports, numbered 00000-00 and 99999-99, issued by the Internal Revenue Service ("IRS") to the Tax Commission. The reports disclose the nature and amount of the adjustments made to Protestant's federal income tax return for the 1991 and 1992 tax years.

For tax year 1991, the IRS characterized gross receipts claimed by Protestant on Schedule C of federal form 1040 as salaries and wages. The IRS disallowed an amount of expenses claimed by Protestant on Schedule C and Schedule F of the federal form 1040. An amount claimed on Schedule A of the 1040 for itemized deductions was also disallowed by the IRS.

For tax year 1992, the IRS characterized gross receipts claimed by Protestant on Schedule C of the federal form 1040 as salaries and wages. The IRS also disallowed expenses claimed by Protestant on Schedule C of the 1040.

The IRS revised its audit findings for the 1991 tax year by allowing an adjustment to income for certain itemized deductions. The Division utilized information from the reports to make adjustments to Protestant's Oklahoma taxable income for tax years 1991[1] and 1992.

6. Protestant did not file amended Oklahoma returns subsequent to the notice of federal changes for tax years 1991 and 1992.

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

8. At the October 11, 1999, hearing, Protestant testified that the IRS disallowed expenses she had taken as being self-employed as her mother's guardian and care-giver, saying that those should have been a reimbursement from the guardianship, and that the IRS would not allow the claimed deductions unless she could prove the basis was fraudulent.

9. On October 18, 1999, Protestant filed copies of two letters from an attorney concerning a court case in another jurisdiction. The Division filed a motion seeking to strike the filing of the documents in this case, and Protestant objected to the Division's motion.

[1] The Division in making its assessment for the 1991 tax year took into consideration the revision made by the IRS.

## ISSUES AND CONTENTIONS

Whether the documents filed by Protestant and objected to by Division are properly before the court in this matter.

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.

Protestant contends that the documents submitted for filing on October 18, 1999, should be taken into consideration when rendering a decision in this case. Further, Protestant contends that the IRS ruling is invalid because of a conspiracy to defraud by the IRS and various judges and attorneys.

The Division contends that the documents at issue are irrelevant to the issue before this court, are hearsay, have not been properly authenticated and violate the best evidence rule. Further, the Division contends that its assessments for tax years 1991 and 1992 were properly based on Protestant's adjusted gross income as reported by the IRS and that it may not deviate from the information supplied by the IRS absent statutory authority otherwise. Additionally, the Division contends that Protestant has neither asserted any cognizable factual errors nor presented any justiciable issues of law.

## CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. Section 221.

2. The letters filed October 18, 1999, are found to be not relevant to the proceedings before this court. Specifically, the letters do not relate to whether Protestant's federal adjusted gross income was further adjusted subsequent to the Revenue Agents Reports, nor do they related to an appeal of the adjustments to Protestant's income for tax years 1991 and 1992 set forth in the Revenue Agents Reports. Therefore, *Division's Motion to Strike* is granted.

3. 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).

4. 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).

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

6. The determination at the federal level as to Protestant's income tax liability for tax years 1991 and 1992 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.

7. The Division's proposed assessments of taxes are 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 Protestant's income tax liability for the years at issue.

8. Protestant has failed to meet her burden and the protest to the proposed assessments 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 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.