

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-12-03-002 / NOT PRECEDENTIAL
ID: P0200015
DATE: 12-03-02
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Protestants are, and were at all times relevant herein, residents of the State of Oklahoma.

2. Protestants filed a joint Oklahoma individual income tax return, Form 511, for 1998 signed August 16, 2001. The return reflects a federal adjusted gross income of zero and claims a refund due of income tax withheld in the amount of \$5,795.00.

3. Attached to the 1998 return was a Wage and Tax Statement, Form W-2, for PROTESTANT A, reflecting wages of \$108,754.76 and Oklahoma withholding of \$5,465.61.

4. Also attached to the 1998 return was a Wage and Tax Statement, Form W-2, for PROTESTANT B, reflecting wages of \$14,552.52 and Oklahoma withholding of \$329.33.

5. Protestants filed a joint Oklahoma individual income tax return, Form 511, for 1999 signed August 16, 2001. The return reflects a federal adjusted gross income of zero and claims a refund due of income tax withheld in the amount of \$3,766.00.

6. Attached to the 1999 return was a Wage and Tax Statement, Form W-2, for PROTESTANT A, reflecting wages of \$81,119.38 and Oklahoma withholding of \$3,456.55.

7. Also attached to the 1999 return was a Wage and Tax Statement, Form W-2, for PROTESTANT B, reflecting wages of \$14,016.00 and Oklahoma withholding of \$309.26.

8. Protestants filed a joint Oklahoma individual income tax return, Form 511, for 2000 signed August 16, 2001. The return reflects a federal adjusted gross income of zero and claims a refund due of income tax withheld in the amount of \$3,255.00.

9. Attached to the 2000 return were Wage and Tax Statements, Form W-2, for PROTESTANT A, reflecting wages of \$24,181.57, \$29,258.51 and \$849.61 and Oklahoma withholding of \$998.78, \$1,718.00 and \$19.00, respectively.

10. Also attached to the 2000 return was a Wage and Tax Statement, Form W-2, for PROTESTANT B, reflecting wages of \$16,395.87 and Oklahoma withholding of \$519.00.

11. By utilizing the information from the W-2 forms, the Division adjusted the amount of state income tax due by Protestants for the 1998, 1999 and 2000 tax years, arriving at Oklahoma individual income tax due for those years in the amounts of \$1,841.00, \$1,723.00 and \$584.00, respectively.

12. By letters dated November 29, 2001, Protestants were notified by the Audit Division of the Oklahoma Tax Commission of the adjustment to their returns for 1998, 1999 and 2000 and that the adjustments would become final in thirty days from the date of mailing of the notice unless protested and a hearing requested.

13. By letter dated December 14, 2001, Protestants timely protested the adjustments and requested a hearing. Protestants assert that the adjustments are in violation of the Form 511, each signed under penalty of perjury and showing zero amount due, as well as their *Asseveration of Claimed Gross Income* and IRS Forms 4852 and 8275.

14. Subsequent to notification of a hearing date, Protestants, by letter dated March 19, 2002, requested information from the Administrative Law Judge as follows:

[W]ritten evidence that you are, in fact, a judge appointed or commissioned by some competent authority to conduct judicial hearings and render judicial decisions.

[A] copy of your oath of office whereby you swore before competent authority, to uphold and defend my Rights under the Constitution for the Oklahoma Republic [1907] and the Constitution of the United States of America [1787].

[W]ritten assurance that you will agree to conduct the scheduled hearing under the due process guidelines outlined below, i.e.; as an impartial and disinterested third party, empowered by competent authority to conduct said hearings in the interests of justice and fair play.

15. In response, Protestants were sent copies of the undersigned's loyalty oath; August 19, 1997, agenda and minutes of the Oklahoma Tax Commission meeting; Section 207 of Title 68 of the Oklahoma Statutes, concerning hearings by the Tax Commission; and the *Rules of Practice and Procedures Before the Oklahoma Tax Commission*.

16. By letter dated April 2, 2002, Protestants advised that they did not accept the documents sent as sufficient and indicated they would not appear for the hearing without written evidence of judicial appointment and written assurances of impartiality.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestants have sustained their burden of proving that the proposed income tax assessments are incorrect.

Protestants contend that they have no adjusted gross income or income from a taxable source, and thus no tax liability, and that the Tax Commission has no jurisdiction or right to alter their Oklahoma individual income tax returns, Forms 511, for tax years 1998, 1999 or 2000.

The Division contends that Protestants had Oklahoma taxable income each year, as reflected on W-2's attached to the returns, and that the Tax Commission may examine and correct returns and make any necessary assessment, correction or adjustment resulting from the audit.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 1991, § 207.

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

3. A "resident individual" is defined by statute to mean "a natural person who is domiciled in this state". 68 O.S. 1991, § 2353(4).

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, §§ 221(a) and (b).

5. The procedures and remedies for challenging an action by the Tax Commission, whether the action is the denial of an income tax claim for refund, 68 O.S. 1991, § 207(c) and (d)¹, or the assessment of income tax, 68 O.S. 1991, § 221(c) and (d), are set forth in the Uniform Tax Procedure Code, 68 O.S. 1991, § 201 *et seq.* Such procedures and remedies satisfy the requirements of the due process clause, Article 2, Section 7 of the Oklahoma Constitution. See, *Stallings v. Oklahoma Tax Commission*, 880 P.2d 912 (Okla. 1994), and *In re Thomas' Estate*, 192 Okl. 409, 136 P.2d 929 (1943).

¹ See, Oklahoma Tax Commission Order No. 2000-09-19-041.

6. It has been well-established by statutory and case law that wages are income and are taxable under the income tax laws:

i. **Internal Revenue Code (1954)**

Sec. 61. Gross income defined. (a) General definition. - Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items; [Emphasis Added]

* * * * *

- ii. The U.S. Supreme Court defined income in ***Eisner v. Macomber***, 1 USTC 32, 252 U.S. 189 (1920) as "the gain derived from capital, from labor, or from both combined."
- iii. In ***Jones v. U.S.***, 551 F.Supp. 578 (D.C. N.Y. 1982), the Court specifically held that wages are "gross income" within the meaning of Section 61.
- iv. In ***Lovell v. U.S.***, 579 F.Supp. 1047 (D.C. Wis. 1984), the Court held that compensation for labor or service is taxable income, and no deduction is allowed for value of labor expended.
- v. In ***Oklahoma Tax Commission v. Smith***, 610 P.2d 794 (1980), the Court provided that for state income tax purposes:

Income relates to total receipts of a taxpayer and is in no way dependant on what part, or how much, of that income a taxpayer must pay for various expenses he is obligated to meet unless those various expenses are as a matter of legislative policy declared to be exempt from taxation, thereby constituting a deduction from income, and made to be so by the Legislature . .

- vi. In ***Casper v. Commissioner of Internal Revenue***, 805 F.2d 902 (10th Cir. 1986), the Court held that "value received in exchange for services constitutes taxable income pursuant to I.R.C. § 61(a)(1)."

7. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *Oklahoma Administrative Code 710:1-5-47*. See, *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 768 P.2d 359 (Okla. 1988). Protestants failed to provide evidence that the Division's adjustments to their 1998, 1999 and 2000 Oklahoma individual income tax returns are incorrect.

8. The protest should be denied.

DISPOSITION

Based on the above and foregoing findings and conclusions, it is DETERMINED that the protest be denied. It is further DETERMINED that the amounts in controversy, plus 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.