JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-01-09-0006 / NOT PRECEDENTIAL**
ID: **P0200051**
DATE: **01-09-03**
DISPOSITION: **DENIED IN PART / SUSTAINED IN PART**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On February 26, 2002, Protestants filed a 2001 Oklahoma Form 511NR as part year residents, reported adjusted gross income from Oklahoma sources of $11,566.00 and adjusted gross income from all sources of $28,101.00. In calculating the percentage of adjusted gross income from Oklahoma sources to adjusted gross income from all sources (line 39) on the return, Protestants divided $11,566.00 by $28,101.00 and arrived at a figure of "point four, one, (.41)" and then multiplied the total amount of tax by "point zero, zero, four, one (.0041)", resulting in Oklahoma income tax in the amount of $3.96. Protestants rounded down to the nearest dollar and subtracted $3.00 for Oklahoma tax due from their Oklahoma withholding (line 44) of $281.00, the return claims an overpayment and refund due of $278.00 (line 48).

2. By letter dated March 18, 2002, the Tax Commission notified Protestants that their 2001 Oklahoma income tax return had been examined and adjusted, and advised them of their statutory rights. The adjustment changed the amount of Oklahoma income tax (line 40), which Protestants' reported as $3.00, to Oklahoma income tax in the amount of $398.00. This figure, less the $281.00 Oklahoma withholding, resulted in an assessment of additional Oklahoma tax due of $117.00.

3. A timely protest to the adjustments and proposed assessment was filed on April 10, 2002.

4. Protestants paid under protest the income tax in the amount of $117.00.

ISSUE AND CONTENTIONS

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

Protestants contend that when calculating the Oklahoma income percentage, line 39, derived by dividing line 23 by line 24 ($11,566.00) $28,101.00), the result is "point four, one (.41)". Because the percent sign (%) appears on line 39 of the form, Protestants assert, "point zero, zero, four, one (.0041)" is the figure to use when multiplying line 38 by line 39, which results, after rounding, in Oklahoma income tax in the amount of $3.00.

The Division contends that the proper calculation of the Oklahoma income percentage, line 39, derived by dividing line 23 by line 24 ($11,566.00) $28,101.00), is 41% or .41. The correct figure to use when multiplying line 38 by line 39 is .41 or 41%, resulting in Oklahoma income tax in the amount of $398.00.[1]

CONCLUSIONS OF LAW

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

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. The Oklahoma Income Tax Act, 68 O.S. 1991, э 2351, *et seq*., imposes an income tax on the Oklahoma taxable income of every resident or nonresident individual, 68 O.S. 1991, э 2355.

4. The Oklahoma taxable income of part-year resident individuals and nonresident individuals shall be calculated as if all income were earned in Oklahoma. 68 O.S. Supp. 1994, э 2362. The amount of tax payable to the State of Oklahoma is computed by multiplying the applicable percentage (adjusted gross income from Oklahoma sources divided by adjusted gross income from all sources) with the amount of tax computed on Oklahoma taxable income after the deduction of all allowable credits. *Id*.

5. In this case, Protestants, to calculate the income percentage, divided their adjusted gross income from Oklahoma sources in the amount of $11,566.00 by adjusted gross income from all sources in the amount of $28,101.00 and arrived at a quotient of .41. In accordance with Section 2362 of Title 68, line 39 of the 2001 Oklahoma Income Tax Return (Form 511NR) requires a percentage.

6. According to basic math principles, to convert a decimal to a percentage, the decimal point is moved two spaces to the right. Therefore, the correct entry on line 39 of Protestants' return is 41%.

7. To arrive at the Oklahoma income tax due, Protestants were required to multiply line 38, the Oklahoma income tax base in the amount of $966.00, by line 39, 41%. The calculation results in Oklahoma income tax due of $396.00.

---

[1] Multiplying line 38, $966.00, by 41% or .41, results in a tax due of $396.00.

8. The protest should be denied in part and sustained in part. Accordingly, Protestants should be refunded the $2.00 difference between $117.00 assessed and the Oklahoma income tax due of $115.00.

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 in part and sustained in part.

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.