

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-03-18-006 / NOT PRECEDENTIAL
ID: P0000111 / P0000113
DATE: 03-18-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT A (P0000111)

1. PROTESTANT A is and was at all times relevant herein a resident of the State of Oklahoma.

2. By letters dated March 31, 2000, the Division assessed income tax, interest and penalty against PROTESTANT A for the 1989 through 1996 tax years.

3. The assessments are based on Internal Revenue Service Revenue Agents Reports dated November 10, 1998, and numbered 98049-70, 98049-71, 98049-72, 98049-73, 98049-74, 98049-75, 98049-76 and 98049-77, respectively.

4. PROTESTANT A had not previously filed Oklahoma income tax returns for the years in question and did not file amended returns with the state subsequent to the changes made by the Internal Revenue Service.

5. The aggregate amounts assessed against PROTESTANT A for the 1989 through 1996 tax years, inclusive of interest accrued through March 31, 2000, are \$1,307.28, \$1,239.01, \$1,279.94, \$1,206.96, \$3,421.36, \$1,876.99, \$2,666.04 and \$1,119.26, respectively.

6. On or about April 17, 2000, the Division received a copy of the assessment letters by return mail with an unsigned notation on the back of each year's assessment stating, "I have inadvertently received this document which appears to be Oklahoma Tax Commission related. I do not have sufficient knowledge or information to know how to handle it. Therefore, I am returning it to you as unaccepted."

PROTESTANT B (P0000113)

7. At all times relevant herein, PROTESTANT B was a resident of the State of Oklahoma.

8. By letters dated March 31, 2000, the Division assessed income tax, interest and penalty against PROTESTANT B for the 1992 through 1996 tax years.

9. The assessments are based on Internal Revenue Service Revenue Agents Reports dated November 10, 1998, and numbered 98049-78, 98049-79, 98049-80, 98049-81, and 98049-82, respectively.

10. PROTESTANT B had not previously filed Oklahoma income tax returns for the years in question and did not file amended returns with the state subsequent to the changes made by the Internal Revenue Service.

11. The aggregate amounts assessed against PROTESTANT B for the 1992 through 1996 tax years, inclusive of interest accrued through March 31, 2000, are \$1,590.70, \$1,208.24, \$1,181.88, \$879.08 and \$4,083.35, respectively.

12. On or about April 17, 2000, the Division received a copy of the assessment letters by return mail with an unsigned notation on the back of each year's assessment stating, "I have inadvertently received this document which appears to be Oklahoma Tax Commission related. I do not have sufficient knowledge or information to know how to handle it. Therefore, I am returning it to you as unaccepted."

ISSUE

The issue presented for decision is whether Protestants sustained their burden of coming forward with evidence to show in what respect the proposed action of the Division is incorrect.

CONCLUSIONS OF LAW

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

2. An income tax is imposed upon the Oklahoma taxable income of every resident or nonresident individual. 68 O.S. Supp. 1989, § 2355.

3. Individuals who are subject to Oklahoma income tax are required to file an income tax return specifically stating taxable income and must remit the amount of tax due at the time such return is filed. 68 O.S. Supp. 1989, §§ 2368 and 2375.

4. When a taxpayer fails to make a report or return as required by state tax law, the Tax Commission is authorized to determine the amount of tax due for such period based on any information which is in its possession or is otherwise obtainable. 68 O.S. 1991, § 221.

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. 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)*.

7. The Division's proposed assessments of taxes are based on the information provided by the Internal Revenue Service to the Oklahoma Tax Commission. The Division has acted within the applicable law and rules in determining the Protestants' income tax liability for the years at issue.

8. Protestants contend that the assessments and the resulting income tax liability are invalid for the reason that the assessments and Revenue Agents Reports were not verified. Protestants, however, failed to present any evidence to show that they challenged the Revenue Agents Reports before the Internal Revenue Service. Further, Protestants failed to present any evidence to prove that the amount of Oklahoma taxable income as determined by the Division is incorrect. Accordingly, the undersigned finds that Protestants' contention is without merit.

9. Protestants also contend that the Commission cannot demand anything but cash as payment of a debt and that cash is not defined in the Oklahoma statutes; and, therefore, the Tax Commission is without any authority to demand anything in payment of a debt.

10. The payment of Oklahoma income tax is prescribed by 68 O.S. Supp. 1989, § 2375(A), wherein it provides:

At the time of transmitting the return required hereunder to the Tax Commission, the taxpayer shall remit therewith to the Tax Commission the amount of tax due under the applicable provisions of this article, and failure to pay such tax at the time of filing the return shall cause said tax to become delinquent.

11. Section 218 of Title 68 prescribes the medium or method in which remittance of taxes and fees, under any state tax law, are to be made to the Tax Commission, as follows:

All remittances of taxes and fees under any state tax law or this Code, shall be made payable to the Oklahoma Tax Commission . . . by bank draft, check, cashier's check, money order, money, or nationally recognized credit or debit card

68 O.S. Supp. 1993, § 218(A).

Additionally, subsection B of Section 218 specifies that "[n]o remittance other than cash shall be final discharge of liability due the Tax Commission unless and until it shall have been paid in cash."

12. When a word is not defined by statute, it is appropriate to interpret the word in accordance with its ordinary, everyday meaning. *U.S. Dept. of Labor v. Elledge*, 614 F.2d 247 (10th Cir. 1980).

13. "Cash" is defined as "ready money". *Webster's Ninth New Collegiate Dictionary*, 211 (1987). 12A O.S. 1991, §1-201(24) defines "money" to mean "a medium of exchange authorized or adopted by a domestic or foreign government. . . ." Congress has authorized and adopted as a part of the currency of the United States, federal reserve notes or dollars as a medium of exchange and has declared that such currency constitutes legal tender for the payment of taxes and other debts. *U.S. v. Wangrud*, 533 F.2d 495 (9th Cir.) cert. denied, 429 U.S. 818 (1976).

14. Furthermore, subsection B of Section 218 does not prohibit the state from accepting any medium of payment other than cash. This provision means that should a person, for example, tender a check in payment of a state tax liability, that liability will not be finally discharged until after the check has been presented to the taxpayer's bank for payment, and cash is received by the Tax Commission. Protestants' argument is without merit.

15. 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).

16. Protestants have failed to present evidence to show that the assessments are erroneous.

17. The 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 PROTESTANTS 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.