JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-04-15-06 / NOT PRECEDENTIAL**
ID: **P0200065**
DATE: **04-15-03**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about September 15, 1999, Protestant filed a 1998 Oklahoma income tax return for the period July 1, 1998, through June 30, 1999.

2. By letter dated January 23, 2002, the Division caused to be issued against Protestant a proposed assessment of additional income tax, interest and penalty for the 1998 tax year.

3. The assessment for the 1998 tax year was for a total of $80,508.00, consisting of tax in the amount of $54,926.00, interest through February 22, 2002, in the amount of $20,089.00, and penalty in the amount of $5,493.00.

4. The proposed assessment is based on a Revenue Agent's Report ("RAR") received by the Division from the Internal Revenue Service ("IRS"). The Division utilized information from the report to make adjustments to Protestant's Oklahoma taxable income for tax year 1998.

5. On October 27, 2000, THE Vice President of the Corporation, signed the RAR Consent to Assessment and Collection, which states, "I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Tax Court the findings in this report. . . ."

6. Protestant did not file an amended Oklahoma return for tax year 1998.

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

ISSUE AND CONTENTIONS

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

Protestant contends that although the IRS adjustment from a cash basis to an accrual basis is accepted, the IRS should allow it to properly report its business activity by using the percentage of completion method of accounting to compute the gross profit earned during the fiscal year ending June 30, 1999.

Division contends that the Commission lacks authority to disregard the federal adjusted gross income as determined by the IRS. Additionally, the Division contends that Protestant has failed to provide any evidence that its federal adjusted gross income was further adjusted subsequent to the Revenue Agents Report or that an appeal of the RAR is still available. The Division contends that, in fact, Protestant consented to the determination at the federal level and therefore the determination is final.

CONCLUSIONS OF LAW

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

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. 1998).

3. An income tax is "imposed upon the Oklahoma taxable income of every corporation doing business within this state or deriving income from sources within this state . . . ." 68 O.S. Supp. 1992, ϶ 2355(C).

4. The Oklahoma taxable income of Protestant, which is subject to taxation in Oklahoma, is derived from adjustments to taxable income as provided in Section 2358 of Title 68.

5. Section 2353 of Title 68 of the Oklahoma Statutes provides in pertinent part as follows:

> ϶ 2353. Definitions
> For the purpose of and when used in this article unless the context otherwise requires:
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> * * *
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> 10. "Taxable income" with respect to any taxpayer means the "taxable income" . . . as defined in the Internal Revenue Code as applies to such taxpayer or any other income of such taxpayer including, but not limited to, lump sum distributions as defined by the Internal Revenue Code of 1986, as amended . . . .
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> * * *
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> 12. "Oklahoma taxable income" means "taxable income" as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;
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> * * *

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

8. The determination at the federal level as to Protestant's income tax liability for tax year 1998 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.

9. 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 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.