

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-10-07-09 / NOT PRECEDENTIAL
ID: P0300032
DATE: 10-07-03
DISPOSITION: DENIED IN PART / SUSTAINED IN PART
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That on or about February 21, 2000, Protestant filed his 1999 Oklahoma individual income tax return, Form 511EZ, claiming a refund in the amount of \$46.00.
2. That the amount of federal adjusted gross income reported by Protestant on the return was illegible and, therefore, the Division adjusted the amount to an amount it believed to be correct and issued a refund in the amount of \$325.00.
3. That upon comparison with information submitted by the Internal Revenue Service under the authority of 26 U.S.C. § 6103(d), the Division determined that it had incorrectly adjusted Protestant's income on the return.
4. That by letter dated November 18, 2002, the Division assessed income tax, interest, and penalty against Protestant for the 1999 tax year in the amount of \$415.48, inclusive of tax in the amount of \$279.00, interest accrued through November 18, 2002, in the amount of \$108.58, and penalty in the amount of \$27.90.
5. That by letter dated December 9, 2002, Protestant protested the proposed assessment, stating that his records show he properly and correctly submitted his 1999 state income taxes.
6. That the Division filed a "Prehearing Conference Report" in lieu of the Prehearing Conference scheduled in this cause for April 17, 2003, advising that Protestant had indicated that he intended to withdraw his protest, pay the tax by certified funds, and request a waiver of penalty and interest.
7. That the request for a thirty (30) day continuance to allow Protestant time to provide his written withdrawal of protest and request for waiver of penalty and interest was granted by letter dated May 19, 2003.
8. That upon Protestant's failure to file a written withdrawal of his protest, this cause was scheduled for the hearing held on August 4, 2003.
9. That Protestant failed to appear at the hearing or respond to notice thereof.

ISSUE AND CONTENTIONS

The issue presented for decision is whether a taxpayer's federal adjust gross income as finally ascertained under the Internal Revenue Code is the basis or starting point for determining the taxpayer's Oklahoma adjusted gross income.

CONCLUSIONS OF LAW

1. That the Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 2001, § 221(D).

2. That 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). See, OAC, 710:1-5-47.

3. That "'Oklahoma adjusted gross income' means 'adjusted gross income' as reported to the federal government (or as would have been reported by the taxpayer had a return been filed), or in the event of adjustments thereto [sic] by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided." 68 O.S. 2001, § 2353(13).

4. That the income information furnished by the IRS shall be that upon which any tax liability is computed. OAC, Rule 710:50-5-10(a).

5. That Protestant failed to come forward with any information or evidence to show he is entitled to the relief requested and, therefore, his protest must be denied. OAC, Rule 710:1-5-47.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION based on the above and foregoing findings of fact and conclusions of law, that the protest as to the taxes assessed be denied and that the protest as to the interest and penalty assessed be sustained.

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.