JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-12-04-16 / NOT PRECEDENTIAL**
ID: **P0200107**
DATE: **12-04-03**
DISPOSITION: **DISMISSED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On March 31, 2000, the Division issued against PROTESTANT proposed assessments of income tax, interest and penalty for tax years 1994, 1995 and 1996. The proposed assessments were mailed to Protestant's last-known address.

2. The assessments are based on Internal Revenue Service Revenue Agent Reports dated December 11, 1998, and numbered XXXXX-XX, YYYYY-YYY and ZZZZZ-ZZZ.

3. Protestant had not previously filed income tax returns with the State of Oklahoma for the 1994, 1995 and 1996 tax years and did not file amended returns with the state subsequent to the changes made by the Internal Revenue Service.

4. The aggregate amount assessed against Protestant for the 1994, 1995 and 1996 tax years, inclusive of interest accrued through March 31, 2000, is $7,727.49.

5. Protestant did not protest the proposed assessments within the time period allowed by statute.

6. The Division sent a series of three letters to Protestant requesting she provide either a copy of her Oklahoma income tax returns previously filed for the years at issue, explain why she was not required to file them, or file the requested returns.

7. By letter dated July 23, 2001, Protestant filed a response to the last demand, which the Division treated as a protest to the proposed assessments.

8. On August 28, 2002, the Division filed a *Motion to Dismiss* on the grounds and for the reason that a protest to the proposed assessments for 1994, 1995 and 1996 was untimely filed, which resulted in the instant action.

9. Evidence was introduced which indicates that on October 19, 2000, Protestant came to the Tax Commission and disagreed verbally to the assessments. An auditor made a written record of Protestant's disagreements, "protest of assessment fact sheet".

10. The record indicates that representatives of the Audit Division and General Counsel's Office met with Protestant and her representative sometime in November 2000.[1]

11. Protestant's allegation that the proposed assessments were not mailed until six months after the date of the assessment letters is unsubstantiated.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes that the Tax Commission is vested with jurisdiction to consider the *Motion to Dismiss*, 68 O.S. 1991, ∋ 207 and *Oklahoma Administrative Code 710:1-5-46*; that where a protest is not filed within the periods prescribed by 68 O.S. 1991, ∋ 221(c) or (f), the proposed assessment is deemed final and absolute under 68 O.S. 1991, ∋ 221(e) and the Tax Commission is without jurisdiction to consider the merits of the protest, *Matter of Phillips Petroleum Co.*, 652 P.2d 283 (Okla. 1982); that Protestant has the burden of proof to show in what respect the action or proposed action of the Tax Commission is incorrect, *Oklahoma Administrative Code 710:1-5-47*; that mere allegations without evidence offered to substantiate the facts alleged do not serve to meet the Protestant's burden of proof; that Protestant's actions in this cause, even if taken in their most favorable light would not constitute "timely filing" of a protest; and that Protestant has failed to come forward with any evidence to show a written protest to the proposed assessments was timely filed.

DISPOSITION

THEREFORE, it is DETERMINED that the protest of Protestant be dismissed. It is further DETERMINED that verbal disagreement to the assessments memorialized in the file by Division staff on October 26, 2000, should be treated as a timely request for abatement pursuant to 68 O.S. 1991, ∋ 221(e).

OKLAHOMA TAX COMMISSION

[1] THE Supervisor, Audit Division, who was present at that meeting, testified that she did not recall discussions regarding Protestant's contention that the postmark on the envelope containing the assessment letters bore a date some six months after the dates on the assessments themselves. THE SUPERVISOR added that a "pre-warrant letter" was forwarded to Protestant in August 2000, and that she was unaware of any communications from Protestant prior to October 2000.

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.