

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-12-16-07 / NOT PRECEDENTIAL
ID: P0200061
DATE: 12-16-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 14th day of November 2003, the above styled and numbered cause comes on for decision pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. Protestant was represented. The Audit Division of the Oklahoma Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. A hearing was held, at which time Protestant filed a *Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted* and a *Motion to Dismiss for Want of Subject Matter Jurisdiction* and briefs in support thereof. Subsequently, Protestant filed a *Motion and Demand for Decision on Motions to Dismiss* and the Division filed a Response thereto. Upon review of the file and record in this cause, the undersigned finds as follows:

FINDINGS OF FACT

1. Protestant is, and was at all times relevant herein, a resident of the State of Oklahoma.
2. By letters dated March 22, 2002, the Division issued against Protestant proposed assessments of income tax, interest and penalty for the 1997, 1998 and 1999 tax years.
3. Protestant timely responded to the proposed assessments protesting "each and every material element and allegation as without foundation or merit, inclusive of but not limited to, timeliness."
4. THE auditor with the Audit Division of the Oklahoma Tax Commission, testified concerning her research and resulting preparation of assessment letters, which were sent to Protestant. After receiving an audit lead, THE AUDITOR researched the files and records of the Oklahoma Tax Commission and determined that Protestant had not filed Oklahoma income tax returns for tax years 1997, 1998 and 1999.

5. A series of letters were sent to Protestant. First, an inquiry letter dated March 5, 2001, was sent requesting she provide a copy of any returns filed, directing Oklahoma returns be filed, or requesting documentation showing why she was not required to file. No response was received to this letter from Protestant. Next, by letter dated April 10, 2001, the Tax Commission demanded tax returns for 1997, 1998 and 1999 be filed or that she provide information and documentation if already filed or not required to be filed. Again, no response was received from Protestant. A third letter, dated February 12, 2002, was sent that again demanded the returns be filed. By letter postmarked April 19, 2002, Protestant responded to the third letter declaring she did not have a federal tax liability and that she is not required to file federal or state returns "since a federal tax is not now, or ever has been owed according to the law."

6. Thereafter, following normal procedure, THE AUDITOR testified that she researched wage information from the Oklahoma Employment Security Commission ("OESC") and determined that Protestant received wages for years 1997, 1998 and 1999 sufficient to require the filing of Oklahoma returns. Since no information was provided by Protestant, the auditor assumed her filing status was single.

7. For tax year 1997, OESC records indicate Protestant received wages in the total amount of \$28,600.00. By letter dated March 22, 2002, Protestant was notified that the Tax Commission proposed to assess her income tax for the year 1997 in the aggregate amount of \$3,407.52, consisting of tax in the amount of \$2,002.00, interest to April 19, 2002, in the amount of \$1,205.32, and 30 day delinquency penalty in the amount of \$200.20.

8. For tax year 1998, OESC records indicate Protestant received wages in the total amount of \$32,800.08. By letter dated March 22, 2002, Protestant was notified that the Tax Commission proposed to assess her income tax for the year 1998 in the aggregate amount of \$2,709.89, consisting of tax in the amount of \$1,746.00, interest to April 19, 2002, in the amount of \$789.29, and 30 day delinquency penalty in the amount of \$174.60.

9. For tax year 1999, OESC records indicate Protestant received wages in the total amount of \$31,700.08. By letter dated March 22, 2002, Protestant was notified that the Tax Commission proposed to assess her income tax for the year 1999 in the aggregate amount of \$2,999.52, consisting of tax in the amount of \$2,140.00, interest to April 19, 2002, in the amount of \$645.52, and 30 day delinquency penalty in the amount of \$214.00.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant has sustained her burden of proving that the proposed income tax assessments are incorrect.

CONCLUSIONS OF LAW

1. Oklahoma income tax is imposed upon the Oklahoma taxable income of every resident individual. 68 O.S. 1991, § 2355(A).

2. A "resident individual" is defined by statute to mean "a natural person who is domiciled in this state." 68 O.S. 1991, § 2353(4).

3. "Oklahoma taxable income" is defined as "'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, as adjusted further [under the provisions of the Oklahoma Income Tax Act]." 68 O.S. 1991, § 2353(12).

4. 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. 1991, §§ 2368 and 2375.

5. It has been well-established by statutory and case law that wages are income and are taxable under the income tax laws:

i. Internal Revenue Code (1954)

Sec. 61. Gross income defined. (a) General definition. - Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items; [Emphasis added]

* * * * *

ii. The U.S. Supreme Court defined income in *Eisner v. Macomber*, 1 USTC 32, 252 U.S. 189 (1920) as "the gain derived from capital, from labor, or from both combined."

iii. In *Jones v. U.S.*, 551 F.Supp. 578 (D.C. N.Y. 1982), the Court specifically held that wages are "gross income" within the meaning of Section 61.

iv. In *Lovell v. U.S.*, 579 F.Supp. 1047 (D.C. Wis. 1984), the Court held that compensation for labor or service is taxable income, and no deduction is allowed for value of labor expended.

- v. In *Oklahoma Tax Commission v. Smith*, 610 P.2d 794 (1980), the Court provided that for state income tax purposes:

Income relates to total receipts of a taxpayer and is in no way dependant on what part, or how much, of that income a taxpayer must pay for various expenses he is obligated to meet unless those various expenses are as a matter of legislative policy declared to be exempt from taxation, thereby constituting a deduction from income, and made to be so by the Legislature. . . .

- vi. In *Casper v. Commissioner of Internal Revenue*, 805 F.2d 902 (10th Cir. 1986), the Court held that "value received in exchange for services constitutes taxable income pursuant to I.R.C. § 61(a)(1)."

6. 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.

7. An assessment of tax made more than three (3) years after the later of the filing date or required filing date of a return is barred unless (1) the Commission and taxpayer consent to the assessment thereof in writing, (2) a false or fraudulent return is filed, (3) no return is filed, or (4) in the case of the assessment of income taxes, taxpayer's federal taxable income is changed or corrected and such change or correction affects taxpayer's Oklahoma taxable income. 68 O.S. 1991, § 223 and 68 O.S. Supp. 1994, § 2375(H). Protestant has not presented any evidence that she filed state income tax returns for tax years 1997, 1998 and 1999. Accordingly the proposed assessments are not barred by the statute of limitations.

8. Protestant mistakenly relies on *Oklahoma Administrative Code 710:50-5-10* to support her argument that the Division's assessment procedure was flawed. The overarching statement in the code provision sets forth that assessments shall be made in accordance with the Uniform Tax Procedure Code. The rest of the provision deals with the specific fact scenario wherein the Division is acting upon the basis of information furnished by the Internal Revenue Service ("IRS"). Nothing relied upon in the section, however, limits in any way the broad authority granted to the Tax Commission by the Uniform Tax Procedure Code to rely upon any information in its possession or obtainable by it. 68 O.S. § 221. Protestant's reliance is entirely without merit.

9. Protestant contends that because her wages are paid in federal reserve notes, which are obligations of the federal government, her wages are not subject to Oklahoma income tax. In support of her argument, Protestant cites to 18 U.S.C. § 8, which states that the "term 'obligation or other security of the United States' includes . . . Federal Reserve notes . . ." and 31 U.S.C. § 3124(a), which states that "[s]tocks and obligations of the United States Government are exempt from taxation by a State or political subdivision of a State. . . ."

Title 31 U.S.C. § 5154 gives express permission to the states to tax federal reserve notes, as follows:

A State or a territory or possession of the United States may tax United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) as money on hand or on deposit in the same way and at the same rate that the State, territory, or possession taxes other forms of money. . . .

The fact that Protestant's wages are paid in federal reserve notes does not prevent the State of Oklahoma from imposing an income tax on those wages.

10. Protestant argues that the Commission has not shown that it is empowered by the Oklahoma Legislature to assume Protestant is an article or commodity in commerce subject to the imposition of tax citing to Title 15 U.S.C. § 17, which pertains to the antitrust laws and the existence and operation of certain organizations. Protestant has failed to show the relevance of this section to the issues in the instant case.

11. Title 68 O.S. 1991, § 207 confers upon the Tax Commission the jurisdiction of the conduct of hearings concerning matters incident to the administration of any state tax law. The Oklahoma Tax Commission has jurisdiction of protests to the proposed assessment of state income taxes. 68 O.S. 1991, §§ 207 and 221. The term protest is described in *Oklahoma Administrative Code 710:1-5-10* as a formal, written challenge to a proposed tax assessment or to the denial of a claim for refund of taxes paid. In the instant case, the Division by letters dated March 22, 2002, issued against Protestant proposed assessments of income tax for tax years 1997, 1998 and 1999. Protestant protested the assessments by letter dated April 19, 2002. Protestant failed to show in what respect the Commission lacks authority to make assessments, conduct hearings and determine the proper amount of tax owed the State. Jurisdiction and duties enumerated are clearly authorized by statute. Based on the foregoing, Protestant's *Motion to Dismiss for Lack of Subject Matter Jurisdiction* is denied.

12. Finally, Protestant alleges that the Division failed to state a claim upon which relief can be granted in that the Division's claim lacks specificity as to the medium of payment the Commission is authorized to demand in satisfaction of an obligation or debt. The payment of Oklahoma income tax is prescribed by 68 O.S. 1991, § 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.

13. 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."

14. 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).

15. "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).

16. 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. Therefore, Protestant's *Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted* is denied.

17. The Division's proposed assessment of taxes is based on the information obtained from the Oklahoma Employment Security Commission and the Division has acted within the applicable law and rules in determining Protestant's income tax liability for the years at issue.

18. 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 (Okla. 1988). Protestant has failed to present any evidence to prove that the amount of Oklahoma taxable income as determined by the Division is incorrect. *Oklahoma Administrative Code 710:1-5-47*.

19. Protestant's protest to the proposed income tax assessments should be denied.

DISPOSITION

Based on the above and foregoing findings and conclusions, it is DETERMINED that the protest be denied. It is further DETERMINED that the amount in controversy, plus any additional accrued and accruing interest, be fixed as the deficiency due and owing.

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.