

JURISDICTION: OKLAHOMA TAX COMMISSION  
 CITE: 2004-03-25-26  
 ID: P-03-171-H  
 DATE: MARCH 25, 2004  
 DISPOSITION: DENIED  
 TAX TYPE: INCOME  
 APPEAL: NONE TAKEN

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held in this matter on January 15, 2004, at approximately 1:30 p.m. PROTESTANT appeared represented by ADVISOR, as Counselor.<sup>1</sup> Upon conclusion of the hearing, the record in this matter was closed and this case was submitted for decision January 15, 2004.

#### FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence and the position letters, briefs and supplemental arguments of the parties, the undersigned finds:

1. On April 4, 2000, *Oklahoma Tax Commission Order No. 2000-04-04-005*<sup>2</sup>, adopted the Findings of Fact, Conclusions of Law, and Recommendation of Denial of the protest in Case No. P-99-305, establishing Protestant's individual income tax liability to the State of Oklahoma for tax year 1996.<sup>3</sup> The Findings of Fact, Conclusions of Law, and Recommendation was the result of an administrative hearing held on January 14, 2000, at approximately 1:30 p.m. The Protestant did not appear at the hearing.

2. *Commission Order No. 2000-04-04-005* was not appealed by the Protestant and the order became final May 5, 2000.<sup>4</sup>

3. On September 19, 2003, the Division sent the Protestant by certified mail, a "Notice to Offset Federal Income Tax Refund", which would result in any federal tax refunds paid to the Protestant by the Internal Revenue Service ("IRS"), to be applied to the Protestant's outstanding individual income tax liability to the State of Oklahoma for tax year 1996.<sup>5</sup> The notice gave the Protestant sixty (60) days to present evidence that all or part of such liability is not past-due or not legally enforceable.<sup>6</sup>

4. As of September 19, 2003<sup>7</sup>, the established individual income tax liability to the State of Oklahoma for tax year 1996, was as follows, to-wit:

Tax	\$1,425.00
Penalty	142.50
Interest	<u>1,404.30</u>
Total	\$2,971.80

5. On October 14, 2003, the Oklahoma Tax Commission received a letter from the Protestant, which the Division deemed a timely filing of a protest to the proposed “Notice to Offset Federal Income Refund”.<sup>8</sup>

CONCLUSIONS OF LAW

1. In the absence of an appeal to the Oklahoma Supreme Court, an order of the Tax Commission becomes final thirty (30) days from the date on which a certified copy of such order is mailed to the taxpayer.<sup>9</sup>
2. The IRS is authorized to reduce the amount of overpayment owed to a taxpayer for the satisfaction of a legally enforceable state income tax obligation.<sup>10</sup>
3. Before taking any action pursuant to 26 U.S.C.A. § 6402, the State must comply with certain notice and due process requirements.<sup>11</sup>
4. A past due, legally enforceable state income tax obligation means a debt which resulted from a determination after an administrative hearing which has determined an amount of State income tax to be due and is no longer subject to judicial review.<sup>12</sup>

The undersigned Administrative Law Judge has considered the evidence presented by the Protestant in her “Protest”, “Position Letter”, and Protestant Exhibit “1”. The Protestant has failed to support her claim, that her individual income tax liability to the State of Oklahoma for tax year 1996, is not past-due or not legally enforceable. *Commission Order No. 2000-04-04-005* adopts the “Findings of Fact, Conclusions of Law, and Recommendations”, which was the result of an administrative hearing. *Commission Order No. 2000-04-04-005*, became final May 5, 2000, and is no longer subject to judicial review, and the “Notice to Offset Federal Income Tax Refund” complies with the notice and due process requirements of 26 U.S.C.A. § 6402.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based on the above and foregoing findings and conclusions, that the 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.

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<sup>1</sup>On January 8, 2004, the Protestant filed a signed statement with the Office of Administrative Law Judge appointing ADVISOR, with the power of attorney, to assist in all matters before the Oklahoma Tax Commission in this matter. On January 8, 2004, ADVISOR filed Protestant’s [sic] Position Letter as her “Counselor”. “Counselor” is defined as an “advisor”. Oxford American Dictionary 145 (1980) ADVISOR

is not a member of the legal profession or a CPA. ADVISOR was allowed to represent the Protestant at her request and *OAC 710:1-5-27*.

<sup>2</sup>See Division Exhibit "A".

<sup>3</sup>See Note 2. The protest arose from an assessment letter dated August 2, 1999. The assessment was based on information obtained from the IRS, which indicated that the Protestant's Adjusted Gross Income in 1996 was \$28,780.71. The Protestant reported zero income on her 1996 Oklahoma return. The basis of the protest was a challenge to the Commission's jurisdiction, authority to assess income tax, and that the Protestant lacked notice of a lawful assessment. The protest was denied.

<sup>4</sup>68 O.S. § 225.

<sup>5</sup>See Division Exhibit "B".

<sup>6</sup>See Note 5.

<sup>7</sup>See Note 5.

<sup>8</sup>See Division Exhibit "C".

<sup>9</sup>See Note 4. 68 O.S. § 221(G):

Within a reasonable time after the hearing herein provided for, the Tax Commission shall make and enter an order in writing in which it shall set forth the disposition made of the protest and a copy of such order shall forthwith be mailed to the taxpayer. The order shall contain findings of fact and conclusions of law. After removing the identity of the taxpayer, the Tax Commission shall make the order available for public inspection and shall publish those orders the Tax Commission deems to be of precedential value. The taxpayer may within the time and in the manner provided for by Section 225 of this title, appeal to the Supreme Court, but in the event the taxpayer fails to so proceed, the order shall within thirty (30) days from the date a certified copy thereof is mailed to the taxpayer, become final. The provisions of Section 226 of this title shall not apply where a proposed assessment or an assessment of taxes has been permitted to become final.

<sup>10</sup>26 U.S.C.A. § 6402(e):

Collection of past-due, legally enforceable state income tax obligation.

(1) In general.--Upon receiving notice from any State that a named person owes a past-due, legally enforceable State income tax obligation to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary--

(A) reduce the amount of any overpayment payable to such person by the amount of such State income tax obligation;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person's name, taxpayer identification number, address, and the amount collected; and

(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a *past-due, legally enforceable State income tax obligation*.

<sup>11</sup> 26 U.S.C.A. § 6402(e)(4)

Notice; consideration of evidence.--No State may take action under this subsection until such State

A) notifies by certified mail with return receipt the person owing the past-due State income tax liability that the State proposes to take action pursuant to this section;

(B) gives such person at least 60 days to present evidence that all or part of such liability is not past-due or not legally enforceable; and

(C) considers any evidence presented by such person and determines that an amount of such debt is past-due and legally enforceable and

(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such State income tax obligation.

<sup>12</sup> 26 U.S. C.A. § 6402(e)(5) provides in pertinent part:

Past-due, legally enforceable state income tax obligation.--For purposes of this subsection, the term "past-due, legally enforceable State income tax obligation" means a debt--

(A)(i) which resulted from.--

. . .

(II) a determination after an administrative hearing which has determined an amount of State income tax to be due; and

(ii) which is no longer subject to judicial review. . .