JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-04-13-03
ID: P-03-183-H
DATE: APRIL 13, 2004
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A prehearing conference was scheduled in this matter on December 17, 2003, at 11:00 a.m. A Notice of Prehearing Conference was mailed to the Protestants, *pro se*[1], at their last known address.[2] Thereafter, notice was sent to the parties that this cause would be closed and the matter submitted for decision upon the filing of a verified response to the protest by the Division. The Division filed its Verified Response to Protest on February 3, 2004, and the record was closed and this case submitted for decision on February 4, 2004.

Upon review of the file and records, including the protest and the Verified Response to Protest filed by the Division, the undersigned finds:

FINDINGS OF FACT

1. Protestants were Oklahoma residents during tax years 1991 and 1992.[3]

2. Oklahoma Tax Commission ("Tax Commission") records indicate that Protestants did not file individual Oklahoma income tax returns for tax years 1991 and 1992.[4]

3. The Internal Revenue Service ("IRS") advised the Tax Commission that the Protestants filed federal income tax returns in 1991 and 1992, listing an Oklahoma address.

4. On March 28, 1996, the Division advised the Protestants by letter that information made available by the IRS, Section 6103(d) of the Internal Revenue Code ("IRC"), indicated that during 1991, they had income sufficient to require the filing of a Federal Income Tax Return. That Tax Commission records do not indicate that an Oklahoma return had been filed for tax year 1991, and requested that return be filed.[5] The letter was mailed to Protestants' last known address, according to Tax Commission records.[6]

5. On May 15, 1996, the Division advised the Protestants, by letter, that information made available by the IRS, Section 6103(d) of the IRC, indicated that during 1992, they had sufficient income to require the filing of a Federal return. That Tax Commission records did not indicate that the Protestants had filed an Oklahoma income tax return for tax 1992, and requested that a return be filed. The letter was sent to the last known address of the Protestants, according to Tax Commission records.[7]

6. On June 18, 1996, the Division issued proposed income tax assessments against the Protestants for tax years 1991 and 1992.[8] The assessments were sent by certified mail to the last known address of the Protestants', according to Tax Commission records[9], as follows, to-wit:

Year	1991
Tax	$1,557.00
Interest through 6/15/96	973.87
Penalty	389.25
Total	$2,920.12

Year	1992
Tax	$ 720.00
Interest through 6/15/96	342.34
Penalty	180.00
Total	$1,242.34

7. The assessment letters were returned to the Tax Commission marked "return to sender, unable to forward."[10] No protest was filed and the assessments became final.

8. On November 1, 1996, tax WARRANT #1 was filed with the Oklahoma County Clerk, listing Protestants' last known address according to records of the Tax Commission.[11] No response or protest was received from the Protestants.

9. On February 4, 2003, according to records of the Tax Commission, AUDITOR, an auditor, responded to correspondence from PROTESTANT. In the correspondence, the Protestant, advised that his family had left Oklahoma sometime during 1995 and now resided in Missouri. The auditor responded by mailing Oklahoma individual income tax returns through 1995 to the Protestants' current Missouri address, along with instructions to file returns through tax year 1995.[12] The Protestants did not file any of the requested returns.

10. On October 27, 2003, the Division received a letter of protest to the tax warrant and requested that the lien be removed from the Protestants' credit report.[13]

11. On November 26, 2003, the parties were notified by mail that a Prehearing Conference would be held in this matter on December 17, 2003, at 11:00 a.m.[14]

12. On December 24, 2003, the parties were notified by letter that the record in this matter would be closed and the case submitted for decision on the merits upon receipt from the Division a Verified Response to Protest, due no later than thirty (30) days from the date of the order.[15]

13. The Division filed its Verified Response to Protest on February 3, 2004.

CONCLUSIONS OF LAW

1. That the Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[16]

2. If a taxpayer fails to file any required report or return, the Tax Commission may use any information in its possession or obtainable by it to determine the correct amount of tax for the taxable period.[17]

3. The Tax Commission is bound by the changes made by the IRS, except in those circumstances where an IRS revision affects items or matters relating to allocation or apportionment between the State of Oklahoma and some other state or the federal government.[18]

4. Assessments shall be made in accordance with the *Uniform Tax Procedure Code*. The Income information furnished by the IRS shall be that upon which any tax liability is computed. Unless otherwise indicated in the RAR, all income is considered to be from Oklahoma sources, as are all deductions and credit, to the extent that they are allowed by Oklahoma Statute.[19]

5. The assessment of taxes or additional taxes shall be proposed in writing and shall be mailed to the taxpayer at the taxpayer's last-known address in accordance with statutory due process requirements.[20]

6. A challenge to the validity of the debt requires a determination that the notice of assessment, which gave rise to the debt, was provided in a manner that satisfies due process requirements.[21]

7. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. If the notice has been mailed as provided in this section, failure of the person to receive such notice shall neither invalidate nor be grounds for invalidating any action taken pursuant thereto, nor shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.[22]

8. In finding that the Division complied with statutory due process requirements in providing the notices of the assessment to the Protestants, the assessments were final and absolute when they were not protested within thirty (30) days[23] of the mailing of the proposed assessments.

9. In all instances where a proposed assessment has been permitted to become final, a certified copy of the assessment may be filed in the office of the County Clerk and shall result in a lien on any property of taxpayer located in the county where the assessment was filed.[24]

10. That in all proceedings before the Commission, the taxpayer has the burden of proof[25] to show the action of the Commission is incorrect, and in what respect.[26]

11. That the Protestants have failed to meet their burden of proof. The Protestants have not presented any evidence in support of their claim that they filed Oklahoma income returns for the tax years 1991 and 1992.

12. That the Protestants have not presented any evidence that the sum claimed by the Division is incorrect, or that the sum is not due and owing.

An analysis of the facts and authority cited herein, supports the assessment of income tax against the Protestants for tax years 1991 and 1992, and the subsequent filing of tax WARRANT #1.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based on the above and foregoing findings and conclusions, that the protest be denied, and that the total amounts assessed for tax years 1991 and 1992, including any accrued and accruing interest be fixed as the Protestants' deficiency and that those amounts be determined 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.

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[1]"Pro se" is defined as "For himself; in his own behalf; in person". "Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court." Black's Law Dictionary 5th Edition 1099 (1979)

[2]The notice was mailed to the Protestants at: MISSOURI ADDRESS 2.

[3]*See* Division Exhibit "E". The basis of the protest is that the Protestants filed Oklahoma individual income tax returns for tax years 1991 and 1992. The Protestants were Oklahoma residents until sometime in 1995, when they moved to Missouri.

[4]*See* Note 3. In his protest letter dated October 24, 2003, PROTESTANT states. "To the best of my knowledge, I received a [sic] refunds for those years." He continues, "I no longer have any records for that far back." Protestants have not offered any documentation to support their claim that returns were filed.

[5]*See* Division Exhibit "B".

[6]*See* Division Exhibit "A". As of the date of the letters, Tax Commission records indicate that the Protestants' last known address was: OKLAHOMA ADDRESS.

[7]*See* Exhibit "B" and Note 6.

[8]*See* Note 7.

[9]*See* Note 6.

[10]*See* Note 7.

[11]*See* Division Exhibit "E". *See* Note 6. When the tax warrant was issued, Tax Commission records indicated that the Protestants' last known address was: MISSOURI ADDRESS 1.

[12]*See* Division Exhibit "D".

[13]*See* Note 3.

[14]*See* Note 3.

[15]*See* Division Exhibit "F".

[16]68 O.S. § 207.

[17] 68 O.S. § 221(A)

[18]*OAC 710:50-3-8(d).*

[19]*OAC 710:50-5-10(a).*

[20] 68 O.S. § 208:

Any notice required by this article, or any state tax law, to be given by the Tax Commission shall be in writing and may be served personally or by mail. If mailed, it shall be addressed to the person to be notified at the last-known address of such person. As used in this article or any other state tax law, "last-known address" shall mean the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice, or if no address appears on the records of that division, the last address given as appears on the records of any other division of the Tax Commission. If no such address appears, the notice shall be mailed to such address as may reasonably be obtainable. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. If the notice has been mailed as provided in this section, failure of the person to receive such notice shall neither invalidate nor be grounds for invalidating any action taken pursuant thereto, no shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.

[21]*Commission Order No. 2001-01-30-002.*

[22]*See* Note 20.

[23] Prior to July 1, 2002, a taxpayer had thirty (30) days after a proposed assessment was mailed within which to file a written protest. 68 O.S. § 221 was amended, effective July 1, 2002, to provide a sixty (60) day protest period.

[24] 68 O.S. § 221(H)

[25]The standard of review in an administrative proceeding is preponderance of the evidence. *Oklahoma Tax Commission Order No. 1999-04-08-003* (citing *Oklahoma Tax Commission Order No. 1991-10-17-061*. OAC 710:1-5-77(b) provides in pertinent part that "preponderance of the evidence" means the evidence

which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[26] *OAC 710:1-5-47*. See ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.