JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2004-10-12-03
ID:	P-04-067-H
DATE:	OCTOBER 12, 2004
DISPOSITION:	DENIED
TAX TYPE:	INCOME
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears *pro se.*[1] The Audit Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Office of General Counsel, Oklahoma Tax Commission.

A prehearing conference was scheduled in this matter on July 20, 2004, at 1:30 p.m. A Notice of Prehearing Conference was mailed to the Protestant at his last known address. The Protestant did not appear at the hearing. Thereafter, notice was served upon 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 August 20, 2004, and the record was closed and this case was submitted for decision on August 24, 2004.

FINDINGS OF FACT

Upon review of the file and records, and the Division's Verified Response, the undersigned finds:

1. On March 25, 2002, the Division issued a proposed assessment of additional income tax for the 1998 tax year.[2]

2. The Division had compared the state income tax return filed by the Protestant for the 1998 tax year with information provided by the Internal Revenue Service ("IRS"), pursuant to the provisions of Section 6103(d) of the Internal Revenue Code.[3]

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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] Division's Exhibit A. At the time of the assessment the Protestant's address was 123 FAKE STREET, ANYTOWN, Oklahoma 12345. The Division's Verified Response, Fact#1, contains a scrivener's error as to the Protestant's name, but the error does not affect the validity of the assessment, which is correct.

[3] Division's Exhibit A and Division's Exhibit B. Exhibit B contains a computer printout of the information provided by the IRS and a copy of the Protestant's Oklahoma return filed on April 15, 1999, for the 1998 tax year, with the Division's adjustments.

3. The proposed assessment[4] was issued by the Division because the Protestant had under-reported his Federal Adjusted Gross Income ("Federal AGI") on his Oklahoma return as follows:

FORM 511 EZ	AS REPORTED	AS ADJUSTED
Federal AGI	7,547.00	16,168.00
Deductions Amount	1,132.00	1,000.00
Total Lines 2, 3, 4 & 5	2,232.00	2,100.00
OK TaxInc for Method 1	5,315.00	14,068.00
Federal Income Tax		1,489.00
OK TaxInc for Method 2	5,315.00	12,579.00
OK Income Tax	95.00	560.00
Balance (13 from 12)	95.00	560.00
Additional Tax Due		465.00
Interest @ 15%		205.43
Tax & Interest If Paid Within 30 Days		670.43
30 Day Delinquent Penalty @ 10%		46.50
Tax, Interest & Penalty If Paid After 30 Days		716.93

4. On or about April 24, 2002, the Division received a protest of the proposed assessment for the 1998 tax year, placing the entire amount in controversy.[5]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[6]

2. The State of Oklahoma levies a tax upon the Oklahoma taxable income of resident individuals.[7]

3. Oklahoma taxable income is calculated based on Federal AGI.[8]

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[4] The court file contains an audit packet, which was forwarded by the Division, as part of the protest file on this matter. The Administrative Law Judge is taking judicial notice of the second page, which is the back of the proposed assessment, in order to complete the factual background of this case. *OAC 710:1-5-36*. The explanation for the assessment is stated as "Federal AGI reported by IRS is different than the amount on Line 1 of your Oklahoma return".

[5] Division's Exhibit C. No date of receipt appears stamped on the letter of protest. However, the Protestant's new address as reflected on the letter is: 9999 IMAGINARY ROAD, ANYTOWN, OK 12345.

[6] 68 O.S. § 207.

[7] 68 O.S. § 2355, 68 O.S. § 2353(12), and 68 O.S. § 2368.

[8] 68 O.S. § 2353(10)-(13). 68 O.S. § 2353(13), in pertinent part, states: "Oklahoma taxable income" means "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."

4. Income information furnished by the IRS shall be that upon which any tax liability is computed.[9]

5. If any tax due under any state tax law is not paid within thirty (30) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected, and paid.[10]

6. The Tax Commission shall also collect interest at the rate of one and one-quarter percent (1¼%) per month from the date prescribed by state law.[11]

7. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[12] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[13]

8. The Protestant has failed to meet his burden of proof in this matter. The Protestant has produced no authority that the Division's assessment is incorrect or that the sum is not due and owing.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest be denied and that the total amount of additional income tax assessed for the 1998 tax year be fixed as the Protestant's deficiency and that the amount be determined as due and owing, including penalty and interest, accrued and accruing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-

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[9] *OAC 710:50-5-10*.

[10] 68 O.S. § 217(D). However, § 217 also states that "the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax within thirty (30) days of the mailing of proposed assessment or voluntarily pays the tax upon the filing of an amended return. The record does not indicate that the Protestant has filed an amended return.

[11] 68 O.S. § 217(B).

[12] 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. Oklahoma Administrative Code ("OAC") 710:1-1-77(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.

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

precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.