JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-01-13-03
ID: P-03-094-K
DATE: JANUARY 13, 2005
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Protestant is, and was at all times relevant herein, a resident of the State of Oklahoma. Tr. 47.

2. Protestant is a licensed Chiropractor and has operated a chiropractic business in ANYTOWN, Oklahoma since 1981. Tr. 48.

3. Protestant practiced chiropractic medicine during the years at issue. Tr. 48.

4. Protestant charges his patients for his services, Tr. 48; and exchanges his time for money. Tr. 52.

5. Protestant does not report any of the payments he receives from his patients to the State of Oklahoma and did not file income tax returns with the State of Oklahoma during the years at issue. Tr. 49.

6. Protestant filed federal income tax returns with the Internal Revenue Service during the years at issue, but reported zero income tax owed. Tr. 50-52.

7. Protestant identified Division's Exhibit I, Department of the Treasury - Internal Revenue Service - Income Tax Examination Changes, Form 4549A, which reports adjustments to Protestant's federal income tax returns for the years at issue. Tr. 51.

8. A Show Cause Hearing was held before the Honorable JUDGE, United States Magistrate Judge, United States District Court, Northern District of the State of Oklahoma in the case styled United States of America and IRS EMPLOYEE, Revenue Agent, Internal Revenue Service, Petitioners, vs. PROTESTANT, Respondent, and numbered 99-XX-99-Y, on April 17, 2000, wherein Protestant was ordered to turn over or make available for examination to the revenue agent certain documents on May 2, 2000. Tr. 33. It was noted for the record in those proceedings that at that time no assessment had been issued against Protestant. Tr. 33.

9. Protestant admits that he received a Notice of Deficiency from the Internal Revenue Service. Protestant's Exhibit 1.[1]

10. Protestant admits that he received a notice of levy from the Internal Revenue Service. Tr. 35.

11. By letters dated June 9, 2003, the Division caused to be issued proposed assessments of income tax, interest, and penalty against Protestant for the tax years 1995, 1996, and 1997. Division's Exhibits A, B and C. Tr. 56, 58 and 59.

12. The assessments are based on information submitted by the Internal Revenue Service to the Tax Commission pursuant to 26 U.S.C. § 6103; namely, Internal Revenue Service, Revenue Agents Reports dated October 8, 2002 and numbered #####-01 through #####-03, respectively. Division's Exhibit I. Tr. 57, 59 and 60.

13. The Division, after receiving the reports and determining from a review of its records that Protestant had not filed Oklahoma income tax returns for the years in question, utilized the information from the reports to determine Protestant's Oklahoma taxable income. Tr. 57, 59 and 60.

14. The assessments propose an aggregate amount due of $12,803.29, inclusive of income tax in the amount of $6,398.00, penalty in the amount of $639.80, and interest accrued through June 9, 2003, in the amount of $5,765.49. Division's Exhibits A, B and C.

15. Protestant timely protested the proposed assessments by letter dated June 11, 2003. Division's Exhibit G. Tr. 63.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant sustained his burden of proving that the proposed assessments are incorrect.

Besides the standard rubric frivolous arguments of a tax protester, Protestant contends that he has not been assessed by the Internal Revenue Service for the years in question and therefore, until a final determination is made at the federal level, the Tax Commission does not have authority to assess him. In support of this contention, Protestant cites the amended transcript of the show cause hearing held in case no. 99-XX-99-Y on April 17, 2000 before the Honorable JUDGE, United States Magistrate Judge for the Northern District, State of Oklahoma. From what can be gleened from Protestant's unsupported assertions, irrelevant platitudes and legalistic gibberish in the filings before the ALJ's Office, Protestant asserts he has not been provided a procedurally proper and lawful assessment by the Internal Revenue Service. Protestant further contends that the proposed assessments issued by the Division are improper because the Revenue Agent Reports upon which the proposed assessments are based are not verified as true, accurate and complete. Protestant

[1] Protestant's Exhibit 1 was not admitted into evidence as being irrelevant. Notice of the written statement of Protestant, found at page 5 of the Emergency First Amendment Default Complaint for Final Default, 10 Day Notice to Cure dated September 10, 2003, is being taken as an admission against interest.

further contends that an assessment has not been made against him. In support of this contention, Protestant argues that the Division has only issued a proposed assessment against him.

The Division contends that every Oklahoma resident is required to make an income tax return stating his or her taxable income and must transmit the return to the Tax Commission and remit the amount of tax due. The Division further contends if any taxpayer shall fail to make any report or return as required by any state law, the Tax Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 2001, § 221(D).

2. Oklahoma income tax is imposed upon the Oklahoma taxable income of every resident individual. 68 O.S. 1991, § 2355(A). *See*, Rule 710:50-3-1 of the *Oklahoma Administrative Code* (*OAC*).[2]

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

4. It is a well-established principle of law that wages are income and are taxable under the income tax laws, as the following statutory and case law distinctly shows:

> 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 ***C.I.R. v. Daehler***, 281 F.2d 823 (C.A. Fla. 1960), the Court held that compensation for services rendered by employee to employer is taxable income of

[2] This rule provides: "All taxpayers must file Oklahoma Income Tax Returns. `Taxpayer' means any person subject to income tax imposed by Oklahoma Statutes, or whose income is in whole or in part, subject to income tax imposed by any provision of the Oklahoma Statutes."

whatever kind and in whatever form it is received, short of specific exception to broad statutory definition of gross income.

iv. 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.

v. In ***Painter v. Campbell***, 110 F.Supp. 503 (D.C. Tex. 1953), the Court held that the intent of the income tax law is that all receipts whatever that come to an employee because of labor and service, whether payment is compelled or not, shall be taxed as arising from labor.

vi. n ***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.

vii. In ***Oklahoma Tax Commission v. Smith***, 610 P.2d 794 (1980), the Court provided:

"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."

viii. 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)."

5. A Revenue Agents Report is presumptive proof of a valid assessment by the Internal Revenue Service. *OAC*, 710:50-5-10(a) and (b). As with any other document that has been adopted and approved, a signature verifying that it is true, accurate and correct is not essential. *See*, ***Campbell v. United States***, 365 U.S. 85, 93-94, 81 S.Ct. 421, 5 L.Ed. 2d 428 (1961).

6. The Tax Commission is authorized in case of a failure to file a report or return, as required under any state tax law, to compute, determine and assess the estimated amount of tax due from any information in its possession. 68 O.S. 1991, § 223(c). Assessments based on information derived from the Internal Revenue Service shall be made in accordance with the Uniform Tax Procedure Code[3], *OAC*, 710:50-5-10(a); the income information furnished by the I.R.S. shall be that upon which any tax liability is computed, *id.*; and the Tax Commission shall be bound by the revisions made in such final determination by the I.R.S., *OAC*, 710:50-3-8(d).

[3] 68 O.S. 1991, §201 et seq.

7. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *OAC*, 710:1-5-47. *See*, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.

8. The evidence in this cause shows that the IRS has issued a Notice of Deficiency against Protestant for the years at issue. The IRS has also instituted proceeding against Protestant to levy and collect the deficiency. Further, the evidence shows that the Division's assessments are based on the income information furnished by the IRS and that the assessments are final with respect to the estimated amount of tax assessed for each year. Protestant's remaining arguments are frivolous and without merit.

9. Protestant's protest to the Division's assessments for the 1995, 1996, and 1997 tax years should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT, be denied. It is further ORDERED that the amount in controversy, inclusive of 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 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.