JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-06-21-06
ID: P-05-045-H
DATE: JUNE 21, 2005
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant"), appears pro se.[1] The Individual Returns Section, Audit Division ("Division"), Oklahoma Tax Commission appears through OTC ATTORNEY, Office of General Counsel, Oklahoma Tax Commission.

On April 26, 2005, the parties were notified that this matter was set for hearing on May 18, 2005, at 1:30 p.m., with position letters or memorandum briefs being due on or before May 11, 2005. On May 10, 2005, the Protestant filed her position letter.[2] On May 11, 2005, the Division filed its position letter. The hearing was held on May 18, 2005, at approximately 1:30 p.m. The Protestant did not appear at the hearing. The notice was forwarded to the Protestant's last known address.[3] It was noted for the record that the Protestant had not contacted the Division's representative or the Office of Administrative Law Judge concerning the hearing, since the Protestant's filing of her position letter. The Division called one witness, WITNESS, Auditor, Individual Returns Section, Audit Division, who testified regarding the records of the Division. The Division's Exhibits A through C were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on May 18, 2005.

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, the undersigned finds:

1. The Protestant was a full time resident of the State of Oklahoma during the 1999 tax year. According to the records of the Oklahoma Tax Commission, the Protestant did not file an Oklahoma Individual Income Tax Return for the 1999 tax year.

2. The Division received Revenue Agents Report ("RAR") No. 9999999 dated August 13, 2002, from the Internal Revenue Service ("IRS"). According to RAR No. 9999999,

[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 1099 (5th ed. 1979).

[2] The Protestant advised in her position letter that she would not be attending the hearing.

[3] OKLA. STAT. ANN. tit. 68, § 208 (West 2001).

the Protestant had Federal Adjusted Gross Income in an amount sufficient to require the Protestant to file an Oklahoma Individual Income Return for the 1999 tax year.[4]

3. On February 7, 2005, the Division issued a proposed income tax assessment against the Protestant for the 1999 tax year based on RAR No. 9999999.[5]

4. The proposed assessment[6] in the amount of $1,936.22, with interest calculated through April 8, 2005, is as follows:

Tax	$1,048.00
Penalty	104.80
Interest	783.42
Total	$1,936.22

5. On March 1, 2005, the Division received a timely filed protest to the proposed assessment.[7]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[8]

2. The Oklahoma Income Tax Act[9] imposes an income tax upon the Oklahoma taxable income[10] of every resident or nonresident individual who earns income within the state.[11]

3. A "resident individual" is defined by statute to mean "a natural person who is domiciled in this state."[12]

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[4] Division's Exhibit B.

[5] Division's Exhibit A.

[6] *See* Note 5.

[7] Division's Exhibit C. The abbreviated basis of the protest is that the Division is without jurisdiction to issue the proposed income tax assessment. The Protestant makes a "Demand to Quash Notice of Amount Due for Lack of Jurisdiction and Discharge for Fraud; Demand for Adjudicatory Hearing of Record, If Denied."

[8] OKLA. STAT. ANN. tit. 68, § 221(D) (West 2001).

[9] OKLA. STAT. ANN. tit. 68, § 2351 et seq. (West 2001).

[10] OKLA. STAT. ANN tit. 68, § 2353(12) (West 2001).

[11] OKLA. STAT. ANN tit. 68, § 2353(14) (West 2001).

[12] *See* Note 10.

4. It is a well-established principle of law that wages are income and are taxable under the income tax laws.[13]

5. The calculation of Oklahoma taxable income is based on Federal Adjusted Gross Income.[14]

6. The Tax Commission is authorized in the 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.[15]

7. Assessments based upon information derived from the IRS shall be made in accordance with the Uniform Tax Procedure Code.[16]

8. The income information furnished by the IRS shall be that upon which any tax liability is computed. The Tax Commission shall be bound by the revisions made in such final determination by the IRS.[17]

9. If the deficiency was the result of negligence or intentional disregard, delinquency penalty at the rate of ten percent (10%) shall be added to assessed income tax, collected, and paid.[18]

10. Interest at the rate of fifteen percent (15%) per annum shall be collected along with the assessed income tax.[19]

11. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[20]

12. The Protestant has failed to produce any evidence and cited no authority that the proposed assessment for the 1999 tax year is incorrect, or that the sum is not due and owing.

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[13] *See* I.R.C. § 61.

[14] OKLA. STAT. ANN. tit. 68, § 2353(10), (11) (West 2001). *See also* OKLA. STAT. ANN. tit. 68, § 2355(A) (West 2001).

[15] OKLA. STAT. ANN. tit. 68, § 223 (c) (West 2001).

[16] OKLA. STAT. ANN. tit. 68, § 201 et seq. *See also* OKLA. ADMIN. CODE § 710:50-5-10(a).

[17] OKLA. ADMIN. CODE § 710:50-3-8(d).

[18] OKLA. STAT. ANN. tit 68, § 2375(D) (West 2001).

[19] OKLA. STAT. ANN. tit. 68, § 217(a) (West 2001).

[20] *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

DISPOSITION\

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest to the proposed assessment of Oklahoma Individual Income Tax for the 1999 tax year should be denied. It is further ORDERED that the total amount of income tax and penalty assessed for the 1999 tax year be fixed as the Protestant's deficiency and that those amounts be determined as due and owing, including 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-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.