JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-07-12-05
ID: P-05-008-K
DATE: JULY 12, 2005
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On or about November 8, 2004, the Division caused to be issued a proposed assessment of additional income tax, interest and penalty against Protestant for the 1998 tax year. Protestant timely protested the proposed assessment by letter dated November 10, 2004. An oral hearing was not requested in the letter of protest.

On January 27, 2005, the Division forwarded its file in this matter to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings pursuant to the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission[2]. The case was docketed as Case No. P-05-008-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled in this cause for March 23, 2005, by *Notice of Prehearing Conference* issued February 18, 2005.[4] Prior to the issuance of the *Notice of Prehearing Conference*, Protestant sent a written correspondence to the ALJ's Office dated January 31, 2005. Protestant also sent a written correspondence to the Division's counsel dated February 16, 2005. Protestant neither appeared at the pre-hearing conference nor responded to the notice thereof. By letter dated March 24, 2005, the parties were notified that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division.[5]

The *Division's Verified Response to Protest* was filed April 25, 2005. Attached to the *Verified Response* were Exhibits A through G. On May 4, 2005, Protestant filed a reply to the *Division's Verified Response to Protest*. Several documents were attached to Protestant's reply. Protestant did not request a hearing in the reply. The record in this cause was closed and the case was submitted for decision on May 16, 2005.

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[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the Oklahoma Administrative Code ("*OAC*")

[3] *OAC*, 710:1-5-22(b).

[4] *OAC*, 710:1-5-28.

[5] *OAC*, 710:1-5-28(c).

FINDINGS OF FACT

Upon review of the file and records, including the correspondences from Protestant and attachments, and the *Division's Verified Response to Protest* and attached Exhibits, the undersigned finds:

1. On or about November 8, 2004, the Division caused to be issued a proposed assessment of additional income tax, interest and penalty against Protestant for the 1998 tax year in the aggregate amount of $5,377.78, inclusive of tax in the amount of $2,743.00, interest accrued through January 7, 2005 in the amount of $2,360.48 and a thirty (30) day delinquency penalty @ ten percent (10%) in the amount of $274.30. Exhibit B attached to the *Division's Verified Response to Protest.*

2. The assessment is based on adjustments made by the Internal Revenue Service ("IRS") to Protestant's federal taxable income for the 1998 tax year. Exhibits A and B attached to the *Division's Verified Response to Protest.*[6]

3. Protestant did not file an amended Oklahoma income tax return reporting the IRS adjustments to his federal taxable income.

4. By Letter dated November 10, 2004, Protestant filed a timely written protest to the proposed assessment, asserting "this entire assessment is news to me." Exhibit C attached to the *Division's Verified Response to Protest.*

5. Protestant, in the correspondence dated January 31, 2005, writes "[p]er attachment showing [zero] owed to the IRS – the additional tax was assessed in error & corrected to [zero] – I shouldn't owe any additional OK tax." Exhibit D attached to the *Division's Verified Response to Protest*. The attachment is a letter from the IRS to Protestant dated December 23, 2004, wherein the IRS advises "[o]ur records show that your Form 1040 account for tax period Dec. 31, 1997 is paid in full at this time."

6. Protestant, in the correspondence dated February 16, 2005, writes:

> In reference to your letter of 02-14-05; my sole purpose in contesting this matter is, what is the source of the additional tax?
>
> Basically, out of the blue I received a bill for something I have no idea about. I made the same question to the IRS, they sent a notice that I owed **NO** additional tax for the referenced period. [sic] I forwarded a copy of this to you last week, yet you make no mention of it in your latest letter.
>
> I'm in agreement with the 'Law Judge' in that I'd like to receive [sic] 'discovery information'.

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[6] Report No. CP2000. Date of Notice to taxpayer August 29, 2001.

Exhibit E attached to the *Division's Verified Response to Protest*, (emphasis original).

7. In his reply to the *Division's Verified Response to Protest*, Protestant writes:

> Thanks for letting me know the source of the additional assessed tax so I can respond.
>
> By agreement, my insurance agency was taken over by the Mark Lauderdale Agency effective 10-01-1998, with all commissions from that time forward going to the purchaser. See attached copy of Agreement.
>
> Copies of the commission statements for the periods of October, November & December 1998 that were paid to the Lauderdale Agency (per Agreement), yet were included on my 1099's in error are attached as follows:
>
> Progressive Cos. = $667.00
> Union Mutual Ins. Co. = $561.00
> Mid-Continent Ins. = $6,593.00
> Total $7,821.00
>
> Misc. additional commissions = $171.00 to equal the adjusted amount per your claim of $7,992.00.
>
> Perhaps tax on the above amount is owed to the Oklahoma Tax Commission, but not by me as I'm not paying tax on monies never received.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that:

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 2001, § 221(D).

2. 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.

3. An income tax is imposed upon the "Oklahoma taxable income" of every resident individual. 68 O.S. 2001, § 2355(A).

4. The "Oklahoma taxable income" of any taxpayer is defined to mean "'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, adjusted further as hereinafter provided." 68 O.S. 2001, § 2353(12).

5. Except in those circumstances where an IRS revision affects items or matters relating to allocation or apportionment, the Tax Commission is bound by the revisions made by the IRS to the amount of taxpayer's taxable income for any year under the Internal Revenue Code, as finally determined under applicable federal law. 68 O.S. 2001, § 2375(H)(1) and (4). *See, OAC*, 710:50-3-8(d).

6. The information furnished by the IRS to the Tax Commission shall be that upon which taxpayer's tax liability shall be computed. OAC, 710:50-5-10(a).

7. Here, Protestant's dispute should have been with the IRS. Protestant failed to present any evidence to show that the IRS has revised its adjustment of his federal taxable income to exclude the non-employee commissions in the amount of $7,992.00. The Division is bound by the IRS's determination of Protestant's federal taxable income for the 1998 tax year. Accordingly, Protestant's protest to the proposed assessment of additional Oklahoma income tax for the 1998 tax year should be denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is ORDERED that the protest of Protestant, PROTESTANT, be denied. It is further ORDERED that the amount in controversy, plus 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.