JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-10-27-04
ID:	P-05-035-H
DATE:	OCTOBER 27, 2005
DISPOSITION:	MOTION GRANTED
TAX TYPE:	INCOME
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

TAXPAYER ("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.

PROCEDURAL HISTORY

On April 8, 2005, a Notice of Prehearing Conference was sent to the Protestant's attorney, ATTORNEY, advising that the prehearing conference was scheduled for April 25, 2005, at 9:30 a.m. On April 25, 2005, a Status Report In Lieu of Prehearing Conference was filed by the Division's representative. On June 24, 2005, a Status Report was filed advising that the Protestant's attorney was being provided with Internal Revenue Service ("IRS") transcripts for the 1996 and 1997 tax years in order for the Protestant to file Oklahoma Individual Income Tax Returns. On July 25, 2005, another Status Report was filed advising that Protestant's attorney was having difficulty communicating with the Protestant and that ATTORNEY was ready to withdraw from the case.

On August 8, 2005, the Division filed a Motion to Dismiss on jurisdictional grounds, specifically the untimely filing of the protest. On August 11, 2005, a Notice to Appear or Respond in Writing was sent to Protestant's counsel advising that the Division's Motion to Dismiss was set for hearing on September 22, 2005, at 9:30 a.m. On September 15, 2005, ATTORNEY filed a Motion to Withdraw as counsel for the Protestant on the basis that the Protestant refused to communicate with him for more than four (4) months.[2] On September 16, 2005, an Order Granting Motion to Withdrawal as Counsel was entered by the undersigned Administrative Law Judge.[3]

The hearing was held on September 22, 2005, at approximately 9:30 a.m. The Protestant appeared at the hearing pro se. The Protestant did not offer any exhibits into evidence. The Division called one witness, AUDITOR, Auditor, Individual Returns Section, Audit Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division's

[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 Motion to Withdraw goes into much greater detail, which is omitted herein. However, ATTORNEY provided a new address for the Protestant, P.O. Box 111, RURALTOWN, OK 99999.

[3] The Division did not object to the motion. The order was mailed to ATTORNEY, and the Protestant at P.O. Box 111 RURALTOWN, OK 99999.

Exhibits A through D were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on September 22, 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. On December 17, 2001, the Division notified the Protestant in writing of its intent to assess him for the 1996 tax year, based on his failure to file a return for that year. The assessment was derived from an IRS Revenue Agent Report ("RAR") number 11111-11 dated July 24, 2001,[4] as follows:

Tax	Penalty	Interest	Total
$353.00	$35.30	$247.10 (Thru 12/17/01)	$635.40

2. On December 17, 2001, the Division notified the Protestant in writing of its intent to assess him income tax for the 1997 tax year, based upon his failure to file a return for that year. The assessment was derived from an IRS RAR number 22222-22 dated July 24, 2001,[5] as follows:

Tax	Penalty	Interest	Total
$1,172.00	$117.20	$644.60 (Thru 12/17/01)	$1,933.80

3. The assessments were mailed to the Protestant's last-known address reflected by the records of the Oklahoma Tax Commission.[6]

4. No extension to file a protest was granted by the Division and no protest was filed within thirty (30) days of the mailing of the proposed assessments for the 1996 and 1997 tax years.

5. On March 10, 2005, the Protestant filed a written protest in the Office of Administrative Law Judges, which was docketed as this case.[7]

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[4] Division's Exhibit A. The assessment was sent to the Protestant at the address of P.O. Box 99, RURALTOWN, OK 99999-9999.

[5] Division's Exhibit B. *See* Note 6.

[6] Division's Exhibit C.

[7] Division's Exhibit D. The protest requested that a garnishment issued by G.C. Services be withdrawn. The protest also requested that the Division withdraw the assessments for the 1996 and 1997 tax years and that the Protestant be given time to file ten (10) years of returns.

CONCLUSIONS OF LAW

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

2. The assessments for the 1996 and 1997 tax years were mailed by the Division on December 17, 2001, to the last-known address of the Protestant as reflected by the records of the Oklahoma Tax Commission. The protest was not filed until March 10, 2005. The assessments were final and absolute when they were not protested within thirty (30) days of the mailing of the proposed assessments.[9]

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the Division's Motion to Dismiss should be granted.

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.

[8] OKLA. STAT. ANN. tit. 68, § 221(E) (West 2001) and OKLA. ADMIN. CODE § 710:1-5-46.

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