JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2006-04-04-25
ID: P-05-110-H
DATE: APRIL 4, 2006
DISPOSITION: DENIED
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, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On August 17, 2005, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.[3] On August 24, 2005, a letter was mailed to the Protestant informing that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-05-110-H. The letter also advised the Protestant that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission.* On October 4, 2005, the Notice of Prehearing Conference was mailed to the last known address of the Protestant, setting the prehearing conference for October 27, 2005, at 10:00 a.m.[4] The Protestant did not appear at the prehearing conference. On October 28, 2005, the Prehearing Conference Order was mailed to the Protestant stating that the record in this matter would be closed and the case submitted for decision on the merits upon receipt from the Division of a verified response.[5] On December 2, 2005, the Division filed its Verified Response. The verification attached to the response was duly sworn under oath, on behalf of the Division, by AUDITOR, Auditor, Individual Returns Section, Audit Division, Oklahoma Tax Commission.[6] No response was received from the Protestant. The record was closed and this matter was submitted for decision on December 19, 2005. On January 9, 2006, the record was re-opened for the Division to file an "Amended Verified Response." The verification attached to the amended response was duly sworn under oath, on

[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] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] OKLA. STAT. ANN. tit. 68, § 208. The notice was mailed to the Protestant at 123 FAKE STREET, SMALLTOWN, Oklahoma 99999-9999.

[5] The order was also mailed to the Protestant's last known address. *See* Note 4.

[6] *See* OKLA. ADMIN. CODE § 710:1-5-28(c).

behalf of the Division, by AUDITOR, Auditor, Individual Returns Section, Audit Division, Oklahoma Tax Commission. No response was received from the Protestant. The record was closed on January 20, 2006, and this matter was resubmitted for decision on January 20, 2006.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, Division's Verified Response, and Division's Amended Verified Response, the undersigned finds:

1. On April 3, 2000, the Protestant's 1999 Oklahoma Individual Income Tax Return was received by the Oklahoma Tax Commission reflecting a Federal Adjusted Gross Income of zero, but claming a refund of $1,183.00.[7] From the record there is no indication if the return was processed as filed or held in suspense.

2. On February 28, 2005, the Division issued a proposed income tax assessment against the Protestant for the 1999 tax year based upon Revenue Agent Report ("RAR") No. 111111 received from the Internal Revenue Service ("IRS") and made available to the Division under the authority of Section 6103(d) of the Internal Revenue Code.[8]

3. The proposed income tax assessment[9] adjusted the Protestant's income as follows:

Year	1999
Corrected Taxable Income-Method I	$64,145.00
Tax Per Table	3,999.00
Total Tax as Adjusted	3,999.00
Less Tax Previously Reported or Assessed	0.00
Additional Tax Due	3,999.00
Interest @ 15% from 4/15/00 to 4/29/05	3,023.90
TAX & INTEREST IF PAID WITHIN 60 DAYS	$ 7,022.90
30 Day Delinquency Penalty @ 10%	399.90
TAX, INTEREST & PENALTY IF PAID AFTER 60 DAYS	$ 7,422.80

4. The W-2 attached to the Protestant's 1999 Oklahoma Income Tax Return reflects that there was Oklahoma withholding for the 1999 tax year in the amount of $1,183.22.[10] The proposed assessment for the 1999 tax year does not appear to give the Protestant credit for the Oklahoma income tax withheld.[11]

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[7] Division's Exhibit B. The return for the 1999 tax year was filed as "married filing separate."

[8] Division's Exhibit A. The RAR was dated July 23, 2002.

[9] *See* Note 8 and Division's Exhibit B. The Protestant had filed a U.S. Individual Income Tax Return and an Individual Oklahoma Income Tax Return for the 1999 tax year, reporting zero income on both returns.

[10] Division's Exhibit B.

[11] Division's Exhibits A and B.

5. On September 4, 2001, the Protestant's 2000 Oklahoma Individual Income Tax Return was received by the Oklahoma Tax Commission reflecting a Federal Adjusted Gross Income of zero, but claming a refund of $1,945.00.[12] From the record there is no indication if the return was processed as filed or held in suspense.

6. On February 28, 2005, the Division issued a proposed income tax assessment against the Protestant for the 2000 tax year based upon RAR No. 222222 received from the IRS and made available to the Division under the authority of Section 6103(d) of the Internal Revenue Code.[13]

7. The proposed income tax assessment[14] adjusted the Protestant's income as follows:

Year	2000
Corrected Taxable Income-Method I	$30,755.00
Tax Per Table	1,745.00
Total Tax as Adjusted	1,745.00
Less Tax Previously Reported or Assessed	0.00
Additional Tax Due	1,745.00
Interest @ 15% from 4/15/01 to 4/29/05	1,057.76
TAX & INTEREST IF PAID WITHIN 60 DAYS	$ 2,802.76
30 Day Delinquency Penalty @ 10%	174.50
TAX, INTEREST & PENALTY IF PAID AFTER 60 DAYS	$ 2,977.26

8. The W-2 attached to the Protestant's 2000 Oklahoma Income Tax Return reflects that there was Oklahoma withholding for the 2000 tax year in the amount of $299.54.[15] The proposed assessment for the 2000 tax year does not appear to give the Protestant credit for the Oklahoma income tax withheld.[16]

9. By letter dated March 15, 2005, the Protestant put at issue the proposed assessments for the 1999 and 2000 tax years.[17]

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[12] Division's Exhibit D. The return for the 2000 tax year was filed as "married filing jointly."

[13] Division's Exhibit C. The RAR was dated July 23, 2002.

[14] *See* Note 13 and Division's Exhibit D. The Protestant had filed a U.S. Individual Income Tax Return and an Individual Oklahoma Income Tax Return for the 2000 tax year, reporting zero income on both returns.

[15] Division's Exhibit B.

[16] Division's Exhibits A and B.

[17] Division's Exhibit E. The protest letter was not date stamped when it was received by the Tax Commission or the Division.

ADDITIONAL FINDINGS OF FACT

10. The Protestant's 2000 Oklahoma Income Tax Return was originally filed as "married filing joint return."[18]

11. RAR No. 222222, dated July 23, 2002, changed the Protestant's 2000 Federal filing status to "married filing separate."[19]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[20]

2. The Oklahoma Income Tax Act[21] imposes an income tax upon the Oklahoma taxable income[22] of every resident or nonresident individual who earn income within the state.[23]

3. A "resident individual" is defined by statute to mean "a natural person who is domiciled in this state."[24]

4. It is a well-established principle of law that wages are income and are taxable under the income tax laws.[25]

5. The calculation of Oklahoma taxable income is based upon Federal Adjusted Gross Income.[26]

6. Assessments based upon information derived from the IRS shall be made in accordance with the Uniform Tax Procedure Code.[27]

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[18] Division's Exhibit D. Footnote 1 of the Division's Verified Response filed December 2, 2005, was incorrect. The name and social security number of the Protestant's spouse was not omitted from the federal and state returns for the 2000 tax year.

[19] Division's Exhibit A to the "Amended Verified Response."

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

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

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

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

[24] *See* Note 20.

[25] *See* I.R.C. § 61.

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

[27] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001). *See also* OKLA. ADMIN. CODE § 710:50-5-10(a).

7. 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.[28]

8. 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.[29]

9. Interest at the rate of fifteen percent (15%) per annum shall be collected along with the assessed income tax.[30]

10. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[31]

11. The Protestant has failed to produce any evidence and cited no authority that the proposed assessments for the 1999 and 2000 tax years are incorrect, or that the sums are not due and owing. However, the proposed assessments do not indicate that the Protestant has been given credit for the Oklahoma State Income Tax withheld according to the Protestant's W-2's attached to the returns for the 1999 and 2000 tax years.

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 assessments for the 1999 and 2000 tax years should be denied.

It is further ORDERED that the proposed income tax assessments against the Protestant for the 1999 and 2000 tax years be *revised* to give the Protestant credit for the Oklahoma State Income Tax withheld according to the Protestant's W-2s.

It is further ORDERED that the *revised* total amount of income tax and penalty assessed for the 1999 and 2000 tax years 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-

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[28] OKLA. ADMIN. CODE § 710:50-3-8.

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

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

[31] *See Enterprise Management Consultants, Inc. v. State of Oklahoma ex rel Oklahoma Tax Com'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.