JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2006-08-22-07 (Non-Precedential)
ID:	P-05-187-K
DATE:	AUGUST 22, 2006
DISPOSITION:	DENIED
TAX TYPE:	INCOME
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestants, HUSBAND AND WIFE, are represented by ATTORNEY, Attorney at Law. The Audit Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, General Counsel's Office of the Tax Commission.

STATEMENT OF THE CASE

The Division reviewed and disallowed the amount of $5,937.00 claimed by Protestants as an "Oklahoma subtraction" on Line 2 of their State of Oklahoma Amended Resident Individual Income Tax Return (Form 511X) for the 2003 tax year. As a result of the disallowance, the Division by letter dated July 20, 2005, proposed the assessment of additional income tax against Protestants for the 2003 tax year in the amount of $415.00. Protestants timely protested the proposed assessment by letter dated August 18, 2005. Protestants did not request an oral hearing in the letter of protest.

The Division's file consisting of a cover memorandum, letter of assessment and protest was referred to the Office of the Administrative Law Judges ("ALJ's Office") on November 15, 2005, for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The protest was docketed as Case No. P-05-187-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled in this cause for December 29, 2005, by *Prehearing Conference Notice* issued December 5, 2005.[4] The pre-hearing conference was held as scheduled. Pursuant to the conference, a *Prehearing Conference Order* was issued in accordance with the parties' agreement to submit the protest for decision by written presentation.[5]

A *Joint Stipulation of Facts* and Exhibits A through E were filed April 19, 2006. *Protestants' Brief in Chief* was filed May 19, 2006, the *Division's Response Brief* was filed June 12,

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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(b) and 710:1-5-38.

2006, and *Protestants' Reply Brief* was filed June 22, 2006, whereupon the record was closed and the protest was submitted for decision.[6]

FINDINGS OF FACT

Upon review of the file and records, including the *Joint Stipulation of Facts*, Exhibits A through E attached thereto, and the respective briefs of the parties, the undersigned finds:

A. The parties stipulate to the following:

1. Protestants filed an amended 511X 2003 Return ("Return"). The Protestants subtracted out $5,937.00 on line 2 of the Return. Protestants state [sic] in the Return that they did not originally deduct the Federal Work Opportunity Credit ("WOC") in the amount of $5,937.00. Exhibit A to the *Joint Stipulation of Facts*.[7]

2. On July 20, 2005, the Division sent Protestants a letter stating that their income tax had been adjusted because of the lack of substantiation for other subtractions exclusions claimed. Exhibit B to the *Joint Stipulation of Facts*.[8]

3. By protest letter dated August 18, 2005, Protestants stated that the subtraction on line two of the Return is not a credit but actual wages that were paid to employees that had to be subtracted from the federal tax return in order to receive the federal WOC. Exhibit C to the *Joint Stipulation of Facts.*

4. By letter dated August 31 [sic], 2005, the Division informed the Protestants that they had reviewed the statutes and did not find a provision that allowed the WOC to be allowed as a subtraction on line 2. Exhibit D to the *Joint Stipulation of Facts.*

5. By letter dated November 3, 2005, Protestants stated that disallowing the wages as deductions is penalizing them for taking the credit on the federal tax return. Exhibit E to the *Joint Stipulation of Facts.*

B. Additional findings of fact:

1. The wages at issue were paid to the members of targeted groups by RESTAURANT, a subchapter S corporation. On their federal return, Protestants were only allowed to deduct $155,008.00 of the actual wages paid their employees which was calculated by subtracting the allowed federal Work Opportunity Credit amount of $5,937.00 from the actual wages paid of $160,945.00. Exhibit A to the *Joint Stipulations of Fact*.

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[6] OAC, 710:1-5-38 and 710:1-5-39(a).

[7] Copy of Protestants' 2003 State of Oklahoma Amended Resident Individual Income Tax Return, Form 511X with explanation of change to original Form 512S and page 4 of Form 512S.

[8] Copy of letter of proposed assessment dated July 20, 2005.

2. The amount in controversy is $415.00, the amount refunded to Protestants upon the filing of the 2003 amended Return, exclusive of any additional accrued and accruing interest. Exhibits B and C to the *Joint Stipulation of Facts.*

ISSUE AND CONTENTIONS

The issued presented for decision as stipulated by the parties is "whether Protestants are allowed to take a subtraction for the Work Opportunity Credit on line 2 of the Oklahoma amended form 511X as an Oklahoma subtraction.

Protestants contend that a deduction from federal adjusted gross income should be allowed on their Oklahoma return for the amount allowed as a credit against tax due on their federal return. In support of this contention, Protestants argue that the amount disallowed as a deduction are actual wages paid which had to be subtracted from wages paid on the federal return in order to received the federal work opportunity credit. Protestants further argue that what isn't specifically disallowed as an adjustment to arrive at Oklahoma taxable income should be allowed as a deduction.

The Division contends that Protestants' protest should be denied since Protestants cannot cite a specific provision of the Oklahoma Income Tax Act allowing for the deduction.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Commission. 68 O.S. Supp. 2002, § 221(D).

2. The starting point for determining the "Oklahoma adjusted gross income" of an individual taxpayer is the "taxable income" with respect to any taxpayer as defined in the Internal Revenue Code as it applies to such taxpayer. 68 O.S. 2001, §§ 2358(A) and 2353(10). *See*, Ok. Const. Art. 10, § 12[9]. *See also, General Accessory Manufacturing Company v. Oklahoma Tax Commission*, 2005 OK CIV APP 75, ¶ 9, 122 P.3d 476. A taxpayer's "taxable income" is subject to

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[9] This section provides:

> The Legislature shall have power to provide for the levy and collection of license, franchise, gross revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes; also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes; also stamp, registration, production or other specific taxes.
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> In the exercise of the powers provided for in this section, and notwithstanding any other provision of this Constitution, the Legislature may, with or without exceptions, modifications, or adjustments, define the amount on, in respect to, or by which any such tax or taxes are imposed or measured (a) by reference to any provisions of the laws (including administrative regulations, determinations, and interpretations) of the United States, as such laws may be or become effective at any time or from time to time; (b) by reference to any amount or amounts finally ascertained in determining amounts subject to taxation by the United States; or (c) by reference to any amount or amounts of tax finally ascertained to be payable to the United States.

Amended by State Question No. 444, Legislative Referendum No. 160, adopted at election held Aug. 27, 1968. Amendment proposed by Laws 1967, p. 689, S.J.R. No. 30.

the adjustments provided in § 2358 of the Oklahoma Income Tax Act, 68 O.S. 2001, § 2351 et seq.; as amended, to arrive at Oklahoma adjusted gross income for individuals. 68 O.S. 2001, §§ 2358(A) and 2353(11) and (13). *See, Getty Oil Co. v. Oklahoma Tax Commission*, 1977 OK 19, 563 P.2d 627.

3. Tax exemptions, deductions and credits depend entirely upon legislative grace and are strictly construed against the exemption, deduction or credit. *TPQ Investment Corporation v. Oklahoma Tax Commission*, 1998 OK 13, ¶ 8, 954 P.2d 139, 141. *See, Getty*, supra at 630-631.

4. The tax status and all elections of all taxpayers shall be the same for purposes of the Oklahoma Income Tax Act as they are for federal income tax purposes. 68 O.S. 2001, § 2353(3). *See, General Accessory, supra* at ¶ 11; *Matter of Income Tax Protest of Flint Resources*, 1989 OK 9, 780 P.2d 665, 673. "The language of § 2353(3) and (12), indicates that the Legislature intended that federal elections be controlling in determining Oklahoma taxable income." Id.

5. The facts of this case are similar to those presented in *Flint Resources, supra*, except that Flint had an arguable position that the foreign taxes paid could be deducted from Oklahoma taxable income through allocation. See, 68 O.S. 2001, § 2358(A)(4)(b). The undersigned finds that the decision of the Oklahoma Supreme Court in *Flint Resources* is controlling in this cause.

In *Flint Resources, supra*, the taxpayer corporation claimed a deduction for foreign taxes paid on its Oklahoma income tax return, notwithstanding that it claimed and was allowed a foreign taxes paid credit on its federal income tax return. On appeal, the Oklahoma Supreme Court affirmed the disallowance of the deduction for foreign taxes paid, holding:

> Corporations choosing to take the federal foreign tax credit, rather than a deduction for foreign taxes paid, must include the amount representing foreign taxes within Oklahoma taxable income.

Id., at 667. *See, General Accessory, supra* at ¶ 11.

In so holding the Supreme Court reasoned:

> Deductions are a matter of legislative grace rather than judicial intervention. The language of § 2353(3) and (12), indicates that the Legislature intended that federal elections be controlling in determining Oklahoma taxable income. The Legislature's use of the word 'allowable' as opposed to 'allowed' in § 2358(A)(4)(b) cannot reasonably and harmoniously be construed to mean that Oklahoma taxpayers were intended to have the option under the Income Tax Act to reevaluate federal deductions for the purpose of calculating Oklahoma taxable income.

(Footnotes omitted). *Flint Resources, supra* at 673-674. *See, General Accessory, supra* at ¶ 11.

6. Here, Protestants claimed and were allowed a Work Opportunity Credit on their 2003 federal return. Notwithstanding, Protestants now claim a deduction on their Oklahoma return for the amount allowed as a federal credit. As both parties point out, the Oklahoma Legislature has responded with respect to the federal Indian Employment Credit, I.R.C. § 45A, by allowing a deduction from Oklahoma taxable income equal to the federal credit. 68 O.S. 2001, § 2358(A)(8).[10] However, the Legislature has not acted with respect to the federal Work Opportunity Credit. Accordingly, since no deduction from Oklahoma taxable income exists in the Oklahoma Income Tax Act equal to the federal Work Opportunity Credit and Protestants' election to claim a credit, rather than a deduction on their federal return for the wages paid to the members of the targeted groups is binding for purposes of the Oklahoma Income Tax Act, the disallowance of Protestants' deduction on their Oklahoma amended income tax return for the amount allowed as a federal credit is not erroneous

7. Protestant's protest to the proposed income tax assessment should be denied.

DISPOSITION

Based on the above and foregoing, it is ORDERED that the protest of Protestants, HUSBAND AND WIFE, 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.

[10] The subsection provides:

> In taxable years beginning after December 31, 1995, all qualified wages equal to the federal income tax credit set forth in 26 U.S.C.A., Section 45A, shall be deducted from tax income. The deduction allowed pursuant to this paragraph shall only be permitted for the tax years in which the federal tax credit pursuant to 26 U.S.C.A., Section 45A, is allowed. For purposes of this paragraph, 'qualified wages' means those wages used to calculate the federal credit pursuant to 26 U.S.C.A, Section 45A.