JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2006-08-22-11 (Non-Precedential)
ID:	P-06-072-K
DATE:	AUGUST 22, 2006
DISPOSITION:	DISMISSED
TAX TYPE:	CIGARETTE EXCISE
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT appears pro se. The Audit Division of the Tax Commission (hereinafter "Division") is represented by the General Counsel's Office of the Tax Commission, OTC ATTORNEY, Assistant General Counsel.

STATEMENT OF THE CASE

On October 7 and October 21, 2005, the Division issued proposed assessments of cigarette excise tax, interest, and penalty against Protestant for the periods ending July, 2005 and August, 2005, respectively. On March 6, 2006, the Division forwarded a demand letter to Protestant. By letter dated March 13, 2006, which was received by the Division on March 28, 2006, Protestant filed a response to the demand letter.

On April 6, 2006, the Division's file was referred to the Office of the Administrative Law Judges ("ALJ's Office) 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 case was docketed as Case No. P-06-072-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled for May 24, 2006, by *Prehearing Conference Notice* dated May 2, 2006.[4] Protestant neither appeared at the pre-hearing conference nor responded to the *Notice*. By letter dated May 10, 2006, 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]

On June 20, 2006, the Division filed a *Motion to Dismiss*.[6] The *Motion to Dismiss* was scheduled for hearing on July 13, 2006, by *Order Setting Hearing on Motion* issued June 22, 2006.[7]

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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(a).

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

[6] *OAC*, 710:1-5-46(c).

[7] *OAC*, 710:1-5-46(d).

The hearing on the *Motion* was held as scheduled. Protestant did not appear at the hearing or respond to the *Order Setting Hearing on Motion*. The Division called one (1) witness, WITNESS, Auditor Supervisor, who testified regarding the file and records of the Division. Exhibits A through D were identified, offered and admitted into evidence. Upon conclusion of the hearing, the record was closed and the *Motion to Dismiss* was submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the record of the hearing, the *Motion to Dismiss* and the Exhibits received into evidence, the undersigned finds:

1. The Division by letter dated October 7, 2005, proposed the assessment of cigarette excise tax, interest and penalty against Protestant for the period ending July, 2005, in the aggregate amount of $84.54, consisting of tax of $72.10, interest accrued through December 7, 2005, of $5.23, and penalty of $7.21. Exhibit A.

2. The October 7, 2005 proposed assessment was mailed to Protestant at his last known address as reflected by the files and records of the Division. Exhibit A. See, 68 O.S. 2001, §§ 221(A) and 208.

3. The Division by letter dated October 21, 2005, proposed the assessment of cigarette excise tax, interest and penalty against Protestant for the period ending August, 2005, in the aggregate amount of $83.01, consisting of tax of $72.10, interest accrued through December 21, 2005, of $3.70, and penalty of $7.21. Exhibit B.

4. The October 21, 2005 proposed assessment was mailed to Protestant at his last known address as reflected by the files and records of the Division. Exhibit B. See, 68 O.S. 2001, §§ 221(A) and 208.

5. On March 6, 2006, the Division forwarded a demand letter to Protestant advising him that the period to protest the proposed assessments had passed, the assessments had become final and that "[u]nless we receive your remittance in the amount of $173.22[8] no later than March 20, 2006, we will initiate the appropriate action to assure that you comply with the Oklahoma Statutes." Exhibit D.

6. The March 6, 2006 demand letter was mailed to Protestant at his last known address as reflected by the files and records of the Division. Exhibit B. See, 68 O.S. 2001, §§ 221(A) and 208.

7. By letter dated March 13, 2006, which was received by the Division on March 28, 2006, Protestant submitted a response to the demand letter. Exhibit C. In the letter, Protestant asserts:

> I'm writing this letter with reference to our phone conversation the other day. As I indicated this is the first notice I ever saw regarding

[8] This amount includes interest accrued through March 20, 2006 of $14.60.

> this issue and I was both amazed and outraged as I had no idea any such statute [sic] existed.
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> I am a 74 year old man who has smoked for approximately 59 years and I am perfectly aware that I am addicted to cigarettes. As I'm sure you are aware at this time cigarettes were $.10 a pack and it's been bad enough that the smoker has been penalized year after year until we are where we are now. I know that if it were left up to government and a few others, all smokers would be taken out and shot but that's neither here nor there. As I mentioned, when I received a mailer from, what I thought was an Oklahoma Indian smoke shop that there was anything wrong with ordering as I normally buy from one of the smoke shops anyway, it was just more convenient, however, I have not ordered since, as I did not like what they had to offer. I don't recall how much the order was for but I do know that the tax you want to collect is for more dollars than the total amount of the order which I think is outrageous.
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> As I indicated, I am 74 years old and live on a fixed income and I just cannot afford to pay this tax bill. I can, however assure you that now that I am aware that this is illegal that I have not nor do I intend [to] repeat this mistake. I do think that it is the [sic] government's responsibility to make a greater effort to make everyone aware of this change and that it is against the law and penalties will be [sic] enforced. I'm sure that I am not the only person in Oklahoma who was not aware of this new situation.
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> I'm sure you can understand the position I'm in and I sincerely hope you can [sic] waive these charges, as I plain and simply do not have the money, aside from the fact that I feel that it is totally unfair to penalize a segment of the population whose real income goes down every year instead of up.

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 proceeding. 68 O.S. Supp. 2002, § 221(E); *OAC*, 710:1-5-46(c) and (d).

2. The proposed assessments were forwarded to Protestant at his last-known address. 68 O.S. 2001, §§ 208 and 221(A).

3. Protestant's written response was not filed with the Tax Commission within sixty (60) days of the mailing of the proposed assessments. 68 O.S. Supp. 2002, § 221(C).

4. The proposed assessments are final and absolute and the Tax Commission is without jurisdiction to consider the merits of the response. 68 O.S. Supp. 2002, § 221(E). *See, Matter of Phillips Petroleum Co*., 1982 OK 112, 652 P.2d 283.

5. Protestant's written response should be and the same is hereby dismissed.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT, be dismissed. It is further ORDERED that the assessed amounts, 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.