

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2006-12-05-04 (NON-PRECEDENTIAL)
ID: P-06-153-H
DATE: DECEMBER 5, 2006
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT (“Protestant”) appears pro se.¹ The Compliance Projects Section of the Audit Division (“Division”), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On August 24, 2006, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code² and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.³ On August 30, 2006, a letter was mailed to the parties stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-06-153-H. The letter also advised the Protestant that this matter had been set for hearing on September 25, 2006, at 1:30 p.m., and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*.⁴

On September 6, 2006, the Division filed an Interim Status Report, requesting that the hearing scheduled for September 25, 2006, at 1:30 p.m., be stricken based upon the attached letter from the Protestant, which advised that the Protestant would not attend either an informal or formal hearing in this matter, and that the Protestant was standing on the letter of protest previously filed in this matter. On September 8, 2006, an Order was issued striking the scheduled hearing and advising the parties 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

¹ “pro se” (proh say or see), *adv. & adj.* [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (8th ed. 2004), available at <http://westlaw.com>. (March 16, 2006).

² OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

³ OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47 (June 11, 2005).

⁴ OKLA. STAT. ANN. tit. 68, § 208 (West 2001). The notice was mailed to the Protestant's last known address, OUT-OF-STATE ADDRESS.

⁵ The Order was mailed to OUT-OF-STATE ADDRESS.

On October 9, 2006, the Division's Verified Response was filed of record. The verification attached to the response was duly sworn under oath by REPRESENTATIVE, on behalf of the Division.⁶ No response was received from the Protestant. On October 11, 2006, the record in this matter was closed and this case was submitted for decision.

FINDINGS OF FACT

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

1. On November 28, 2005, the Division notified the Protestant by letter that information made available to the Tax Commission indicated that the Protestant had sufficient income from Oklahoma sources to require the filing of an Oklahoma Income Tax Return for the 2003 tax year.⁷

2. On January 27, 2006, the Division sent the Protestant another letter requesting the Protestant to file an Oklahoma Income Tax Return for the 2003 tax year.⁸

3. On April 13, 2006, the Division issued a proposed assessment of income tax for the 2003 tax year,⁹ as follows, to-wit:

Tax Due:	\$4,079.00
Interest @ 15% from 04-15-04 to 06-12-06	1,320.93
Tax and Interest if Paid within 60 Days	5,399.93
30 Day Delinquency Penalty @ 10%	407.90
Tax, Interest & Penalty Due After 60 Days	\$5,807.83

4. On May 1, 2006, the Division received a timely filed letter of protest.¹⁰ The protest cites various sections of the United States Code and various Federal Court opinions as authority for proposition that the Protestant is not required to file an Oklahoma Income Tax Return for the 2003 tax year.

5. The records of the Tax Commission reflect that the Protestant was an Oklahoma resident during the 2003 tax year, with the address of PROTESTANT'S ADDRESS.¹¹

⁶ See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

⁷ See Attachments to Division's Exhibit B.

⁸ See Note 7.

⁹ Division's Exhibit A.

¹⁰ Division's Exhibit B.

¹¹ Division's Exhibit C.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.¹²
2. If a taxpayer fails to file any required report or return, the Tax Commission may use any information in its possession or obtainable by it to determine the correct amount of tax for the taxable period.¹³
3. The Oklahoma Income Tax Act¹⁴ imposes an income tax upon the Oklahoma taxable income of every resident or nonresident individual.¹⁵
4. Assessments shall be made in accordance with the *Uniform Tax Procedure Code*.¹⁶
5. The assessment of taxes or additional taxes shall be proposed in writing and shall be mailed to the taxpayer at the taxpayer's last-known address in accordance with statutory due process requirements.¹⁷
6. The Tax Commission shall also collect interest at the rate of one and one-quarter percent (1¼ %) per month from the date prescribed by state law.¹⁸
7. The Tax Commission shall also collect a penalty of ten percent (10%) on the total amount of tax due and delinquent if the taxpayer fails to remit the tax and interest within sixty (60) days of the mailing of a proposed assessment.¹⁹
8. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²⁰

¹² OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2006).

¹³ OKLA. STAT. ANN. tit. 68, § 221(A) (West Supp. 2006).

¹⁴ OKLA. STAT. ANN. tit. 68, § 2351 et seq. (West 2001).

¹⁵ OKLA. STAT. ANN. tit. 68, § 2355 (West Supp. 2006).

¹⁶ OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

¹⁷ OKLA. STAT. ANN. tit. 68, § 208 (West 2001).

¹⁸ OKLA. STAT. ANN. tit. 68, § 217(B) (West 2001).

¹⁹ OKLA. STAT. ANN. tit. 68, § 217(D) (West Supp. 2006).

²⁰ OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999), which states:

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon

9. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.²¹

10. In this matter the Protestant has failed to present any evidence or cite any authority that the Division's proposed income tax assessment for the 2003 tax year is incorrect, and in what respects.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case that the protest should be denied.

It is further ORDERED that the amount of income tax and penalty assessed for the 2003 tax year be fixed as the deficiency 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-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

... "preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

²¹ See *Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.