

JURISDICTION: OKLAHOMA TAX COMMISSION  
CITE: 2006-12-21-24 (NON-PRECEDENTIAL)  
ID: P-06-138-H  
DATE: DECEMBER 21, 2006  
DISPOSITION: DENIED  
TAX TYPE: INCOME  
APPEAL: NONE

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND and WIFE (“Protestants”) appear pro se.<sup>1</sup> The Income Tax Section of the Account Maintenance 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 23, 2006, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code<sup>2</sup> and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.<sup>3</sup> On August 24, 2006, a letter was mailed to the Protestants stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-06-138-H. The letter also advised the Protestants 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 September 7, 2006, the Notice of Prehearing Conference was mailed to the last known address of the Protestants, setting the prehearing conference for September 27, 2006, at 2:30 p.m.<sup>4</sup> The prehearing conference was held by telephone as scheduled on September 27, 2006, at 2:30 p.m. The Protestants failed to appear in person or by telephone. On September 28, 2006, the parties were mailed the Prehearing Conference Order, which advised that the Division’s Verified Response was due no later than thirty (30) days from the date of the order.

On October 13, 2006, the Division’s Verified Response was filed. The verification attached to the response was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Supervisor, Account Maintenance Division, Oklahoma Tax Commission.<sup>5</sup> No

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<sup>1</sup> “**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 (8<sup>th</sup> ed. 2004), available at <http://westlaw.com>. (March 16, 2006).

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

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

<sup>4</sup> OKLA. STAT. ANN. tit. 68, § 208 (West 2001). The notice was mailed to the Protestants at HOME ADDRESS.

<sup>5</sup> See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

response was received from the Protestants. On October 31, 2006, the record in this matter was closed and this case submitted for decision.

### FINDINGS OF FACT

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

1. The Protestants filed an Oklahoma Claim for Credit or Refund of Sales Tax (Form 538-S), with the Oklahoma Individual Income Tax Return for the 2005 tax year in the amount of \$160.00 (Line 30).<sup>6</sup>

2. On May 17, 2006, the Division sent the Protestants a letter advising that the \$160.00 sales tax credit claimed on the Oklahoma Individual Income Tax Return for the 2005 tax year was in error, because the gross income for the household located at HOME ADDRESS, exceeded \$50,000.00.<sup>7</sup> Also contained in the letter was the following proposed assessment,<sup>8</sup> as follows, to-wit:

Tax Due	\$160.00
Interest @ 15% from 04/17/06 to 05/26/06	2.56
Tax and Interest due within 30 days	\$162.56
Delinquent Penalty @ 5%	8.00
Tax, Penalty and Interest due after 30 days	\$170.56

3. On May 25, 2006, the Division received a timely letter of protest to the Division's proposed assessment on the basis that the income of the Protestants' three (3) children should not have been added to the Protestants' income.<sup>9</sup>

4. The Protestants failed to appear in person or by telephone at the prehearing conference scheduled for September 27, 2006, at 2:30 p.m. or respond to the Division's Verified Response.

### CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.<sup>10</sup>

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<sup>6</sup> Division's Exhibit A.

<sup>7</sup> Division's Exhibit B. According to the records of the Tax Commission the combined household income reported at HOME ADDRESS, for the 2005 tax year was \$57,409.00, consisting of the income of Protestants (\$32,344.00), Protestants' son (\$7,385.00), Protestants' daughter (\$5,556.00), and Protestants' other daughter (\$12,124.00).

<sup>8</sup> Division's Exhibit B.

<sup>9</sup> Division's Exhibit C.

2. The Sales Tax Relief Act<sup>11</sup> provides that for the calendar year 2005 and following, an individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made may file a claim for sales tax relief if the gross household income<sup>12</sup> for such year does not exceed the following amounts, to-wit:

For an individual claiming one or more allowable personal exemptions other than the allowable personal exemption for that individual or the spouse of that individual, an individual with a physical disability constituting a substantial handicap to employment, or an individual who is sixty-five (65) years of age or older at the close of the tax year, Fifty Thousand Dollars (\$50,000.00).<sup>13</sup>

3. According to the records of the Tax Commission the combined household income for the 2005 tax year was \$57,409.00.<sup>14</sup>

4. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.<sup>15</sup> A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.<sup>16</sup>

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<sup>10</sup> OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2006).

<sup>11</sup> OKLA. STAT. ANN. tit. 68, § 5010 et seq. (West Supp. 2006).

<sup>12</sup> OKLA. STAT. ANN. tit. 68, § 5012 (West 2001):

For purposes of this act "gross household income" means the gross amount of income of every type, regardless of the source, received by all persons occupying the same household, whether such income was taxable or nontaxable for federal or state income tax purposes, including pensions, annuities, federal social security, unemployment payments, veterans' disability compensation, public assistance payments, alimony, support money, workers' compensation, loss-of-time insurance payments, capital gains and any other type of income received; and excluding gifts.

<sup>13</sup> OKLA. STAT. ANN. tit. 68, § 5011(C)(2) (West Supp. 2006).

<sup>14</sup> See Division's Exhibit B.

<sup>15</sup> 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 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.

5. The Protestants have failed to present any proof or provide any authority that the proposed assessment of the Division 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 Division's proposed assessment of tax and penalty should be fixed as the Protestants' deficiency, 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.

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<sup>16</sup> See *Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.