

JURISDICTION: OKLAHOMA TAX COMMISSION  
CITE: 2007-02-27-37 (Non-Precedential)  
ID: P-06-145-K  
DATE: FEBRUARY 27, 2007  
DISPOSITION: DENIED  
TAX TYPE: INCOME  
APPEAL: NONE

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The correspondence to the disallowance of the sales tax relief credit and proposed income tax assessment was filed on behalf of Protestant, PROTESTANT, by HOMEOWNER. The Account Maintenance Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

### STATEMENT OF THE CASE

An office audit of Protestant's 2005 Oklahoma income tax return was conducted by the Division. As a result of the audit, the Division by letter dated May 23, 2006, disallowed the claim to a sales tax relief credit in the amount of \$40.00 and proposed an assessment of additional income tax, interest and penalty in the amount of \$42.72. A hand written correspondence on the reverse side of the proposed assessment was received June 23, 2006. An oral hearing was not requested.

The Division's file was referred to the Office of the Administrative Law Judges ("ALJ's Office") on August 23, 2006, for further proceedings consistent with the Uniform Tax Procedure Code<sup>1</sup>, the Sales Tax Relief Act<sup>2</sup> and the Rules of Practice and Procedure before the Oklahoma Tax Commission<sup>3</sup>. The protest was docketed as Case No. P-06-145-K and assigned to ALJ, Administrative Law Judge.<sup>4</sup>

A pre-hearing conference was scheduled for October 10, 2006, by Prehearing Conference Notice issued September 5, 2006.<sup>5</sup> Neither Protestant nor Protestant's representative appeared at the conference or responded to the Notice. By letter dated October 11, 2006, notice was given 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.<sup>6</sup>

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<sup>1</sup> 68 O.S. 2001, § 201 et seq.

<sup>2</sup> 68 O.S. 2001, § 5010 et seq., in particular § 5015.

<sup>3</sup> Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("OAC").

<sup>4</sup> OAC, 710:1-5-22(b).

<sup>5</sup> OAC, 710:1-5-28.

<sup>6</sup> OAC, 710:1-5-28(c).

The Division's Verified Response to Protest was filed November 3, 2006. Exhibits A and B were attached to the Response. Neither Protestant nor Protestant's representative filed a reply to the Verified Response. On November 21, 2006, the record was closed and the protest was submitted for decision.<sup>7</sup>

### FINDINGS OF FACT

Upon review of the file and records, including the Division's Verified Response to Protest and exhibits, the undersigned finds:

1. Protestant claimed a Sales Tax Relief Credit of \$40.00 on her 2005 Oklahoma Income Tax Return, Form 511. Exhibit A.

2. Protestant's address, as reported on the income tax return, was OKLAHOMA ADDRESS. Exhibit A.

3. Protestant was notified by letter dated May 23, 2006, that the credit was disallowed because the "gross household income" for the address reported on the return, as indicated by the Division's records, exceeded \$20,000.00. This letter also proposed the assessment of additional income tax against Protestant for the 2005 tax year in the amount of \$40.00, interest on the delinquent tax at fifteen percent (15%) from April 17, 2006 to May 31, 2006, in the amount of \$0.72, for a total tax and interest due within thirty (30) days of \$40.72, and a delinquent penalty of five percent (5%) in the amount of \$2.00, for a total of tax, interest and penalty due after thirty (30) days of \$42.72. Exhibit B.

4. On June 23, 2006, the credit disallowance and proposed assessment letter was received by the Division with the following hand written correspondence from HOMEOWNER on the reverse side:

[Protestant] did not live with us till August of 2005. I don't know how long a person has to live with you to consider them for the whole year. But this is all I know. I guess if you pull where address's of where she worked it would say her different addresses. If she still owes please let us know.

Exhibit B.

### CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Commission. 68 O.S. 2001, § 5015.<sup>8</sup>

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<sup>7</sup> See, Note 6 and OAC, 710:1-5-39(a).

<sup>8</sup> This section provides:

A. The Oklahoma Tax Commission shall, within a reasonable time after receipt of a claim, audit said claim for correctness and payment. If the Oklahoma Tax Commission determines the amount of a claim to be incorrect or excessive, or the supporting proof to be inadequate, or that the claim should be disallowed for any other reason, it shall notify

2. The eligibility requirements and claim procedures for obtaining the refundable income tax credit known as “sales tax relief” are governed by the Sales Tax Relief Act (“Act”).<sup>9</sup> The eligibility requirements for relief, as authorized by the Act for the 2005 tax year, are set forth in § 5011(C) which provides in pertinent part:

[A]n individual who is a resident of and is domiciled in this state during the entire calendar year \* \* \* may file a claim for sales tax relief if the gross household income for such year does not exceed the following amounts:

1. For an individual \* \* \* claiming no allowable personal exemption other than the allowable personal exemption for that individual or the spouse of that individual, Twenty Thousand Dollars (\$20,000.00) \* \* \*.

68 O.S. Supp. 2005, § 5011(C).<sup>10</sup> The term “Gross household income” is defined by the Act to mean “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.” 68 O.S. 2001, § 5012.

3. If eligible, the individual is entitled to claim an amount of Forty Dollars (\$40.00) for each “allowable personal exemption” as a “direct credit against income taxes owed by such claimant to the State of Oklahoma”<sup>11</sup> or as a refund of such amount, or any balance thereof “[i]n all

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the claimant by mail of the correct amount, if any, for which the claim can be allowed or the finding and reasons for disallowance of the claim. The claimant may, within thirty (30) days after the date the notice is mailed by the Oklahoma Tax Commission, submit further or additional proof in support of his claim or request an oral hearing before the Oklahoma Tax Commission.

B. Upon request for a hearing, the Oklahoma Tax Commission shall notify claimant in writing of the date, place and time of the hearing. The hearing date shall not be less than ten (10) days from the date of mailing the written hearing notice to the claimant. Upon examination of the claimant’s additional proof or after the oral hearing, the Oklahoma Tax Commission shall enter an order in accordance with its findings. The order of the Oklahoma Tax Commission shall be final.

<sup>9</sup> Title 68, §§ 5010 through 5016. Added by Laws 1990, c. 126, §§ 1-7, emerg. eff. April 25, 1990.

<sup>10</sup> Amended by Laws 2004, c. 322, § 15, eff. Dec. 1, 2004 which was proposed by State Question No. 713, Legislative Referendum No. 336 and approved by the people Nov. 2, 2004.

<sup>11</sup> 68 O.S. 2001, § 5013(A) which provides:

All claims for relief authorized by the Sales Tax Relief Act shall be received by and in the possession of the Oklahoma Tax Commission on or before June 30 of each year for sales taxes paid for the preceding calendar year. Claimants shall be allowed a direct credit against income taxes owed by such claimant to the State of Oklahoma for the amount of such claim, in which case such claim shall be filed with the claimant’s income tax return on or before April 15 following the close of the taxable year. In all cases where claimants have no income tax liability or where the sales tax relief authorized by

cases where claimants have no income tax liability or where the sales tax relief \* \* \* exceeds the claimant's income tax liability"<sup>12</sup>. 68 O.S. 2001, § 5011(D). The phrase "allowable personal exemption" is defined by the Act to mean "a personal exemption to which the taxpayer would be entitled pursuant to the provisions of the Oklahoma Income Tax Act"<sup>13</sup>, except for:

1. The exemptions such taxpayer would be entitled to pursuant to Section 2358 of this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the close of the tax year;
2. An exemption for a person convicted of a felony if during all or any part of the calendar year for which the claim is filed such person was an inmate in the custody of the Department of Corrections; or
3. An exemption for a person if during all or any part of the calendar year for which the claim is filed such person resided outside of this state."

*Id.* (Footnote original).

4. The facts in this matter are not in dispute. Protestant, a single individual, with Oklahoma adjusted gross income of \$1,403.00 for the 2005 tax year claimed a sales tax relief credit of \$40.00 for the only "allowable personal exemption" on her timely filed 2005 Oklahoma income tax return, Form 511<sup>14</sup>. Exhibit A. As determined by the Division, the 2005 tax year "total household income" for the address listed on Protestant's return was \$118,194.00, inclusive of Protestant's Oklahoma adjusted gross income. Exhibit B. Protestant resided at this address at least a portion of the 2005 calendar year. Exhibit B, Protestant's correspondence.

This case raises a question regarding the administration of the Act by the Oklahoma Tax Commission; i.e., whether an individual who dwelt for any portion of a calendar year in a residence whose gross household income exceeded \$20,000.00 is ineligible for sales tax relief. For the reasons stated *infra*, the undersigned recommends that the credit disallowance and proposed income tax assessment be sustained. First, the term "household" is ordinarily and commonly understood to mean "those who dwell under the same roof and compose a family; a social unit comprised of those living together in the same dwelling".<sup>15</sup> Webster's Ninth New Collegiate Dictionary 584 (1987). Second, a claimant under the Act is required to report any informational changes to the Tax

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this section exceeds the claimant's income tax liability, such claim, or any balance thereof, shall be paid out in the same manner and out of the same fund as refunds of income taxes are paid and so much of said fund as is necessary for such purposes is hereby appropriated. (Footnote omitted).

<sup>12</sup> See, Note 12.

<sup>13</sup> Title 68, § 2351 et seq.

<sup>14</sup> Indicates she was a resident and domiciliary of Oklahoma during the entire calendar year. Also, Protestant did not report any out-of-state income on this return.

<sup>15</sup> See, *Curtis v. Board of Educ. of Sayre Public Schools*, 1995 OK 119, 914 P.2d 656, which stands for the general axiom that in absence of a statutory or contrary definition, or a plainly contrary intention, terms in a statute are to be given the same meaning as attributed them by ordinary or common definitions. See also, *Cruse v. Board of County Com'rs of Atoka County*, 1995 OK 143, 910 P.2d 998.

Commission<sup>16</sup>, including changes of households; and is subject to a penalty equal to the amount of the relief claimed for knowingly and willfully filing a claim to which the claimant is not entitled or for knowingly and willfully furnishing any false or fraudulent information<sup>17</sup>. Third, sales tax relief under the Act is denied for any personal exemption attributable to “a person if during all or any part of the calendar year for which the claim is filed such person resided outside”<sup>18</sup> of Oklahoma or “a person convicted of a felony if during all or any part of the calendar year for which the claim is filed such person was an inmate in the custody of the Department of Corrections”<sup>19</sup>. (Emphasis added). See, *Phillips v. Duke Mfg., Inc.*, 1999 OK 25, 980 P.2d 137<sup>20</sup> and *Sharp v. Tulsa County Election Bd.*, 1994 OK 104, 890 P.2d 836<sup>21</sup>. Fourth, 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 Oil Co. v. Oklahoma Tax Commission*, 1977 OK 19, 563 P.2d 627.

5. Protestant's protest to the disallowance of the sales tax relief credit and proposed income tax assessment should be denied.

### DISPOSITION

Based on the above and foregoing, it is ORDERED that the protest of Protestant, PROTESTANT, 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.

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<sup>16</sup> 68 O.S. 2001, § 5014 which provides:

Every person filing a claim pursuant to the Sales Tax Relief Act shall furnish the Oklahoma Tax Commission information changes, if any, of households, amount of gross income of household, number of personal exemptions claimed, and such other information as the Oklahoma Tax Commission may require. Claims and supporting proof must be on forms prescribed by the Oklahoma Tax Commission. (Footnote omitted).

<sup>17</sup> 68 O.S. 2001, § 5016 which provides:

In addition to the penalties provided in the Uniform Tax Procedure Code, any person who knowingly and willfully files a claim for sales tax relief to which such person is not entitled or who knowingly and willfully furnishes any false or fraudulent information to the Tax Commission pursuant to the provisions of the Sales Tax Relief Act, shall be subject to a penalty equal to the amount of the relief claimed. In addition to such penalty, such person shall repay to the Tax Commission any amount of sales tax relief granted pursuant to such claim. (Footnotes omitted).

<sup>18</sup> 68 O.S. Supp. 2005, § 5011(D)(3).

<sup>19</sup> 68 O.S. Supp. 2005, § 5011(D)(2).

<sup>20</sup> This case stands for the proposition that other relevant portions of an act must be considered when construing a statute.

<sup>21</sup> Cited for the general submission that provisions of a statute, as far as practicable, should be construed to make them not only consistent and harmonious, but also to give them intelligent effect.

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.