JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-03-06-04 (NON-PRECEDENTIAL)
ID:	P-06-142-H
DATE:	MARCH 6, 2007
DISPOSITION:	DENIED
TAX TYPE:	INCOME
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Case Management 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[2] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.[3] On August 24, 2006, a letter was mailed to the Protestant stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-06-142-H. The letter also advised the Protestant 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 Protestant, setting the prehearing conference for September 27, 2006, at 9:30 a.m.[4] The prehearing conference was held by telephone as scheduled on September 27, 2006, at 9:30 a.m. On September 28, 2006, the parties were mailed the Prehearing Conference Order, which advised that a status report was to be filed on or before November 27, 2006.

On November 27, 2006, the Division filed the Status Report advising that correspondence requesting information from the Protestant had been mailed, but that the Protestant had failed to respond.[5] The Division requested that this matter be set for hearing.

---

[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 at PROTESTANT'S ADDRESS.

[5] Attached to the Status Report are copies of the correspondence the Division mailed to the Protestant dated September 29, 2006, and November 13, 2006, respectively.

On December 7, 2006, the parties were advised by letter that this matter had been set for hearing on January 10, 2007, at 9:30 a.m.

On January 3, 2007, the Division's Position Statement was filed. A response was not received from the Protestant. On January 10, 2007, at 9:30 a.m. the hearing in this matter was held as scheduled. It was noted for the record that the Protestant was not present, nor had he contacted the Division or this office concerning the hearing.

The Division called one witness, AUDITOR, Auditor, Account Maintenance Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division's Exhibits A through D were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on January 10, 2007.

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 Position Statement, the undersigned finds:

1. On February 2, 2006, an Oklahoma Claim for Credit or Refund of Sales Tax ("538-S") was received by the Division from the Protestant for the 2005 tax year in the amount of $40.00 (Line 15).[6]

2. On March 29, 2006, the Protestant was notified by letter that the 538-S for the 2005 tax year had been examined and adjusted resulting in a sales tax credit of zero.[7] The letter in pertinent part, states as follows:

> You have the right to file a verified protest. A protest must be received in writing *within sixty (60) days from the date of this letter.* [Emphasis added.]

3. On June 10, 2006, the Tax Commission received a letter of protest, with an envelope post-marked[8] May 31, 2006.[9] The basis of the protest is that the credit had been received by the Protestant in the past[10] and that he is currently engaged in a social security disability appeal.

4. On June 8, 2006, the Division responded to the letter of protest, by explaining to the Protestant why the Division had denied the sales tax credit in its letter of March 29, 2006. The

---

[6] Division's Exhibit A. The Protestant did not file an Individual Income Tax Return (Form 511) for the 2005 Tax Year. On the 538-S the Protestant listed his occupation as "mechanic," with an address of PROTESTANT'S ADDRESS.

[7] Division's Exhibit B.

[8] *See* OKLA. ADMIN. CODE § 710:1-3-30 (June 11, 2005).

[9] Division's Exhibit C.

[10] In past years, the Protestant had properly filled out the 538-S and received the credit because he meet the eligibility requirements for the years the credit was received. Testimony of AUDITOR.

Protestant entered zeros on Lines One (1) through Thirteen (13) reflecting zero "Total Household Income" on Line Fourteen (14) for the 2005 tax year.[11]

5. On September 29, 2006, a letter was mailed to the Protestant stating that the receipt of food stamps did not affect his qualification for the sale tax credit, but that his total household income must be reported.[12]

6. On November 13, 2006, another letter was mailed to the Protestant requesting information regarding his Total Household Income.[13] The Protestant did not respond to the letter.

7. On November 27, 2006, the Division filed the Status Report advising that the denial of the sale tax credit would be reconsidered if the Protestant would provide the requested information, but that the Protestant did not respond to its inquiries and the Division requested that this matter be set for hearing.[14]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding pursuant to Section 5015 of Title 68[15]:

> 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 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. [Emphasis added.]

---

[11] Division's Exhibit D. *See* Division's Exhibit B. The Division did not give the Protestant any explanation in its March 29, 2006, letter why the sales tax credit was denied. In the Division's letter of June 8, 2006, the Protestant was advised that household income includes but is not limited to public assistance payments, support money, workman's compensation, etc.

[12] Division's Exhibit E.

[13] Division's Exhibit F.

[14] Division's Exhibit G. The Protestant was copied on the Status Report.

[15] OKLA. STAT. ANN. tit. 68, § 5015 (West 2001).

The March 29, 2006, denial letter received by the Protestant incorrectly recites that the Protestant had *sixty (60) days after the date the notice is mailed by the Oklahoma Tax Commission*.[16] Section 5015(A) of Title 68 clearly states that the Protestant has *thirty (30) days from the date the notice is mailed*, which would make the protest received by the Division untimely as filed and subject to a Motion to Dismiss for lack of jurisdiction. However, Section 5015(A) also requires the Tax Commission to explain the reasons for disallowance of the claim. The denial letter of March 29, 2006, does not offer the Protestant any explanation as to why his claim was denied. It was not until the Division's letter of June 8, 2006, that the Protestant was given an explanation of why his claim was denied which does comply with the provisions of Section 5015. The Protestant's thirty (30) days did not begin to run until the June 8, 2006, letter. The Protestant's letter is timely filed under the specific facts and circumstances of this case.

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").[17]

3. The eligibility requirements for relief, as authorized by the Act for the 2005 tax year are as follows, to-wit:

> C. For calendar years … 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 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…, Twenty Thousand Dollars ($20,000.00); ….[18]

4. The term "Gross Household Income" is defined by the Act to mean "the gross amount of income of every type, regardless of 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."[19] In the Division's letter of September 29, 2006, Protestant's conversations stating that he lived with his aunt were confirmed and the Division

---

[16] *See* Division's Exhibit B. *See also* OKLA. STAT. ANN. tit, 68, § 221(C) (West Supp. 2007), which in pertinent part states:

> *Within sixty (60) days* after the mailing of the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a written protest under oath, signed by the taxpayer or the taxpayer's duly authorized agent, setting out therein:
>
> …

[Emphasis added.]

[17] OKLA. STAT. ANN. tit. 68, §§ 5010 through 5016 (West 2001).

[18] OKLA. STAT. ANN. tit. 68, § 5011(C)(1) (West Supp. 2007).

[19] OKLA. STAT. ANN. tit. 68, § 5012 (West 2001).

requested additional information in order to reconsider the Protestant's claim.[20] The Protestant did not respond to the request.

5. 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"[21] or as a refund of such amount, or any balance thereof "[i]n all cases where claimants have no income tax liability or where the sales tax relief … exceeds the claimant's income tax liability."[22]

6. 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,[23] 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.

7. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[24]

---

[20] *See* Division's Exhibit E.

[21] OKLA. STAT. ANN. tit. 68, § 5013(A) (West 2001):

> 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 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.

[22] OKLA. STAT. ANN. tit. 68, § 5011(D) (West 2001).

[23] OKLA. STAT. ANN. tit. 68, § 2351 et seq. (West 2001).

[24] 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.

8. The Protestant has failed to present any proof or provide any authority that the Division's denial of the credit 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.

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.

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.