

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2007-03-27-72 (NON-PRECEDENTIAL)
ID: P-06-219-H
DATE: MARCH 27, 2007
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled and numbered cause comes on for consideration pursuant to Section 221(D) of the *Uniform Tax Procedure Code*.¹ PROTESTANT (“Protestant”) appears pro se.² The Individual Audit Section of the Audit Division (“Division”), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

FINDINGS OF FACT

Upon review of the file and records, the undersigned finds:

1. Protestant is, and was at all times relevant herein, a resident of the State of Oklahoma.

2. On April 11, 2006, the Division issued a proposed assessment of income tax against the Protestant for the 1999 tax year based upon Revenue Agent Report (“RAR”) No. XXX dated August 16, 2004, received from the Internal Revenue Service (“IRS”) and made available to the Division under the authority of Section 6103(d) of the Internal Revenue Code,³ as follows, to-wit:

¹ OKLA. STAT. ANN. tit. 68, §221(D) (West Supp. 2007), in pertinent part states:

In the event an oral hearing is not requested, the Tax Commission shall proceed without further notice to examine into the merits of the protest and enter an order in accordance with its findings.

² “**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).

³ A copy of the proposed assessment is contained in the court file.

Year	<u>1999</u>
Corrected Taxable Income-Method I	\$27,977.00
Total Tax as Adjusted	1,558.00
Less: Tax Previously Reported or Assessed	0.00
Additional Tax Due	1,558.00
Interest @ 15% from 04/15/00 to 06/12/06	1,439.97
Tax and Interest if Paid Within 60 Days	\$ 2,997.97
30 Day Delinquency Penalty @ 10%	155.80
Tax, Interest, & Penalty if Paid After 60 Days	\$ 3,153.77

3. On April 11, 2006, the Division issued a proposed assessment of income tax against the Protestant for the 2000 tax year based upon Revenue Agent Report (“RAR”) No. XXX dated August 16, 2004, received from the Internal Revenue Service (“IRS”) and made available to the Division under the authority of Section 6103(d) of the Internal Revenue Code,⁴ as follows, to-wit:

Year	<u>2000</u>
Corrected Taxable Income-Method I	\$34,154.00
Total Tax as Adjusted	1,975.00
Less: Tax Previously Reported or Assessed	0.00
Additional Tax Due	1,975.00
Interest @ 15% from 04/15/01 to 06/12/06	1,529.14
Tax and Interest if Paid Within 60 Days	\$ 3,504.14
30 Day Delinquency Penalty @ 10%	197.50
Tax, Interest, & Penalty if Paid After 60 Days	\$ 3,701.64

4. On April 11, 2006, the Division issued a proposed assessment of income tax against the Protestant for the 2001 tax year based upon Revenue Agent Report (“RAR”) No. XXX dated August 16, 2004, received from the Internal Revenue Service (“IRS”) and made available to the Division under the authority of Section 6103(d) of the Internal Revenue Code,⁵ as follows, to-wit:

Year	<u>2001</u>
Corrected Taxable Income-Method I	\$32,371.00
Total Tax as Adjusted	1,855.00
Less: Tax Previously Reported or Assessed	0.00
Additional Tax Due	1,855.00
Interest @ 15% From 04/15/02 to 06/12/06	1,157.98
Tax and Interest if Paid Within 60 Days	\$ 3,012.98
30 Day Delinquency Penalty @ 10%	185.50
Tax, Interest, & Penalty if Paid After 60 Days	\$ 3,198.48

⁴ A copy of the proposed assessment is contained in the court file.

⁵ A copy of the proposed assessment is contained in the court file.

5. On May 31, 2006, the Tax Commission received a timely protest to the proposed assessments, the substance of which is that the Constitution and the 16th Amendment do not grant the states the power to tax, so a protest is not necessary.⁶

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.⁷

2. The Oklahoma Income Tax Act⁸ imposes an income tax upon the Oklahoma taxable income⁹ of ever resident or nonresident individual who earn income within the state.¹⁰

A “resident individual” is defined by statute to mean “a natural person who is domiciled in this state.”¹¹

3. It is a well-established principle of law that wages are income and are taxable under the income tax laws.¹²

⁶ However, in the letter the Protestant stated that he did not live in the State of Oklahoma during 1999, 2000, or 2001. In response the Division sent the Protestant a letter dated July 26, 2006, the pertinent part of which states:

You stated in your letter that you “did not live in Oklahoma during the periods stated.” If you were not required to file Oklahoma Income tax returns because you were a resident of another state, documentation supporting your claim must be submitted. Please refer to the enclosed list entitled “Proof of Residency” for examples of acceptable documentation. If you can provide documentation showing that you were a resident of another state during the tax years 1999-2001, we could cancel the assessments and a formal protest would not be necessary.

On August 16, 2006, the Division received a response from the Protestant, which in pertinent part states:

I note you seized upon only one of my arguments, that I did not live in Oklahoma during the time frames indicated.

It matters not whether I lived there or not (though I did not), as I would still not be subject to the State Income Tax laws for all the reasons presented in my previous letters.

⁷ OKLA. STAT. ANN. tit. 68, § 221(D) (West 2001).

⁸ OKLA. STAT. ANN. tit. 68, § 2351 et seq. (2001).

⁹ OKLA. STAT. ANN. tit. 68, § 2353(12) (West 2001).

¹⁰ OKLA. STAT. ANN. tit. 68, § 2353(14) (West 2001).

¹¹ OKLA. STAT. ANN. tit. 68, § 2353(4) (West 2001).

¹² See I.R.C. § 61.

4. The calculation of Oklahoma taxable income is based upon Federal Adjusted Gross Income.¹³

5. Assessments based upon information derived from the IRS shall be made in accordance with the Uniform Tax Procedure Code.¹⁴

6. The income information furnished by the IRS shall be that upon which any tax liability is computed. The Tax Commission shall be bound by the revisions made in such final determination by the IRS.¹⁵

7. If the deficiency was the result of negligence or intentional disregard, delinquency penalty at the rate of ten percent (10%) shall be added to assessed income tax, collected, and paid.¹⁶

8. Interest at the rate of fifteen percent (15%) per annum shall be collected along with the assessed income tax.¹⁷

9. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.¹⁸

10. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.¹⁹

¹³ OKLA. STAT. ANN. tit. 68, §§ 2353(10) and (11) (West 2001). See OKLA. STAT. ANN. tit. 68, § 2355(A) (West 2001).

¹⁴ OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001). See OKLA. ADMIN. CODE § 710:50-5-10(a).

¹⁵ OKLA. ADMIN. CODE § 710:50-3-8.

¹⁶ OKLA. STAT. ANN. tit. 68, 2375(D) (West 2001). See OKLA. STAT. ANN. tit. 68, § 217(D) (West 2001).

¹⁷ OKLA. STAT. ANN. tit. 68, § 217(B) (West 2001).

¹⁸ OKLA. ADMIN. CODE § 710:1-5-47, 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), 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.

¹⁹ See *Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

11. The Protestant has failed to produce any evidence and has cited no authority that the proposed assessments for the 1999, 2000, and 2001 tax years are incorrect, or that the sums are not due and owing.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest to the proposed income tax assessments for the 1999, 2000, and 2001 tax years should be denied.

It is further ORDERED that the total amount of income tax and penalty assessed for the 1999, 2000, and 2001 tax years should be fixed as the Protestant's deficiency and that those amounts should be determined as due and owing, including, interest, accrued and accruing.

ORDER DENYING MOTION FOR RECONSIDERATION

The motion to reconsider filed by PROTESTANT ("Protestant") in the above styled and numbered cause comes on for consideration. Having reviewed the motion, the undersigned finds that the *Findings, Conclusions and Recommendations* issued on January 19, 2007, address the legal and factual issues presented for decision and the same adequately and accurately explain the decision.

THEREFORE, IT IS ORDERED that the Protestant's motion to reconsider should be and the same is hereby 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.