JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2007-04-05-41 (NON-PRECEDENTIAL)
ID: P-06-206-H
DATE: APRIL 5, 2007
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this _____ day of March, 2007, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. PROTESTANT ("Protestant") appears pro se.[1] The Taxpayer Assistance Division ("Division"), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.\

PROCEDURAL HISTORY

On November 13, 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 November 17, 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-06-206-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* ("Rules"). On November 28, 2006, a letter was received from the Protestant acknowledging receipt of the November 17, 2007, letter and a copy of the Rules. On December 19, 2006, the Notice of Prehearing Conference was mailed to the last-known address of the Protestant.[4] On January 9, 2007, a Prehearing Conference Order was issued submitting this matter on briefs,[5] due on or before February 13, 2007, with reply briefs due on or before February 27, 2007.[6]

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[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. tit. 68, § 201 et seq. (West 2005).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] OKLA. STAT. tit. 68, § 208 (West 2005). The notice was mailed to the Protestant at LAST KNOWN ADDRESS.

[5] OKLA. ADMIN. CODE § 710:1-5-38 (June 25, 1999).

[6] The letter from the Protestant dated December 28, 2006 and received by this office on January 3, 2007, was considered as a "report in-lieu," which requested that this matter "not be set for oral hearing," because of the constraints on the Protestant's financial resources, medical condition, and her employment.

On February 13, 2007, the Brief of the Taxpayer Assistance Division was filed of record with a Certificate of Mailing reflecting that a copy of the Division's Brief had been mailed to the Protestant at her last known address. No further filings were received from the Protestant. On February 28, 2007, 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 Brief of the Division, the undersigned finds:

1. On or about June 14, 2006, the Protestant filed a Part-Year Resident Oklahoma Individual Income Tax Return (Form 511NR) for the 2005 tax year ("Return").[7] The Return reflects that the Protestant was a resident of the State of Oklahoma from June 15, 2005, to December 31, 2005. The Return as filed was incomplete beyond Lines 46 and 47, which reflected tax due in the amount of $519.00 and Oklahoma withholding of $72.00. The W-2s attached to the Return reflect that the Protestant's other state of residency during the 2005 tax year was the State of Florida.

2. On August 9, 2006, the Division issued an "Adjustment Letter"[8] by mail to the Protestant of the following adjustments to the Return:

		Reported	Adjusted
Line 36	Oklahoma Income Tax	910.00	877.00
Line 38	Non-Resident Base Tax	910.00	877.00
Line 40	Non-Resident Oklahoma Tax	519.00	503.00
Line 44	Balance	519.00	503.00
Line 51	Total Refundable Credits	0.00	72.00
Line 57	Income Tax Due	0.00	431.00
Line 61	Total Balance Due	0.00	431.00

3. On or about September 6, 2006, the Division received a timely filed letter of protest to the proposed adjustments to the Protestant's Return.[9] The basis of the protest was that the Division had utilized the wrong formula for determining a "Part-Year" Resident's income.[10] The Protestant also states that she is a "…born military, Federal Dependant and U.S.A. born citizen" and has "… never paid a State Tax in my 43 years of life."[11]

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[7] Division's Exhibit A. This exhibit consists of a copy of the Return, the Protestant's federal return (1040 EZ) for the 2005 tax year, a copy of a billing statement from the Internal Revenue Service reflecting a balance due for the 2005 tax year, and copies of the Protestant's W-2s for the 2005 tax year.

[8] Division's Exhibit B. The "Adjustment Letter" advised the Protestant that the adjustments were made to the Return due to "Math Errors."

[9] Division's Exhibit C.

[10] *See* Note 9.

[11] *See* Note 9.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[12]

2. The Oklahoma Income Tax Act ("Act")[13] imposes an income tax upon the Oklahoma taxable income[14] of every resident or nonresident individual who earn income within the state.[15]

3. It is a well-established principle of law that wages are income and are taxable under the income tax laws.[16]

4. A natural person who resides less than seven (7) months of the taxable year within this state is presumed to be a "part-year resident individual" for purposes of the Act.[17]

5. If a return is filed for a tax year, the Tax Commission shall examine it and make such audit or investigation, as it may deem necessary. If the Tax Commission shall determine that the tax disclosed by the return is less than the tax disclosed by its examination, it shall in writing propose to assess the taxes or additional taxes as the case may be.[18]

6. The formula utilized by the Division in calculating the "Oklahoma taxable income"[19] of the Protestant, a Part-Year Resident is correct and follows the provisions of the Act.[20] The Act does not contain an "exemption" for Part-Year Residents who are "… born military, Federal Dependant and U.S.A. born citizen."

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 assess income tax, collected, and paid.[21]

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[12] OKLA. STAT. tit. 68, § 221(D) (West 2005).

[13] OKLA. STAT. tit. 68, § 2351 et seq. (West 2005).

[14] OKLA. STAT. tit. 68, § 2353(12) (West 2005).

[15] OKLA. STAT. tit. 68, § 2353(14) (West 2005).

[16] *See* I.R.C. § 61.

[17] OKLA. STAT. tit. 68, § 2353(4) (West 2005).

[18] OKLA. STAT. tit. 68, § 221(A) (West 2005).

[19] OKLA. STAT. tit. 68, § 2353(12) (West 2005).

[20] *See* OKLA. STAT. tit. 68, § 2362 (West 2005). *See also Walters v. State of Oklahoma ex rel. Oklahoma Tax Commission*, 1996 OK CIV APP 154, 935 P.2d 398.

[21] OKLA. STAT. tit. 68, § 217(E) (West 2005).

8. Interest at the rate of fifteen percent (15%) per annum shall be collected along with the assessed income tax.[22]

9. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[23] A proposed assessment (adjustment) is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[24]

10. The Protestant has failed to produce any evidence and cited no authority that the Division's proposed adjustment of her Return for the 2005 tax year is incorrect, or that the sum is not due and owing.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the protest to the Division's adjustments to the Protestant's Return for the 2005 tax year should be denied.

It is further ORDERED that the total amount of income tax and penalty for the 2005 tax year be fixed as the Protestant's deficiency and that those amounts should be determined as 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.

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[22] OKLA. STAT. tit. 68, § 217(A) (West 2005).

[23] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> 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.

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