JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2007-05-17-32 (NON-PRECEDENTIAL)
ID: P-06-166-H
DATE: MAY 17, 2007
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Compliance Projects Section of the Audit Division ("Division"), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On September 12, 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 September 13, 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-06-166-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 October 2, 2006, the Notice of Prehearing Conference was mailed to the last known address of the Protestant, setting the prehearing conference for October 24, 2006, at 1:30 p.m.[4]

The prehearing conference was held as scheduled on October 24, 2006, at 1:30 p.m. The Division appeared by teleconference. The Protestant did not make an appearance at the prehearing conference. On October 25, 2006, the Prehearing Conference Order was issued advising that the Division was to file a verified response no later than thirty (30) days from the date of the order.

On November 27, 2006, the Division's Verified Response was filed with this office. However, the verification did not comply with the Rules.[5] The verification was signed by the

[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.

[4] OKLA. STAT. ANN. tit. 68, § 208 (West 2001). The notice was mailed to the Protestant at MARYLAND ADDRESS.

[5] *See* OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999), which in pertinent part states:

attorney for the Division. The Protestant did not file a response to the Division's Verified Response.

On March 5, 2007, the Amended Division's Verified Response to Protest was filed with this office. The verification attached to the response was duly sworn under oath, on behalf of the Division, by AUDITOR, Compliance Projects Section, Audit Division, Oklahoma Tax Commission.[6] The Protestant did file a response to the Division's Amended Verified Response. On March 6, 2007, the record in this matter was closed and this case submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, and the "Amended" Verified Response to Protest, the undersigned finds:

1. On February 11, 2003, COMPANY, LLC ("LLC") filed its final Oklahoma Income Return for the 2002 tax year (01/01/02-08/30/02).[7] LLC provided Schedule K-1's and Supplemental Revenue Schedules for each of the 495 nonresident partners.

2. The Protestant (SS# XXX) was listed as limited partner number 433C, with Oklahoma Gross Revenue of $37,255.00 for the 2002 tax year.

3. On February 13, 2006, the Division mailed a letter to the Protestant advising that information made available to the Tax Commission indicated that the Protestant had received sufficient income from Oklahoma sources to require the filing on an Oklahoma Income Tax Return.[8]

4. On April 14, 2006, the Division mailed another letter to the Protestant advising that the Division had not received her Oklahoma Individual Income Tax Return for the 2002 tax year.

5. On June 13, 2006, the Division issued a proposed income tax assessment against the Protestant for the 2002 tax year as follows, to-wit:

> "If a hearing has not been requested, then the Division will be directed by the Administrative Law Judge to file a response to the protest, *verified by the Division* and signed by the attorney representing the Division." [Emphasis added.]

[6] *See* OKLA. ADMIN. CODE § 710:1-5-28(c).

[7] The Division did not attach any exhibits to the Verified Response or Amended Verified Response. The Administrative Law Judge is taking judicial notice of the materials contained in the court file to complete the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). Included in the court file are copies of the State and Federal Partnership Income Tax Returns for the 2002 tax year, including the Schedule K-1 and Supplemental Schedule for the Protestant attached to the LLC's federal return.

[8] On the K-1, the Protestant's address was listed as MISSOURI ADDRESS.

Tax Due:	$2,608.00[9]
Interest @ 15% from 04/15/03 to 08/14/06:	1,304.36
Tax and Interest if Paid Within 60 Days:	$3,912.36
30 Day Delinquency Penalty @ 10%:	260.80
Tax, Interest & Penalty Due After 60 Days:	$4,173.16

6. On June 29, 2006, the Division received a timely filed letter of protest to the proposed assessment of income tax for the 2002 tax year.[10] The basis of the protest is that the Protestant is a resident of Maryland.

7. On July 15, 2006, the Division received a follow-up letter from the Protestant indicating that based upon the K-1 and Supplemental Schedule enclosed with the protest that the Division was letting her "off the hook."

8. On July 27, 2006, the Division sent the Protestant a letter responding to the copies of the K-1 and Supplemental Schedule enclosed with the protest. The Division advised the Protestant that the K-1 and Supplemental Schedule did not have a "Social Security Number or Figures, [and] the owner's name and number are different on the K-1s. The only thing these two K-1's have in common is the individual's name."[11]

9. On August 11, 2006, the Review Section of the Division sent the Protestant a letter advising that if additional information could not be obtained to resolve the protest, the file would be forwarded to the Administrative Law Judge's Office.

10. The Division did not receive any additional information from the Protestant.

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[9] *See* OKLA. STAT. ANN. tit. 68, § 2355(a)(8)(b) (West Supp. 2007). The Division calculated the tax on the Oklahoma Gross Revenues of $37,255.00 for the 2002 tax year multiplied by the seven percent (7%) tax rate provided by Section 2355.

[10] The address listed on the K-1 was the Protestant's broker, BROKER. The broker faxed the Protestant a copy of the proposed assessment on June 27, 2006. The Protestant's address is MARYLAND ADDRESS.

[11] The K-1 and Supplemental Schedule utilized by the Division was filed with the LLC's return for the 2002 tax year. The K-1 contains the Protestant's name and SS# XXX, the LLC's FEI #XXX, the Protestant's BROKER Account #XXX, and reflects the Protestant's address c/o BROKER, MISSOURI ADDRESS. The K-1 also contains an analysis of the Protestant's Capital Account. The Supplement Schedule contains a detailed analysis of Gross Revenue, Expenses, and Cost Depletion for the States of Oklahoma, Louisiana, and Texas.

The K-1 and Supplemental Schedule enclosed with the protest do not contain the Protestant's Social Security Number, BROKER Account Number and reflects the Protestant's address not in c/o BROKER, but that the K-1 was sent directly to the Protestant at MARYLAND ADDRESS. The K-1 also reflects the beginning balance of the Protestant's capital account as $92,205. The remainder of the K-1 contains zeros, as does the Supplemental Schedule.

CONCLUSIONS OF LAW

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

2. The Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to income.[13]

3. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[14]

4. A nonresident is required to file an Oklahoma Income Tax Return (Form 511NR) if $1,000.00 of gross receipts is from Oklahoma sources.[15]

5. If any taxpayer fails to make any report or return as required by any state tax law, the Tax Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period.[16]

6. 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.[17]

7. Interest at the rate of fifteen percent (15%) per annum shall be collected along with the assessed income tax.[18]

8. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[19] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[20]

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[12] OKLA. STAT. ANN. tit. 68, § 221(D) (West 2001).

[13] OKLA. ADMIN. CODE § 710:50-1-1.

[14] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2001).

[15] OKLA. ADMIN. CODE § 710:50-3-38(a) (June 25, 2000).

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

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

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

[19] 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

9. The Protestant has failed to produce any evidence and cited no authority that the Division's proposed income tax assessment for the 2002 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 proposed income tax assessment for the 2002 tax year should be denied.

It is further ORDERED that the total amount of income tax and penalty for the 2002 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.

> 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.

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