JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-06-19-04 (NON-PRECEDENTIAL)
ID:	P-06-225-K
DATE:	JUNE 19, 2007
DISPOSITION:	DENIED
TAX TYPE:	INCOME
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT appears pro se. The Audit Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY 1 and OTC ATTORNEY 2, Assistant General Counsels, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

As the result of an office audit of Protestant's 2002 Oklahoma income tax return and comparison with information submitted by the Internal Revenue Service, the Division by letter dated November 15, 2005, proposed an assessment of additional income tax, interest and penalty against Protestant. Upon receipt of additional information from Protestant, the Division amended the proposed assessment and by letter dated July 31, 2006, issued an amended proposed assessment of additional income tax, interest and penalty against Protestant for the 2002 tax year. Protestant timely protested the amended proposed assessment by letter dated August 20, 2006. Protestant did not request an oral hearing in the letter of protest.

On December 20, 2006, the Division referred its file to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings pursuant to the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission[2]. The case was docketed as Case No. P-06-225-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled for February 13, 2007, by *Prehearing Conference Notice* issued January 16, 2007.[4] Protestant neither responded to nor appeared at the pre-hearing conference. By letter dated February 14, 2007, the parties were notified 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.[5] *See*, 68 O.S. 2001, § 208.

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[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*")

[3] *OAC*, 710:1-5-22(b).

[4] *OAC*, 710:1-5-28.

[5] *OAC*, 710:1-5-28(c).

The *Division's Verified Response to Protest* was filed March 12, 2007. Attached to the *Response* were Exhibits A, B and C. Protestant did not file a reply to the *Response*. On March 30, 2007, the record was closed and the protest was submitted for decision.[6]

FINDINGS OF FACT

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

1. During the 2002 tax year, Protestant received income in the form of wages from working in the States of Oregon, Texas and Oklahoma.[7]

2. An office audit of Protestant's 2002 Oklahoma income tax return was performed by the Division upon receipt of information submitted by the Internal Revenue Service which showed Protestant's reported Oklahoma adjusted gross income did not match his reported Federal adjusted gross income.[8]

3. As a result of the audit, the Division by letter dated November 15, 2005, proposed the assessment of additional income tax, interest and penalty against Protestant for the 2002 tax year in the aggregate amount of $764.69. Exhibit A.

4. Upon receipt of information from Protestant showing he was a part-year resident of Oklahoma during the 2002 tax year, the Division changed Protestant's filing status from resident to part-year resident and amended the proposed assessment. *Protest of Assessment – Fact Sheet*.

5. Although the information submitted by Protestant reduced the amount of additional income tax proposed to be due under the original assessment, the Division's adjustment of Protestant's 2002 Oklahoma income tax return; as amended, reflected tax in addition to that reported by Protestant and by letter dated July 31, 2006, the Division issued an amended proposed assessment of income tax against Protestant for the 2002 tax year in the amount of $159.00, interest on the delinquent tax at fifteen percent (15%) from April 15, 2006 to July 31, 2006, in the amount of $76.04, for a total tax and interest due within thirty (30) days of $179.04[9], and a thirty (30) day delinquent penalty of ten percent (10%) in the amount of $15.90, for a total tax, interest and penalty due after sixty (60) days of $194.94. Exhibit B.

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[6] *OAC*, 710:1-5-39(a).

[7] Protestant's 2002 U.S. Individual Income Tax Return and W-2 Statements were included in the file submitted by the Division to the ALJ's Office. Official notice of the return and W-2 statements is taken. *OAC*, 710:1-5-36.

[8] *Protest of Assessment – Fact Sheet* submitted with the Division's file. Official notice of the fact sheet is taken. *OAC*, 710:1-5-36.

[9] A payment of $56.00 was applied to the 2002 tax assessment on or about May 11, 2006. Official notice of a letter from the Division to Protestant dated May 11, 2006, wherein notice is given that Protestant's 2005 income tax refund was being applied to the 2002 tax assessment, is taken. *OAC*, 710:1-5-36.

6. Protestant timely protested the amended proposed assessment by letter dated August 20, 2006, asserting that the income he earned prior to moving to Oklahoma should not be subject to Oklahoma income tax. Exhibit C.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that:

1. Jurisdiction of the parties and subject matter of this action is vested in the Tax Commission. 68 O.S. Supp. 2002, § 221(D).

2. The Oklahoma taxable income of a part-year resident individual is required to be calculated following the provisions of § 2358 of the Oklahoma Income Tax Act[10] as if all income were earned in Oklahoma, (emphasis added). 68 O.S. 2001, § 2362(A). The tax liability of a part-year resident individual to the State of Oklahoma shall be computed on the amount determined in § 2362(A) using Oklahoma income tax rates. 68 O.S. 2001, § 2362(B). The adjusted gross income of a part-year resident individual from Oklahoma sources shall be divided by the individual's adjusted gross income from all sources to arrive at an applicable percentage, 68 O.S. 2001, § 2362(D); which applicable percentage shall be multiplied by the amount of Oklahoma tax computed, (less all allowable credits – 68 O.S. 2001, § 2362(C)) to determine the amount of income tax payable to Oklahoma, 68 O.S. 2001, § 2362(E).

3. In ***Walters v. Oklahoma Tax Commission***, 1996 OK CIV APP 154, 935 P.2d 398, the Governor of Oklahoma and a nonresident challenged the constitutionality § 2362(A) through (E) which change the method of calculating state income tax for nonresidents and part-year residents by using out-of-state income to calculate tax rate for in-state income. The Court of Civil Appeals of Oklahoma rejected the challenge holding: "[u]se of out-of-state income to calculate a tax rate for in-state income in no way represents a tax on the out-of-state income, *citing Brady v. State*, 80 N.Y.2d 596, 592 N.Y.S.2d 955, 958, 607 N.E.2d 1060, 1063 (Ct.App.1992), *cert. denied*, 509 U.S. 905, 113 S.Ct. 2998, 125 L.Ed.2d 692 (1993); *cf., Maxwell v. Bugbee*, 250 U.S. 525, 539, 40 S.Ct. 2, 6, 63 L.Ed. 1124 (1919). *Id*. at 402.

4. Protestant's protest to the amended proposed assessment should be denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, 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.

OKLAHOMA TAX COMMISSION

[10] 68 O.S. 2001, § 2351 et seq.

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.