JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2007-06-19-05 (NON-PRECEDENTIAL)
ID: P-06-211-K
DATE: JUNE 19, 2007
DISPOSITION: DISMISSED
TAX TYPE: INCOME
APPEAL: NONE

RECOMMENDATION OF DISMISSAL

Protestant, PROTESTANT, is represented by CPA, CPA, ACCOUNTING FIRM. 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 a result of the review and audit of Protestant's 2004 amended Oklahoma income tax return, the Division on June 8, 2006 caused to be issued a letter of adjustment. By letter dated August 22, 2006, and marked received by the Division on October 26, 2006, Protestant protested the Division's adjustments to his 2004 amended income tax return.

On December 4, 2006, the Division referred its file to the Office of the Administrative Law Judges ("ALJ's Office) for further proceedings consistent with 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-06-211-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled for January 11, 2007, by *Prehearing Conference Notice* issued December 19, 2006.[4] The conference was held as scheduled. Pursuant to the conference, the parties were directed to file a status report on or before February 15, 2007. By *Status Report* filed February 15, 2007, the Division advised that it intended to file a motion to dismiss on the grounds and for the reason that Protestant's protest was untimely filed.

A *Motion to Dismiss* was filed by the Division on March 1, 2007. An *Order Setting Hearing on Motion* was issued March 2, 2007, with service issuing March 5, 2007, and scheduling the hearing on the *Motion to Dismiss* for March 27, 2007.

The *Motion to Dismiss* was heard on March 27, 2007, as scheduled. Neither Protestant nor Protestant's representative appeared at the scheduled hearing or responded to the notice thereof. The

---

[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.

Division called one (1) witness; AUDITOR, Auditor, Amended Section of the Division, through whom Exhibits A and B were identified, offered and admitted into evidence Upon conclusion of the Division's case, the record was closed and the case was submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the *Motion to Dismis*s and exhibits received into evidence, the undersigned finds:

1. That by letter dated June 8, 2006, the Division proposed certain line item adjustments to Protestant's 2004 amended Oklahoma income tax return. Exhibit A.

2. That the last paragraph of the letter provides:

> If you do not agree with the adjustment(s) made on your amended return, you must file a written protest within sixty (60) days from the date of this notice. If you do not timely file a protest, the adjustment(s) will become final (68 O.S., § 221.c.).

Exhibit A.

3. That the letter of adjustment was forwarded to Protestant's last known address as reflected by the files and records of the Division.

4. That a written protest to the adjustment letter was received by the Division on October 26, 2006. Exhibit B.

5. That the letter of protest is dated August 22, 2006. Exhibit B.

6. That the amount in controversy is $1,227.00, plus penalty and interest. Exhibit A.

CONCLUSIONS OF LAW

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

1. The Tax Commission is vested with jurisdiction of the parties and subject matter of this proceeding, including the dismissal thereof. 68 O.S. 2001, § 207 and *OAC*, 710:1-5-46(b).

2. Protestant did not file a timely written protest to the letter of adjustment. 68 O.S. Supp. 2002, § 221(C).

3. The proposed adjustments to Protestant's 2004 amended Oklahoma income tax return are final and absolute and the Tax Commission is without jurisdiction to consider the merits of the protest. 68 O.S. Supp. 2002, § 221(E). *See*, ***Matter of Phillips Petroleum Co***., 1982 OK 112, 652 P.2d 283.

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT, be dismissed. It is further ORDERED that the amount in controversy, inclusive of any penalty, and any accrued and accruing interest, be fixed as the deficiency due and owing.

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.