

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2007-09-13-12 / NON-PRECEDENTIAL
ID: P-07-026-H
DATE: SEPTEMBER 13, 2007
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND AND WIFE (“Protestants”) appear pro se.¹ The Individual Audit 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 February 15, 2007, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code² and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.³ On February 23, 2007, a letter was mailed to the Protestants stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-07-026-H. The letter also advised the Protestants 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*. On March 1, 2007, the Notice of Prehearing Conference was mailed to the last known address of the Protestants, setting the prehearing conference for March 26, 2007, at 1:30 p.m.⁴ The prehearing conference was conducted as scheduled, with the parties appearing via teleconference.

On March 28, 2007, the parties were advised by mail that this matter had been set for hearing on April 18, 2007, at 1:30 p.m., with position letters or memorandum briefs due on or before April 11, 2007. On April 2, 2007, a letter was received from the Protestants requesting a two (2) week extension of the hearing date and briefing due to scheduling conflicts. On April 3, 2007, there being no objection from the Division, the parties were advised by letter that a new hearing date had been set for May 8, 2007, at 9:30 a.m., with position letters or memorandum briefs due on or before May 1, 2007.

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 Protestants at PROTESTANT'S HOME ADDRESS.

On April 30, 2007, the Protestants filed their Memorandum Brief and on May 1, 2007, the Brief of the Audit Division was filed.

At the time of hearing, the undersigned Administrative Law Judge ruled on the following motions filed by the Protestants:

<u>File Date</u>	<u>Title of Motion/Pleading</u>
04/18/07	Motion to Suspend All Collection
04/18/07	Affidavit of Truth
04/24/07	Motion for Discovery ⁵
04/24/07	Motion to Claim and Exercise Constitutional Rights and Require the Presiding Judge to Rule Upon This Motion, and All Public Officers of This Court to Uphold Said Rights ⁶
05/07/07	Motion to Demand This Court Read All Motions Plaintiffs File With This Court, and Rule on Motions, Adhering to Constitutionally Compliant Law and Case Law, and in Particular, The Bill of Rights, In Ruling

On May 1, 2007, the Division responded that the exhibits attached to and citations of authority in the Division's Brief are responsive and to the extent the Brief does not respond to the Protestant's Motion for Discovery, the Division objected to the requests as irrelevant and frivolous.

After reviewing the pending motions, the undersigned Administrative Law Judge granted the Protestants' Motion to Suspend All Collection. As to the remaining motions, the undersigned ruled that to the extent that the motions were not "moot" under the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*,⁷ the remaining motions were denied pursuant to the provisions of Section 247 of Title 68 and Tax Commission Rule 710:50-3-21.⁸

⁵ The Motion was filed via fax, with the original being received and file-stamped on 04/26/07.

⁶ The Motion was filed via fax, with the original being received and file-stamped on 04/26/07.

⁷ See Note 3.

⁸ OKLA. STAT. ANN. tit. 68, § 247 (West 2001):

Any taxpayer who files a purported state tax return or report that does not contain sufficient information to determine the correctness of the reported tax liability and that, on its face, indicates a prima facie intent to delay or impede the administration or enforcement of any state tax law shall be subject to a penalty, in addition to any other penalty imposed by law, in the amount of Five Thousand Dollars (\$5,000.00). Said penalty shall be recoverable

A closed hearing⁹ was held as scheduled on May 8, 2007, at approximately 9:30 a.m. The Division called one witness, MANAGER, Revenue Unit Manager, Individual Section, Audit Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division's Exhibits 1 through 11, with subparts, were identified, offered, and admitted into evidence. The Protestants Exhibits A through Z, AA through ZZ, and AAA through HHH, were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on May 8, 2007.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the position letters, the undersigned finds:

1. The Protestants are and were at all times relevant herein, residents¹⁰ of the State of Oklahoma.¹¹

by the Tax Commission as a part of the tax and shall be apportioned as provided for the apportionment of the tax on which such penalty is collected.

This provision is intended to impose an additional penalty on those taxpayers who do not file required tax returns or reports in processible form, *make spurious constitutional claims on the face of the return* or report, refuse to complete the return or report, present information that is clearly inconsistent, or declare "gold standard" or "war tax" deductions or any other similar claim with the intent not to file required tax returns or reports in a processible form. (Emphasis added.)

See OKLA. ADMIN. CODE § 710:50-3-21:

(a) For the purposes of this Subchapter, a return shall be considered to be in "**not processible form**" if it does not contain sufficient information to properly determine the accuracy and correctness of any and all claims. This is intended to include all applicable schedules from Federal Income Tax Returns, or any other documentary evidence deemed necessary by the Tax Commission to properly administer or enforce any state tax law. *This may also include any statements or claims that the taxpayer is not subject to tax*, that Federal Reserve Notes do not carry the same value as dollars, assertions of 5th Amendment Rights, the substitution of the word "Object" or "Objection" for any number required on any income tax form, or any other similar claim or scheme. (Emphasis added.)

(b) It shall be the policy of the Tax Commission to not respond to telephone inquires or correspondence from a taxpayer which contains questions of a nature, or state a position, which, if included in, or on, an Income Tax Return, would subject the taxpayer to penalty imposed by Statute. [See: [68 O.S. §247](#)]

⁹ The Protestants invoked their right to a confidential hearing as provided by OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2007).

¹⁰ OKLA. STAT. ANN. tit. 68, § 2353(4) (West Supp. 2007):

For the purpose of and when used in [Section 2351](#) et seq. of this title, unless the context otherwise requires:

4. "Resident individual" means a natural person who is domiciled in this state, and any other natural person who spends in the aggregate more than seven (7) months of the taxable year

2. On February 28, 2007, the Division issued a proposed assessment of income tax against the Protestants for the 1996 tax year based upon an adjustment to the State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting “Federal Adjusted Gross Income” of zero, with a W-2 from HUSBAND’S employer reflecting state wages for the 1996 tax year (\$38,504.90) and state withholding (\$96.08)¹² as follows, to-wit:

<u>Year</u>	<u>1996</u>
Tax Due	\$1,596.00
Interest @ 15% from 04/15/97 to 04/30/07	2,405.16
Tax and Interest if Paid within 60 days	\$4,001.16
30 Day Delinquency Penalty @ 10%	159.60
Tax, Interest, & Penalty if Paid After 60 Days	\$4,160.76

3. On March 1, 2007, the Division issued a proposed assessment of income tax against the Protestants for the 1997 tax year based upon an adjustment to the “Amended” State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting “Federal Adjusted Gross Income” of zero, with a W-2 from HUSBAND’S employer reflecting state wages for the 1997 tax year (\$44,889.20) and state withholding (\$0.00)¹³ as follows, to-wit:

<u>Year</u>	<u>1997</u>
Tax Due	\$2,153.00
Interest @ 15% from 04/15/98 to 05/01/07	2,922.47
Tax and Interest if Paid within 60 days	\$5,075.47
30 Day Delinquency Penalty @ 10%	215.30
Tax, Interest, & Penalty if Paid After 60 Days	\$5,290.77

within this state shall be presumed to be a resident for purposes of [Section 2351](#) et seq. of this title in absence of proof to the contrary. 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 Oklahoma Income Tax Code, [Section 2351](#) et seq. of this title, in absence of proof to the contrary. A "nonresident individual" means an individual other than a resident individual or a part-year resident individual.

¹¹ OKLA. STAT. ANN. tit. 68, § 2353(14) (West Supp. 2007):

14. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision thereof; and

¹² Division’s Exhibits 1A through 1B. Also attached is a copy of the Protestants’ U.S. Individual Income Tax Return for the 1996 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, and an “Affidavit of Income Tax Non-liability.”

¹³ Division’s Exhibits 2A through 2B. Also attached is a copy of the Protestants’ U.S. Individual Income Tax Return for the 1997 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, and an “Affidavit of Income Tax Non-liability.”

4. On March 1, 2007, the Division issued a proposed assessment of income tax against the Protestants for the 1998 tax year based upon an adjustment to the “Amended” State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting “Federal Adjusted Gross Income” of zero, with a W-2 from HUSBAND’S employer reflecting state wages for the 1998 tax year (\$52,131.49) and state withholding (\$0.00)¹⁴ as follows, to-wit:

<u>Year</u>	<u>1998</u>
Tax Due	\$2,654.00
Interest @ 15% from 04/15/99 to 05/01/07	3,204.43
Tax and Interest if Paid within 60 days	\$5,858.43
30 Day Delinquency Penalty @ 10%	265.40
Tax, Interest, & Penalty if Paid After 60 Days	\$6,123.83

5. On March 1, 2007, the Division issued a proposed assessment of income tax against the Protestants for the 1999 tax year based upon an adjustment to the “Amended” State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting “Federal Adjusted Gross Income” of zero, with a W-2 from HUSBAND’S employer reflecting state wages for the 1999 tax year (\$51,731.77) and state withholding (\$0.00)¹⁵ as follows, to-wit:

<u>Year</u>	<u>1999</u>
Tax Due	\$2,559.00
Interest @ 15% from 04/15/00 to 05/01/07	2,704.83
Tax and Interest if Paid within 60 days	\$5,263.83
30 Day Delinquency Penalty @ 10%	255.90
Tax, Interest, & Penalty if Paid After 60 Days	\$5,519.73

6. On October 5, 2006, the Division issued an “amended” proposed assessment of income tax against the Protestants for the 2000 tax year based upon an adjustment to the State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting “Federal Adjusted Gross Income” of zero, with a W-2 from HUSBAND’S employer reflecting state wages for the 2000 tax year (\$38,378.05) and state withholding (\$0.00)¹⁶ as follows, to-wit:

¹⁴ Division’s Exhibits 3A through 3B. Also attached is a copy of the Protestants’ U.S. Individual Income Tax Return for the 1998 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, and an “Affidavit of Income Tax Non-liability.”

¹⁵ Division’s Exhibits 4A through 4B. Also attached is a copy of the Protestants’ U.S. Individual Income Tax Return for the 1999 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, and an “Affidavit of Income Tax Non-liability.”

¹⁶ Division’s Exhibits 5A through 5C. Also attached is a copy of the Protestants’ U.S. Individual Income Tax Return for the 2000 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, “Affidavits of Income Tax Non-liability,” and “Affidavit of Mailing.”

<u>Year</u>	<u>2000</u>
Tax Due	\$1,658.00

7. On February 28, 2007, the Division issued a proposed assessment of income tax against the Protestants for the 2001 tax year based upon an adjustment to the State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting “Federal Adjusted Gross Income” of zero, with a W-2 from HUSBAND’S employer reflecting state wages for the 2001 tax year (\$50,409.00) and state withholding (\$0.00)¹⁷ as follows, to-wit:

<u>Year</u>	<u>2001</u>
Tax Due	\$2,470.00
Interest @ 15% from 04/15/02 to 04/30/07	1,868.74
Tax and Interest if Paid within 60 days	\$4,338.74
30 Day Delinquency Penalty @ 10%	247.00
Tax, Interest, & Penalty if Paid After 60 Days	\$4,585.74

8. On February 22, 2007, the Division issued a proposed assessment of income tax against the Protestants for the 2002 tax year based upon an adjustment to the State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting “Federal Adjusted Gross Income” of zero, with a W-2 from HUSBAND’S employer reflecting state wages for the 2002 tax year (\$38,307.24) and state withholding (\$0.00)¹⁸ as follows, to-wit:

<u>Year</u>	<u>2002</u>
Tax Due	\$1,686.00

9. On February 28, 2007, the Division issued an adjustment of income tax against the Protestants for the 2003 tax year based upon an adjustment to the State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting “Federal Adjusted Gross Income” of zero, with a W-2 from HUSBAND’S employer reflecting state wages for the 2003 tax year (\$40,369.10) and state withholding (\$1,998.00)¹⁹ as follows, to-wit:

¹⁷ Division’s Exhibits 6A through 6B. Also attached is a copy of the Protestants’ U.S. Individual Income Tax Return for the 2001 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, “Affidavits of Income Tax Non-liability,” and “Affidavit of Mailing.”

¹⁸ Division’s Exhibits 7A through 7B. Also attached is a copy of the Protestants’ U.S. Individual Income Tax Return for the 2002 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, “Affidavits of Income Tax Non-liability,” and “Affidavit of Mailing.”

¹⁹ Division’s Exhibits 8A through 8B. Also attached is a copy of the Protestants’ U.S. Individual Income Tax Return for the 2003 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, “Affidavits of Income Tax Non-liability,” and “Affidavit of Mailing.”

<u>Year</u>	<u>2003</u>
Refund Due	\$167.00

10. On February 28, 2007, the Division issued a proposed assessment of income tax against the Protestants for the 2004 tax year based upon an adjustment to the State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting "Federal Adjusted Gross Income" of zero, with a W-2 from HUSBAND'S employer reflecting state wages for the 2004 tax year (\$46,603.80) and state withholding (\$1,978.06)²⁰ as follows, to-wit:

<u>Year</u>	<u>2004</u>
Tax Due	\$214.00
Interest @ 15% from 04/15/05 to 04/30/07	65.52
Tax and Interest if Paid within 60 days	\$279.52
30 Day Delinquency Penalty @ 10%	21.40
Tax, Interest, & Penalty if Paid After 60 Days	\$300.92

11. On February 28, 2007, the Division issued a proposed assessment of income tax against the Protestants for the 2005 tax year based upon an adjustment to the State of Oklahoma Resident Individual Income Tax Return (Form 511) filed by the Protestants, as married filing jointly, on April 15, 2006, reporting "Federal Adjusted Gross Income" of zero, with a W-2 from HUSBAND'S employer reflecting state wages for the 2005 tax year (\$40,714.73) and state withholding (\$1,482.00)²¹ as follows, to-wit:

<u>Year</u>	<u>2005</u>
Tax Due	\$318.00
Interest @ 15% from 04/15/06 to 04/30/07	96.00
Tax and Interest if Paid within 60 days	\$414.00
30 Day Delinquency Penalty @ 10%	32.00
Tax, Interest, & Penalty if Paid After 60 Days	\$446.00

12. On March 13, 2007, the Division received a timely protest to the proposed assessments on the basis that the proposed assessments were not lawful; therefore, no tax was due.²²

²⁰ Division's Exhibits 9A through 9B. Also attached is a copy of the Protestants' U.S. Individual Income Tax Return for the 2004 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, "Affidavits of Income Tax Non-liability," and "Affidavit of Mailing."

²¹ Division's Exhibits 10A through 10B. Also attached is a copy of the Protestants' U.S. Individual Income Tax Return for the 2005 tax year reflecting zero wages, a Substitute for W-2, Wage, and Tax Statement ... (Form 4852) reflecting zero wages, "Affidavits of Income Tax Non-liability," and "Affidavit of Mailing."

²² Division's Exhibit 11.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.²³

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.²⁴

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.²⁵

4. The Oklahoma Income Tax Act²⁶ imposes an income tax upon the Oklahoma taxable income²⁷ of every resident individual who earn income within the state.²⁸

5. A “resident individual” is defined by statute to mean “a natural person who is domiciled in this state.”²⁹

6. If any taxpayer³⁰ 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.³¹

7. A return shall be considered in “not processible form” if it does not contain sufficient information to properly determine the accuracy and correctness of any and all claims. This may also include any statements or claims that the taxpayer is not subject to tax, that Federal Reserve

²³ OKLA. STAT. ANN. tit. 68, § 221(D) (West 2001).

²⁴ OKLA. ADMIN. CODE § 710:50-1-1.

²⁵ OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2001).

²⁶ OKLA. STAT. ANN. tit. 68, § 2351 et seq. (West 2001).

²⁷ OKLA. STAT. ANN. tit. 68, § 2353(12) (West 2001).

²⁸ OKLA. STAT. ANN. tit. 68, § 2353(14) (West 2001).

See OKLA. ADMIN. CODE § 710:50-3-1:

All taxpayers must file Oklahoma Income Tax Returns. "Taxpayer" means any person subject to income tax imposed by Oklahoma Statutes, or whose income is in whole or in part, subject to income tax imposed by any provision of the Oklahoma Statutes.

²⁹ OKLA. STAT. ANN. tit. 68, § 2353(4) (West 2001).

³⁰ *See* OKLA. STAT. ANN. tit. 68, § 202(d) (West 2001).

³¹ OKLA. STAT. ANN. tit. 68, § 221(A) (West 2001).

Notes do not carry the same value as dollars, assertions of 5th Amendment Rights, the substitution of the word "Object" or "Objection" for any number required on any income tax form, or any other similar claim or scheme.³²

8. "Taxable income" means the "taxable income," "life insurance company taxable income," "mutual insurance company taxable income," "(regulated) investment company taxable income," "real estate investment trust taxable income," and "cooperatives' taxable income" and any other "taxable income" as defined in the Internal Revenue Code as applies to such taxpayer or any other income of such taxpayer including, but not limited to, lump sum distributions as defined by the Internal Revenue Code of 1986.³³

9. If the deficiency was the result of negligence or intentional disregard, delinquency penalty at the rate of ten percent (10%) shall be added to the assessed income tax, collected, and paid.³⁴

10. Interest at the rate of fifteen percent (15%) per annum shall be collected along with the assessed income tax.³⁵

11. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.³⁶

12. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.³⁷

³² OKLA. ADMIN. CODE § 710:50-3-21.

³³ OKLA. STAT. ANN. tit. 68, §§ 2353(10) and (11) (West 2001). See OKLA. STAT. ANN. tit. 68, § 2355(A) (West 2001). See also *Casper v. Commissioner of Internal Revenue*, 805 F.2d 902 (10th Cir. 1986).

³⁴ OKLA. STAT. ANN. tit. 68, 2375(D) (West 2001). See OKLA. STAT. ANN. tit. 68, § 217(D) (West 2001).

³⁵ OKLA. STAT. ANN. tit. 68, § 217(B) (West 2001).

³⁶ 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 the 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.

³⁷ See *Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

13. The Protestant has failed to produce any evidence and has cited no authority that the proposed assessments for the 1996 through 2005 tax years are incorrect, or that the sums are not due and owing. The Protestants' returns for the 1996 through 2005 tax years are not "processable" as filed, because their Federal adjusted gross income is reported as \$0.00, when the attached W-2 statements clearly reflects that HUSBAND received employee compensation.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protests to the proposed income tax assessments for the 1996 through 2005 tax years should be denied.

It is further ORDERED that the total amount of income tax and penalty assessed for the 1996 through 2005 tax years should be fixed as the Protestants' 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.