JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2007-11-06-03 / NON-PRECEDENTIAL**
ID: **P-07-103-K**
DATE: **NOVEMBER 6, 2007**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT, appear pro se. The Compliance Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

By letter dated April 23, 2007, the Division proposed the assessment of additional income tax, interest and penalty against Protestant for the 2003 tax year. Protestant timely protested the proposed assessment by correspondence received April 30, 2007.

On July 3, 2007, the Division referred its file in this matter 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-07-103-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled in this cause for August 16, 2007, by *Prehearing Conference Notice* issued July 17, 2007.[4] On July 18, 2007, Protestant contacted the ALJ's Office and requested that the conference be held by telephone. Protestant neither appeared at the pre-hearing conference nor responded to the notice thereof. Protestant did telephone the ALJ's Office in the afternoon of August 16, 2007. Because Protestant had requested an oral hearing in one of his earlier correspondences, the protest was scheduled for hearing for September 13, 2007, by *Notice of Hearing* issued August 17, 2007.[5]

The hearing was held as scheduled. Protestant neither appeared at the hearing nor filed a position letter or memorandum brief in conformity with the *Notice*.[6] The Division called one (1) witness: WITNESS who testified regarding the records of the Division and identified Division's

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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] 68 O.S. 2001, § 221(D). *See OAC*, 710:1-5-29 and 710:1-5-38.

[6] *OAC*, 710:1-5-29.

Exhibits A through C. Division's Exhibits A through C and ALJ's Exhibit 1 were admitted into evidence. Upon conclusion of the Division's presentation, the record was closed and the protest was submitted for decision.[7]

FINDINGS OF FACT

Upon review of the file and records, including the *Division's Position Letter* and the exhibits received into evidence, the undersigned finds:

1. On April 23, 2007, the Division proposed the assessment of additional income tax, interest and penalty against Protestant for the 2003 tax year in the aggregate amount of $2,895.53, consisting of tax in the amount of $1,835.00, and interest accrued through June 22, 2007 in the amount of $877.03, for a total tax and interest due within sixty (60) days of $2,712.03, and a thirty (30) day delinquency penalty @ ten percent (10%) in the amount of $183.50. Exhibit A.

2. The assessment is based on adjustments made by the Internal Revenue Service ("IRS") to Protestant's federal taxable income for the 2003 tax year. Division's Exhibit A[8].

3. The CP2000 report shows that for federal income tax purposes, Protestant failed to report an Oklahoma income tax refund of $365.00, a pension/annuity distribution in the amount of $26,052.00 and unemployment compensation of $3,154.00. Testimony of WITNESS.

4. Protestant timely protested the proposed assessment by correspondence received April 30, 2007. Division's Exhibit B.

5. In the correspondence, Protestant asserts that the omissions on his original 2003 return were the result of mistakes by his tax preparer which had issued a written guarantee to him against such errors. Division's Exhibit B.

6. On or about May 15, 2007, Protestant filed an amended 2003 income tax return which included the originally omitted income and, after corrections of mathematical errors, reported an identical amount of tax due as assessed. Division's Exhibit C.

7. By letter dated May 15, 2007, the Division notified Protestant that the 2003 amended return had been disallowed because it essentially matched the proposed assessment and requested that Protestant respond stating whether he still wanted to protest and the reason therefor. Division's Exhibit C.

8. Protestant responded by correspondence received May 22, 2007, stating he was protesting whether he owed any additional taxes since liability for the taxes, interest and penalty was assumed by his tax preparer. Division's Exhibit C.

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

[8] Report No. CP2000. Date of Notice to taxpayer January 3, 2005.

9. By letter dated May 7, 2007, Protestant requested an oral hearing before the Commission if his request for relief from the obligation of paying or owing the additional taxes was not granted. ALJ's Exhibit 1.

CONCLUSIONS OF LAW

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

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 2001, § 221(D).

2. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *OAC*, 710:1-5-47. *See*, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.

3. An income tax is imposed upon the "Oklahoma taxable income" of every resident individual. 68 O.S. 2001, § 2355(A).

4. The "Oklahoma taxable income" of any taxpayer is defined to mean "'taxable income' as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided." 68 O.S. 2001, § 2353(12).

5. Except in those circumstances where an IRS revision affects items or matters relating to allocation or apportionment, the Tax Commission is bound by the revisions made by the IRS to the amount of taxpayer's taxable income for any year under the Internal Revenue Code, as finally determined under applicable federal law. 68 O.S. 2001, § 2375(H)(1) and (4). *See OAC*, 710:50-3-8(d).

6. The information furnished by the IRS to the Tax Commission shall be that upon which taxpayer's tax liability shall be computed. *OAC*, 710:50-5-10(a).

7. Here, Protestant has neither asserted any cognizable factual errors nor presented any justiciable issues of law in respect to the proposed action of the Division. The guarantee of the tax preparer is irrelevant to our consideration of whether the Division's action is incorrect. Accordingly, Protestant's protest to the proposed assessment of additional Oklahoma income tax, interest and penalty for the 2003 tax year should be and the same is hereby 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, plus any additional 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.