

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 2008-04-15-03 / NON-PRECEDENTIAL  
**ID:** P-07-155-H  
**DATE:** APRIL 15, 2008  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. HUSBAND AND WIFE (“Protestants”) appear pro se.<sup>1</sup> The Account Maintenance Division (“Division”), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, Assistant General Counsel, and INTERN, Legal Intern, Office of General Counsel, Oklahoma Tax Commission.

### PROCEDURAL HISTORY

On November 19, 2007, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code<sup>2</sup> and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.<sup>3</sup> On November 26, 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-07-155-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 December 27, 2007, the Notice of Prehearing Conference (“PHC”) was mailed to the last-known address of the Protestants, setting the PHC for January 9, 2008, at 9:30 a.m.<sup>4</sup>

On January 9, 2008, at approximately 9:30 a.m. the PHC was held as scheduled. The Protestants did not appear at the PHC. On January 10, 2008, the PHC Order was mailed to the parties advising that the record in this matter would be closed and the case submitted for decision on the merits upon receipt from the Division of a verified response. The verified response was due no later than thirty (30) days from the date of the order.

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<sup>1</sup> “**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 (8<sup>th</sup> ed. 2004), available at <http://westlaw.com>. (March 16, 2006).

<sup>2</sup> OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

<sup>3</sup> OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

<sup>4</sup> OKLA. STAT. ANN. tit. 68, § 208 (West 2001). The notice was mailed to the Protestants at ARIZONA ADDRESS.

On January 10, 2008, the introductory letter dated November 26, 2007, and Notice of PHC dated December 27, 2007, were returned by the U.S. Postal Service as “Return to Sender, Not Deliverable as Addressed, Unable to Forward.”

On February 7, 2008, the Division’s Verified Response was filed, with Exhibits A through D attached thereto. On February 14, 2008, an Addendum to Division’s Verified Response to Protest (“Addendum”) was faxed to this office. The Addendum consisted of the verification by the Division, which had been omitted from the February 7<sup>th</sup> filing.<sup>5</sup>

The verification to the response was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Supervisor, Case Management Section of Account Maintenance Division, Oklahoma Tax Commission.<sup>6</sup>

The undersigned requested a complete copy of the Division’s file on this matter, as well as copies of any comments of the Division’s “Comments Database.” On February 21<sup>st</sup> and 28<sup>th</sup>, respectively, the Division supplied the requested information, but according to the records of the Tax Commission, the last-known address of the Protestants is ARIZONA ADDRESS.

On February 28, 2008, the record in this matter was closed and the case was submitted for decision.

### FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the Division’s Verified Response, the undersigned finds:

1. On March 28, 2006, the Tax Commission received the Protestants’ State of Oklahoma Income Tax Return (“2005 Return”), Form 511NR, for the 2005 Tax Year.<sup>7</sup>

2. By letter dated November 16, 2006, the Tax Commission requested Protestants to provide a complete copy of their 2005 Federal Return, including all schedules, copies of all income tax returns filed in states other than the State of Oklahoma.<sup>8</sup> No response was received from Protestants.

3. On December 8, 2006, the Taxpayer Assistance Division of the Tax Commission issued a proposed income tax assessment<sup>9</sup> against the Protestants for the 2005 tax year, as follows, to-wit:

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<sup>5</sup> On February 19, 2008, the original “verification” was received for filing.

<sup>6</sup> See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

<sup>7</sup> Division’s Exhibit D. The address on all the returns is ARIZONA ADDRESS.

<sup>8</sup> Division’s Exhibit C.

<sup>9</sup> Division’s Exhibit A.

		<u>Reported</u>	<u>Adjusted</u>
Line 41	Tax Paid Another State	419.00	0.00
Line 44	Balance	0.00	153.00
Line 57	Income Tax Due	0.00	153.00
Line 61	Total Balance Due	0.00	153.00

4. The Tax Commission received a protest letter to the proposed assessment for the 2005 tax year dated January 3, 2007. The Protestants claim a credit for taxes paid to the States of Arizona and California.<sup>10</sup> Attached to the protest are copies of a Tax Commission Billing Statement dated December 11, 2006,<sup>11</sup> Protestants' 2005 Federal Return (with schedules), 2005 Part-Year Resident Arizona Return, and 2005 Part-Year Resident California Return.<sup>12</sup>

5. On September 11, 2007, the Division mailed a response to the protest of January 3, 2007. The Division advised Protestants the credit claimed on the 2005 return was disallowed because Protestants did not pay tax on their Oklahoma income to the States of Arizona and California. The Protestants were further advised that an Auditor from the Division had spoken to their tax preparer, who acknowledged that the credit was claimed in error.<sup>13</sup>

6. The Division did not receive a withdrawal of the pending protest.

### CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.<sup>14</sup>

2. The Oklahoma Income Tax Act ("Act")<sup>15</sup> imposes an income tax upon the Oklahoma taxable income of every resident or non-resident individual who earns income within the state.<sup>16</sup>

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<sup>10</sup> Division's Exhibit E. The protest does not reflect the date the Tax Commission received the letter, but has date-stamps from the Collections Division (February 9, 2007) and the Taxpayer Assistance Division (February 12, 2007). From a review of the file, it appears that the protest letter was received within the sixty (60) day protest period, which the Division does not dispute.

<sup>11</sup> Division's Exhibit B. The Tax Commission Billing Statement was mailed to Protestants three (3) days after the proposed assessment was issued.

<sup>12</sup> Division's Exhibit D.

<sup>13</sup> The court file contains an audit packet, which was forwarded by the Division as part of the protest file on this matter. 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).

<sup>14</sup> OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2008).

<sup>15</sup> OKLA. STAT. ANN. tit. 68, § 2351 et seq. (West 2001).

<sup>16</sup> OKLA. STAT. ANN. tit. 68, § 2353(12) (West 2001), which states:

"Oklahoma taxable income" means "taxable income" as reported (or would have been reported by the taxpayer had a return been filed) to the federal government, and in the event

3. The Act allows a credit against income tax for tax paid to another state. This credit is available if another state taxes the Oklahoma income.<sup>17</sup>

4. The Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement, and collection taxes and other levies enacted by the Oklahoma Legislature with respect to income.<sup>18</sup>

5. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be binding on the persons they affect and have the force of law.<sup>19</sup>

6. If any tax due under any state tax law is not paid within thirty (30) days after such tax becomes delinquent, a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid.<sup>20</sup>

7. Interest at the rate of fifteen percent (15%) per annum shall be collected along with the assessed income tax.<sup>21</sup>

8. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.<sup>22</sup> A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.<sup>23</sup>

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of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;

<sup>17</sup> OKLA. STAT. ANN. tit. 68, § 2357(B)(1) (West 2001). See OKLA. ADMIN. CODE § 710:50-15-72 (June 25, 2004).

<sup>18</sup> OKLA. ADMIN. CODE § 710:50-1-1.

<sup>19</sup> OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2001).

<sup>20</sup> OKLA. STAT. ANN. tit. 68, § 217(D) (West 2001).

<sup>21</sup> OKLA. STAT. ANN. tit. 68, § 217(B) (West 2001).

<sup>22</sup> 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.

<sup>23</sup> See *Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

The Protestants filed their 2005 Return as Part-Year Residents. Attached to the Protestants' 2005 Return is a copy of a W-2, Oklahoma income (\$4,513.96), with no Oklahoma income tax withheld.

A review of the Protestants' 2005 Federal Return, 2005 Arizona Part-Year Resident Return, and 2005 California Part-Year Return reveals that the Protestants did not pay income tax on the Oklahoma income to the States of Arizona and California.

The Protestants have failed to produce any evidence and have cited no authority that the Division's proposed income tax assessment for the 2005 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 proposed income tax assessment against the Protestants for the 2005 tax year should be denied.

It is further ORDERED that the total amount of income tax and penalty assessed for the 2005 tax year 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.