JURISDICTION:	OKLAHOMA TAX COMMISSION DECISION
CITE:	2008-09-30-03 / NON-PRECEDENTIAL
ID:	P-07-065-K
DATE:	SEPTEMBER 30, 2008
DISPOSITION:	SUSTAINED
TAX TYPE:	ESTATE
APPEAL:	NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Estate of DECEDENT (hereinafter "Estate") is represented by ATTORNEY, Attorney at Law, **LAW FIRM**. 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

On March 10, 2006, the personal representative of the Estate caused to be filed an Oklahoma Estate Tax Return and remitted therewith the sum of $10,281.00, the tax reported due. On June 1, 2006, the Estate filed an amended return and remitted therewith the sum of $1,601.00, the additional tax reported due.

On July 21, 2006, the Division issued a *Notice* and *Order Assessing Tax* against the Estate which *Order* assessed interest only in the amount of $558.00. The assessed interest was paid by the Estate on or about July 31, 2006. On September 20, 2006, an *Order Releasing Taxable Estate* was issued by the Commission.

On November 16, 2006, the Estate filed a second amended return and remitted therewith the sum of $13,125.00, the additional tax reported due. On January 9, 2007, the Division issued a *Notice* and *Supplemental Order Assessing Tax* against the Estate which *Order* proposed an estate tax refund of $13,125.00. By letters dated February 27, 2007 and March 1, 2007, the Estate protested the Division's January 9, 2007 *Supplemental Order Assessing Tax*.

On April 24, 2007, 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-07-065-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled for June 11, 2007, by *Prehearing Conference Notice* issued on May 11, 2007.[4] The conference was held as scheduled. Pursuant to 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.

conference, a *Scheduling Order* was issued setting forth the procedure by which the protest would be submitted for decision.[5]

A *Joint Stipulation of Facts* was filed August 20, 2007. The *Protestant's Brief in Chief* was filed October 29, 2007. The *Response to Protestant's Brief in Chief* was filed November 27, 2007. On December 7, 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 *Joint Stipulation of Facts*, Exhibits A through D attached thereto, Protestant's Exhibits 1 through 6 attached to *Protestant's Brief in Chief* and the pleadings of the parties, the undersigned finds:

The parties stipulate to the following:

1. On March 10, 2006 the Estate filed it's Form 454, Oklahoma Estate Tax Return and paid $10,281.00. Exhibit A.

2. The March 10, 2006, Form 454 reported a real estate value of $37,164.00. Exhibit A.

3. The real estate value of $37,164.00 was reported by the Estate based on the valuation taxpayer received from the COUNTY, Oklahoma Assessor. Protestant's Exhibit 2.

4. On or about June 1, 2006 the Estate filed it's Amended Form 454, Oklahoma Estate Tax Return and paid $1,601.00. Exhibit B.

5. On September 20, 2006 the Commission issued it's Order Releasing Taxable Estate. Exhibit C.

6. On November 16, 2006 the Estate filed it's Second Amended Form 454, Oklahoma Estate Tax Return and paid $13,125.00. Exhibit D.

7. The Second Amended Form 454 was filed by the Estate, upon discovering an error in the valuation reported for the real estate, to correct the erroneous valuation reported in the original Form 454 from the amount of $37,164.00 to the correct value of $160,000.00.

8. On January 9, 2007 the Division issued an Assessment Order showing that a refund was due in the amount of $13,125.00, from which the Estate filed a timely protest. Protestant's Exhibit 6.

9. The Second Amended Form 454 contains the correct calculations of tax due.

10. Should this Court find for the Estate the amount due is $13,125.00.

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[5] *OAC*, 710:1-5-28(b) and 710:1-5-38.

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

11. Should this Court find for the Division, there is a refund to be paid in the amount of $13,125.00.

Additional findings:

1. On July 21, 2006, the Division upon audit of the original and amended returns issued a *Notice* and *Order Assessing Tax* against the Estate which *Order* assessed interest only in the amount of $558.00, which interest accrued from the due date to the filing date of the original return and from the filing date of the original return to the filing date of the amended return. Protestant's Exhibit 4.

2. The assessed interest was paid by the Estate on or about July 31, 2006. Protestant's Exhibit 6.

3. The January 9, 2007 *Notice* and *Supplemental Order Assessing Tax* proposes a refund of the $13,125.00 remitted with the second amended return because the Division is of the opinion that it is without jurisdiction to accept the payment since the Estate did not file an objection to the July 21, 2006 *Notice* and *Order Assessing Tax* within sixty (60) days of the mailing date of such *Notice* and *Order*. Protestant's Exhibit 6.

4. Protestant's letters of protest to the January 9, 2007 *Notice* and *Supplemental Order Assessing Tax* are dated February 27, 2007 and March 1, 2007.

ISSUE AND CONTENTIONS

The parties stipulate that: "[t]he sole issue to be tried is whether the Commission may accept payment of additional taxes precipitated by the initial filing of estate tax returns containing erroneous valuations." The restated issue is whether the Division is precluded from accepting for filing the Estate's second amended return.

The Estate contends that the second amended return should be accepted as filed. In support of this contention, the Estate argues that the value utilized for the real estate in the original and first amended returns is clearly erroneous and therefore, the portion of the July 21, 2006 *Order Assessing Tax* using this value is not final and absolute.

In its *Response*, the Division writes:

> This matter is in the manner of a request for adjustment under 68 O.S. Supp. 2007, § 815(B) of the estate tax. After review, it is accepted that the contentions of the protestant are true and correct. It is therefore respectfully suggested that a finding be made that an error on the assessment order of January 9, 2007 with relationship to the valuation of real property of the estate was clearly erroneous and that an order issue accepting the second amended return (Exhibit "D") as the final return and therefore accepting the amount tendered by the estate

($13,125.00) as the total due under the second amended return. No refund is due.

CONCLUSIONS OF LAW

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

1. The Tax Commission is vested with jurisdiction of the parties and subject matter of this proceeding. 68 O.S. Supp. 2004, § 815(B).

2. Section 815 of the Oklahoma Estate Tax Act ("Act")[7] provides for the filing of estate tax returns, the audit of such returns by the Tax Commission and the procedure for objecting to an order assessing tax, wherein it provides in pertinent part:

> A. 1. The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Oklahoma Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate. * * *
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> B. Upon receipt of such return, the Tax Commission may, for the purpose of determining the value of the estate or any transfer, audit the books of account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and by order assess, the tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and such person's attorney of record of such assessment by furnishing a detailed statement of the values of the estate or transfers, as fixed by the Tax Commission, and the amount of tax assessed. Such notice may be delivered in person or may be by mail addressed to such administrator, executor, trustee, transferee and such person's attorney of record at the last-known post office addresses, with the postage thereon prepaid, and upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisement made by the Tax Commission, such person shall, within sixty (60) days from the date of mailing of such notice, file with the Tax Commission an objection, in writing, specifically setting forth the grounds of the objections, and thereupon the Tax Commission may grant a hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may

[7] 68 O.S. 2001, § 801 et seq., as amended.

> require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of the objection, and thereupon the Tax Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.
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> An administrator, executor, trustee or any interested party who fails to file an objection within the sixty-day time period prescribed by this section may, within one (1) year from the date of mailing of the notice, request the Tax Commission to adjust or abate the assessment for reasons other than an error of omission or inclusion of property on return, if the administrator, executor, trustee or any interested party can demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous. If the Tax Commission determines that the proper showing has been made, the assessment or portion thereof determined to be clearly erroneous shall be deemed not to have become final and absolute. No hearing to adjust or abate a clearly erroneous assessment may be granted after the denial by the Tax Commission of such a request. An order of the Tax Commission denying a request of an administrator, executor, trustee or any interested party to adjust or abate an assessment alleged to be clearly erroneous is not an appealable order under Section 225 of this title. No proceeding instituted by the Tax Commission to collect a tax liability may be stayed because of a request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

3. Based on the facts presented, the undersigned finds that under two (2) alternative theories the Division is not statutorily precluded from accepting for filing the second amended return of the Estate. First, the second amended return was filed within sixty (60) days from the mailing of the *Order Releasing Taxable Estate* and therefore represents a timely objection to the finding that no additional tax was due from the Estate. Second, since the second amended return does not deal with the subject of or attempt to circumvent the result of the July 21, 2006 *Order Assessing Tax*, the return reopened the Estate for further audit and scrutiny by the Division under § 815(B).

4. Whether the Division accepts the valuation of the real property as stated on the second amended return and the amount of tax remitted with the return is not the subject of this proceeding. The Division may accept or reject such valuation and may audit and appraise such property. 68 O.S. Supp. 2004, § 815(B). However, if such valuation is accepted or any other valuation over and above that stated for the property on the original and first amended returns, interest shall be due on the delinquent tax.

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of the Estate of DECEDENT be sustained.

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.