JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **2009-04-23-03 / NON-PRECEDENTIAL**
ID: **P-08-128-K**
DATE: **APRIL 23, 2009**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT, appear pro se. The Account Maintenance Division of the Oklahoma 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 letters dated July 14, 2008, the Division notified Protestant of proposed adjustments to his Oklahoma income tax returns for tax years 2006 and 2007. Protestant timely protested the proposed adjustments by letter dated July 21, 2008. An oral hearing was not requested.

On November 14, 2008, the Division referred its file in this matter to the Office of the Administrative Law Judges 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-08-128-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled in this cause for January 12, 2009, by *Prehearing Conference Notice* issued December 22, 2008.[4] Protestant neither appeared at the pre-hearing conference nor responded to the notice thereof. By letter issued January 13, 2009, Protestant was notified that the protest to the Division's adjustments would be submitted for decision upon the filing of a verified response to protest by the Division.[5]

On February 23, 2009, the *Division's Verified Response to Protest* was filed. Attached to the *Verified Response* were Exhibits A through F. Protestant did not file a reply to the *Verified Response*. On March 11, 2009, the record in this matter was closed and the protest was submitted for decision.[6]

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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] *OAC*, 710:1-5-28(c).

[6] *Id*. See, 68 O.S. Supp. 2002, § 221(D).

FINDINGS OF FACT

Upon review of the file and records, including the *Verified Response* and the exhibits attached thereto, the undersigned finds:

1. Protestant was a resident of the Oklahoma during tax years 2006 and 2007 as evidenced by his filings of State of Oklahoma Income Tax Returns, Forms 511[7] and the W-2s attached to said returns. Exhibits B and D.

2. On the 2006 and 2007 income tax returns, Protestant's federal adjusted gross income consisted entirely of wages or salary which Protestant subtracted as out-of-state income resulting in Oklahoma adjusted gross income of zero and refund claims of the entire amount of Oklahoma withheld income taxes. Exhibits B and D.

3. The Division denied the subtraction of Protestant's wages as out-of-state income and adjusted the income tax due for tax years 2006 and 2007 from zero as reported by Protestant to $1,256.00 and $1,153.00; respectively, thus resulting in true income tax refunds of $41.00 for the 2006 tax year[8] and $34.00 for the 2007 tax year. Exhibits A and C.

4. By letter dated July 21, 2008, Protestant filed a timely written protest to the proposed adjustment letters, asserting that his records indicate he has paid taxes in each year and does not owe any state taxes. Exhibit E.

5. By letter dated August 8, 2008, the Division responded to the protest. Exhibit F.

6. In the *Verified Response*, the Division states that Protestant did not respond to this letter. *See*, page 3, ¶ 11, Factual Basis for Assessment, *Verified Response*.

7. The amount in controversy is $1,222.00, plus any accrued and any interest.

CONCLUSIONS OF LAW

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

1. Jurisdiction of the parties and subject matter of this action is vested in the Oklahoma Tax Commission. 68 O.S. Supp. 2002, § 221(D).

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[7] State of Oklahoma Income Tax Return, Form 511 is for use by residents only.

[8] Prior to making the adjustment, the Division by warrant # 293191 paid the refund amount claim of $1,297.00 to Protestant. The Division's adjustment letters seek repayment of $1,222.00, the amount refunded to Protestant less the true refund amount of $41.00 for 2006, and $34.00 for 2007 which was applied to the amount owed for tax year 2006. *See*, Exhibit A, C and F.

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

3. The provisions of § 2358 of the Oklahoma Income Tax Act[9]; in general, specify the adjustments to the taxable income of any taxpayer to arrive at the Oklahoma adjusted gross income for individual taxpayers. 68 O.S. 2001, § 2358(A). None of the adjustments permit the deduction or subtraction of wages or salary earned by an individual for services performed either partly or wholly outside the state from taxable income to arrive at Oklahoma adjusted gross income.

4. "Deductions [and credits against tax] are a matter of legislative grace rather than judicial intervention." ***Flint Resources Company v. Oklahoma Tax Commission***, 1989 OK 9, 780 P.2d 665, 673. In order to be allowed, authority for the deduction sought must be clearly expressed. ***Home-State Royalty Corporation v. Weems***, 1935 OK 1043, 175 Okla. 340, 52 P.2d 806 (1935). None may be allowed in absence of a statutory provision therefor. *Id*. *See*, ***New Colonial Ice Co. v. Helvering***, 292 U.S. 435, 440, 54 S.Ct. 788, 78 L.Ed. 1348 (1934).

5. Income received by a resident of Oklahoma for services performed wholly without the state is subject to Oklahoma income tax. ***Colchensky v. Oklahoma Tax Commission***, 1938 OK 612, 184 Okla. 207, 86 P.2d 329. *See*, ***Oklahoma Tax Commission v. Benham***, 1947 OK 104, 198 Okla. 384, 179 P.2d 123. In ***Colchensky***, the Oklahoma Supreme Court cited the holding of the U.S. Supreme Court in ***Lawrence et al. v. State Tax Commission of Mississippi***[10], wherein it held: "[a] state has constitutional power to tax its own citizens on their net incomes though derived wholly from activities carried on by them outside of the State. Domicile in itself establishes a basis for taxation" and said "[e]njoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable from the responsibility for sharing the costs of government."

6. 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.

7. Here, Protestant, a resident of Oklahoma has cited no statutory or judicial authority for reporting his wages as out-of-state income. Further, Protestant has failed to present any facts or evidence to show the proposed adjustments to his 2006 and 2007 Oklahoma income tax returns are erroneous. Accordingly, Protestant's protest should be denied.

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[9] 68 O.S. 2001, § 2351 et seq., as amended.

[10] 286 U.S. 276, 52 S.Ct. 556, 76 L.Ed. 1102, 87 A.L.R. 374.

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 denied. It is further ORDERED that the amount in controversy, inclusive 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.