JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-03-02-03 / NON-PRECEDENTIAL**
ID: **P-09-155-K**
DATE: **MARCH 2, 2010**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

ORDER

Several correspondences and notices regarding these proceedings have been served on Protestants, HUSBAND AND WIFE, at their last known address.[1] Protestants have not responded to any of these matters. 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

Protestants timely filed a 2008 Oklahoma part-year resident income tax return requesting a refund of $1,061.00. The Division audited the return, disallowed the credit claimed for taxes paid to another state in the amount of $790.00, and by letter dated July 6, 2009, notified Protestants of the proposed adjustment and resulting reduction of the refund to an amount of $270.00. Protestants timely protested the proposed adjustment. An oral hearing was not requested.

On September 14, 2009, the Division referred the protest to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code[2], the Oklahoma Income Tax Act ("Act")[3] and the Rules of Practice and Procedure before the Office of the Administrative Law Judges[4]. The case was docketed as Case No. P-09-155-K and assigned to ALJ, Administrative Law Judge.[5]

A pre-hearing conference was scheduled for November 12, 2009, by *Prehearing Conference Notice* issued October 13, 2009.[6] The conference was rescheduled on two (2) separate occasions by *Notices of Prehearing Conference* issued October 14, 2009 and October 22, 2009. Protestants neither appeared at the rescheduled conference held on November 17, 2009, nor responded to the notice thereof. By *Prehearing Conference Order* issued November 19, 2009, the Division was directed to file a verified response to protest on or before December 17, 2009, and Protestants were

[1] 68 O.S. Supp. 2009, § 208.

[2] 68 O.S. 2001, § 201 et seq.

[3] 68 O.S. 2001, § 2351 et seq., as amended.

[4] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*")

[5] *OAC*, 710:1-5-22(b).

[6] *OAC*, 710:1-5-28.

permitted to file a written response on or before January 5, 2010, upon which filings the record would be closed and the protest submitted for decision.[7]

On February 17, 2009, the *Division's Verified Response* was filed. Attached to the *Verified Response* were Exhibits A through D. Protestants did not file a written response. On January 12, 2010, the record was closed and the protest was submitted for decision.[8]

FINDINGS OF FACT

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

1. Protestants were residents of Oklahoma from January 1, 2008 through May 31, 2008. Exhibit A.

2. Protestants timely filed a 2008 Oklahoma part-year resident income tax return (Form 511NR) reporting Oklahoma source income of $61,239.00 consisting of wages of $57,239.00 and gambling winnings of $4,000.00, total income from all sources of $135,311.00, Oklahoma income tax after the percentage limitation of $2,200.00, a credit for taxes paid to another state of $790.00 for a tax balance due of $1,410.00, Oklahoma withholding of $2,471.00[9] and a refund of $1,061.00. The $57,239.00 was paid as wages to Protestants by COMPANY as shown by two (2) of the W-2 statements submitted with the Oklahoma return. Exhibit A.

3. Copies of Protestants' 2008 federal income tax return, W-2 statements, Oklahoma Form 511 TX (Credit for Tax Paid to Another State) and Protestants' 2008 OTHER STATE Individual Income Tax Return were attached to the Oklahoma return. Exhibit A.

4. The form 511 TX reports the amount of "income for personal services taxed by both the other state and also Oklahoma" as $21,998.00 and the "[o]ther state tax credit" of $790.00. Exhibit A.

5. The OTHER STATE return shows the $21,998.00 was reported as "[a]ll income while a part-year OTHER STATE resident and OTHER STATE source income while a nonresident." The $21,998.00 was paid as wages to Protestants by COMPANY 2 as shown by two (2) of the W-2 statements submitted with the Oklahoma return. Exhibit A.

6. Upon audit of Protestants' 2008 Oklahoma return, the Division disallowed the "[t]ax paid another state" credit in the amount of $790.00, and by letter dated July 6, 2009, notified Protestants of the proposed adjustment and the resulting partial denial of the refund claimed by

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

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

[9] The audit also corrected the Oklahoma withholding to an amount of $2,470.00 as the W-2 statements reporting wages subject to Oklahoma income tax show income tax withholding of $805.57 and $1,664.75 for a total of $2,470.32, which is rounded down for tax purposes.

Protestants, writing "[t]axpayer does not qualify to claim credit for taxes paid to another state, as no wages were taxed in multiple states". Exhibit B.

7. Protestants filed a timely written protest to the proposed adjustment letter, asserting the information provided proves taxes were paid to another state. Exhibit C.

8. By letter dated July 29, 2009, the Division responded to the protest writing in part:

> You do not qualify to claim the credit for taxes paid to another state, as no income was taxed in multiple states. On the OTHER STATE return, you were taxed only on the percentage of income that was OTHER STATE. The computation was on line 53 on the OTHER STATE return.

9. The amount in controversy is $790.00.

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).

2. "Taxation is an exclusively legislative function that can be exercised only under statutory authority and in the manner specified by statute." ***State, ex rel. Oklahoma Tax Commission v. Texaco Exploration & Production, Inc.,*** 2005 OK 52, ¶ 7, 131 P.3d 705, 707. Accordingly, an individual's liability for Oklahoma income tax must be found in the Act.

3. An income tax is imposed upon the Oklahoma taxable income of every resident or nonresident 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).

4. A credit against the tax imposed by § 2355 of the Act is allowed for the amount of tax paid another state by a resident individual upon income received as compensation for personal services performed in such other state. 68 O.S. 2001, § 2357(B)(1). The credit may not exceed the proportion of the tax payable under § 2355 as the compensation for personal services subject to tax in the other state and also taxable under § 2355 bears to the Oklahoma adjusted gross income. Id.

5. Residents and part-year residents who work in other states after becoming an Oklahoma resident and who are required to file income tax returns with the other states shall claim the credit for taxes paid other states on Form 511 TX. *OAC*, 710:50-15-72(a). The credit is available only on taxes paid in another state for wages and compensation for personal service which includes retirement income and proceeds from gambling. *OAC*, 710:50-15-72(b).

6. "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).

7. The income that was reported to and taxed by OTHER STATE was not included in Protestants' Oklahoma taxable income. This income was not subject to Oklahoma income tax; therefore, Protestants are not entitled to receive a credit for the taxes paid against their Oklahoma income tax.

8. Protestants' protest to the proposed adjustment of their 2008 Oklahoma income tax return should be denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestants, HUSBAND AND WIFE, be denied.

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.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."