JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-08-03-04 / NON-PRECEDENTIAL**
ID: **P-10-027-H**
DATE: **AUGUST 3, 2010**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Case Management Section of the Account Maintenance Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On January 27, 2010, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[3] On February 3, 2010, a letter was mailed to the Protestant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-027-H. The letter also advised the Protestant that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[4]

On March 3, 2010, the Notice of Prehearing Conference was mailed to the last known address of the Protestant, setting the prehearing conference for March 31, 2010, at 11:00 a.m.[5] On March 31, 2010, at 11:00 a.m., the prehearing conference was held as scheduled. The Protestant did not appear. OTC ATTORNEY appeared by telephone.

On April 7, 2010, written notice was served upon the parties that the Division's verified response was due on or before May 7, 2010. The Protestant could file a response on or before May 24, 2010. Thereafter, this cause would be closed and submitted for decision.

---

[1] "[P]**ro 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 (8th ed. 2004), available at *http://westlaw.com*.

[2] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] *Id.*

[5] OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2010). The notice was mailed to the Protestant at ADDRESS.

On May 7, 2010, the Division filed its Verified Response with Exhibits A through D, attached thereto. The Verification attached to the Division's Verified Response was duly sworn under oath, on behalf of the Division, by DIRECTOR, Deputy Director, Account Maintenance Division, Oklahoma Tax Commission.[6] There being no response from the Protestant, the record in this matter was closed and this case was submitted for decision on May 28, 2010.

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 June 19, 2009, the Protestant filed his Oklahoma Non-Resident Income Tax Return (Form 511NR) ("2008 Return") for the 2008 Tax Year, with a copy of his Federal return attached thereto. There is a W-2 attached to the returns from EMPLOYER located at BUSINESS ADDRESS, which reflects the Protestant's employer withheld Oklahoma income tax of $1,623.00. The 2008 Federal Return reflects the Protestant is a professional driver and had Schedule C income of $4,234.00. On the 2008 Return the Protestant reported "zero" for Oklahoma source income on line 23. The 2008 Return reflects a refund of $1,623.00 in Oklahoma income tax withheld.[7]

2. On June 25, 2009, the Division mailed an adjustment letter partially denying the Protestant's refund for the 2008 Tax Year[8] as follows, to-wit:

		REPORTED	ADJUSTED
LINE 23	OKLA AGI - OKLA SOURCES	0.00	35,084.00
LINE 36	NON-RESIDENT OKLAHOMA TAX	0.00	1,343.00
LINE 40	BALANCE	0.00	1,343.00
LINE 48	OVERPAYMENT OF INCOME TAX	1,623.00	280.00
LINE 52	REFUND	1,623.00	280.00

SOURCED OKLAHOMA WAGES TO RETURN.

3. On August 25, 2009, the Division received a protest[9] to the proposed partial denial of the Protestant's refund for the 2008 Tax Year. The basis of the protest is stated as follows, to-wit:

> This is a protest letter for PROTESTANT… I had Ok state taxes taken erroneously by my company am [sic] not a resident of Ok I am full time resident of STATE and have been charged state tax by them also. I own a

[6] *See* OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

[7] Exhibit A.

[8] Exhibit B.

[9] Exhibit C.

> house and pay monthly bills in STATE if you need documentation. I am in Ok about 2 days per month.

4. On September 22, 2009, the Division mailed a letter to the Protestant acknowledging receipt of the protest and requested a corrected W-2 showing that the income was not Oklahoma source income.[10]

5. The Protestant did not respond to the Division's September 22, 2009, letter.

6. On March 31, 2010, at 11:00 a.m., the Protestant did not appear in person or by telephone for the prehearing conference.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[11]

2. The Oklahoma Income Tax Act[12] imposes an income tax on the Oklahoma taxable income of every resident and non-resident individual.[13]

3. The State of Oklahoma levies a tax upon the Oklahoma taxable income[14]

4. Oklahoma adjusted gross income of a non-resident individual is calculated in pertinent parts,[15] as follows, to-wit:

> F. For purposes of determining the adjusted gross income from Oklahoma, the following shall be includable:

---

[10] Exhibit D.

[11] OKLA. STAT. ANN. tit. 68, § 207 (West 2001).

[12] OKLA. STAT. ANN. tit. 68, § 2351 et seq. (West 2008).

[13] OKLA. STAT. ANN. tit. 68, § 2355(B) (West 2008). *See* OKLA. STAT. ANN. tit. 68, § 2353(4) (West 2008).

[14] OKLA. STAT. ANN. tit. 68, § 2353(12) (West 2008), 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 of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;

See OKLA. STAT. ANN. tit. 68, § 2353(15) (West 2008):

> "Taxpayer" means any person subject to a tax imposed by this Article, or whose income is, in whole or in part, subject to a tax imposed by any provision of this article.

[15] OKLA. STAT. ANN. tit. 68, § 2362(F) (West 2008).

…

> 2. A business, trade, profession or occupation carried on in this state or compensation for services performed in this state;
>
> 3. A business, trade, profession or occupation carried on or compensation for services performed partly within and partly without this state to the extent allocable and apportionable to Oklahoma as determined under Section 2358 of this title;
>
> …

5. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[16]

6. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[17]

DISCUSSION

The Division adjusted the 2008 Return based upon the W-2 from the Protestant's employer which indicates Oklahoma source income for the 2008 Tax Year. The Protestant did not provide any information to the Division which indicates that the wages earned during the 2008 Tax Year were not Oklahoma source income.

CONCLUSION

The Protestant has failed to meet his burden of proof that the Division's proposed adjustment to the 2008 Return was incorrect and in what respects.

---

[16] 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.

[17] *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest should 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."