JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-01-11-05 / NON-PRECEDENTIAL**
ID: **P-09-191-H**
DATE: **JANUARY 11, 2011**
DISPOSITION: **DISMISSED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

PROCEDURAL HISTORY

On November 13, 2009, 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 November 19, 2009, a letter was mailed to the parties stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-09-191-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 November 23, 2009, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division.

On December 1, 2009, the introductory letter was returned by the United States Postal Service ("USPS") as "Return to Sender/Attempted-Not Known/Unable to Forward," but with a hand-written notation to "Forward to STATE ADDRESS."[5] On December 8, 2009, the Notice of Prehearing Conference was mailed to the last-known address of the Protestant, setting the prehearing conference for January 11, 2010, at 2:00 p.m.[6]

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[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. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

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

On January 6, 2010, a letter was received by the Court Clerk[7] requesting that documents which were attached be filed in the captioned matter.[8] On January 11, 2010, at 2:00 p.m., the prehearing conference was held as scheduled by telephone. During the prehearing conference the Protestant's current address was confirmed as STATE ADDRESS. The Protestant also provided information to OTC ATTORNEY that he was a "truck driver" and the portion of the assessment ($241,489.00) for the 2005 Tax Year attributable to him from "HORSE BUSINESS" was for a taxpayer in the horse racing business with the same name as the Protestant's. The Protestant provided several details as to the "other" taxpayer.

On January 11, 2010, a letter was mailed to the parties pursuant to the prehearing conference directing that a status report be filed on or before February 25, 2010.

On February 26, 2010,[9] the Division filed the Status Report advising that information had been requested from the Protestant to support his claim of STATE residency during the 2005 Tax Year. A second Status Report dated February 26, 2010, and filed April 9, 2010, advised that the Division was in the process of contacting the issuer of the 1099, "HORSE BUSINESS."

On March 1, 2010, a letter was mailed to the parties directing them to file a status report on or before March 29, 2010. On March 29, 2010, the Status Report was received from the Protestant asserting various allegations of wrongdoing against the Tax Commission and its employees.

On April 12, 2010, a letter was mailed to the parties advising that a status report was to be filed on or before June 8, 2010.

On June 8, 2010, the Division filed the Status Report stating that information had been received which would enable the Division to revise the proposed assessment for the 2005 Tax Year. On June 10, 2010, a letter was mailed to the parties directing the Division to mail a copy of the revised assessment to the Protestant and file an additional status report on or before June 23, 2010. The Protestant was also directed to file a response to the revised assessment within fifteen (15) days of the mailing of the revised assessment by the Division. On June 16, 2010, the Division's Notice of Revision was filed with Exhibit A attached thereto. The Division mailed the Notice of Revision to the Protestant's last-known address. On June 22, 2010, the

[7] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

[8] The documents consist of the following, to-wit:

- Answer and Cross Claim
- Motion for Compulsory Joiner of Persons
- Motion for Compulsory Signing of Affidavits
- Motion to Dismiss with Prejudice by Estoppel of Silence OK 12-2008 General Rules of Pleadings C. Affirmative Defenses 7. Estoppel and Judicial Notice of Oklahoma 12-2201 Judicial Notice of Law
- Motion for Compulsory Sanction
- Notice of Teleconference and Answer to Teleconference

[9] On February 25, 2010, the Court Clerk received a telephone call from OTC ATTORNEY requesting to file the status report one (1) day out of time. The undersigned granted the request.

Protestant filed an Objection and Motion to Dismiss with Prejudice by Fraud on the Court and Fraud by the Court, Motion for Compulsory Sanction, and Motion for Summary Judgment.

On July 6, 2010, the Division filed a copy of the envelope which was returned by the USPS as "Return to Sender/Not Deliverable as Addressed/Unable to Forward," and on which was hand-written "Opened by Error/Delivered to Wrong Address." On July 22, 2010, a letter was mailed to the parties setting this matter for hearing on September 9, 2010, at 1:30 p.m., with position letters or memorandum briefs due on or before September 2, 2010.

On August 20, 2010, the Division filed its *Motion for Summary Disposition ("Motion")*, with Exhibits A through F, attached thereto. The Verification attached to the Division's *Motion* was duly sworn under oath, on behalf of the Division, by AUDITOR, Individual Income Section of the Compliance Division, Oklahoma Tax Commission.[10] On the Division's Certificate of Service it was noted that a copy of the *Motion* was sent by facsimile (FAX NUMBER) to the Protestant in addition to the mailing of the *Motion* to the Protestant's last-known address. On August 25, 2010, the Division filed a Request for Continuance of Hearing Date due to a scheduling conflict of Division's Counsel. On August 26, 2010, an Order Resetting Hearing was issued granting the Division's request, striking the hearing from the September 9, 2010, docket, and resetting the hearing on September 16, 2010, at 1:30 p.m., at which time oral arguments would be heard on the various motions filed by the parties. The Protestant was also advised that he could file a response to the Division's *Motion* on or before September 7, 2010.

On September 16, 2010, by facsimile (FAX NUMBER / TRANSPORT COMPANY) the following were received for filing: Press Release; Objection to Notice to Appear, Respondents Motion for Notice of Lack of Subject Matter Jurisdiction, Lack of In Personam Jurisdiction, and Violation of Due Process; and Objections to AUDITOR'S Verification, Third Party Documents, Summary Disposition. On September 16, 2010, at 1:30 p.m. the oral arguments on the motions filed by the parties were held as scheduled. The Protestant did not appear. OTC ATTORNEY made oral arguments on behalf of the Division. At the conclusion of oral arguments the record in this matter was closed and the parties' motions were submitted for decision on September 16, 2010.

FINDING OF MATERIAL FACTS AS TO WHICH THERE IS NO CONTROVERSY

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the Division's *Motion*, and the Protestant's *Response*, the undersigned finds:

1. On May 8, 2009, the Individual Income Section of the Compliance Division notified the Protestant by letter that information made available to the Tax Commission indicated that the Protestant had sufficient income from Oklahoma sources to require the filing of an Oklahoma

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

Income Tax Return for the 2005 Tax Year. The letter was mailed to the last-known address of the Protestant according to the records of the Tax Commission at OKLAHOMA ADDRESS.[11]

2. On May 14, 2009, the letter was returned by the U.S. Postal Service as "Return to Sender/Attempted-Not Known/Unable to Forward."[12]

3. On July 27, 2009, the Division issued a proposed assessment of income tax for the 2005[13] Tax Year to the Protestant's last-known address, as follows, to-wit:

2005 Tax Year	
Gross Income	$264,463.00
Tax Due	$ 17,586.79
Interest @ 15% from due date to 09-25-09	$ 9,092.15
Tax and Interest if paid within 60 Days	$ 26,678.94
30 Day Delinquency Penalty @ 10%	$ 1,758.68
Tax, Interest & Penalty Due After 60 Days	$ 28,437.62

4. The proposed assessments of income tax for the 2005 Tax Year is based upon W-2 Wages and 1099-Misc information received from the Internal Revenue Service ("IRS") on the Protestant,[14] as follows, to-wit:

SSN	TAX YEAR	DOC CODE	AMOUNT	PAYER NAME	PAYER ADDRESS			
XXX-XX-XXXX	2005	W-2 Wages	$ 22,974.00	COMPANY 1	ADDRESS 1	CITY	STATE	ZIP
XXX-XX-XXXX	2005	1099 MISC INCOME	$241,489.00	COMPANY 2	ADDRESS 2	CITY	STATE	ZIP
TOTAL			$264,463.00					

5. On August 11, 2009, by facsimile, the Division received a timely filed protest. The protest includes a Criminal Complaint Against Oklahoma Tax Commission and a letter of protest disputing the proposed assessment and demanding proof of the "alleged debt." The Protestant's mailing address is reflected as STATE ADDRESS, cell phone number (###) ###-####, and facsimile (TRANSPORT COMPANY FAX NUMBER). There is also a copy of the envelope used to mail the proposed assessment which reflects a forwarding address of STATE ADDRESS.[15]

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[11] Division's Exhibit A. The letter contains the following sentence "**Unless an Oklahoma Income Tax return is received within thirty (30) days from the date of this letter, it will be necessary to determine your assessable liability based on the information that is available.**" (Emphasis original). The Division did not receive a response from the Protestant.

[12] Division's Exhibit B.

[13] Division's Exhibit C.

[14] Division's Exhibit D.

[15] Division's Exhibit E.

6. On June 16, 2010, the Division mailed the "Revised" assessment[16] to the Protestant for the 2005 Tax Year, which removed the 1099-Misc. Income information. The proposed assessment for the 2005 Tax Year was based solely upon the W-2 Wages information received from the Internal Revenue Service, as follows, to-wit:

Gross Income:	$22,974.00
Tax Due:	1,528.00
Interest @ 15% from 04/17/06 to 08/16/10:	993.41
Delinquency Penalty @ 10%:	152.70
Total:	$ 2,674.11

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[17]

2. The rules promulgated pursuant to the Administrative Procedures Act[18] are presumed to be valid and binding on the persons they affect and have the force of law.

3. The Oklahoma Income Tax Act[19] imposes an income tax upon the Oklahoma taxable income of every resident or nonresident individual.[20] Every Oklahoma resident who has sufficient income to require the filing of a Federal income tax return must file an Oklahoma tax return stating his or her taxable income,[21] and must transmit the return to the Commission and remit the amount of tax due.[22]

4. If a taxpayer fails to file any required report or return, the Tax Commission may use any information in its possession or obtainable by it to determine the correct amount of tax for the taxable period.[23] The term "taxpayer"[24] shall mean in pertinent part as follows, to-wit:

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[16] Division's Exhibit F.

[17] OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2010). *See* OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

[18] OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

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

[20] OKLA. STAT. ANN. tit. 68, § 2355 (West 2008).

[21] *See* OKLA. STAT. ANN. tit. 68, § 2368(A) (West 2008).

[22] *See* OKLA. STAT. ANN. tit. 68, § 2355 (West 2008). *See also* OKLA. STAT. ANN. tit. 68, § 2375 (West 2008).

[23] OKLA. STAT. ANN. tit. 68, § 221(A) (West Supp. 2010).

[24] OKLA. STAT. ANN. tit. 68, § 202(d) (West 2001).

(1) Any person owing or liable to pay any state tax;

(2) Any person required to file a report, a return, or remit any tax required by the provisions of any state tax law;

(3) Any person required to obtain a license or a permit or to keep any records under the provisions of any state tax law;

(e) The term "person" means an individual, trust, estate, fiduciary, partnership, limited liability company, or a corporation, and shall include any municipal subdivision of the state;

(f) The term "individual" means a natural person;

…

5. Assessments shall be made in accordance with the *Uniform Tax Procedure Code.*[25] The income information furnished by the IRS shall be that upon which any tax liability is computed. Unless otherwise indicated in the Revenue Agent's Report ("RAR"), all income is considered to be from Oklahoma sources, as are all deductions and credit, to the extent that they are allowed by Oklahoma Statute. The taxpayer is considered to be, or to have been an Oklahoma resident during the year or years examined by the IRS by virtue of the fact that the results of the examination are disclosed to the Commission by the IRS.[26]

6. The assessment of taxes or additional taxes shall be proposed in writing and shall be mailed to the taxpayer at the taxpayer's last-known address in accordance with statutory due process requirements.[27]

7. The Tax Commission shall also collect interest at the rate of one and one-quarter percent (1¼%) per month from the date prescribed by state law.[28]

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

[26] *See* OKLA. ADMIN. CODE § 710:50-5-10(a).

[27] OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2010):

> Any notice required by this article, or any state tax law, to be given by the Tax Commission shall be in writing and may be served personally or by mail. If mailed, it shall be addressed to the person to be notified at the last-known address of such person. As used in this article or any other state tax law, "last-known address" shall mean the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice, or if no address appears on the records of that division, the last address given as appears on the records of any other division of the Tax Commission. If no such address appears, the notice shall be mailed to such address as may reasonably be obtainable. If the Tax Commission receives an address from the United States Postal Service as a result of a change of address submitted to the United States Postal Service, "last-known address" shall mean the address provided to the United States Postal Service. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. If the notice has been mailed as provided in this section, failure of the person to receive such notice shall neither invalidate nor be grounds for invalidating any action taken pursuant thereto, nor shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.

8. The Tax Commission shall also collect a penalty of ten percent (10%) on the total amount of tax due and delinquent if the taxpayer fails to remit the tax and interest within sixty (60) days of the mailing of a proposed assessment.[29]

DISCUSSION

A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact.[30] The procedures for such motion are as follows:

> (1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.
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> (2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judges.
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> (3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.
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> (4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material

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[28] OKLA. STAT. ANN. tit. 68, § 217(B) (West Supp. 2010).

[29] OKLA. STAT. ANN. tit. 68, § 217(D) (West Supp. 2010).

[30] OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

> submitted by another party may raise the issue expressly by written objection or motion to strike such material.
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> (5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.
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> (6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to *OAC* 710:1-5-10, 710:1-5-40 and 710:1-5-41. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.
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> (7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge.

The basis of the Division's *Motion* is that there is no genuine issue of fact that the Division's proposed "Revised" assessment for the 2005 Tax Year has been issued and mailed to the Protestant in compliance with Oklahoma Statutes and Tax Commission Rules.

Based upon a review of the record, the Division's *Motion* is well taken. There is no substantial controversy as to the material facts and the Division is entitled to a decision in its favor as a matter of law.

The Protestant has filed numerous pleadings throughout this matter, including an Answer and Cross Claim against the Tax Commission, Motion for Compulsory Joiner of Persons, Motion for Compulsory Signing of Affidavits, Motion to Dismiss with Prejudice by Estoppel of Silence, Motion for Compulsory Sanction, Objection and Motion to Dismiss with Prejudice by Fraud on the Court and Fraud by the Court, Motion for Compulsory Sanction, Motion for Summary Judgment, Objection to Notice to Appear, Respondents Motion for Notice of Lack of Subject Matter Jurisdiction, Lack of In Personam Jurisdiction, and Violation of Due Process, and Objections to AUDITOR'S Verification, Third Party Documents, and Summary Disposition.

The Protestant has failed to present any evidence that the pleadings filed herein have any legal or factual basis.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the Division's *Motion* should be granted.

It is further the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the Protestant's pleadings as more fully set forth herein 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."