JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-02-22-03 / NON-PRECEDENTIAL**
ID: **P-10-095-H**
DATE: **FEBRUARY 22, 2011**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND and WIFE ("Protestants") appear pro se.[1] 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 April 7, 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 April 13, 2010, a letter was mailed to the Protestants stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-095-H. The letter also advised the Protestants 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 April 15, 2010, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On April 30, 2010, the Notice of Prehearing Conference was mailed to the last-known address of the Protestants, setting the prehearing conference for May 26, 2010, at 3:00 p.m.[5]

On May 21, 2010, the Court Clerk[6] received a letter from HUSBAND advising that the Protestants could not afford to retain Counsel or appear at the scheduled prehearing conference. On May 21, 2010, the Court Clerk spoke to HUSBAND by telephone to make sure he understood the prehearing conference could be held by telephone, if desired. HUSBAND agreed to hold the prehearing conference by telephone. On May 26, 2010, the Court Clerk received a

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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. STAT. ANN. tit. 68, § 208 (West Supp. 2011). The notice was mailed to the Protestants at LAST-KNOWN ADDRESS.

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

telephone call from HUSBAND requesting a continuance due to the hospitalization of his mother.

On June 2, 2010, a Notice of Prehearing Teleconference was mailed to the parties rescheduling the prehearing teleconference on July 1, 2010, at 11:00 a.m. The notice was mailed to the Protestants at LAST-KNOWN ADDRESS.

On July 1, 2010, at 11:00 a.m. the prehearing teleconference was held as scheduled. On July 21, 2010, a letter was mailed to the parties directing that a status report be filed on or before August 2, 2010.

On August 2, 2010, the Division filed the Status Report advising that the parties had conferred and the Protestants had requested an additional ten (10) days to decide how they wished to proceed. On August 3, 2010, a letter was mailed to the parties stating that a status report was due on or before August 12, 2010, advising how the parties wished to proceed. On August 13, 2010, the Division filed the Status Report advising that the Protestants wished to proceed and requested a scheduling order be issued setting this matter for hearing. On August 18, 2010, a letter was mailed to the parties advising that this matter had been set for hearing on September 21, 2010, at 1:30 p.m., with position letters or memorandum briefs due on or before September 14, 2010.

On September 1, 2010, the Division filed a *Motion for Summary Disposition* ("*Motion*"), with Exhibits A through H attached thereto. On September 13, 2010, the Court Clerk received a letter from HUSBAND styled as "Plaintiff's Motion for Refund of Income Tax Overpayments for Years 1999 through 2005," requesting a refund of $3,683.00 and asserting that the Protestants are entitled to a "trial by jury," pursuant to OK Const. Art. 2, § 19. Also enclosed was a response ("*Response*") to the Division's *Motion.* On September 14, 2010, pursuant to a request by the undersigned, a teleconference was held with the parties. It was agreed that the scheduling order, including the hearing, would be stricken, as well as the Division's *Motion*, and any motions filed by the Protestants. The undersigned also explained again to HUSBAND that jury trials are not held in proceedings on the administrative level. The parties were directed to file a status report in thirty (30) days. On September 15, 2010, a letter was mailed to the parties confirming the teleconference and advising that a status report was due on or before October 14, 2010.

On October 14, 2010, the Division filed the Status Report advising that the Protestants had submitted a letter dated September 29, 2010, along with copies of IRS CP21A Forms for tax years 1999 through 2003 and 2006, to the Division for review. However, the Division declined to grant the refunds and requested that a scheduling order be entered setting this matter for hearing.

On November 23, 2010, a letter was mailed to the parties setting this matter for hearing on December 13, 2010, at 1:30 p.m., with position letters or memorandum briefs due on or before December 6, 2010.

On December 6, 2010, the Court Clerk received for filing another letter from HUSBAND styled "Plaintiff request refund of Income Tax Overpayments" ("Position Letter"). On December 6, 2010, the Division's Memorandum Brief ("Brief") was filed, with Exhibits A through I attached thereto.

On December 13, 2010, at 1:30 p.m. the hearing was held as scheduled. The Protestants did not make an appearance at the hearing. OTC ATTORNEY appeared for the Division. The Division called AUDITOR, Auditor IV, Account Maintenance Division, Oklahoma Tax Commission, who testified about the Division's review of the Protestants' Oklahoma income tax returns for the 1999 through 2006 tax years, Tax Commission records, and copies of the Internal Revenue Service Notice of Change (Forms CP21A) to the Protestant's Federal returns for 1999 through 2003 and 2006, and as custodian of the Division's records. The Division's Exhibits A through I were identified, offered, and admitted into evidence. At the conclusion of the hearing the record in this matter was closed and this case was submitted for decision on December 13, 2010.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the Protestants' Position Letter, and Division's Brief, the undersigned finds:

1. On November 2, 2009, the Protestants filed "Original" Oklahoma resident income tax returns for the following Tax Years,[7] to-wit:

1999	$ 769.00
2000	$ 229.00
2001	$1,076.00
2002	$ 876.00
2003	*[8]
2004	$ 47.00
2005	$ 310.00
2006	$ 376.00*
2007	*
2008	*

2. The Division examined the records of the Tax Commission and determined that the Protestants had not filed prior returns for the 1999 through 2008 Tax Years.[9]

[7] Division's Exhibit A.

[8] *Id*. It appears that the 2003, 2006, 2007, and 2008 Tax Years are not at issue.

[9] Testimony of AUDITOR. *See* Note 7, *supra.*

3. On December 3, 2009, the Division mailed letters to the Protestants denying their income tax refunds for the 1999 through 2002 and 2005 because each of the returns was filed beyond the three (3) year time period provided by Section 2373 of Title 68.[10]

4. On December 7, 2009, the Division mailed a letter to the Protestants denying their income tax refund for the 2004 Tax Year because the return was filed beyond the three (3) time period provided by Section 2373 of Title 68.[11]

5. On January 7, 2010, the Division received the protest to the denial of the refunds for the 1999 through 2002 and 2004 through 2005 Tax Years.[12]

6. On September 30, 2010, the Protestants provided copies of the Internal Revenue Service Notices of Change (Form CP21A) ("Notices") for their Federal returns for the 1999 through 2003 and 2006 Tax Years. The Notices[13] for 1999, 2000, 2003, and 2006 contain the following language in pertinent parts as follows, to-wit:

> **Why You Received This Notice**
> As you requested, we changed your account for (Tax Year) to correct your
> - filing status to married filing joint return
> - penalty charge
>
> **How We Changed Your Account**
> We changed your account as follows:

Account balance before this change	$XX,XXX.XX	Due
Decrease in tax because of this change	$ X,XXX.XX	

The Notices for 2001 and 2002 contain similar language with the following exceptions:

- The Notice for the 2001 Tax Year reflects the change to the Protestants' account to correct the "Economic Stimulus Payment" and "penalty charge."

- The Notice for the 2002 Tax Year reflects the change to the Protestants' account to correct "schedule A" and "penalty charge."

[10] Division's Exhibits B through E and G. *See* Note 19, *infra.*

[11] Division's Exhibit F. *Id.*

[12] Division's Exhibit H.

[13] Division's Exhibit I.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[14]

2. OK Const. Art.2, § 19 provides:

> The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Thousand Five Hundred Dollars ($1,500.00), or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Thousand Five Hundred Dollars ($1,500.00). Provided, however, that the Legislature may provide for jury trial in cases involving lesser amounts. Juries for the trial of civil cases, involving more than Ten Thousand Dollars ($10,000.00), and felony criminal cases shall consist of twelve (12) persons. All other juries shall consist of six (6) persons. However, in all cases the parties may agree on a lesser number of jurors than provided herein.
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> In all criminal cases where imprisonment for more than six (6) months is authorized the entire number of jurors must concur to render a verdict. In all other cases three-fourths (3/4) of the whole number of jurors concurring shall have power to render a verdict. When a verdict is rendered by less than the whole number of jurors, the verdict shall be signed by each juror concurring therein.

3. The rules promulgated pursuant to the *Administrative Procedures Act*[15] are presumed to be valid and binding on the persons they affect and have the force of law.[16]

4. In the event the completed return of the taxpayer discloses a refund to be due by reason of the credits for withholding and/or estimated taxes previously paid, the filing of such tax return shall constitute a claim for refund of the excess.[17]

5. For the 1999 through 2002 and 2004 through 2005 Tax Years at issue in this matter, "All returns, except corporate returns, made on the basis of the calendar year shall be made on or before the 15th day of April following the close of the taxable year."[18]

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

[15] *See* Note 35, *infra.*

[16] *Id. See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

[17] OKLA. STAT. ANN. tit. 68, 2385.10 (West 2001).

[18] OKLA. STAT. ANN. tit. 68, § 2368(G) (West 2001).

6. With exceptions not pertinent in this matter, when an original return has not been filed, the Tax Commission will not issue a refund on an "Original" Individual Income Tax Return filed three (3) years after the original due date of the return. A refund that is "barred by statute" cannot be used as payment on any delinquent account or applied to estimated tax.[19]

7. Three year period during which taxpayers could request refund commenced on original due date of tax return, not on extended date taxpayers received when they filed for an extension of time. The rule promulgated by the Tax Commission providing that the time period during which taxpayers could claim refunds commenced on the original due date of the tax return, mirrored the statute and was not beyond scope of authority granted to the Tax Commission.[20]

8. General principles of equity may not override statutory requirements for timely filing of tax refund claims.[21]

9. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[22]

DISCUSSION

The Protestants' position is three-fold: first, "Equity in law necessitates that over-payments must be Refunded to the taxpayer"; second, "The state statute referenced in this case is contrary to the Oklahoma state constitution and is not enforceable"; and third, "This administrative process does not supersede the Oklahoma constitution which includes: Section II-19: Trial by jury[.] The right of trial by jury shall be and remain inviolate!"[23]

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[19] OKLA. ADMIN. CODE § 710:50-9-2. *See* OKLA. STAT. ANN. tit. 68, § 2373 (West 2001). *See also* OKLA. ADMIN. CODE 710:50-5-13 (June 26, 1994).

[20] *Matlock v. State ex rel. Okl. Tax Com'n*, 2001 OK CIV APP 104, 29 P.3d 614.

[21] OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Republic Petroleum Corp. v. United States*, 613 F.2d 518.

[22] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999), which states:

> 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 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.

[23] Protestants' Position Letter at 1.

As to the Protestants' first contention, general principles of equity may not override statutory requirements for the timely filing of tax refund claims.[24] The statute of limitations applies regardless of whether it is the tax agency's error or the taxpayer's error which leads to the overpayment of taxes.[25]

The Protestants' second contention is that "[t]he state statute referenced in this case is contrary to the Oklahoma state constitution and is not enforceable." Several statutes and Tax Commission Rules are applicable in this matter. Section 2373 of Title 68[26] provides in pertinent part as follows, to-wit:

> Except as provided in subsection H of Section 2375 of this title, the amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund.

Every statute is deemed constitutionally valid until a court of competent jurisdiction declares otherwise.[27] Great weight is accorded an agency's construction of a statute when the administrative interpretation is made contemporaneously with the enactment of the statute and the construction is longstanding and continuous by the agency charged with its execution.[28] Where the Legislature is made repeatedly aware of the operation of the statute according to the construction placed upon it by an agency and the Legislature has not expressed its disapproval with the agency's construction, the Legislature's silence may be regarded as acquiescence in the agency's construction,[29] and the agency's construction is given controlling weight and will not be disregarded except in cases of serious doubt.[30]

The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute, or are unreasonable.[31] Agency rules need not be specifically authorized by statute, but must

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[24] OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Republic Petroleum Corp. v. United States*, 613 F.2d 518.

[25] OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Jones v. Liberty Glass Co.*, 332 U.S. 524.

[26] *See* Note 19, *supra*.

[27] *See, State ex rel. York v. Turpen*, 1984 OK 26, 681 P.2d 763.

[28] *Schulte Oil Co., Inc. v. Oklahoma Tax Commission*, 1994 OK 103, 882 P.2d 65.

[29] *R.R. Tway, Inc. v Oklahoma Tax Commission*, 1995 OK 129, 910 P.2d 972.

[30] *Cox v. Dawson*, 1996 OK 11, 911 P.2d 272.

[31] *Arkansas Louisiana Gas Co. v. Travis*, 1984 OK 33, 682 P.2d 225. *See Boydston v. State*, 1954 OK 327, 277 P.2d 138.

generally reflect the intent of the Legislature as expressed in the statute.[32] As a rule, it is presumed that administrative rules and regulations are fair and reasonable and that the complaining party has the burden of proving the contrary by competent and convincing evidence.[33]

The Division's position is supported by ample Oklahoma case law. The Statutes and Tax Commission Rules cited herein are deemed constitutionally valid until a court of competent jurisdiction determines otherwise.

Protestants' third contention is that "This administrative process does not supersede the Oklahoma constitution which includes: Section II-19: Trial by jury[.] The right of trial by jury shall be and remain inviolate."[34] This case is not a civil matter, but a protest filed by the Protestants on the administrative level, which is governed by the provisions of the *Administrative Procedure Act*[35] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[36]

The Division's position[37] in pertinent parts is as follows, to-wit:

> Pursuant to Section 2368 of Title 68, "[a]ll returns, except corporate returns, made on the basis of the calendar year shall be made on or before the fifteenth day of April following the close of the taxable year." OKLA. STAT. tit. 68, § 2368(G)(1) (2002).
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> Here, the Protestants filed their 1999 through 2002 and 2004 through 2005 tax return [sic] well after the three (3) year deadline which started running on April 15 of the following year for which each return was filed. Protestants' refund claims are thus all barred by the three year limitation period in Section 2373. The Forms CP 0021 do not constitute a Federal change which would reopen the periods at issue for a refund claim under OKLA. STAT. Tit. 68, § 2375(H) because those changes only affect HUSBAND's filing status for those years, not *adjusted gross income*. (Emphasis added.)

Subsection H of Section 2375 of Title 68[38] provides as follows, to-wit:

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[32] *Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission*, 2003 OK CIV APP 23, 65 P.3d 289.

[33] *State ex rel. Hart v. Parham*, 1966 OK 9, 412 P.2d 142.

[34] Protestants' Position Letter at 1.

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

[36] *See* Note 3, *supra.*

[37] Division's Brief at 4.

[38] OKLA. STAT. tit. 68, § 2375(H) (West Supp. 2005).

> 1. The period of time prescribed in Section 223 of this title, in which the procedures for the assessment of income tax may be commenced by the Tax Commission, shall be tolled and extended until the amount of *taxable income*[39] for any year of a taxpayer under the Internal Revenue Code has been finally determined under applicable federal law and for the additional period of time hereinafter provided in this subsection.
>
> 2. If, in such final determination, the amount of *taxable income* for any year of a taxpayer under the Internal Revenue Code is changed or corrected from the amounts included in the federal return of the taxpayer for such year and such change or correction affects the *Oklahoma taxable income*[40] of the taxpayer for such year, the taxpayer, within one (1) year after such final determination of the *corrected taxable income*, shall file an amended return under Section 2351 et seq. of this title reporting the *corrected Oklahoma taxable income*, and the Tax Commission shall make assessment or refund within two (2) years from the date the return required by this paragraph is filed and not thereafter, unless a waiver is agreed to and signed by the Tax Commission and the taxpayer. (Emphasis added.)

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[39] OKLA. STAT. tit. 68, § 2353(10) (West 2001):

> "Taxable income" with respect to any taxpayer means the "taxable income", "life insurance company taxable income", "mutual insurance company taxable income", "(regulated) investment company taxable income", "real estate investment trust taxable income", and "cooperatives' taxable income" and any other "taxable income" as defined in the Internal Revenue Code as applies to such taxpayer or any other income of such taxpayer including, but not limited to, lump sum distributions as defined by the Internal Revenue Code of 1986, as amended; provided, in the case of income derived from oil and gas well production, any taxpayer, at his or her option, may deduct as an allowance for depletion, in lieu of other calculation of depletion based on the cost of the oil and gas deposit, twenty-two percent (22%) of the gross income derived from the properties during the taxable year. Provided further, for tax years beginning on or after January 1, 1997, and ending on or before December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, for major oil companies as defined in Section 288.2 of Title 52 of the Oklahoma Statutes, such allowance shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property. During taxable years other than those specified herein, for all taxpayers, such allowance shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property. If a depletion allowance is allowed as a deduction in arriving at the adjusted gross income in the case of an individual, or taxable income for corporations and trusts, or distributable income of partnerships by the Internal Revenue Service, the percentage depletion so calculated shall in no event be a duplication of depletion allowed on the Federal Income Tax Return;

[40] OKLA. STAT. tit. 68, § 2353(12) (West 2001):

> "Oklahoma taxable income" means "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;

On November 2, 2009, the Protestants filed their "Original" Oklahoma returns for the 2004 and 2005 Tax Years and the Protestants did not receive Notices from the IRS for either Tax Year. The Protestants' returns for the 2004 and 2005 Tax Years were due April 15, 2005, and April 15, 2006, respectively. The three (3) year time period provided by Section 2373 of Title 68[41] expired for both Tax Years. The Protestants' refunds for the 2004 and 2005 Tax Years are time-barred.

On November 2, 2009, the Protestants filed their "Original" Oklahoma returns for the 1999, 2000, 2001, and 2002 Tax Years. The three (3) year time period provided by Section 2373 of Title 68 had expired by the time the Protestants had filed their "Original" returns on November 2, 2009. However, as stated by the Supreme Court of Oklahoma in the *Neer*[42] case:

> The exception carved out in 68 O.S. Supp.1998, § 2375(H) generally concerns the allowance of additional time for either OTC to assess income tax or an Oklahoma taxpayer to submit a refund claim in the situation where a change in a taxpayer's federal taxable income occurs and such change affects Oklahoma taxable income-the limitation period being tolled and extended until final determination of the federal tax dispute involving the federal taxable income, and a one year time period for a refund claim commencing from such final determination. *See In re Holt*, 1997 OK 12, 932 P.2d 1130, 1136 (seems clear that Legislature intended to keep open limitation period where taxpayer's federal return was in dispute-because state tax "piggy-backs" on federal return, any eventual change in federal return would affect state tax, resulting either in deficiencies or refunds in regard to State income tax); *See also O'Carroll v. Oklahoma Tax Com'n*, 1998 OK 6, 952 P.2d 45 (meaning of § 2375(H) explained).

The Division misquoted Section 2375(H) in its Brief, by referring to *adjusted gross income* instead of *taxable income.* According to the Notices for 1999 and 2000, the changes to the Protestants' Federal returns were to correct the "filing status to married filing joint return"[43] and the Notices for 2001 and 2002 were to correct the Protestants' Federal returns to reflect the "Economic Stimulus Payment" and "Schedule A," respectively, all of which could potentially affect *taxable income.*[44]

In OTC Order No. 2010-04-06-02 (April 6, 2010), the Tax Commission held:

> 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

[41] *See* Note 19, *supra*.

[42] *Neer v. State ex rel. Oklahoma Tax Commission*, 1999 OK 41, 982 P.2d 1071.

[43] *See* Note 13, *supra*.

[44] *Id. See* Note 13, *supra.*

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."

A taxpayer has a state statutory duty to notify the Oklahoma Tax Commission by amended state income tax report of any adjustment or correction in returned federal taxable income within one (1) year after the federal adjustment or correction has been finally determined and the Tax Commission is required to make assessment or refund within two (2) years from the date the return is filed.

The Tax Commission in administering the provisions of § 2375(H) is granted the authority to audit "each and every item of income, deduction, credit or any other matter related to the return where such items or matters relate to allocation or apportionment between" taxing jurisdictions, but "shall be bound by the revisions made in such final determination" where such items or matters do not relate to allocation or apportionment between taxing jurisdictions.

When a taxpayer fails to file a return required under the income tax laws of this state, the Tax Commission is authorized to compute, determine and assess the tax as an estimated tax on the basis of its own determination of the Oklahoma taxable income of the taxpayer, to be adjusted if and when Oklahoma taxable income is ascertained under the provisions of the Act.

Tax statutes must be applied uniformly upon all taxpayers similarly situated.

Section 2375(H) and Oklahoma Tax Commission Rule OAC 710:50-3-8 both provide that the Oklahoma Tax Commission is bound by the determination of the IRS when the IRS changes the federal income tax return by issuing its final determination except where such item of income, deduction, credit or any other matter related to the return relate to allocation or apportionment between the State of Oklahoma and some other state or federal government.

Regardless of the correctness of the IRS actions in accepting protestant's proposed changes in her amended federal return, the Oklahoma Tax Commission is bound by the IRS determination in such matter. Section 2375 (C) of Title 68 of the Oklahoma Statutes authorizes the Oklahoma Tax Commission to make its own determination of the Oklahoma taxable income of a taxpayer in certain circumstances. Those circumstances are limited to the situation described in the first sentence of that subsection, that is when a taxpayer has refused to file any return required by the Oklahoma Income Tax Act. We do not decide today whether the Oklahoma Tax Commission is bound by the final determination of the IRS when a taxpayer has refused to file a return required by the Oklahoma Income Tax Act.

> Section 2375(H) of Title 68 of the Oklahoma Statues authorizes a taxpayer to file an amended state income tax return within one year after the IRS makes a final determination changing or correcting the taxable income from the amounts included in the federal return of such taxpayer and such change or correction affects the Oklahoma taxable income of such taxpayer for such year. The Oklahoma Supreme Court has found that this section authorizes a taxpayer to file an amended state income tax return within one year after the IRS makes a final determination of the taxable income of the taxpayer in a case where such change was, as here, sought by the taxpayer and not by the IRS. (Citations omitted.)

Pursuant to Section 2375(H),[45] the Protestants have one (1) year after the IRS makes a final determination changing or correcting the taxable income from the amounts included in the federal return to file Amended Oklahoma Returns for the 1999, 2000, 2001, and 2002 Tax Years to reflect whether the corrections made at the Federal level affected *taxable income*.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case that the protest should be denied as set forth herein.

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."

[45] *See* Note 38, *supra*.