JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-03-01-01 / NON-PRECEDENTIAL**
ID: **P-10-330-H**
DATE: **MARCH 1, 2011**
DISPOSITION: **DENIED**
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 May 26, 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 May 28, 2010, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division.

On June 2, 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-10-330-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 July 23, 2010, the Notice of Prehearing Conference was mailed to the last-known address of the Protestant, setting the prehearing conference for August 26, 2010, at 10:30 a.m.[5]

On August 26, 2010, at 10:30 a.m. the prehearing conference was held as scheduled. OTC ATTORNEY appeared via telephone. The Protestant did not make an appearance at the prehearing conference. On August 31, 2010, the Prehearing Conference Order was mailed to the

---

[1] "**Pro 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 CURRENT ADDRESS.

parties directing the Division's to file a verified response on or before September 30, 2010, and advising the Protestant could file a response on or before October 15, 2010.

On September 29, 2010, the Division's Verified Response was filed with Exhibits A through E attached thereto. The Verification attached to the Division's Verified Response was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Individual Income Section of the Compliance Division, Oklahoma Tax Commission.[6]

There being no response from the Protestant, the record in this matter was closed and this case submitted for decision on November 3, 2010. On November 10, 2010, a letter was mailed to the parties advising this matter was being withdrawn from submission for decision in order that additional documentation could be requested and provided to complete the record. The letter in pertinent part states, "In the Compliance Division's Verified Response, reference is made to a 'CP 2000' notice of adjustment by the Internal Revenue Service. The Division is directed to provide a copy of the IRS transcript in this matter, which was previously provided to the Protestant."

On December 8, 2010, OTC ATTORNEY hand-delivered the IRS transcript requested to the Court Clerk.[7] OTC ATTORNEY requested that the Court Clerk advise him when the ALJ was finished with the IRS transcript so that OTC ATTORNEY could pick it up and return it to the Division.[8] The ALJ reviewed the IRS transcript and on December 13, 2010, OTC ATTORNEY picked up the transcript to return to the Division. 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 Division's Verified Response, and the IRS transcript, the undersigned finds:

1. On April 8, 2005, the Protestant filed the original 2004 Oklahoma resident income tax return ("2004 Return") with a copy of the 2004 Federal Form 1040A attached thereto. The 2004 Return reported $345.00 in Oklahoma income tax due, $494.00 in credits and payments, and sought a refund of $149.00.[9]

---

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

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

[8] As a condition for receiving federal tax returns and return information, the IRS requires the Division to adhere to a set of Tax Information Security Guidelines outlined in IRS Publication 1075 (Rev. 8-2010). The Division is responsible for maintaining the confidentiality and integrity of the federal tax data disclosed under the Internal Revenue Code (IRC), Section 6103 (d).

[9] Division's Exhibit A.

2. On February 13, 2006, the Internal Revenue Service ("IRS") issued a "CP 2000" notice of adjustment to the Protestant's 2004 Federal income tax return. The adjustment resulted in an increase in Protestant's Federal adjusted gross income for the 2004 Tax Year. This information was provided to the Division by the IRS.[10] The Division examined the IRS transcript and also checked Tax Commission records for an "Amended" Oklahoma income tax return for the 2004 Tax Year. According to the records of the Tax Commission the Protestant had not filed an "Amended" return for the 2004 Tax Year.

3. On September 14, 2009, the Division mailed a letter to the Protestant's last-known address, LAST-KNOWN ADDRESS, proposing an assessment of additional income tax for the 2004 Tax Year based upon the IRS transcript[11] as follows, to-wit:

Corrected Taxable Income-Method I	$29,973.00
Total Tax as Adjusted	1,673.00
Less Tax Previously Reported or Assessed	345.00
Additional Tax Due	1,328.00
Interest @ 15% from 04-15-05 to 11-13-09	913.05
Tax and Interest if Paid Within 60 Days	$2,241.05
60 Day Delinquency Penalty @ 10%	132.80
Tax, Interest & Penalty if Paid After 60 Days	$2,373.85

4. On November 10, 2009, the Tax Commission received a timely protest to the Division's proposed income tax assessment for the 2004 Tax Year. The Protestant states, "I am writing this letter to dispute debt. I do not agree with this record of alleged debt to OK tax commission." The return address on the envelope was CURRENT ADDRESS.[12]

5. On November 17, 2009, the Division mailed a letter to the Protestant, along with a copy of the IRS transcript, at LAST-KNOWN ADDRESS, which was returned "Unable to Forward."[13]

6. On December 9, 2009, the Division mailed a second letter to the Protestant at CURRENT ADDRESS, along with a copy of the IRS transcript.[14]

7. According to the records of the Tax Commission, the Protestant still has not filed an amended Oklahoma return for the 2004 Tax Year.

---

[10] Division's Exhibit B. On or about December 9, 2010, the undersigned reviewed the IRS transcript and the Protestant's Federal Adjusted Gross Income was increased $19,605.00 from $13,368.00 to $32,973.00, which is consistent with the Division's adjustment for the 2004 Tax Year. *Id.*

[11] *Id.*

[12] Division's Exhibit C.

[13] Division's Exhibit D.

[14] Division's Exhibit E.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[15]

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

3. The Oklahoma Income Tax Act[17] imposes an income tax upon the Oklahoma taxable income of every resident or nonresident individual.[18] 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,[19] and must transmit the return to the Commission and remit the amount of tax due.[20]

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.[21] The term "taxpayer"[22] shall mean in pertinent part as follows, to-wit:

> (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;
>
> …

5. Assessments shall be made in accordance with the *Uniform Tax Procedure Code.*[23] 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

---

[15] OKLA. STAT. tit. 68, § 221(D) (West Supp. 2002).

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

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

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

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

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

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

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

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

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.[24]

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.[25]

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.[26]

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.[27]

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the protest to the Division's proposed income tax assessment for the 2004 Tax Year should be denied.

It is further ORDERED that the amount of income tax and penalty assessed for the 2004 Tax Year be fixed as the deficiency due and owing, including interest, accrued and accruing.

OKLAHOMA TAX COMMISSION

---

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

[25] 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.

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

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

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."