JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-06-07-02 / NON-PRECEDENTIAL**
ID: **P-09-206-H**
DATE: **JUNE 7, 2011**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears through POA..[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 December 16, 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 December 17, 2009, a letter was mailed to the Protestant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-09-206-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 December 22, 2009, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On December 31, 2009, the Notice of Prehearing Conference was mailed to the last-known address of the Protestant, setting the prehearing conference for January 26, 2010, at 11:00 a.m.[5]

On January 21, 2010, OTC ATTORNEY filed a Status Report in Lieu of Prehearing Conference and requested an additional sixty (60) days to work with the Protestant. The Procedural History from January 22, 2010, through June 22, 2010, is omitted herein.

On June 23, 2010, at the request of the parties, a teleconference was held at 2:40 p.m. to discuss this matter. OTC ATTORNEY was to file a status report pursuant to the teleconference. On June 28, 2010, the Status Report was filed. OTC ATTORNEY advised that the Division would request a copy of the Internal Revenue Service ("IRS") Transcript for the 2004 Tax Year

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[1] *See* Procedural History herein.

[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 Protestant at ADDRESS.

to determine whether the IRS adjustments for the 2004 Tax Year were currently under protest on the Federal level or whether the IRS adjustments were final.

On July 8, 2010, a letter was mailed directing the parties to file a status report on or before August 27, 2010.

On August 19, 2010, OTC ATTORNEY filed the Status Report advising that the Division was reviewing the information received from the IRS for the 2004 Tax Year. On August 31, 2010, a letter was mailed to the parties directing that a status report be filed on or before September 27, 2010.

On September 27, 2010, OTC ATTORNEY filed the Status Report. At the Protestant's request a copy of the IRS Transcript for the 2004 Tax Year was provided and the Protestant requested additional time to contact the Technical Assistance Division of the IRS to understand the codes used on the transcript. On September 28, 2010, a letter was mailed to the parties directing that a status report be filed on or before October 27, 2010.

On October 27, 2010, OTC ATTORNEY filed the Status Report advising that the Protestant had not received a response from the Technical Assistance Division of the IRS. On October 28, 2010, a letter was mailed to the parties directing that a status report be filed on or before December 1, 2010.

On December 1, 2010, OTC ATTORNEY filed the Status Report advising that the parties were attempting to enter into stipulations so that this matter could be submitted on briefs. On December 13, 2010, a Scheduling Order and Notice of Alternative Hearing was mailed to the parties.

On January 21, 2011, a Status Report was filed advising that the parties would comply with the alternative hearing date of February 3, 2011, at 9:30 a.m. On January 21, 2011, a letter was mailed to the parties that due to a scheduling conflict, the hearing set for February 3, 2011, at 9:30 a.m. had been stricken and reset for April 21, 2011, at 9:30 a.m., with position letters or memorandum briefs due on or before April 14, 2011.

On April 14, 2011, the Protestant's Position Letter was filed with the Court Clerk.[6] No exhibits were attached thereto. On April 14, 2011, the Division's Brief was filed. No exhibits were attached thereto.

On April 21, 2011, the Protestant, by facsimile, filed a Power of Attorney appointing her husband, POA, to represent her at hearing in this matter. On April 21, 2011, at 1:30 p.m., an open hearing[7] was held as scheduled. The Protestant testified through POA. The Protestant did not identify and offer any exhibits to be admitted into evidence. The Division called one (1)

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

[7] The Protestant, through POA, waived her right to a confidential hearing as provided by the provisions of OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2011).

witness, AUDITOR, Individual Income Tax Section, Compliance Division, Oklahoma Tax Commission, who testified about the audit of the Protestant's return, procedures for assessing additional income tax based upon information received from the Internal Revenue Service, and as custodian of the Division's records. The Division's Exhibits A through D, were identified, offered, and admitted into evidence without objection. At the conclusion of the hearing, the record in this matter was closed and this case was submitted for decision on April 21, 2011.

FINDINGS OF FACT

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

1. On or about May 7, 2007, the Protestant filed her "Original" Oklahoma Income Return for the 2004 Tax Year, which reflected Federal Adjusted Gross Income of $5.00, withholding of $314.00, and a refund of $314.00. Attached to the return was a copy of the Protestant's Federal Return for the 2004 Tax Year, and Federal Form 4852 (Substitute for Form W-2…), which reflected zero wages and $314.00 in Oklahoma withholding. The return was processed as filed.[8]

2. The proposed assessment of income tax for the 2004 Tax Year is based upon W-2 Wage information received from the IRS on the Protestant,[9] as follows, to-wit:

SSN	TAX YEAR	DOC CODE	AMOUNT	PAYER NAME	PAYER ADDRESS
XXX-XX-XXXX	2004	W-2 Wages	$15,372	EMPLOYER	CITY, State, OK

[8] Division's Exhibit A. Testimony of AUDITOR.

[9] Division's Exhibits C and D.

3. On September 14, 2009, the Division issued an assessment to the Protestant for the 2004 Tax Year based upon a Notice of Adjustment (CP2000) received from the IRS,[10] as follows, to-wit:

Year	2004
Corrected Taxable Income - Method I	$13,877.00
Total Tax as Adjusted	602.00
Less Tax Previously Reported or Assessed	0.00
Additional Tax Due	602.00
Interest @ 15% from 04-15-05 to 11-13-09	413.89
TAX AND INTEREST IF PAID WITHIN 60 DAYS	$1,015.89
60 Day Delinquency Penalty @ 10%	60.20
TAX, INTEREST, PENALTY IF PAID AFTER 60 DAYS	$1,076.09

4. On November 12, 2009, the Taxpayer Assistance Division, Oklahoma Tax Commission, received the protest to the Division's proposed assessment to the 2004 Tax Year, with attachments thereto. The basis of the protest is because there was not an "Agreed Change" with the IRS as a result of the CP2000, there could not be an assessment for the 2004 Tax Year on the state level.[11]

5. The Division requested a copy of the IRS Transcript (CP2000) for the 2004 Tax Year, which indicates that the IRS's proposed adjustment (failure to report W-2 wages from EMPLOYER for $15,372.00)[12] is final.[13]

CONCLUSIONS OF LAW

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

2. 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.

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[10] Division's Exhibit B.

[11] Division's Exhibit C. One of the attachments is a copy of a letter to the IRS, which recites that the Protestant does not agree with the CP2000 based upon what is commonly referred to as the Protestant being a constitutional tax protester.

[12] *See* Note 9, *supra.*

[13] Division's Exhibit D. Testimony of AUDITOR. POA also indicated during the hearing that the IRS had a levy in place for the 2004 Tax Year.

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

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

3. The Oklahoma Income Tax Act[16] imposes an income tax upon the Oklahoma taxable income of every resident or nonresident individual.[17] 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,[18] and must transmit the return to the Commission and remit the amount of tax due.[19]

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.[20] The term "taxpayer"[21] 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;
> (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.*[22] 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.[23]

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

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

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

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

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

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

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

[23] *See* OKLA. ADMIN. CODE § 710:50-5-10(a). *See* OKLA. ADMIN. CODE § 710:50-3-8 (June 11, 2005).

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.[24]

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.[25]

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.[26]

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.

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

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.

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[24] 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.

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

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

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."