

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2011-06-07-05 / NON-PRECEDENTIAL
ID: P-10-1642-H
DATE: JUNE 7, 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 by OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On November 18, 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 December 8, 2010, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On December 10, 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-10-1642-H. The letter also advised the Protestants 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 January 19, 2011, the Notice of Prehearing Conference was mailed to the last-known address of the Protestants stating the prehearing conference was set for February 7, 2011, at 10:30 a.m.⁵

On February 7, 2011, at 10:30 a.m. the prehearing conference was held as scheduled. The Protestants failed to appear at the prehearing conference. OTC ATTORNEY appeared via telephone. On February 15, 2011, the Prehearing Conference Order was mailed to the parties

¹ “[P]ro se” (proh say or see), adv. & ad. [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 ADDRESS.

directing the Division to file a verified response on or before March 9, 2011, and advising the Protestants could file a written response on or before March 24, 2011. On February 25, 2011, the Division's *Verified Response* was filed 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 SUPERVISOR, Credits and Refunds Section, Account Maintenance Division, Oklahoma Tax Commission.⁶ No response was received from the Protestants.

The record in this matter was closed and this case was submitted for decision on March 28, 2011.

FINDINGS OF FACTS

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

1. On April 15, 2010, the Tax Commission received the Protestants' 2009 Oklahoma Nonresident/Part-Year Resident Income Tax Return (Form 511-NR) ("2009 Return"), which reflects a refund of \$1,341.00. Attached to the 2009 Return was a copy of the Protestants' 2009 STATE Nonresident Income Tax Return, with 2009 STATE W-2s for the Protestants reflecting \$36,077.00 in wages and \$1,848.00 in STATE withholding. Also attached is a copy of HUSBAND'S 2009 W-2 from EMPLOYER for Oklahoma wages of \$33,170.00 and Oklahoma withholding of \$1,341.00.⁷

2. On July 14, 2010, the Division mailed an adjustment letter⁸ to the Protestants which provides as follows, to-wit:

FORM 511N	REPORTED	ADJUSTED
LINE 23 OKLA AGI-OKLA SOURCES	0.00	33,170.00
LINE 25 OKLAHOMA AGI-ALL SOURCES**	0.00	58,677.00
LINE 27 INCOME AFTER ADJUSTMENTS	0.00	8,677.00
LINE 28 DEDUCTION AMOUNT	0.00	8,500.00
LINE 29 EXEMPTION AMOUNT	0.00	2,000.00
LINE 30 DEDUCTIONS & EXEMPTIONS	0.00	10,500.00
LINE 31 OKLAHOMA TAXABLE INCOME	0.00	48,177.00
LINE 32 OKLAHOMA INCOME TAX	0.00	2,220.00
LINE 34 NON-RESIDENT BASE TAX	0.00	2,220.00
LINE 36 NON-RESIDENT OKLAHOMA TAX	0.00	1,255.00
LINE 39 BALANCE	0.00	1,255.00
LINE 47 OVERPAYMENT OF INCOME TAX	1,341.00	86.00
LINE 51 REFUND	1,341.00	86.00

** OKLAHOMA AGI FROM ALL SOURCES WAS CORRECTED.

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

⁷ Division's Exhibit A. The 2009 Return reflects that the Protestants were part-year residents from April 25, 2009, to December 31, 2009.

⁸ Division's Exhibit B.

3. On August 27, 2010, the Division received a protest to the Division's adjustment to the Protestants' 2009 Return, which states, "We are sending a copy of our Federal Return, a copy of our Oklahoma state return including work sheets, & a copy of our STATE return. According to H&R Block we are due a return of \$1341 not the \$86 we received."⁹

4. On September 14, 2010, the Division notified the Protestants by letter,¹⁰ which in pertinent part states as follows, to-wit:

Your return was not completed correctly. The federal column should reflect the amounts as they appear on your federal return. The Oklahoma Column should list your Oklahoma income from EMPLOYER and any other Oklahoma income in the Oklahoma Column.

CONCLUSIONS OF LAW

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

2. The Oklahoma Income Tax Act ("Act")¹² imposes an income tax upon the Oklahoma taxable income¹³ of every resident or nonresident individual who earn income within the state.¹⁴

3. It is a well-established principle of law that wages are income and are taxable under the income tax laws.¹⁵

4. A natural person who resides less than seven (7) months of the taxable year within this state is presumed to be a "part-year resident individual" for purposes of the Act.¹⁶ According to the 2009 Return the Protestants resided in the State of Oklahoma from April 25, 2009, to December 31, 2009.

⁹ Division's Exhibit C.

¹⁰ Division's Exhibit D.

¹¹ OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2011). *See also* OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

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

¹³ OKLA. STAT. ANN. tit. 68, § 2353(12) (West 2008).

¹⁴ OKLA. STAT. ANN. tit. 68, § 2353(14) (West 2008).

¹⁵ *See* I.R.C. § 61.

¹⁶ OKLA. STAT. ANN. tit. 68, § 2353(4) (West 2008).

5. If a return is filed for a tax year, the Tax Commission shall examine it and make such audit or investigation, as it may deem necessary. If the Tax Commission shall determine that the tax disclosed by the return is less than the tax disclosed by its examination, it shall in writing propose to assess the taxes or additional taxes as the case may be.¹⁷

6. The formula utilized by the Division in calculating the “Oklahoma taxable income”¹⁸ of the Protestants is correct and follows the provisions of the Act.¹⁹

7. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²⁰ A proposed assessment (adjustment) is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.²¹

8. The Protestants have failed to produce any evidence and have not cited any authority that the Division’s adjustment of the 2009 Return is incorrect, and in what respect.

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

¹⁷ OKLA. STAT. ANN. tit. 68, § 221(A) (West Supp. 2011).

¹⁸ See Note 13, *supra*.

¹⁹ See OKLA. STAT. ANN. tit. 68, § 2362 (West Supp. 2011). See also *Walters v. State of Oklahoma ex rel. Oklahoma Tax Commission*, 1996 OK CIV APP 154, 935 P.2d 398.

²⁰ 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 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.

²¹ See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.

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.”