JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-07-12-03 / NON-PRECEDENTIAL**
ID: **P-11-374-H**
DATE: **JULY 12, 2011**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME INTERCEPT**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Case Management Section, Account Maintenance Division ("Division") of the Oklahoma Tax Commission, appears through OTC ATTORNEY 1, Assistant General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On April 19, 2011, 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 21, 2011, OTC ATTORNEY 1 and OTC ATTORNEY 2 filed an Entry of Appearance as Co-Counsel of record for the Division. On April 27, 2011, a letter was mailed to the parties setting this matter for hearing on May 16, 2011, at 2:00 p.m. before ALJ, Administrative Law Judge, and docketed as Case Number P-11-374-H.

On May 9, 2011, the Division's Memorandum Brief was filed with Exhibits A through H attached thereto. The Protestant did not file a position letter or memorandum brief.

On May 16, 2011, at 2:00 p.m. the hearing was held as scheduled. The Protestant failed to appear at the hearing. The Division was represented by OTC ATTORNEY 1 and OTC ATTORNEY 2. The Division called one (1) witness, SUPERVISOR, Case Management Section of the Account Maintenance Division, Oklahoma Tax Commission, who testified about the filing of the Protestant's "Original" income tax returns for the 2005 and 2006 Tax Years, the assessments for the 2005 and 2006 Tax Years, the Division's notice of intercept for the 2010 Tax Year, and as custodian of the Division's records. The Division's Exhibits A through J 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 May 16, 2011.

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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. (March 16, 2006).

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

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the protest letter, and the Division's Memorandum Brief, the undersigned finds:

1. On March 8, 2006, the Protestant electronically filed the Oklahoma Income Tax Return (Form 511) for the 2005 Tax Year. The return reported a $1,500.00 adjustment for partial military pay exclusion[4] on Schedule 511-C, and a refund of $1,115.00.[5]

2. On March 10, 2006, the Tax Commission issued the refund of $1,115.00 to the Protestant.[6]

3. On April 2, 2007, the Protestant electronically filed the Oklahoma Income Tax Return (Form 511) for the 2006 Tax Year. The return did not claim a partial military exclusion, but did reflect a refund of $1,255.00.[7]

4. According to the records of the Tax Commission, the Protestant did not file "Amended" Oklahoma Income Tax Returns for the 2005 or 2006 Tax Years.[8]

5. On February 1, 2010, the "Original" proposed assessment of additional income tax for the 2006 Tax Year was mailed to the Protestant at her last-known address of ADDRESS. The proposed assessment was based upon information received from the Internal Revenue Service ("IRS") under the authority of Section 6103(d) of the Internal Revenue Code (Report No. 200911212 dated 20090422). The proposed assessment[9] was computer generated by the Computer Audit Management System ("CAMS") ID #2009337702629, as follows, to-wit:

Tax Due:	$ 636.00
Interest to 04/02/10:	282.02
Tax & Interest Due within 60 Days:	$ 918.02
Penalty:	63.60
Tax, Interest, & Penalty after 60 Days:	$ 981.62

6. On April 5, 2010, the "Original" assessment of additional income tax for the 2005 Tax Year was mailed to the Protestant at her last-known address of ADDRESS. The proposed

[4] *See* Note 27, *infra.*

[5] Testimony of SUPERVISOR. Division's Exhibits A and C.

[6] *Id.*

[7] *Id.* Division's Exhibit B. *See* Note 5, *supra.* On February 19, 2010, the Protestant's income tax refund of $1,135.00 was intercepted by another agency, but the $120.00 sales tax credit was refunded to the Protestant.

[8] *Id.*

[9] Division's Exhibit J-2.

assessment was based upon information received from the Internal Revenue Service ("IRS") under the authority of Section 6103(d) of the Internal Revenue Code (Report No. 200833612 dated 12/01/08). The proposed assessment[10] was computer generated by CAMS" ID #2010081700231, as follows, to-wit:

Tax Due:	$1,476.00
Interest to 06/04/10:	915.32
Tax & Interest Due within 60 Days:	$2,391.32
Penalty:	147.60
Tax, Interest, & Penalty after 60 Days:	$2,538.92

7. On April 9, 2010, AUDITOR, Individual Income Tax Section of the Compliance Division, Oklahoma Tax Commission, sent the Protestant an e-mail,[11] which states in pertinent part as follows, to-wit:

> I did find 2 errors, 1 on each year, where you did not get benefit of the $1500.00 Oklahoma Active Duty Military exclusion.
> I have attached the amended assessment for both years.
> These take the place of the earlier ones.
> I am also mailing the originals to you.
> Please call me for an explanation of the IRS adjustments.

8. On April 13, 2010, the "Amended" assessment[12] of additional income tax for the 2005 Tax Year was mailed to the Protestant at her last-known address of ADDRESS, by the Compliance Division as follows, to-wit:

Tax Due:	$1,376.00
Interest to 06/14/10:	858.96
Tax & Interest Due within 60 Days:	$2,234.96
Penalty:	137.60
Tax, Interest, & Penalty after 60 Days:	$2,372.56

9. On April 13, 2010, the "Amended" assessment[13] of additional income tax for the 2006 Tax Year was mailed to the Protestant at her last-known address of ADDRESS, by the Compliance Division as follows, to-wit:

[10] Division's Exhibit I-2.

[11] Division's Exhibits I-3 and J-3.

[12] Division's Exhibit I-1.

[13] Division's Exhibit J-1.

Tax Due:	$ 542.00
Interest to 06/04/10:	256.60
Tax & Interest Due within 60 Days:	$ 798.60
Penalty:	54.20
Tax, Interest, & Penalty after 60 Days:	$ 852.80

10. According to the records of the Tax Commission the Protestant failed to file written protests to the proposed "Amended" assessments of additional income tax for the 2005 and 2006 Tax Years within sixty (60) days and both assessments became final by operation of law.[14]

11. On February 15, 2011, the Protestant electronically filed her Oklahoma Income Tax Return (Form 511) for the 2010 Tax Year. The return was not filed as a joint return and reflected a refund of $763.00.[15]

12. On February 16, 2011, the Division mailed a letter to the Protestant stating it had applied the refund for the 2010 Tax Year,[16] as follows, to-wit:

Tax Year	2005	2006
Tax Due:	$1,376.00	$542.00
Penalty Due:	137.60	54.20
Interest Due:	998.07	311.39
Less Applied Refund:	(763.00)	0.00
Remaining Period Balance:	$1,748.67	$907.59

Total Liability Balance:	$2,656.26

Original Refund Requested:	$763.00
Less Refund Applied:	$763.00
Remaining Refund to be Paid to You:	$ 0.00

13. On March 1, 2011, the Division received a written protest to the interception of the refund for 2010 Tax Year due to the outstanding liability for the "Amended" assessments for the 2005 and 2006 Tax Years.[17]

[14] Testimony of SUPERVISOR. *See* Note 29, *infra.*

[15] *See* Note 5, *supra.*

[16] Division's Exhibit F.

[17] Division's Exhibit G. The protest letter also asked if the Protestant is entitled to the "Partial Military Exclusion" of $1,500.00 for active military.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[18]

2. The Oklahoma Tax Commission is authorized to deduct from any state tax refund due to a taxpayer the amount of delinquent state tax, and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law prior to payment of the refund.[19]

3. In the event of a protest to the application to deduct the delinquent taxes from the refund due the taxpayer, the only issues subject to determination are whether the claimed sum is correct or whether an adjustment to the claim shall be made.[20] No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[21]

4. A challenge to the validity of the debt requires a determination that the notice of assessment, which gave rise to the debt, was provided in a manner that satisfies due process requirements.[22]

5. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[23]

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[18] OKLA. STAT. ANN. tit. 68, § 205.2(B) (West Supp. 2011):

> If the municipal court, district court or agency asserting the claim receives a written request for a hearing from the debtor or taxpayer against whom no debt, no municipal fines and cost, or final judgment is claimed, the agency, the municipal court or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt, unpaid fines and cost, or final judgment asserted by the municipal court, the district court or the agency, no action shall be taken in furtherance of the collection of the debt, unpaid fines and cost, or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act.

[19] OKLA. STAT. ANN. tit. 68, § 205.2(E) (West Supp. 2011):

> The Tax Commission shall deduct from any state tax refund due to a taxpayer the amount of delinquent state tax and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law prior to payment of such refund.

[20] *See* Note 18, *supra.*

[21] *Id*.

[22] *Id.*

[23] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

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. For the purpose of determining any income tax liability, a taxpayer's filing status, and any elections, such as itemized deductions, shall be the same as on the Federal Income Tax Return. In cases where no return has been filed, any information made available by the I.R.S., whether a Revenue Agents Report (R.A.R.) or other related return information, shall constitute the filing status and elections for the purpose of the determination, assessment, and collection of any Oklahoma Income Tax liability.[25]

8. If any taxpayer's Federal Income Tax Return is adjusted, an Amended Oklahoma Income Tax Return must be filed within one year. All supporting documentation must be enclosed with an Oklahoma Amended Income Tax Return for the tax year involved. Upon request, the taxpayer must furnish a complete copy of the Federal Income Tax Return, including all schedules, to enable the Tax Commission to determine the correct Oklahoma tax.[26]

9. The Commission has two (2) years from the date the return or notice was filed to make an assessment or refund and not thereafter, unless a waiver is agreed to and signed by the Commission and the taxpayer.

10. In the event of failure by a taxpayer to comply with the requirement set out in (a) of this Section, the statute of limitations is tolled until the Amended Oklahoma Income Tax Return is actually furnished.

11. When the Internal Revenue Service changes the Federal Income Tax Return by issuing its final determination, the Tax Commission shall have 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 the State of Oklahoma and some other state or the federal government, even if such items or matters were not affected by revisions made in such final determination. Where such items or matters do not relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination.

12. Before July 1, 2010, the first One Thousand Five Hundred Dollars ($1,500.00) received by any person from the United States as salary or compensation in any form, other than retirement benefits, as a member of any component of the Armed Forces of the United States shall be deducted from taxable income.[27]

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

[25] OKLA. ADMIN. CODE § 710:50-3-35.

[26] OKLA. ADMIN. CODE § 710:50-3-8 (June 11, 2005). *See* OKLA. STAT. ANN. tit. 68, § 2375 (West Supp. 2011).

[27] OKLA. STAT. ANN. tit. 68, § 2358(E)(5) (West Supp. 2011).

13. If the taxpayer fails to file a written protest within the sixty-day period provided for by Section 221(C) of Title 68,[28] then the proposed assessment, without further action of the Tax Commission, shall become final and absolute.[29]

14. In all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof to show the action of the Commission is incorrect, and in what respects.[30]

DISCUSSION

The Division's "Amended" assessments for the 2005 and 2006 Tax Years were properly issued pursuant to information received from the IRS and allowing the "Active Duty Military Exclusion" of $1,500.00, which were then mailed to the last-known address of the Protestant. The Protestant did not file protests to the "Amended" assessments within the statutory sixty (60) day time period and the "Amended" assessments became final by operation of law.

When the Protestant filed her return for the 2010 Tax Year, the Division gave the required statutory notice of intercepting the 2010 refund, which was to be applied to the tax portion of the "Amended" assessment for the 2005 Tax Year.

The Protestant has failed to meet her burden of proof. The Protestant has not presented any evidence that the Division's claim to her refund for the 2010 Tax Year is incorrect, or whether an adjustment to the claim should be made by the Division.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest to the claim of the Division to the Protestant's refund for the 2010 Tax Year 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.

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[28] OKLA. STAT. ANN. tit. 68, § 221(C) (West Supp. 2011).

[29] OKLA. STAT. ANN. tit. 68, § 221(E) (West Supp. 2011).

[30] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999). *See Enterprise Management Consultants, Inc. v. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

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."