

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2011-08-02-20 / NON-PRECEDENTIAL
ID: P-10-1636-H
DATE: AUGUST 2, 2011
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND AND WIFE, (“Protestants”) appear by and through, CPA, CPA. 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 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*¹ and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.² 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’ Representative stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-1636-H. The letter also advised the Protestants’ Representative 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*.³

On January 19, 2011, the Notice of Prehearing Conference was mailed to the parties’ Representative, setting the prehearing conference for February 7, 2011, at 11:00 a.m.

On February 7, 2011, the Protestants’ Representative filed what is deemed as a “Report-In-Lieu” of prehearing conference. On February 8, 2011, the Division filed a Status Report and Request for Scheduling Order. On February 23, 2011, the Scheduling Order was issued setting the hearing for May 3, 2011, at 9:30 a.m., with position letters or memorandum briefs due on or before April 26, 2011.

On April 18, 2011, the Division filed its *Motion for Summary Disposition* (“*Motion*”), with Exhibits A through G, attached thereto.⁴ The Verification attached to the Division’s *Motion* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Case Management

¹ OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

² OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

³ *Id.*

⁴ At hearing a copy of the Protestants’ 2009 return, which was filed with the Division, was substituted as part of Division’s Exhibit A.

Section, Account Maintenance Division, Oklahoma Tax Commission.⁵ On April 19, 2011, a letter was mailed to the parties' Representatives acknowledging the filing of the Division's *Motion* and advising the Protestants could file a response to the Division's *Motion* on or before April 26, 2011, and the hearing on the merits was changed to oral argument on the Division's *Motion*.

On May 3, 2011, at 9:30 a.m. oral argument was heard on the Division's *Motion*. The Division's oral argument was made by OTC ATTORNEY. Neither the Protestants nor their Representative filed a response to the Division's *Motion* or appeared to make oral argument. At the conclusion of oral argument, the record in this matter was closed and the Division's *Motion* was submitted for ruling on May 3, 2011. On May 20, 2011, *Findings, Conclusions and Recommendations* were issued. On May 26, 2011, an *Order Withdrawing Findings, Conclusions and Recommendations* was issued.

**FINDING OF MATERIAL FACTS
AS TO WHICH THERE IS NO CONTROVERSY**

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

1. On April 15, 2010, the Protestants filed an Oklahoma Part-Year Resident Income Tax Return (Form 511-NR) ("2009 NR Return") for the 2009 Tax Year. The 2009 NR Return reflects that the Protestants resided in the State of Oklahoma from January 1, 2009, through June 30, 2009, \$271.00 in tax due, a \$271.00 credit for tax paid to another state,⁶ \$211.00 in Oklahoma withholding, and a refund of \$211.00.⁷

2. On May 27, 2010, the Division mailed an adjustment letter to the Protestants on the 2009 NR Return,⁸ as follows, to-wit:

FORM 511N[R]	REPORTED	ADJUSTED
LINE 37 TAX PAID ANOTHER STATE	271.00	0.00
LINE 39 BALANCE	0.00	271.00
LINE 47 OVERPAYMENT OF INCOME TAX	211.00	0.00
LINE 51 REFUND	211.00	0.00
LINE 52 INCOME TAX DUE	0.00	60.00
LINE 55 TOTAL BALANCE DUE	0.00	60.00
BALANCE DUE AFTER ADJUSTMENTS		60.00

⁵ See OKLA. ADMIN. CODE § 710:1-5-38(b)(1) (June 25, 2009).

⁶ Division's Exhibit B.

⁷ Division's Exhibit A. See OKLA. ADMIN. CODE § 710:50-3-39 (June 25, 2000).

⁸ Division's Exhibit C.

3. On July 28, 2010, the Division received a timely filed protest to the adjustment to the 2009 NR Return. The basis of the protest is the disallowance of the credit for tax paid to other states (STATE).⁹

4. On September 10, 2010, the Division mailed a letter to the Protestants' Representative,¹⁰ which in pertinent part states as follows, to-wit:

We have reviewed your letter Dated July 21, 2010, regarding the adjustment of your clients' Oklahoma Income tax return form 511NR for 2009.

They do not qualify to claim the credit for taxes paid to another state, as no income was taxed in multiple states. On the STATE return, they were taxed only on the percentage of income that was STATE. See line 56 and 57 of the return.

On the Oklahoma return they were only taxed on their Oklahoma income. See lines 35 through 36. The tax due was prorated on line 35 of the form 511NR.

CONCLUSIONS OF LAW

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

2. A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact.¹² The procedures for such motion are as follows:

(1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.

(2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier

⁹ Division's Exhibit D.

¹⁰ Division's Exhibit E.

¹¹ OKLA. STAT. tit. 68, § 221(D) (West Supp. 2007) and OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

¹² OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judges.

- (3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.
- (4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.
- (5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.
- (6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to *OAC 710:1-5-10, 710:1-5-40 and 710:1-5-41*. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.
- (7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial

summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge.

3. The Oklahoma Income Tax Act (“Act”)¹³ imposes an income tax upon the Oklahoma taxable income of every resident or non-resident individual who earns income within the state.¹⁴

4. The Act allows a credit against income tax for tax paid to another state. This credit is available if another state taxes the Oklahoma income.¹⁵

5. The Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to income.¹⁶

6. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be binding on the persons they affect and have the force of law.¹⁷

DISCUSSION

The Protestants filed their 2009 Return as Part-Year Residents. Attached to the Protestants’ 2009 Return is a copy of a W-2, Oklahoma income (\$5,241.00), with (\$211.00) Oklahoma income tax withheld. A review of the Protestants’ 2009 Federal Return and 2009 STATE Return reveals that the Protestants did not pay income tax on the Oklahoma income to the State of STATE, nor did the Protestants pay any Oklahoma income tax on the income reported to the State of STATE.

Based upon the record, there is no substantial controversy as to the material facts and the Division is entitled to a decision in its favor as a matter of law.

¹³ OKLA. STAT. ANN. tit. 68, § 2351 *et seq.* (West 2001).

¹⁴ OKLA. STAT. ANN. tit. 68, § 2353(12) (West 2001), which states:

“Oklahoma taxable income” means “taxable income” as reported (or 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;

¹⁵ OKLA. STAT. tit. 68, § 2357(B)(1) (West Supp. 2008). *See* OKLA. ADMIN. CODE § 710:50-15-72 (June 25, 2004). *See also* OKLA. STAT. tit. 68, § 2362 (West Supp. 2003).

¹⁶ OKLA. ADMIN. CODE § 710:50-1-1.

¹⁷ OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the Division's *Motion* should be granted.

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."