

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2012-10-23-09 / NON-PRECEDENTIAL
ID: P-12-113-H
DATE: OCTOBER 23, 2012
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND and WIFE (“Protestants”) appear pro se.¹ The Amended Audit Section, Compliance Division (“Division”) of the Oklahoma Tax Commission appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On June 6, 2012, the Office of Administrative Law Judges received the protest file 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 June 12, 2012, OTC ATTORNEY filed an Entry of Appearance as Counsel for the Division. On June 12, 2012, this office mailed a letter to the Protestants assigning the captioned matter to ALJ, Administrative Law Judge, and docketed as Case Number P-12-113-H. The letter also advised the Protestants that a Notice of Prehearing Conference would be mailed and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.⁴ On June 19, 2012, this office mailed the Notice of Prehearing Conference to the last-known address of the Protestants,⁵ setting the prehearing conference for July 9, 2012, at 3:00 p.m.

On July 3, 2012, the parties filed an Agreed Proposed Scheduling Order in Lieu of Prehearing Conference, as more fully set out therein. On July 9, 2012, the Scheduling Order issued for the submission of this matter on stipulations and briefs.⁶ On July 9, 2012, the parties filed *Joint Stipulation of Facts*, with *Joint Exhibits A* through *H*, attached thereto. On July 18,

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 (9th ed. 2009), available at <http://web2.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.* This is a case of first impression interpreting the provisions of the Statute. See Note 23, *infra*.

⁵ OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). The notice was mailed to the Protestants at HOME ADDRESS.

⁶ OKLA. ADMIN. CODE § 710:1-5-38(a) (June 25, 2009).

2012, the Protestants' Brief ("*Brief in Chief*") was filed, with Exhibits A through F, attached thereto.

On August 6, 2012, the Division filed its Memorandum Brief ("*Response Brief*") with Appendix A-1 through A-4, attached thereto. On August 24, 2012, the Protestants filed their Response to Division's Memorandum Brief ("*Reply Brief*") with Exhibits A-2 through E-2, attached thereto. The undersigned closed the record and this case submitted for decision on August 27, 2012.⁷

JOINT STIPULATION OF FACTS

On July 9, 2012, the parties filed *Joint Stipulation of Facts*,⁸ with *Joint Exhibits A* through H, which states in pertinent part, as follows, to-wit:

...jointly stipulate to the following undisputed facts and agree that these facts are true and correct and are admissible as evidence in the current proceeding before the Commission's Administrative Law Judge and any subsequent proceeding before the Oklahoma Tax Commission or judicial review or appeal. This Joint Stipulation shall not preclude either Protestants or the Division from submitting additional factual evidence in this case through affidavits or testimony, if permitted by the Court.

STATEMENT OF THE PARTIES' STIPULATED FACTS

1. On or about March 30, 2011, Protestants filed their 2010 Oklahoma Resident Income Tax Return. The 2010 Oklahoma Resident Income Tax Return is attached hereto as **Exhibit A**. On Line 10 of Form 511, Protestants claimed an Oklahoma standard deduction in the amount of \$11,400. On Line 11 of Form 511, Protestants claimed two exemptions totaling \$2,000.

2. On or about March 6, 2012, Protestants filed their 2011 Oklahoma Resident Income Tax Return. The 2011 Oklahoma Resident Income Tax Return is attached as **Exhibit B**. On Line 10 of Form 511, Protestants claimed an Oklahoma standard deduction in the amount of \$11,600. On Line 11 of Form 511, Protestants claimed two exemptions totaling \$2,000.

3. On or about March 20, 2012, Protestants filed their first 2010 Oklahoma Amended Resident Income Tax Return. The first 2010 Oklahoma Amended Resident Income Tax Return is attached hereto as **Exhibit C**. Protestants amended Line 4 of Form 511 to reflect a higher Oklahoma Subtractions amount based on a higher calculation percentage and additional retirement income. Attached to Form 511X, Protestants attached Form 1099-R from DFAS and

⁷ On August 27, 2012, this office mailed a letter to the parties acknowledging the filing of the pleadings, closing of the record, and submission of this case for decision. See court file.

⁸ The text of the stipulated facts is set out *in haec verba*. "*In haec verba*" (in heek v<<schwa>>r-b<<schwa>>). [Latin] In these same words; verbatim. BLACK'S LAW DICTIONARY (9TH ed. 2009), available at <http://web2.westlaw.com>.

Form 1099-R from BANK to support the retirement income from the AGENCY. These attachments are included in **Exhibit C**.

4. On or about April 3, 2012, Protestants filed their second 2010 Oklahoma Amended Resident Income Tax Return. The second 2010 Oklahoma Amended Resident Income Tax Return is attached hereto as **Exhibit D**. On Line 10 of Form 511X, Protestants claimed a deduction and exemption amount of \$15,600 to reflect an increased Oklahoma standard deduction amount of \$13,600 and two claimed exemptions totaling \$2,000. Protestants increased the standard deduction from \$11,400 to \$13,600 based upon their interpretation of 68 O.S. § 2358(E)(2)(f) which they claim allows them to include the additional standard deduction allowed by the Internal Revenue Code.

5. On or about April 3, 2012, Protestants filed their 2011 Oklahoma Amended Resident Individual Income Tax Return. The 2011 Oklahoma Amended Resident Individual Income Tax Return is attached hereto as **Exhibit E**. On Line 10 of Form 511X, Protestants claimed a deduction and exemption amount of \$15,900 to reflect an increased Oklahoma standard deduction of \$13,900 and two claimed exemptions totaling \$2,000. Protestants increased the standard deduction from \$11,600 to \$13,900 based upon their interpretation of 68 O.S. § 2358(E)(2)(f) which they claim allowed them to include the additional standard deduction allowed by the Internal Revenue Code. Additionally, Protestants amended Line 6 of the original Schedule 511-A to include \$10,000 of retirement income from the AGENCY. To support this amendment, Protestants attached a 1099-R with the amended return. This attachment is included in **Exhibit E**.

6. On April 24, 2012, an adjustment letter was issued to Protestants explaining their 2010 Oklahoma Amended Resident Individual Income Return had been adjusted because “Oklahoma standard deduction is to be entered on your return, not federal standard deduction,” and assessing additional tax in the amount of \$124.58. The assessment letter for the 2010 Oklahoma Amended Resident Individual Income Tax Return is attached hereto as **Exhibit F**.

7. On April 30, 2012, an adjustment letter was issued to Protestants explaining their 2011 Oklahoma Amended Resident Individual Income Tax Return had been adjusted because “Oklahoma standard deduction is to be entered on your return, not federal standard deduction,” and assessing additional tax in the amount of \$130.71. The assessment letter for the 2011 Oklahoma Amended Resident Individual Income Tax Return is attached hereto as **Exhibit G**.

8. Protestants filed a protest letter dated May 8, 2012, stating they disagreed with the adjustments made to their 2010 and 2011 returns and provided an analysis explaining why their reading of the statute and filing instructions allowed for a greater standard deduction for tax years 2010 and 2011. The protest letter is attached hereto as **Exhibit H**.⁹ Enclosed with the protest letter, the Protestants provided payment under protest, on the 2010 and 2011 assessments.

⁹ In the Protestants’ *Brief in Chief* at 3, the Protestants request that Exhibit B be substituted for a copy of 26 U.S.C. § 63, which is part of *Joint Exhibit H*. The request is denied. The parties stipulated to the *Joint Exhibits* and the Protestants did not seek the Division’s approval for the substitution. Any exceptions are noted for the record.

ADDITIONAL FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the Protestants' *Brief in Chief*, the Division's *Response Brief*, and the Protestants' *Reply Brief*, the undersigned finds:

9. The calculation of the Protestants' "Standard Deduction" on the Oklahoma Income Returns for the 2010 and 2011 Tax Years are summarized in pertinent parts,¹⁰ as follows-wit:

YEAR	TYPE	LINE 10	LINE 11	LINE 12
2010	ORIGINAL	11,400.00	2,000.00	13,400.00
2010	FIRST AMENDED	13,400.00		
2010	SECOND AMENDED	15,600.00		
2011	ORIGINAL	11,600.00	2,000.00	13,600.00
2011	AMENDED	15,900.00		

10. The Protestants attached a statement to the "Second Amended" and "Amended" Oklahoma Income Tax Returns for the 2010 and 2011 Tax Years, respectively,¹¹ which states in pertinent parts, as follows, to-wit:

The Oklahoma Tax Code (Title 68, Chapter 1, Article 23, Section 2358, (E)(2)(f) states:

For taxable years beginning on or after January 1, 2010, in the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction equal to the standard deduction allowed by the Internal Revenue Code of 1986, as amended, based upon the amount and filing status prescribed by such Code for purposes of filing federal individual income tax returns.

The worksheet on Page 34, Instructions for 2010 Form 1040-Line 40, Standard Deduction Worksheet for People Who Were Born Before January 2, 1947, indicates that Married filing jointly (2 exemptions), the standard deduction is \$13,600.

¹⁰ *Joint Exhibits A through E.*

¹¹ *See Joint Exhibits D through E.* On the "Amended" Oklahoma Income Tax Return for the 2011 Tax Year, the wording of the second paragraph of the statement differs slightly, but in sum and substance is the same for purposes of this matter. However, the calculation example states, "Page 34, Instructions for 2011 Form 1040-Line 40, Standard Deduction Chart for People Who Were Born Before January 2, 1947, or Were Blind indicates that Married filing jointly (2 exemptions), the standard deduction is \$13,900. When you add the Oklahoma exemptions (2 x \$1,000) the Total Deductions and exemptions equals \$15,900.00."

When you add the Oklahoma exemptions (Two (2) x \$1,000) the Total Deductions and exemptions equals \$15,600.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction over the parties and subject matter of this proceeding.¹²

2. When a taxpayer in an administrative proceeding does not request an oral hearing, or the parties agree that an oral hearing is un-necessary, the Administrative Law Judge will base the Findings, Conclusions and Recommendations on the position letters and briefs submitted by the parties. The Administrative Law Judge will mail notice of a date certain for each party to submit a position letter or brief setting out therein the statement of facts, issues to be determined, contentions and statutory and case law relied upon to support his contentions. The Administrative Law Judge may schedule a conference between the parties if it is necessary to clarify the positions of the parties.¹³

3. A taxpayer's "Taxable Income"¹⁴ is subject to the adjustments provided in Section 2358 of Title 68¹⁵ of the Oklahoma Income Tax Act¹⁶ ("Act") to arrive at "Oklahoma Adjusted Gross Income"¹⁷ for individuals.¹⁸

4. The starting point for determining the "Oklahoma Adjusted Gross Income"¹⁹ of an individual taxpayer is the "Taxable Income"²⁰ with respect to the taxpayer as defined in the Internal Revenue Code ("IRC") as it applies to such taxpayer.²¹

5. Any term used in the Act shall have the same meaning as when used in a comparable context in the IRC, unless a different meaning is clearly required. For all taxable periods covered by the Act, the tax status and all elections of all taxpayers covered by the Act shall be

¹² OKLA. STAT. ANN. tit. 68, § 221(C) (West Supp. 2012).

¹³ OKLA. ADMIN. CODE § 710:1-5-38(a) (June 25, 2009).

¹⁴ OKLA. STAT. ANN. tit. 68, § 2353(10) (West Supp. 2012).

¹⁵ OKLA. STAT. ANN. tit. 68, § 2358 (West Supp. 2012).

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

¹⁷ *See* Note 19, *infra*.

¹⁸ *See* Note 14, *supra*.

¹⁹ OKLA. STAT. ANN. tit. 68, § 2353(13) (West 2008).

²⁰ *See* Note 14, *supra*. *See also* *General Accessory Manufacturing Company v. Oklahoma Tax Com'n*, 2005 OK CIV APP 75, ¶ 7, 122 P.3d 476 and *Getty Oil Co. v. Oklahoma Tax Com'n*, 1977 OK 19, 563 P.2d 627.

²¹ OKLA. STAT. ANN. tit. 68, § 2358(A) (West Supp. 2012).

the same for all purposes material hereto as they are for federal income tax purposes except when the Act specifically provides otherwise.²²

6. Section 2358(E)(2)(f) of Title 68 (“Statute”),²³ provides as follows, to-wit:

The Oklahoma adjusted gross income of any individual taxpayer shall be further adjusted as follows to arrive at Oklahoma taxable income:

...

For taxable years beginning on or after January 1, 2010, in the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction equal to the standard deduction allowed by the Internal Revenue Code of 1986, as amended, based upon the amount and filing status prescribed by such Code for purposes of filing federal individual income tax returns.

7. Authority to classify various portions of income as deductible in computing state income tax liability is entirely within the legislative arena.²⁴

8. The state, through the legislature, may select its subjects of taxation and classify them, and they may tax one subject or class and exempt other subjects or classes.²⁵

9. Section 2358(E)(1)(c) of Title 68,²⁶ provides in pertinent part , as follows, to-wit:

The Oklahoma adjusted gross income of any individual taxpayer shall be further adjusted as follows to arrive at Oklahoma taxable income:

...

There shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following

²² OKLA. STAT. ANN. tit. 68, § 2353(3) (West 2008).

²³ OKLA. STAT. ANN. tit. 68, § 2358(E)(2)(f) (West Supp. 2012). See OKLA. ADMIN. CODE § 710:50-15-50 (July 11, 2010).

²⁴ *Oklahoma Tax Commission v. Smith*, 1980 OK 74, 610 P.2d 794. (Citations omitted).

²⁵ *Id.* See *Fent v. State ex rel. Oklahoma Tax Com’n*, 2004 OK 59, 99 P.3d 241.

²⁶ OKLA. STAT. ANN. tit. 68, § 2358(E)(1)(c) (West Supp. 2012). See OKLA. ADMIN. CODE § 710:50-15-30 (June 25, 2001).

filing status may claim this exemption if the federal adjusted gross income does not exceed:

- (1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;
- (2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;
- (3) Fifteen Thousand Dollars (\$15,000.00) if single; and
- (4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household.

10. Statutes are to be construed by reading their provisions with ordinary and common definitions of words used, and it is to be assumed that lawmaking authority intended for them to have same meaning as that attributed to them in ordinary and usual parlance.²⁷

11. Courts must interpret legislation so as to give effect to every word and sentence rather than rendering some provision nugatory.²⁸

12. The goal of any inquiry into the meaning of a legislative act is to ascertain and give effect to the intent of the legislature. The law-making body is presumed to have expressed its intent in a statute's language and to have intended what the text expresses. Hence, where a statute is plain and unambiguous, it will not be subject to judicial construction, but will be given the effect its language dictates. Only where the intent cannot be ascertained from a statute's text, as occurs when ambiguity or conflict (with other statutes) is shown to exist, may rules of statutory construction be employed.²⁹

13. Where there are two statutory provisions, one of which is special and clearly includes matter in controversy, and prescribes different rules and procedures from those in general statute, special statute and not general statute applies.³⁰

14. 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.³¹

²⁷ *Matter of Income Tax Protest of Ashland Exploration, Inc.*, 1988 OK 23, 751 P.2d 1070.

²⁸ *Globe Life and Acc. Ins. Co. v. Oklahoma Tax Com'n*, 1996 OK 39, 913 P.2d 1322.

²⁹ *Blitz U.S.A., Inc. v. Oklahoma Tax Com'n*, 2003 OK 50, ¶ 14, 75 P.3d 883. (Citations omitted).

³⁰ *Southwestern Bell Telephone Co. v. Oklahoma County Excise Bd.*, 1980 OK 97, 618 P.2d 915. See *City of Tulsa v. Smittle*, 1985 OK 37, 702 P.2d 367.

³¹ 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.

15. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.³² A proposed assessment is presumed correct and the taxpayer bears the burden of showing it is incorrect and in what respects.³³

ISSUE

WHETHER PROTESTANTS MAY PROPERLY EXCLUDE FROM TAXABLE INCOME THE ENTIRE AMOUNT OF STANDARD DEDUCTION ALLOWED BY THE IRS, WHICH INCLUDES AMOUNTS FOR THE ADDITIONAL STANDARD DEDUCTION FOR TAXPAYERS WHO ARE SIXTY-FIVE (65) YEARS OR OLDER BEFORE THE CLOSE OF THE TAXABLE YEAR?³⁴

DISCUSSION

The Protestants' position is "There is no mention of the "basic Federal Standard Deduction" in the Oklahoma Tax Code, only "the standard deduction allowed by the Internal Revenue Code of 1986, based upon the amount and filing status prescribed by such Code for purposes of filing federal individual income tax returns."³⁵ In support of their position,³⁶ the Protestants cite the Statute,³⁷ which states as follows, to-wit:

³² 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 the 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.

³³ See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

³⁴ The parties did not specifically stipulate that the Protestants were both sixty-five (65) years or older before the close of the 2010 Tax Year, but that fact is implied by the Protestants' calculation of their "Oklahoma Standard Deduction," the Division's subsequent disallowance thereof, and the reasons as more fully stated herein.

³⁵ See Exhibit H at 1. (Emphasis original).

³⁶ See Protestants' *Brief in Chief* at 1. See also Protestants' *Reply Brief* at 1.

³⁷ See Note 23, *supra*.

The Oklahoma adjusted gross income of any individual taxpayer shall be further adjusted as follows to arrive at Oklahoma taxable income:

...

For taxable years beginning on or after January 1, 2010, in the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction equal to the standard deduction allowed by the Internal Revenue Code of 1986, as amended, based upon the amount and filing status prescribed by such Code for purposes of filing federal individual income tax returns.³⁸

The Division argues "...that the statutory language controls, and pursuant to Section 2358(E)(2)(f), the deduction is limited to the standard deduction based on amount and filing status, referred to as the basic standard deduction. Additionally, the Division argues that the intent of the legislature is clearly expressed in the statute upon consideration of other relevant provisions in the [Act]."³⁹ In support of its position, the Division cites the comprehensive list of exemptions contained in Section 2358(E)(1),⁴⁰ which includes the following, to-wit:

The Oklahoma adjusted gross income of any individual taxpayer shall be further adjusted as follows to arrive at Oklahoma taxable income:

...

There shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following filing status may claim this exemption if the federal adjusted gross income does not exceed:

(1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;

³⁸ Protestants' *Brief in Chief* at 5 contains this example of how to calculate the "standard deduction" from the IRS instructions for the 2010 Tax Year:

Bill and Lisa are filing a joint return for 2010. Both are over age 65. Neither is blind, and neither can be claimed as a dependent. They did not pay sales or excise taxes on the purchase of a new motor vehicle or have net disaster loss. They do not itemize deductions, so they use Worksheet 3. Because they are married filing jointly, they enter \$11,400 on line 1. They check the "No" box on line 2, so they also enter \$11,400 on line 4. Because they are both over age 65, they enter \$2,200.00 (\$1,100 x 2) on line 5. They enter \$13,600 (\$11,400 + \$2,200) on line 7, so their standard deduction is \$13,600.

See also Protestants' Exhibits D through E.

³⁹ Division's *Response Brief* at 2.

⁴⁰ OKLA. STAT. ANN. tit. 68, § 2358(E)(1) (West Supp. 2012).

- (2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;
- (3) Fifteen Thousand Dollars (\$15,000.00) if single; and
- (4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household.

The parties cite to the Internal Revenue Code (“I.R.C.”) and specifically to the provisions of I.R.C. § 63, which provides in pertinent parts,⁴¹ as follows, to-wit:

(c) Standard deduction.--For purposes of this subtitle—

(1) In general.--Except as otherwise provided in this subsection, the term “standard deduction” means the sum of—

- (A) the basic standard deduction,
- (B) the additional standard deduction,
- (C) in the case of any taxable year beginning in 2008 or 2009, the real property tax deduction,
- (D) the disaster loss deduction, and
- (E) the motor vehicle sales tax deduction.

...

(3) Additional standard deduction for aged and blind.--For purposes of paragraph (1), the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (f).

...

(f) Aged or blind additional amounts.—

(1) Additional amounts for the aged.--The taxpayer shall be entitled to an additional amount of \$600—

- (A) for himself if he has attained age 65 before the close of his taxable year, and
- (B) for the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b). (Emphasis original).

⁴¹ I.R.C. § 63

The parties also cite to Section 2353(3) of Title 68,⁴² which provides as follows, to-wit:

Any term used in Section 2351 et seq. of this title shall have the same meaning as when used in a comparable context in the Internal Revenue Code, unless a different meaning is clearly required. For all taxable periods covered by Section 2351 et seq. of this title, the tax status and all elections of all taxpayers covered by Section 2351 et seq. of this title shall be the same for all purposes material hereto as they are for federal income tax purposes *except when Section 2351 et seq. of this title specifically provides otherwise*; (Emphasis added).

What the Protestants fail to recognize is the significance of the language “*except when Section 2351 et seq. of this title specifically provides otherwise.*” The provisions of the Statute cannot be read in isolation as suggested by the Protestants, but the Act must be construed in its entirety.⁴³ The language of the Act is clear and unambiguous and its terms should be construed using their ordinary meaning as directed by the Legislature. When there are two (2) statutory provisions, which arguable could govern, the more specific must prevail.⁴⁴

The Protestants’ position would be correct, if the Legislature had not specifically included in the Act, Section 2358(E)(1)(c) of Title 68,⁴⁵ which only allows the Protestants an additional exemption (65+ at the close of the taxable year) of One Thousand Dollars (\$1,000.00) each, if their Federal Adjusted Gross Income (“FAGI”) does not exceed Twenty-five Thousand Dollars (\$25,000.00) based upon their filing status of married filing jointly. However, in this matter, the Protestants’ FAGI (Line one (1)) for the 2010 and 2011 Tax Years exceeds the income cap mandated by the Legislature.⁴⁶

The Protestants also assert the “Oklahoma Resident Individual Income Tax Forms and Instructions” for the 2010 and 2011 Tax Years control. Courts cannot enlarge taxing act’s ambit to make its provision applicable to cases not clearly within legislature’s contemplation or to fill lacunae in revenue law in manner that would distort enactment’s plain language.⁴⁷

⁴² See Note 22, *supra*.

⁴³ *Imaging Services, Inc. v. Oklahoma Tax Com’n*, 1993 OK 164, 866 P.2d 1204. See *Affiliated Management Corp. v. Oklahoma Tax Commission*, 1977 OK 183, 570 P.2d 335. See also *Wooten v. Oklahoma Tax Commission, et al.*, 1935 OK 54, 40 P.2d 672.

⁴⁴ See Note 30, *supra*.

⁴⁵ See Note 26, *supra*.

⁴⁶ See Exhibits D through E. The Protestants’ FAGI on the “Second Amended” Return for the 2010 Tax Year is \$86,352.00 and \$87,588.00 on the “Amended” Return for the 2011 Tax Year.

⁴⁷ See Note 28, *supra*.

Estoppel generally does not apply against the state acting in its sovereign capacity because of unauthorized acts of its officers or because of mistakes or error of its employees.⁴⁸ Application of estoppel is not allowed against state, political subdivisions, or agencies, unless the facts or circumstances implicate the imposition of estoppel would further some prevailing principal of public policy or interest.⁴⁹ Where there is no power to act, a public official cannot bind a government entity even if he or she mistakenly or falsely asserts such authority.⁵⁰

No provision of state law specifically adopts all federally allowed deductions. Even though taxing statutes must be construed in favor of taxpayer, and change in method of computing deductible losses for income tax purposes is within province of legislature and should not be made by the courts; deductions depend entirely upon legislative grace. Taxing statutes are frequently discriminatory, but for an income tax classification to be constitutional all that is required is that the classification and apportionment be reasonable and related to the object of the tax action.⁵¹

Ignorance of the law, standing alone is no defense. The rule, long-standing and well-known is cited by the Court in *Campbell*,⁵² “We know of no case where mere ignorance of the law, standing alone, constitutes any excuse or defense against its enforcement. It would be impossible to administer the law if ignorance of its provisions were a defense thereto”.

CONCLUSION

The Protestants have failed to meet their burden of proof, by preponderance of the evidence, that the Division’s adjustments to the “Second Amended” Return for the 2010 Tax Year and the “Amended” Return for the 2011 Tax Year is incorrect and in what respects.

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, as more fully set forth herein.

OKLAHOMA TAX COMMISSION

⁴⁸ *State ex rel. Cartwright v. Dunbar*, 1980 OK 15, 618 P.2d 900.

⁴⁹ *Tice v. Pennington*, 2001 OK CIV APP 95, 30 P.3d 1164.

⁵⁰ *Hiland Dairy Foods Co., LLC. v. Oklahoma Tax Com’n*, 2006 OK CIV APP 68, 136 P.3d 1072.

⁵¹ *Getty Oil Company v. Oklahoma Tax Commission*, 1977 OK 19, 563 P.2d 627.

⁵² *Campbell v. Newman*, 1915 OK 538, ¶3, 151 P. 602, 603, citing *Utermehle v. Norment*, 197 U.S. 40, 25 S.Ct. 291, 49 L.Ed. 655 (1905).

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.”