

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2013-03-12-06 / NON-PRECEDENTIAL
ID: P-12-001-H
DATE: MARCH 12, 2013
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT (“Protestant”) appears through attorney, ATTORNEY, FIRM. The Account Maintenance Division (“Division”) of the Oklahoma Tax Commission appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On January 5, 2012, the protest letter 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 January 11, 2012, the Court Clerk³ sent a memorandum requesting the Division’s file. On January 12, 2012, OTC ATTORNEY 1, Assistant General Counsel filed an Entry of Appearance as Counsel of record for the Division. On January 13, 2012, the Clerk mailed the letter to ATTORNEY that advised this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-12-001-H. The letter also advised 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 January 18, 2012, the Clerk received the protest file from the Division. On January 31, 2012, the Clerk mailed the Notice of Prehearing Conference to the ATTORNEY’S last-known address, setting the prehearing conference for February 27, 2012, at 11:00 a.m.⁵

On February 1, 2012, OTC ATTORNEY 1 filed a memorandum requesting that the prehearing conference be continued due to a scheduling conflict. On February 7, 2012, the Clerk mailed a Notice of Prehearing Conference rescheduling the prehearing conference to March 6, 2012, at 9:30 a.m.

On March 5, 2012, OTC ATTORNEY 1 filed the Status Report in Lieu of Prehearing Conference, advising that ATTORNEY was forwarding additional information for the Division’s

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

⁴ *Id.*

⁵ OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). The Clerk mailed the notice to ATTORNEY at ATTORNEY’S ADDRESS.

review. On March 6, 2012, the Clerk mailed the letter advising the parties that a status report was due on or before April 5, 2012.

On April 5, 2012, OTC ATTORNEY 1 filed the Status Report advising the Division had not received any additional documentation from ATTORNEY; nor had attempts to contact ATTORNEY been successful. On April 5, 2012, ATTORNEY filed a Status Report that Protestant was gathering information, which once complete should resolve the protest. On April 12, 2012, the Clerk mailed the letter to Counsel that a status report was due on or before May 15, 2012.

On May 15, 2012, OTC ATTORNEY 1 filed the Status Report that Counsel was providing additional documentation for the Division's review. On May 18, 2012, the Clerk mailed the letter that a status report was due on or before June 14, 2012.

On June 13, 2012, OTC ATTORNEY 1 filed the Status Report that Counsel had provided additional documentation and the Division was currently reviewing the documentation. On June 13, 2012, the Clerk mailed the letter that a status report was due on or before July 16, 2012.

On July 16, 2012, OTC ATTORNEY 1 filed the Status Report advising that the parties could not reach a resolution of this matter and that this case should be set for hearing. On July 17, 2012, OTC ATTORNEY 2 filed a Notice of Substitution of Attorney and Entry of Appearance as Counsel for the Division.⁶ On July 17, 2012, the undersigned advising Counsel by letter that this matter had been set for hearing on August 30, 2012, at 9:30 a.m., with position letters and/or memorandum briefs due on or before August 23, 2012.

On August 23, 2012, the Division filed its Notice of Revision, with Exhibit A, attached thereto. On August 23, 2012, the Division filed its Brief, with Appendix A, attached thereto. On August 27, 2012, the Protestant filed his Position Letter. No exhibits were attached thereto. On August 29, 2012, at 1:30 p.m. the undersigned conducted a Status Conference, by telephone, with Counsel, at ATTORNEY'S request. ATTORNEY was given one (1) hour to fax a copy of the Protestant's STATE 2 Income Tax Return to the Clerk and OTC ATTORNEY 2 or the hearing would proceed as scheduled. The undersigned advised ATTORNEY if he complied with the deadline, an Order Striking Hearing would issue with instructions as to how the parties were to proceed. On August 29, 2012, at 2:14 p.m. the Clerk received, by facsimile, an unfiled copy of the Protestant's 2010 STATE 2 Nonresident and Part-Year Resident-2D Return. On August 29, 2012, the undersigned issued an Order Striking Hearing and Setting Status Report, striking the hearing set for August 30, 2012, at 9:30 a.m. The undersigned directed the Division to file a status report on or before September 14, 2012, as to whether the Division has been able to adjust the proposed income tax assessment, based upon the STATE 2 Income Tax Return for the 2010 Tax Year. On August 31, 2012, the Division filed its Notice of Revision based upon the STATE 2 return, concurrently with a Status Report, which states "...which partially substantiated the credit for taxes paid to another state claimed on line 16 of Form 511. The

⁶ This pleading is deemed as OTC ATTORNEY 1'S Withdrawal as Counsel.

information provided by the Protestant on August 29, 2012 has no effect on line 4 of Form 511, thus the adjustment, as originally made to line 4, remains as an issue in controversy.”⁷

On September 14, 2012, the parties filed a Joint Status Report anticipating that they would be able to stipulate to all relevant facts and this matter submitted on briefs. On September 14, 2012, by letter, the undersigned directed the parties to submit a proposed scheduling order on or before September 28, 2012. On September 25, 2012, the parties submitted a Proposed Scheduling Order. On September 26, 2012, the undersigned issued the Scheduling Order, as more fully set forth therein.

On October 18, 2012, ATTORNEY filed, by facsimile, a Motion for Enlargement of Time to File Written Stipulations, due to a scheduling conflict with trials in U.S. Tax Court. The Division had no objection to the request for the seven (7) day extension. On October 19, 2012, the undersigned issued an Order granting Motion for Enlargement of Time to File Written Stipulations to October 25, 2012. The remaining deadlines listed in the Scheduling Order dated September 26, 2012, remain in place.⁸ On October 25, 2012, OTC ATTORNEY 2 filed a Status Report advising that ATTORNEY had neither agreed to nor requested any changes to the draft Stipulations which were delivered on October 4, 2012, pursuant to the September 26th Scheduling Order.

On November 2, 2012, the undersigned acknowledged, by letter, OTC ATTORNEY 2’S Status Report, striking the September 26th Scheduling Order and enclosing a Scheduling Order setting this matter for hearing on December 18, 2012, at 9:30 a.m., with position letters and/or memorandum briefs due on or before December 11, 2012. On November 5, 2012, the Clerk mailed an Amended Scheduling Order setting this matter for hearing on December 20, 2012, at 9:30 a.m. with position letters and/or memorandum briefs due on December 13, 2012.⁹

On December 13, 2012, the Division filed its Brief with the Clerk. On December 13, 2012, the Protestant filed his Position Letter with the Clerk. On December 20, 2012, the undersigned convened a closed hearing¹⁰ as scheduled. ATTORNEY appeared on behalf of the Protestant (who was not present for the hearing) and made a brief Opening Statement. OTC ATTORNEY 2 appeared on behalf of the Division. OTC ATTORNEY 2 waived the Division’s Opening Statement. ATTORNEY stood on his Position Letter. The Division called one (1) witness, AUDITOR, “Auditor,” Account Maintenance Division of the Oklahoma Tax Commission, who testified about the adjustment of the Protestant’s income tax return for the 2010 Tax Year, and as custodian of the Division’s records. OTC ATTORNEY 2 identified and offered Division’s Exhibits A through G, which the undersigned admitted into evidence without objection. ALJ’s Exhibits 1 through 2 (Copies of STATE 2 W-2Gs for the 2010 Tax Year and STATE W-2Gs for 2010 Tax Year) were identified and admitted into evidence. OTC

⁷ See Status Report filed August 31, 2012.

⁸ A letter stating, “So that the process keeps moving forward, the Court is reluctant to entertain or grant any further extensions requests to the Scheduling Order dated September 26, 2012, accompanied the Order.

⁹ There was a scheduling conflict with a hearing set on the same day.

¹⁰ OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2012). The Protestant, through ATTORNEY, invoked confidentiality.

ATTORNEY 2 made a brief Closing Statement. ATTORNEY waived Closing Statement. At the conclusion of the hearing, the record remained open for thirty (30) days for the Protestant to provide a copy of the STATE return for the 2010 Tax Year. On December 20, 2012, the Clerk mailed the letter confirming the hearing announcements, that the record remained open until January 21, 2013, for Protestant to provide a copy of the STATE return, which would be identified and admitted into evidence as Protestant's Exhibit 1. The undersigned closed the record and this case submitted for decision January 23, 2013.¹¹

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 October 20, 2011, the Protestant filed an Oklahoma Resident Income Tax Return ("Return") for the 2010 Tax Year. On the Return, the Protestant claimed an out-of-state income deduction on Line 4(b) of \$25,707.00 for "Gambling Income," in addition to an itemized deduction on Line 12 of \$54,087.00. On Line 16 of the Return, the Protestant claimed \$677.00 as a credit for taxes paid to another state.¹²

2. On November 8, 2011, the Division issued an adjustment letter ("1st Adjustment") to the Return,¹³ as follows, to-wit:

<u>FORM 511</u>	<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 04B OUT OF STATE INCOME	\$ 25,707.00	0.00
LINE 07 OKLAHOMA AGI	176,423.00	202,130.00
LINE 09 INCOME AFTER ADJUSTMENTS	176,323.00	202,030.00
LINE 10 DEDUCTION AMOUNT	0.00	5,700.00
LINE 11 EXEMPTION AMOUNT	0.00	1,000.00
LINE 12 DEDUCTIONS & EXEMPTIONS	54,087.00	6,700.00
LINE 13 OKLAHOMA TAXABLE INCOME	122,236.00	195,330.00
LINE 14 OKLAHOMA INCOME TAX	6,491.00	10,511.00
LINE 16 TAX PAID ANOTHER STATE	677.00	0.00
LINE 18 BALANCE	5,789.00	10,486.00
LINE 36 INCOME TAX DUE	1,164.00	5,861.00
LINE 39 TOTAL BALANCE DUE	\$1,582.00	\$6,279.00
PAYMENT WITH RETURN	\$1,582.00	\$1,582.00
REMAINING BALANCE	0.00	\$4,697.00

¹¹ On January 23, 2013, the Clerk mailed a letter to the parties advising that as of the date of the letter, the Protestant had not supplemented the record, which closed and the case submitted for decision.

¹² Testimony of Auditor. Division's Exhibit A.

¹³ *Id.* Division's Exhibit B.

LINES 4 & 16 ADJUSTED, FORM 511TX &/OR COPY OF THE OTHER STATE(S) TAX RETURN NOT PROVIDED. SCHEDULE SHOWING THE TYPE, NATURE & SOURCE OF THE OUT OF STATE INCOME NOT PROVIDED.

***TAX RATE ERROR

***ADDITIONAL TAX DUE DOES NOT INCLUDE PENALTY OR INTEREST THAT MAY APPLY.

***PAYMENTS MAY BE REMITTED TO THE ADDRESS BELOW.

3. On January 5, 2012, the Protestant filed a timely written protest to the Division's adjustment to the Return for the 2010 Tax Year.¹⁴

4. On May 23, 2012, the Protestant provided a Federal Schedule A for the 2010 Tax Year to substantiate the itemized deduction on Line 12 of the Return.¹⁵

On August 22, 2012, the Division revised the original adjustment ("2nd Adjustment") to the Return for the 2010 Tax Year to allow for the Protestant's itemized deductions,¹⁶ as follows, to-wit:

	<u>Original</u>	<u>11/08/11 Adjustment</u>	<u>08/22/12 Revision</u>
Line 1	\$202,130.00	\$202,130.00	\$202,130.00
Line 4	25,707.00	0.00	0.00
Line 5 & 7	176,423.00	202,130.00	202,130.00
Line 8	100.00	100.00	100.00
Line 9	176,423.00	202,030.00	202,030.00
Line 12	54,087.00	6,700.00	61,969.00
Line 14 (tax)	6,491.00	10,511.00	7,470.00
Line 16	677.00	0.00	0.00
Line 18	5,789.00	10,486.00	7,446.00
Line 24 & 30	4,650.00	4,650.00	4,650.00
Line 36	1,164.00	5,861.00	2,796.00
Payment	\$1,582.00	\$1,582.00	\$1,582.00
Balance due	0.00	\$4,279.00	\$1,214.00

5. On August 29, 2012, by facsimile, the Protestant provided an "unfiled" copy of his STATE 2 Nonresident and Part-Year Resident-2D Return for the 2010 Tax Year ("STATE 2 Return").¹⁷ The STATE 2 Return reflects STATE 2 Adjusted Gross Income of \$18,395.00, withholding of \$1,104.00, \$199.00 income tax due, and a refund of \$905.00.¹⁸

¹⁴ *Id.* Division's Exhibit C.

¹⁵ *Id.* Division's Exhibit D.

¹⁶ *Id.* Division's Exhibit E.

¹⁷ *Id.* Division's Exhibit F.

¹⁸ *Id.* See ALJ's Exhibit 2. The six (6) W-2Gs from STATE 2 reflect total winnings of \$18,395.00, with \$1,103.70 in withholding.

6. On August 29, 2012, the Division further revised the original adjustment (“3rd Adjustment”) to the Return for the 2010 Tax Year,¹⁹ as follows, to-wit:

	<u>Original</u>	<u>11/08/11 Adjustment</u>	<u>08/22/12 Revision</u>
Line 1	\$202,130.00	\$202,130.00	\$202,130.00
Line 4	25,707.00	0.00	0.00
Line 5 & 7	202,130.00	202,130.00	202,130.00
Line 8	100.00	100.00	100.00
Line 9	176,423.00	202,030.00	202,030.00
Line 12	54,087.00	6,700.00	61,969.00
Line 14 (tax)	6,491.00	10,511.00	7,470.00
Line 16	677.00	0.00	199.00
Line 18	5,789.00	10,486.00	7,247.00
Line 24 & 30	4,650.00	4,650.00	4,650.00
Line 36	1,164.00	5,861.00	2,597.00
Payment	\$1,582.00	\$1,582.00	\$1,582.00
Balance due	0.00	\$4,279.00	\$1,015.00

7. At hearing, ATTORNEY provided copies of three (3) STATE W-2Gs for the 2010 Tax Year. Gross winnings are reflected as \$5,745.00 and “ZERO” withholding.²⁰ Post-hearing, ATTORNEY was to submit a copy of the Protestant’s STATE Income Tax Return for the 2010 Tax Year, but a copy was not submitted.²¹

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.²²

2. An income tax is imposed upon the Oklahoma taxable income of every resident or nonresident individual.²³

¹⁹ *Id.* Division’s Exhibit G. The adjustment also notes “...there is penalty of \$129.85 and interest to 09/10/12 of \$482.50. Total tax, underpayment of estimated penalty and interest, penalty and interest are now due for \$1,705.57.” There appears to be a mathematical error, \$1,015.00 plus \$129.85 plus \$482.50 equals \$1,627.35.

²⁰ ALJ’s Exhibit 2. The gross winnings reflected on the Return for the 2010 Tax Year is \$25,707.00, but all of the W-2GS total \$24,140.00 or \$1,567.00 less than reported on the Return.

²¹ *See* Procedural History herein.

²² OKLA. STAT. ANN. tit. 68, § 221(C) (West Supp. 2012).

²³ OKLA. STAT. ANN. tit. 68, § 2355(A) (West 2008). *See* OKLA. STAT. ANN. tit. 68, § 2353(12) (West 2008), 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;

3. A taxpayer may exclude from Oklahoma Adjusted Gross Income an amount for income earned out-of-state (“Deduction Statute”),²⁴ as follows, to-wit:

For all tax years beginning after December 31, 1981, taxable income and adjusted gross income shall be adjusted to arrive at Oklahoma taxable income and Oklahoma adjusted gross income as required by this section.

A. The taxable income of any taxpayer shall be adjusted to arrive at Oklahoma taxable income for corporations and Oklahoma adjusted gross income for individuals, as follows:

...

4. Items of the following nature shall be allocated as indicated. Allowable deductions attributable to items separately allocable in subparagraphs a, b and c of this paragraph, whether or not such items of income were actually received, shall be allocated on the same basis as those items:

a. Income from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property;

b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer,

...

4. The Tax Commission Rule provides,²⁵ as follows, to-wit:

(a) For residents, “out-of-state income” consists of income from real or tangible personal property or business income in another state. Any amount deducted must be substantiated with the appropriate Federal schedule which sets out the Oklahoma portion.

(b) Losses sustained from property owned or from a business located outside the State of Oklahoma must be added to Federal adjusted gross income to arrive at Oklahoma adjusted gross income.

²⁴ OKLA. STAT. ANN. tit. 68, § 2358(A)(4) (West Supp. 2013).

²⁵ OKLA. ADMIN. CODE § 710:50-15-52 (June 25, 2000).

(c) Out-of-State income is limited to the net income from real or tangible personal property or net business income in another state. (Emphasis original).

5. A credit against the tax imposed by Section 2355 of Title 68 is allowed for the amount of tax paid another state by a resident individual upon income received as compensation for personal services performed in such other state (“Out-of-State Credit Statute”).²⁶ The credit may not exceed the proportion of the tax payable under § 2355 as the compensation for personal services subject to tax in the other state and also taxable under § 2355 bears to the Oklahoma adjusted gross income.²⁷

6. OTC Form 511 TX shall be used by residents and part-year residents who work in other states after becoming an Oklahoma resident and who are required to file Income Tax Returns with those states. This credit is available only on taxes paid in another state for wages and compensation for personal service. *For this credit, retirement income and the proceeds from gambling are considered compensation for personal services.* A copy of the Income Tax Return for each state in which a return was required to be filed must be filed and attached to a completed OTC Form 511 TX. A separate OTC Form 511 TX must be filed for each state.²⁸

7. 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. Statutes that provide an exemption from taxation are to be strictly construed against the claimant.²⁹ Statutory construction presents a question of law.³⁰

8. The Statute is a tax exemption or deduction statute, not a tax levying statute; and as such, it must be strictly construed unless authority for the deduction is clearly expressed.³¹

9. “Deductions [and credits against tax] are a matter of legislative grace rather than judicial intervention.”³² In order to be allowed, authority for the deduction sought must be clearly expressed.³³ None may be allowed in absence of a statutory provision therefor.³⁴

²⁶ OKLA. STAT. ANN. tit. 68, § 2357(B) (West Supp. 2012).

²⁷ *Id.*

²⁸ OKLA. ADMIN. CODE § 710:50-15-72 (June 25, 2004). See OKLA. STAT. ANN. tit. 68, § 2357(B)(1) (West Supp. 2012).

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

³⁰ *Id.* at ¶ 6.

³¹ *Id.*

³² *Flint Resources Company v. Oklahoma Tax Commission*, 1989 OK 9, 780 P.2d 665.

³³ *Home-State Royalty Corporation v. Weems*, 1935 OK 1043, 52 P.2d 806.

³⁴ *Id.* See *New Colonial Ice Co. v. Helvering*, 292 U.S. 435.

10. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.³⁵ A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.³⁶

DISCUSSION

The Protestant's position is two-fold. First, the Protestant asserts that he had Out-of-State Income, which is a deduction on Line 4(b) of the Return for the 2010 Tax Year. Secondly, the Protestant asserts that he paid \$1,103.70 in income tax to other states during the 2010 Tax Year, which the Division has disallowed as a Line 16 credit.³⁷ In support of position One (1), ATTORNEY states, "Protestant claims that gambling income is an adjustment from federal adjusted income for the calculation [of] Protestant's 2010 state income tax. Protestant relies upon Oklahoma Income Act, Title 68, Sections 2301 through 2357 of the Oklahoma statutes and the case law pursuant thereto."³⁸

As to the Protestant's argument regarding the deduction on Line 4(b), the Division acknowledges that a taxpayer may exclude from "Oklahoma Adjusted Gross Income"³⁹ an amount for income earned out-of-state, but the deduction is limited to income from real or tangible personal property or business income. Gambling income is not included as a deduction because it is not derived from real property or tangible personal property or business income.⁴⁰

The Division's position is correct as to Line 4(b). The Deduction Statute permits a deduction limited to income from two (2) types of property: (1) real property and (2) tangible personal property or business income. "Gambling Winnings" do not fall into either category and according to the Return; the Protestant's occupation is Attorney. "Gambling Winnings" are not business income.

Because of the 3rd Adjustment, it appeared that the Line 16 credit argument was moot, but at hearing, ATTORNEY expounded on his position. It is ATTORNEY'S position that the

³⁵ 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.

³⁶ See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

³⁷ Protestant's Position Letter at 1.

³⁸ *Id.* at 1-2. The Protestant's statutory and case law relied upon is quoted in its entirety.

³⁹ OKLA. STAT. ANN. tit. 68, § 2353(13) (West 2008).

⁴⁰ Division's Brief at 4. See OKLA. STAT. ANN. tit. 68, § 2358(A)(4) (West Supp. 2012). See also Notes 24-25, *supra*. Protestant failed to provide a copy of the federal schedule required by the Tax Commission Rule.

Division should have allowed a credit of \$1,103.70 based solely on the W-2G's, because the STATE 2 W-2G's reflect that is the amount which was withheld/paid by the various gambling establishments to the State of STATE 2. This is especially confusing because Line 16 on the Return claims a credit of only \$677.00.⁴¹

ATTORNEY also disputes the Division's position that the Protestant must also provide a copy of the out-of-state returns, in addition to the W-2Gs. This despite the fact that the Tax Commission Rule requires that "A copy of the Income Tax Return for each state in which a return was required to be filed *must be filed* and attached to a completed OTC Form 511 TX. A separate OTC Form 511 TX must be filed for each state."⁴² The obvious reason for this requirement is illustrated by the copy of the Protestant's "unfiled" STATE 2 Return, prepared by ATTORNEY, which reflects only \$199.00 in tax due and the remaining \$905.00 in withholding to be refunded to the Protestant. A copy of the Protestant's STATE Return was not supplied, but the STATE W-2Gs reflect that there was "Zero" withheld/paid to the State of STATE anyway.

CONCLUSION

The Protestant has failed to meet his burden of proof, by preponderance of the evidence, that the Division's adjustments to the Return for the 2010 Tax Year were 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.

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."

⁴¹ *See* Note 12, *supra*.

⁴² *Id.*