

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2014-01-09-05 / NON-PRECEDENTIAL  
**ID:** P-13-064-H  
**DATE:** JANUARY 9, 2014  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### ORDER

PROTESTANT (“Protestant”) appears pro se.<sup>1</sup> The Individual Income Tax 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 April 23, 2013, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*<sup>2</sup> and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.<sup>3</sup> Upon receipt, the Court Clerk (“Clerk”) noted that the protest file contained **Federal Tax Information (“FTI”)**.

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<sup>1</sup> “[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 (9<sup>th</sup> ed. 2009), available at <http://westlaw.com>.

<sup>2</sup> OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2001).

<sup>3</sup> OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

The Division placed a stamp and sticker on the protest file, respectively, which states as follows, to-wit:

**CONTAINS IRS FTI INFORMATION  
DO NOT DUPLICATE CONTENTS  
MUST BE DESTROYED IN ACCORD  
WITH IRS PUB. 1075 GUIDELINES**

**Inspection or Disclosure Limitations**

Unauthorized inspection or disclosure, printing, or publishing of any Federal return or return information, or any information therefrom, may be punishable by fine or imprisonment and in the case of Federal officers or employees, dismissal from office or employment. See section 7213 and 7213A of the Internal Revenue Code and 18 U.S.C. section 1905. In addition, Code section 7431 provides for civil damages for unauthorized inspection or disclosure of such information. Tapes should be degaussed after they have served their purpose, disposed of in accordance with Publication 1075 disposition guidelines or returned to the IRS.

*Department of the Treasury  
Internal Revenue Service*

*Notice 129A (Rev. 12-97)  
Cat No. 45547W*

The Office of Administrative Law Judges does not make copies of **FTI** and the Clerk secures the originals in a locked file cabinet, with the sticker set out above. At the conclusion of the case, the Clerk hand-delivers the **FTI** contained in the protest file to OTC ATTORNEY or a designated representative from the Office of General Counsel.

On April 24, 2013, the Clerk mailed the introductory letter to the Protestant that this matter had been assigned to ALJ, Administrative Law Judge (“ALJ”), and docketed as Case Number P-13-064-H. The letter also advised the Protestant that a Notice of Prehearing Teleconference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.<sup>4</sup> On April 24, 2013, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On April 25, 2013, the Clerk mailed the Prehearing Teleconference Notice to the last-known address of the Protestant, setting the teleconference for June 12, 2013, at 2:00 p.m.<sup>5</sup>

On June 12, 2013, at 2:00 p.m. the ALJ conducted the Prehearing Teleconference as scheduled. OTC ATTORNEY appeared for the Division. The Protestant did not appear. On June 13, 2013, the ALJ issued the Prehearing Conference Order directing the Division to file a verified response on or before July 15, 2013, with the Protestant to file a response on or before August 15, 2013.

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<sup>4</sup> *Id.* Unless otherwise noted herein, the ALJ notifies the parties by letter.

<sup>5</sup> OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2013). The Clerk mailed the notice to the Protestant at PROTESTANT ADDRESS.

On July 15, 2013, the Division filed its Verified Response, with Exhibits 1 through 24, attached thereto. The Division stamped the Verified Response,<sup>6</sup> as follows, to-wit:

**CONTAINS IRS FTI INFORMATION  
DO NOT DUPLICATE CONTENTS  
MUST BE DESTROYED IN ACCORD  
WITH IRS PUB. 1075 GUIDELINES**

The Verification attached to the Division's Verified Response was duly sworn under oath, on behalf of the Division, by AUDITOR, Auditor, Compliance Division, Oklahoma Tax Commission.<sup>7</sup> On July 16, 2013, the ALJ acknowledged the filing of the Division's Verified Response and directed the Protestant to file a response on or before August 5, 2013. On July 23, 2013, the Protestant filed his Response, with Exhibits 1 through 6, and Points of Reference 1 through 5, attached thereto.<sup>8</sup> The ALJ acknowledged receipt of the Protestant's Response, closed the record, and submitted this matter for decision on July 24, 2013.

On August 27, 2013, the ALJ pulled this matter from decision and reopened the record, notifying the parties, as follows, to-wit:

After an extensive review of the record, this matter has been withdrawn from submission for decision because the Division's *Verified Response* and the Protestant's *Reply* lack sufficient facts upon which *Findings, Conclusions and Recommendations* can be issued.

First, the proposed assessments for the 2005 and 2006 Tax Years both contain the following opening sentence, to-wit:

"Your assessment of July 8, 2009 has been corrected to match the IRS records."

The record does not contain copies of the previous assessments. The Division is to provide copies of both assessments reflecting the Protestant's last-known address at the time of mailing. The ALJ also directs the Division to provide any documentation as to whether the U.S. Postal Service returned the proposed assessments as "unclaimed," or "undeliverable."

Second, the proposed assessment for the 2006 Tax Year does not have an "Attachment A" (Division's Exhibit 15) like the proposed assessment for the 2005 Tax Year (Division's Exhibit 14).

Third, on February 25, 2013, the Division received what appears to be a protest to refund intercepts for the 2010 (\$43.00), 2011 (\$393.00), and 2012

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<sup>6</sup> See Division's Verified Response filed herein.

<sup>7</sup> See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

<sup>8</sup> On July 22, 2013, the Protestant sent his Response by certified mail return receipt requested (7012 3460 0003 6724 3976). On the envelope, the Protestant's return address is PROTESTANT ADDRESS.

(\$314.00) Tax Years. A copy of this letter is contained in the court file and corresponds to the amounts reflected on "Attachment A" for the proposed assessment for the 2005 Tax Year (\$43.00 plus \$314.00 equals \$357.00).

The Division is to provide copies of the refund intercept letters in order to determine whether the Protestant timely protested the intercept of the refunds for the 2010, 2011, and 2012 Tax Years, along with any documentation as to whether the U.S. Postal Service returned the proposed assessments as "unclaimed," or "undeliverable."

The ALJ directs the Division to file a status report on or before **September 26, 2013**, with the requested documentation and advise the ALJ how the parties wish to proceed.

On September 26, 2013, the Division filed its *Transmittal of Additional Documents*, as follows, to-wit:

The following is the Division's response to the Administrative Law Judge's August 27, 2013 request for additional documents and/or information for inclusion in the record:

1. Copies of the 2005 and 2006 assessment letters are attached. The Division has no record of these letters being returned as unclaimed or undeliverable.
2. The 2006 amended assessment letter does not have an "Attachment A" because none of the "snagged" refunds were applied to that period, only to the 2005 period.
3. The only record of Offset letters sent is a July 27, 2009 Comment from Protestant's income tax records noting that one such letter concerning both 2005 and 2006 was sent. A copy of this Comment is attached.

The ALJ identified and admitted into evidence copies of the assessments for the 2005 and 2006 Tax Years, as ALJ's Exhibits 1 and 2, respectively. The ALJ identified and admitted into evidence a copy of the Division's "Comments Screen," as ALJ's Exhibit 3. The ALJ notified the parties the record closed and this matter submitted for decision on October 8, 2013.

### FINDINGS OF FACT

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

1. On July 8, 2009, the Division issued a proposed income tax assessment for the 2005 Tax Year, as follows,<sup>9</sup> to-wit:

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<sup>9</sup> ALJ's Exhibit 1. The Division mailed the assessment to the Protestant at

Year Ending	12-31-2005
Gross Income	\$133,450.00
Tax Due	\$ 8,874.42
Interest @ 15% from due date to 09/06/2009	\$ 4,515.03
<b>Tax &amp; Interest if paid within 60 Days</b>	<b>\$ 13,389.45</b>
30 Day Delinquent Penalty @ 10%	\$ 887.44
<b>Tax, Interest &amp; Penalty if Paid after 60 days</b>	<b>\$ 14,276.90</b>

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PROTESTANT ADDRESS 2.

On July 8, 2009, the Division issued a proposed income tax assessment for the 2006 Tax Year, as follows,<sup>10</sup> to-wit:

Year Ending	12-31-2006
Gross Income	\$133,848.00
Tax Due	\$ 8,365.50
Interest @ 15% from due date to 09/06/2009	\$ 2,994.40
<b>Tax &amp; Interest if paid within 60 Days</b>	<b>\$ 11,359.90</b>
30 Day Delinquent Penalty @ 10%	\$ 836.55
<b>Tax, Interest &amp; Penalty if Paid after 60 days</b>	<b>\$ 12,196.45</b>

2. On July 27, 2009, the Division noted in the “Comments” of the Protestant’s income tax account, as follows,<sup>11</sup> to-wit:

INCOME TAX “TOP” OFFSET PROGRAM – TAXPAYER  
 NOTIFICATION LETTER  
 LETTER NUMBER: 10759                      LETTER DATE: 08/07/2009  
 PERIOD(S): 2005, 2006  
 DLN:

3. On November 20, 2012, the Protestant filed original individual full-year resident Oklahoma income tax returns (Form 511) for the 2004, 2005, 2006, 2007, 2008, and 2009 Tax Years (“Audit Periods”) as a “Private Oklahoma Citizen.” On each return, the Protestant reported Line One (1), Federal Adjusted Gross Income (“Federal AGI”) as zero, Line Sixteen (16), Oklahoma Taxable Income as a “negative” amount,<sup>12</sup> and zero Oklahoma income tax due. The Protestant did not claim a refund on any return for the Audit Period. The Protestant attached to each return, except for the 2009 Tax Year,<sup>13</sup> Federal Form 4852, Substitute for Form W-2 or Form 1099-R, on which the Protestant states, “Payor provided 1099 which erroneously alleged payments or IRC Section 3401(a) & 3121(a) ‘wages.’ I hereby dispute their claim. I received no such wages. None. The 1099 issued before ‘wages’ errors were noted. Payer is no longer in operation. I do not dispute anything due me if any.”<sup>14</sup>

4. The Division examined the Protestant’s Oklahoma Returns for the Audit Periods and compared the amounts reported by the Protestant on the corresponding Federal Returns for the

<sup>10</sup> ALJ’s Exhibit 2. The Division mailed the assessment to the Protestant at PROTESTANT ADDRESS 2.

<sup>11</sup> ALJ’s Exhibit 3.

<sup>12</sup> The negative amount varies from return to return based upon the Protestant’s calculation of the deduction/exemptions.

<sup>13</sup> Division’s Exhibit 6. On the return for the 2009 Tax Year, the Protestant attached a “corrected” 1099. In box seven (7), the Protestant marked through 108540.17 with an interlineation of “\$-0-,” and signed by Protestant.

<sup>14</sup> Division’s Exhibits 1 through 6. The Division stamped all six (6) exhibits reflecting “Information Submitted by Taxpayer.”

Audit Periods. The Internal Revenue Service (“IRS”) transcripts reflect Federal AGI, contrary to the Oklahoma Returns filed by the Protestant for the Audit Periods. Using Federal AGI reported on the transcripts as a starting point, the Division calculated Protestant’s Oklahoma Taxable Income and the resulting Oklahoma income tax due for the Audit Periods.<sup>15</sup>

5. The proposed assessments of income tax for the Audit Periods are based upon 1099-Misc information received from the IRS on the Protestant, as follows,<sup>16</sup> to-wit:

SSN	TAX YEAR	DOC CODE	AMOUNT	PAYER NAME	PAYER ADDRESS			
***-**-6030	2004	1099 MISC	118,424.00	SOONER FAST FREIGHT, INC.	4951 NE 23 <sup>RD</sup> ST	OKC	OK	73121
***-**-6030	2005	1099 MISC	133,450.00	SOONER FAST FREIGHT, INC.	4951 NE 23 <sup>RD</sup> ST	OKC	OK	73121
***-**-6030	2006	1099 MISC	133,848.00	SOONER FAST FREIGHT, INC.	4951 NE 23 <sup>RD</sup> ST	OKC	OK	73121
***-**-6030	2007	1099 MISC	113,002.00	SOONER FAST FREIGHT, INC.	4951 NE 23 <sup>RD</sup> ST	OKC	OK	73121
***-**-6030	2008	1099 MISC	107,660.00	SOONER FAST FREIGHT	P.O. BOX 189	CHARLESTON	MO	63834
***-**-6030	2009	1099 MISC	108,540.17	CHAMP	NA	NA	NA	NA

<sup>15</sup> Division’s Exhibits 7 through 12.

<sup>16</sup> *Id.* The Protestant’s address on the IRS Transcripts is PROTESTANT ADDRESS 2.

6. On March 22, 2013, the Division issued a proposed income tax assessment 2005 Tax Year, as follows,<sup>17</sup> to-wit:

Your assessment of July 8, 2009 has been corrected to match the IRS records.

<u>2005 Tax Year</u>	<u>Amended</u>
Corrected Taxable Income – Method I	\$123,083.00
Tax per Table	7,865.00
Total Tax as Adjusted	7,865.00
Additional Tax Due	7,865.00
Interest @ 15% from 04/19/06 to 05/21/13	8,346.11
Tax and Interest if paid within 60 Days	\$15,854.11
60 Day Delinquency Penalty @ 10%	786.50
Tax, Interest & Penalty Due after 60 Days	\$16,640.61

The proposed assessment for the 2005 Tax Year had an Attachment A, which states as follows, to-wit:

Tax Year: 2005  
Tax: \$7,865.00

	INTEREST	TAX PAID
Interest on \$7,865 from 4/19/2006 to 11/20/2012	7,779.89	
Payment/refund Date: <b>11/20/2012</b> Less: Apply: 43.00		43.00
Interest on \$7,822 from 11/21/2012 to 2/13/2013	270.02	
Payment/refund Date: <b>2/13/2013</b> Less: Apply: 314.00		314.00
Interest on 7,508.00 from 2/14/2013 to 5/21/2013	296.21	
<b>TOTAL INTEREST</b>	<b>\$8,346.11</b>	
<b>TOTAL APPLY/PAYMENT</b>		<b>\$357.00</b>

7. On March 22, 2013, the Division issued a proposed income tax assessment 2006 Tax Year, as follows,<sup>18</sup> to-wit:

Your assessment of July 8, 2009 has been corrected to match IRS records.

<u>2006 Tax Year</u>	<u>Amended</u>
Corrected Taxable Income	\$123,215.00
Tax per Table	7,401.00

<sup>17</sup> Divisions' Exhibit 14. See Attachment A. This assessment is an amendment to an earlier assessment, which was not protested and became final. See Note 9, *supra*.

<sup>18</sup> Divisions' Exhibit 15. This exhibit does not have an "Attachment A." See Note 10, *supra*.

Total Tax as Adjusted	7,401.00
Additional Tax Due	7,401.00
Interest @ 15% from 04/19/07 to 05/21/13	6,764.31
Tax and Interest if paid within 60 Days	\$14,165.31
60 Day Delinquency Penalty @ 10%	740.10
Tax, Interest & Penalty Due after 60 Days	\$14,905.41

8. On April 1, 2013, the Division issued a proposed income tax assessment 2004 Tax Year, as follows,<sup>19</sup> to-wit:

The Oklahoma Tax Commission has adjusted your Oklahoma income tax as indicated below for the following reason:

FEDERAL AGI REPORTED BY IRS IS DIFFERENT THAN THE AMOUNT ON LINE 1 OF YOUR OKLAHOMA RETURN.

<u>2004 Tax Year</u>	
Corrected Taxable Income – Method I	\$108,388.00
Total Tax as Adjusted	6,887.00
Less Tax Previously Reported or Assessed	0.00
Additional Tax Due	6,887.00
Interest @ 15% from 04/15/05 to 05-31-13	8,400.25
Tax and Interest if paid within 60 Days	\$15,287.25
Tax, Interest & Penalty Due after 60 Days	\$15,975.95

9. On April 1, 2013, the Division issued a proposed income tax assessment 2007 Tax Year, as follows,<sup>20</sup> to-wit:

The Oklahoma Tax Commission has adjusted your Oklahoma income tax as indicated below for the following reason:

FEDERAL AGI REPORTED BY IRS IS DIFFERENT THAN THE AMOUNT ON LINE 1 OF YOUR OKLAHOMA RETURN.

<u>2007 Tax Year</u>	
Corrected Taxable Income	\$101,694.00
Tax per Table	5,501.00
Less Tax Previously Reported or Assessed	0.00
Additional Tax Due	5,501.00
Interest @ 15% from 04/19/08 to 05/31/13	4,222.96
Tax and Interest if paid within 60 Days	\$9,723.96
60 Day Delinquency Penalty @ 10%	550.10
Tax, Interest & Penalty Due after 60 Days	\$10,274.06

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<sup>19</sup> Division's Exhibit 13.

<sup>20</sup> Divisions' Exhibit 16.

10. On April 1, 2013, the Division issued a proposed income tax assessment 2008 Tax Year, as follows,<sup>21</sup> to-wit:

The Oklahoma Tax Commission has adjusted your Oklahoma income tax as indicated below for the following reason:

FEDERAL AGI REPORTED BY IRS IS DIFFERENT THAN THE AMOUNT ON LINE 1 OF YOUR OKLAHOMA RETURN.

2008 Tax Year

Corrected Taxable Income	\$95,804.00
Total Tax as Adjusted	5,037.00
Less Tax Previously Reported or Assessed	0.00
Additional Tax Due	5,037.00
Interest @ 15% from 04/19/08 to 05/31/13	3,111.21
Tax and Interest if paid within 60 Days	\$8,148.21
60 Day Delinquency Penalty @ 10%	503.70
Tax, Interest & Penalty Due after 60 Days	\$8,651.91

11. On April 1, 2013, the Division issued a proposed income tax assessment 2009 Tax Year, as follows,<sup>22</sup> to-wit:

The Oklahoma Tax Commission has adjusted your Oklahoma income tax as indicated below for the following reason:

FEDERAL AGI REPORTED BY IRS IS DIFFERENT THAN THE AMOUNT ON LINE 1 OF YOUR OKLAHOMA RETURN.

2009 Tax Year

Corrected Taxable Income	\$95,622.00
Total Tax as Adjusted	5,027.00
Less Tax Previously Reported or Assessed	0.00
Additional Tax Due	5,027.00
Interest @ 15% from 04/19/08 to 05/31/13	2,350.98
Tax and Interest if paid within 60 Days	\$7,377.98
60 Day Delinquency Penalty @ 10%	502.70
Tax, Interest & Penalty Due after 60 Days	\$7,880.68

12. On April 1, 2013, the Division received the protest to the proposed income tax assessment for the 2005, 2006, and 2009 Tax Years.<sup>23</sup>

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<sup>21</sup> Divisions' Exhibit 17.

<sup>22</sup> Divisions' Exhibit 18.

<sup>23</sup> Division's Exhibits 20, 21, and 24. The Protestant notes on the protests: New Address, PROTESTANT ADDRESS. Exhibit 20 contains the following paragraph in pertinent part, to-wit:

13. On April 11, 2013, the Division received the protest to the proposed income tax assessment for the 2004, 2007, and 2008 Tax Years, which states as follows,<sup>24</sup> to-wit:

...Your assessment and proposal are in error. The information for your basis is from bad payer data.

My 2004 form 511 is correct as I have assessed. I corrected the bad payer data using irs form 4852 (corrected 1099) which you are in receipt of the copy. I understand the irs may be slow to correct and update their information but still this shouldn't affect your determination. My 511 isn't heresy such as is the information you are basing you proposal and assessment.

14. On April 11, 2013, the Division received the protest to the proposed income tax assessment for the 2004, 2007, and 2008 Tax Years, which states as follows,<sup>25</sup> to-wit:

...The only correction needed to the assessment of my [Tax Year] 511 is for your system to reflect the amount I have properly reported and signed under penalty of perjury. Not sure why your letter has a date of July the 8<sup>th</sup> of 2009. I recently filed that 511 for 2009 but wasn't in July. I show no tax liability for [Tax Year] or [Tax Year]. To my knowledge your assessment should be based on what I've reported and not what's erroneously reported to you by another party. I filled out form 511 properly as it requested. After filing Federal 1040 I showed the amount of "income" from that on the State form 511.

This same letter also show [Tax Year] under the bold AMENDED section. I'm a little confused on the specific year to which your letter pertains to. If it pertains to multiple years then your corrections and or amending is in error for both year. Although your records should not be "corrected to match the IRS records" I do understand your practice. Their records are in error because of my previously not filing in a timely fashion and a misleading 1099 and or w2 which showed a false amount of "income". The corrected 1099 for 2006 was copied and sent in to the OTC as well. I do not owe \$123,215.00, additional tax due \$7,401.00 or total interest \$14,165.31,

Continued unsupported claims I owe these amounts, continued requests to pay or continued statements of a balance (which interrupts my refund due me) may be construed

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Kindly and promptly return to me my property in the amount of \$357.00 as reported and reiterated on attachment a. This is the amount combined which was sent to you under "income" that was false via another party known as payer. If you don't return my property promptly then provide lawful just cause as to why...

<sup>24</sup> *Id.* Division's Exhibits 19, 22, and 23.

<sup>25</sup> *Id.*

as extortion under color of office 18 USC 1951 (b)(2) or mail fraud 18 USC 1341, Gov. code 6203(a).

15. On July 23, 2013, the Protestant filed his Reply, with a copy of the 1099-G from the Tax Commission for 2012, which states as follows,<sup>26</sup> to-wit:

Box 2: State or local income tax refunds, credits, or offsets	\$43.00
Box 3: Box 2 is for tax year	2010

### CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.<sup>27</sup>

2. The rules promulgated pursuant to the Administrative Procedures Act (“APA”)<sup>28</sup> are presumed to be valid and binding on the persons they affect and have the force of law.

3. The Oklahoma Income Tax Act<sup>29</sup> imposes an income tax upon the Oklahoma taxable income of every resident or nonresident individual.<sup>30</sup> Every Oklahoma resident who has sufficient income to require the filing of a Federal income tax return must file an Oklahoma tax return stating his or her taxable income,<sup>31</sup> and must transmit the return to the Commission and remit the amount of tax due.<sup>32</sup>

4. If a taxpayer fails to file any required report or return, the Tax Commission may use any information in its possession or obtainable by it to determine the correct amount of tax for the taxable period.<sup>33</sup> The term “taxpayer”<sup>34</sup> shall mean in pertinent part as follows, to-wit:

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<sup>26</sup> Protestant’s Reply, Exhibit 1.

<sup>27</sup> OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2013). See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 2009).

<sup>28</sup> OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

<sup>29</sup> OKLA. STAT. ANN. tit. 68, § 2351 *et seq.* (West 2008).

<sup>30</sup> OKLA. STAT. ANN. tit. 68, § 2355 (West 2008).

<sup>31</sup> See OKLA. STAT. ANN. tit. 68, § 2368(A) (West 2008).

<sup>32</sup> See OKLA. STAT. ANN. tit. 68, § 2355 (West 2008). See also OKLA. STAT. ANN. tit. 68, § 2375 (West 2008).

<sup>33</sup> OKLA. STAT. ANN. tit. 68, § 221(A) (West Supp. 2010).

<sup>34</sup> OKLA. STAT. ANN. tit. 68, § 202(d) (West 2001).

- (1) Any person owing or liable to pay any state tax;
- (2) Any person required to file a report, a return, or remit any tax required by the provisions of any state tax law;
- (3) Any person required to obtain a license or a permit or to keep any records under the provisions of any state tax law;
- (e) The term “person” means an individual, trust, estate, fiduciary, partnership, limited liability company, or a corporation, and shall include any municipal subdivision of the state;
- (f) The term “individual” means a natural person;

...

5. Assessments shall be made in accordance with the *Uniform Tax Procedure Code*.<sup>35</sup> The income information furnished by the IRS shall be that upon which any tax liability is computed. Unless otherwise indicated in the Revenue Agent’s Report (“RAR”), all income is considered to be from Oklahoma sources, as are all deductions and credit, to the extent that they are allowed by Oklahoma Statute. The taxpayer is considered to be, or to have been an Oklahoma resident during the year or years examined by the IRS by virtue of the fact that the results of the examination are disclosed to the Commission by the IRS.<sup>36</sup>

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.<sup>37</sup>

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<sup>35</sup> OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2001).

<sup>36</sup> See OKLA. ADMIN. CODE § 710:50-5-10(a).

<sup>37</sup> OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2010):

Any notice required by this article, or any state tax law, to be given by the Tax Commission shall be in writing and may be served personally or by mail. If mailed, it shall be addressed to the person to be notified at the last-known address of such person. As used in this article or any other state tax law, “last-known address” shall mean the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice, or if no address appears on the records of that division, the last address given as appears on the records of any other division of the Tax Commission. If no such address appears, the notice shall be mailed to such address as may reasonably be obtainable. If the Tax Commission receives an address from the United States Postal Service as a result of a change of address submitted to the United States Postal Service, “last-known address” shall mean the address provided to the United States Postal Service. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. **If the notice has been mailed as provided in this section, failure of the person to receive such notice shall neither invalidate nor be grounds for invalidating any action taken pursuant thereto, nor shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.** (Emphasis added.)

This version of the statute became effective June 1, 2009. See Laws 2009, c. 426, § 4, emerg. eff. June 1, 2009.

7. The Tax Commission shall also collect interest at the rate of one and one-quarter percent (1¼%) per month from the date prescribed by state law.<sup>38</sup>

8. The Tax Commission shall also collect a penalty of ten percent (10%) on the total amount of tax due and delinquent if the taxpayer fails to remit the tax and interest within sixty (60) days of the mailing of a proposed assessment.<sup>39</sup>

9. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.<sup>40</sup>

10. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.<sup>41</sup>

### DISCUSSION

The Protestant states in pertinent parts, as follows,<sup>42</sup> to-wit:

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<sup>38</sup> OKLA. STAT. ANN. tit. 68, § 217(B) (West Supp. 2013).

<sup>39</sup> OKLA. STAT. ANN. tit. 68, § 217(D) (West Supp. 2013).

<sup>40</sup> 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.

<sup>41</sup> See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.

I start with a declaration that I am not protesting taxes. Any thing [sic] from me considered a protest should be clarified that I am disagreement with the OTC's assessments. I am in no way making an attempt to impede the OTC from enforcing tax laws or to affect the general maintenance and welfare of the State of Oklahoma.

...

It appears the determinations are based on information provided by the IRS. If 710:1-3-73 is applicable then the OTC may want to get legal counsel before making assertions, without first hand knowledge of, that have the force of law behind them....

...

If the rule in 68-221 are still legit and I understand them correctly then it states that the Tax Commission can only make changes to their assessments and not allowed to make changes to my returns (511)....The info obtained from the IRS is not proof of the amount of income, taxable income or tax liability....

The Division responds, "In the case at bar, the Division audited Protestant's returns for the audit period in conformity with the Oklahoma Income Act. It compared the information provided by Protestant on his Oklahoma individual income tax returns with the information obtained from the IRS transcripts. ...Protestant's income tax returns reported no taxable income and no tax or refund due ...the IRS transcripts, however, reported federal AGI. ...As federal AGI is the starting point for determining Oklahoma AGI and the resulting Oklahoma taxable income, ...the Division used the federal AGI reported on the transcripts to determine Protestant's Oklahoma taxable income and resulting Oklahoma income tax due. The Division's actions are clearly supported by the applicable provisions of the Oklahoma Income Tax Act."<sup>43</sup>

The Oklahoma Income Tax Act<sup>44</sup> imposes an income tax upon the Oklahoma taxable income of every resident or nonresident individual.<sup>45</sup> Every Oklahoma resident who has sufficient income to require the filing of a Federal income tax return must file an Oklahoma tax return stating his or her taxable income,<sup>46</sup> and must transmit the return to the Commission and remit the amount of tax due.<sup>47</sup>

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<sup>42</sup> Protestant's Reply at 1.

<sup>43</sup> Division's Verified Response at 5.

<sup>44</sup> OKLA. STAT. ANN. tit. 68, § 2351 *et seq.* (West 2008).

<sup>45</sup> OKLA. STAT. ANN. tit. 68, § 2355 (West 2008).

<sup>46</sup> See OKLA. STAT. ANN. tit. 68, § 2368(A) (West 2008).

<sup>47</sup> See OKLA. STAT. ANN. tit. 68, § 2355 (West 2008). See also OKLA. STAT. ANN. tit. 68, § 2375 (West 2008).

If a taxpayer fails to file any required report or return, the Tax Commission may use any information in its possession or obtainable by it to determine the correct amount of tax for the taxable period.<sup>48</sup> The term “taxpayer”<sup>49</sup> shall mean in pertinent part as follows, to-wit:

- (1) Any person owing or liable to pay any state tax;
- (2) Any person required to file a report, a return, or remit any tax required by the provisions of any state tax law;
- (3) Any person required to obtain a license or a permit or to keep any records under the provisions of any state tax law;
- (e) The term “person” means an individual, trust, estate, fiduciary, partnership, limited liability company, or a corporation, and shall include any municipal subdivision of the state;
- (f) The term “individual” means a natural person;

...

Assessments shall be made in accordance with the *Uniform Tax Procedure Code*.<sup>50</sup> The income information furnished by the IRS shall be that upon which any tax liability is computed. Unless otherwise indicated in the Revenue Agent’s Report (“RAR”), all income is considered to be from Oklahoma sources, as are all deductions and credit, to the extent that they are allowed by Oklahoma Statute. The taxpayer is considered to be, or to have been an Oklahoma resident during the year or years examined by the IRS by virtue of the fact that the results of the examination are disclosed to the Commission by the IRS.<sup>51</sup>

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.<sup>52</sup> The Tax Commission shall also collect interest at the rate of one and one-quarter percent (1¼%) per month from the date prescribed by state law.<sup>53</sup> The Tax Commission shall also collect a penalty of ten percent (10%) on the total amount of tax due and delinquent if the taxpayer fails to remit the tax and interest within sixty (60) days of the mailing of a proposed assessment.<sup>54</sup>

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<sup>48</sup> OKLA. STAT. ANN. tit. 68, § 221(A) (West Supp. 2010).

<sup>49</sup> OKLA. STAT. ANN. tit. 68, § 202(d) (West 2001).

<sup>50</sup> OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2001).

<sup>51</sup> See OKLA. ADMIN. CODE § 710:50-5-10(a).

<sup>52</sup> See Note 37, *supra*.

<sup>53</sup> OKLA. STAT. ANN. tit. 68, § 217(B) (West Supp. 2010).

<sup>54</sup> OKLA. STAT. ANN. tit. 68, § 217(D) (West Supp. 2010).

As stated by the Division, “The dispositive issue in this case is whether the Division properly adjusted Protestant’s Oklahoma taxable income for the audit period.”<sup>55</sup> A review of the record reflects that Protestant had Federal AGI for each year in the Audit Periods, which the Protestant did not report on his Oklahoma income tax returns for the Audit Periods.<sup>56</sup> Contrary to Protestant’s assertions, the IRS did not accept the Substitute 1099s (Form 4852) for the Federal Returns for the Audit Periods.<sup>57</sup>

Protestant was a “Resident Individual”<sup>58</sup> of Oklahoma during the Audit Periods and had income taxable under the Oklahoma Income Tax Act.<sup>59</sup> The Protestant is a “Taxpayer”<sup>60</sup> with “Oklahoma Taxable Income”<sup>61</sup> for the Audit Periods. The Division issued and mailed the proposed assessments for the Audit Periods in accordance with Oklahoma Statutes and Tax Commission Rules.

### CONCLUSION

The Protestant has failed to carry his burden of proof, by a preponderance of the evidence, that the Division’s proposed income tax assessments for the Audit Periods are incorrect, and in what respects.

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<sup>55</sup> Division’s Verified Response at 6.

<sup>56</sup> See Notes 9-10 and 12-22, *supra*.

<sup>57</sup> *Id.* See Notes 6-7, *supra*.

<sup>58</sup> OKLA. STAT. ANN. tit. 68, § 2353(4) (West 2008).

<sup>59</sup> See Notes 28-32, *supra*.

<sup>60</sup> OKLA. STAT. ANN. tit. 68, § 2353(15) (West 2008). See OKLA. STAT. ANN. tit. 68, § 202(d) (West 2001)

<sup>61</sup> See Note 31, *supra*.

**DISPOSITION**

The OKLAHOMA TAX COMMISSION ORDERS denial of the protest, based upon the facts and circumstances of this case, as more fully set forth herein.

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.”