

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2019-02-20-04 / NON-PRECEDENTIAL
ID: P-18-200-K
DATE: FEBRUARY 20, 2019
DISPOSITION: DISMISSED
TAX TYPE: INCOME
APPEAL: NONE

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 29th day of January, 2019, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

RECOMMENDATION OF DISMISSAL

NOW on this 29th day of January, 2019, the above-styled and numbered cause comes on for decision under assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. An *Order Setting Hearing on Motion* (“*Order*”) was mailed to Protestant, PROTESTANT in accordance with 68 O.S. 2011, § 208. Protestant did not appear at hearing scheduled on the Motion or respond to the *Order*. The Account Maintenance Division of the Oklahoma Tax Commission (“*Division*”) is represented by AGC1 and AGC2, Assistant General Counsels, Office of General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Based on federal income tax transcript information, the Division corrected Protestant’s Oklahoma taxable income for tax years 2010, 2011, 2012 and 2013. By letters dated January 8, 2014 for 2010, January 21, 2015 for 2011, January 6, 2016 for 2012, and June 1, 2017 for 2013, the Division proposed the assessment of additional income tax, interest and penalty against Protestant for each tax year. A written protest was received by the Tax Commission on June 15, 2018.

On September 28, 2018, the file of the Division for the 2013 tax year was received by the Office of the Administrative Law Judges (“*ALJ’s Office*”). On October 19, 2018, the ALJ’s Office received the files for the remaining tax years and initiated proceedings under the Uniform Tax

Procedure Code¹ and the Rules of Practice and Procedure before the Oklahoma Tax Commission². The case was docketed as Case No. P-18-200-K and assigned to ALJ, Administrative Law Judge.

A pre-hearing teleconference was scheduled for November 27, 2018. A *Motion to Dismiss for Lack of Jurisdiction*³ was filed by the Division on October 23, 2018 with Division's Exhibits 1 through 6 attached thereto. A hearing was scheduled for January 17, 2019, by *Order Setting Hearing on Motion* ("Order"). The *Order* also struck the teleconference. Protestant did not respond to the *Order*.

The hearing on the *Motion* was held as scheduled. Protestant did not appear. SUPERVISOR, CPA/Supervisor with the Division testified regarding the adjustments to the returns, the issuance of the assessment letters and the receipt of the protest letter. Division's Exhibits 1 through 6 were identified, offered and admitted into evidence. At the conclusion of the Division case, the record was closed and the *Motion* was submitted for decision.⁴

FINDINGS OF FACT

Upon review of the file and records, including the digital recording of the hearing, the *Motion* and exhibits, the undersigned finds:

1. On January 8, 2014, the Division mailed an adjustment letter to Protestant for tax year 2010 at her last known address as reflected on the records of the Division. The adjustment was based on a CP2000 report dated June 18, 2012 from the Internal Revenue Service ("IRS"). The adjustment resulted in the assessment of additional income tax, interest and penalty for the 2010 tax year in the aggregate amount of \$562.52.⁵ Division's Exhibit 1.

2. On January 21, 2015, the Division mailed an adjustment letter to Protestant for tax year 2011 at her last known address as reflected on the records of the Division. The adjustment was

¹ 68 O.S. 2011, § 201 et seq.

² Rules 710:1-5-20 through 710:1-5-49 of the *Oklahoma Administrative Code* ("OAC").

³ OAC 710:1-5-46(c).

⁴ OAC 710:1-5-39.

⁵ The interest assessed was accrued from the due date of the return to March 9, 2014.

based on a CP2000 report dated March 11, 2013 from the IRS. The adjustment resulted in the assessment of additional income tax, interest and penalty for the 2011 tax year in the aggregate amount of \$838.10.⁶ Division's Exhibit 2.

3. On January 6, 2016, the Division mailed an adjustment letter to Protestant for tax year 2012 at her last known address as reflected on the records of the Division. The adjustment was based on a CP2000 report dated May 27, 2014 from the IRS. The adjustment resulted in the assessment of additional income tax, interest and penalty for the 2012 tax year in the aggregate amount of \$390.62.⁷ Division's Exhibit 3.

4. On June 1, 2017, the Division mailed an adjustment letter to Protestant for tax year 2013 at her last known address as reflected on the records of the Division. The adjustment was based on a CP2000 report dated February 23, 2015 from the IRS. The adjustment resulted in the assessment of additional income tax, interest and penalty for the 2013 tax year in the aggregate amount of \$1,622.17.⁸ Division's Exhibit 4.

5. On June 15, 2018, the Tax Commission received a letter from Protestant disagreeing with the amount owed and writing that the back taxes had been discharged in bankruptcy case. Included with the letter was a letter from the U.S. Department of the Treasury, a Notice of Bankruptcy Case Filing dated July 24, 2017 and Order of Discharge granted November 29, 2017. The letter from the Treasury Department dated May 9, 2018, notified Protestant that a portion of her federal refund in the amount of \$2,063.10 had been intercepted and applied to her state tax obligation. Division's Exhibit 5.

6. On June 19, 2018, the Tax Commission received a second letter from Protestant disagreeing with the amount of back taxes owing for tax years 2010, 2011 and 2012. Division's Exhibit 6.

⁶ The interest assessed was accrued from the due date of the return to March 22, 2015.

⁷ The interest assessed was accrued from the due date of the return to March 6, 2016.

⁸ The interest assessed was accrued from the due date of the return to July 31, 2017.

7. A CP2000 report generally involves unreported income that a taxpayer forgot to include in gross income on the federal return. Testimony of CPA/Supervisor.

8. Protestant did not file amended returns with the Tax Commission for any of the tax years in question. Testimony of CPA/Supervisor.

9. Each of the adjustment letters provide in part:

If you disagree with this assessment, a written protest must be filed within sixty (60) days from the date of assessment. If you do not timely file a protest, this assessment will become final by 68 Oklahoma Statute Section 221(C).

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. The Oklahoma Tax Commission is vested with jurisdiction of the parties and subject matter of this proceeding, including the dismissal thereof. 68 O.S. 2011, § 207 and *OAC* 710:1-5-46(c) and (d).

2. Protestant did not file a timely written protest to the letters of adjustment. 68 O.S. 2011, § 221(C).

3. The proposed adjustments to the 2010, 2011, 2012 and 2013 income tax returns are final and absolute and the Oklahoma Tax Commission is without jurisdiction to consider the merits of the protest. 68 O.S. 2011, § 221(E). *See, Matter of Phillips Petroleum Co.*, 1982 OK 112, 652 P.2d 283.

RECOMMENDATIONS

The protest was untimely and should be dismissed.

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 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).