

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2019-02-21-04 / NON-PRECEDENTIAL
ID: P-16-240-K
DATE: FEBRUARY 21, 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 Recommendation of Dismissal 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. Protestant, PROTESTANT, Deceased died June 7, 2016. The protest to the proposed assessment of income issued against Protestant was filed by ATTORNEY, Attorney at Law. The Compliance Division of the Oklahoma Tax Commission (“Division”) is represented by AGC, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Based on a CP2000 report from the Internal Revenue Service, the Division corrected Protestant’s Oklahoma taxable income for tax year 2012, and by letter dated March 30, 2016, proposed the assessment of additional income tax, interest and penalty against Protestant. A written protest to the proposed assessment was mailed to the Tax Commission on September 24, 2016.

On October 20, 2016, the protest was referred to the Office of the Administrative Law Judges to initiated proceedings under the Uniform Tax Procedure Code¹ and the Rules of Practice

¹ 68 O.S. 2011, § 201 et seq.

and Procedure before the Oklahoma Tax Commission². The case was docketed as Case No. P-16-240-K and assigned to Kris D. Kasper, Administrative Law Judge.

A pre-hearing teleconference was scheduled for December 15, 2016. A *Status Report in Lieu of Prehearing Conference* was filed, wherein the Division asked that the protest be stayed pending the filing of a probate petition for Protestant's estate. The parties were directed to file a status report by February 13, 2017, by letter issued December 15, 2016.

Several status reports were filed indicating no probate petition had been filed and that the same could take several months. By *Status Report* filed July 26, 2018, the Division advised that the status remained unchanged. By letter dated August 2, 2018, the Court informed the parties that the protest would be taken under consideration pursuant to *OAC* 710:1-5-49(1) based on the records contained in the Court file.

A *Notice of Intent to Dismiss Protest* was issued by the Court on September 25, 2018. A hearing was scheduled under *OAC* 710:1-5-46(d), for December 4, 2018. No response to the notice was received.

A closed hearing was held as scheduled.³ No one appeared in support of the protest. The proposed assessment letter and protest letter were marked as Exhibits A and B, respectively and admitted into evidence. The record was thereafter closed and the dismissal of the protest was submitted for decision.⁴

FINDINGS OF FACT

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

1. On March 30, 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

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

³ Confidentiality was invoked. 68 O.S. 2011, § 205.

⁴ *OAC* 710:1-5-39.

based on a CP2000 report dated December 8, 2014, from the Internal Revenue Service. The adjustment resulted in the assessment of additional income tax, interest and penalty in the aggregate amount of \$435.42.⁵ Exhibit A.

2. Protestant died June 7, 2016. Exhibit B.

3. A written protest to the proposed assessment was mailed to the Tax Commission on September 24, 2016. Official notice of the envelope is taken.⁶

4. The adjustment letter provides 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. A timely written protest to the adjustment letter was not filed. 68 O.S. 2011, § 221(C).

3. The proposed adjustment to the 2012 income tax return is 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.

⁵ Interest on the assessment letter was accrued from the due date of the 2012 return to May 29, 2016.

⁶ *OAC* 710:1-5-36(a)

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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).