

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2019-04-23-05 / NON-PRECEDENTIAL  
**ID:** P-19-031-K  
**DATE:** APRIL 23, 2019  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NONE TAKEN

### **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 12<sup>th</sup> day of March, 2019, appended hereto, together herewith shall constitute the Order of the Commission.

### **SO ORDERED**

### **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION**

NOW on this 12<sup>th</sup> day of March, 2018, 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 introductory letter was mailed to Protestants, PROTESTANT and SPOUSE in accordance with 68 O.S. 2011, § 208, on March 5, 2019. The letter was returned “undeliverable”. 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 federal income tax transcript information, the Division corrected Protestants’ itemized deductions and Oklahoma taxable income for tax year 2015, and by letter dated December 5, 2018, proposed the assessment of additional income tax, interest and penalty against Protestants. Protestants timely protested to the assessment. A hearing was not requested.

On March 5, 2018, the protest, assessment and Division’s work papers were referred to the Office of the Administrative Law Judges to initiate proceedings under the Uniform Tax Procedure

Code<sup>1</sup> and the Rules of Practice and Procedure before the Office of Administrative Law Judges<sup>2</sup>. The protest was docketed as Case No. P-19-031-K and assigned to ALJ, Administrative Law Judge.

The protest was taken under advisement pursuant to 68 O.S. 2011, § 221(D), specifically: “[i]n the event an oral hearing is not requested [in the written protest], the Tax Commission shall proceed without further notice to examine into the merits of the protest and enter an order in accordance with its findings.” The record is closed and the protest submitted for decision as of March 12, 2019.<sup>3</sup>

### FINDINGS OF FACTS

Upon review of the file and records, the undersigned finds:

1. Protestants filed their 2015 Oklahoma Resident Income Tax Return (“2015 Return”) on or about April 15, 2016 with the Oklahoma Tax Commission (“OTC”).
2. The Division received notice of adjustments to Protestants’ federal adjusted gross income (added taxable wages of \$38,707.00) and corresponding reduction of federal itemized deductions from \$24,951.00 to \$21,080.00 by the Internal Revenue Service (“IRS”) for the 2015 tax year.
3. Based on the IRS adjustments, the Division corrected the Protestants’ federal adjusted gross income; line 1, and itemized deductions, line 10 on the 2015 Return.
4. By letter dated December 5, 2018, the Division proposed the assessment of additional income tax, interest and penalty against Protestants for the 2015 tax year in the aggregate amount of \$3,471.25, consisting of tax of \$2,286.00, interest accrued through February 3, 2019, of \$956.65 and penalty of \$228.60.
5. By handwritten correspondence marked received January 8, 2019, entitled “OTC Notice of False Adjustments No Authority” Protestants protested the Division’s adjustments. The

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<sup>1</sup> 68 O.S. 2011, § 201 et seq., as amended.

<sup>2</sup> Rules 710:1-5-20 through 710:1-5-49 of the *Oklahoma Administrative Code* (“OAC”).

<sup>3</sup> OAC 710:1-5-28(c).

Protestants write inter alia: that the assessment is not a valid debt, that the Division has the responsibility to show and prove who is framing them, that an elaborate fraud is being perpetrated on them and the Division, and that the Division should cease and desist from bullying them and corrupting their good files and excellent tax status.

### CONCLUSIONS OF LAW

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

#### I. JURISDICTION AND BURDEN OF PROOF

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 221(D).<sup>4</sup>

2. The taxpayer must prove the action or proposed action of the Oklahoma Tax Commission is incorrect, and in what respect. *OAC 710:1-5-47. In re Adway Properties, Inc.*, 2006 OK CIV APP 14, 130 P.3d 302; *Geoffrey, Inc. v. Oklahoma Tax Commission*, 2006 OK CIV APP 27, 132 P.3d 632. If the taxpayer fails to prove a prima facie case, the protest may be denied solely on the grounds of failure to prove sufficient facts which would entitle the taxpayer to the requested relief. *OAC 710:1-5-47; Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359, 362, citing *Continental Oil Co. v. Oklahoma State Bd. of Equalization*, 1976 OK 23, 570 P.2d 315, 317.

3. The burden of proof standard is “preponderance of evidence.” 2 Am.Jur.2d *Administrative Law* § 357. “Preponderance of evidence” means “[e]vidence which is of greater weight or more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows the fact sought to be proved is more probable than not \* \* \* evidence which is more credible and convincing to the mind \* \* \* that which best accords with reason and probability.” BLACK’S LAW DICTIONARY 1064 (5<sup>th</sup> ed. 1979). Each element of the claim must be supported by reliable, probative, and substantial evidence of sufficient quality and quantity as to show the

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<sup>4</sup> When an oral hearing is not requested in the letter of protest, the Tax Commission is authorized to examine the merits of the protest and enter an order in accordance with its findings without further notice to the taxpayer.

existence of the facts supporting the claim are more probable than their nonexistence. 2 Am.Jur.2d *Administrative Law* § 357.

4. An order of the Tax Commission must be supported by substantial evidence. *Dugger v. State ex rel. Oklahoma Tax Commission*, 1992 OK 105, 834 P.2d 964. Likewise, the audit upon which a portion of the record is formed and order issued, must be supported by substantial evidence. Oklahoma Tax Commission Order No. 2003-07-22-09, 2003 WL 2347117.

5. An audit is supported by substantial evidence when an evidentiary foundation for the audit has been established. Usually the evidentiary foundation will be established by the records reviewed by the auditor. Where an evidentiary foundation has been established, the taxpayer must prove the action of the Tax Commission in assessing the tax is incorrect, and in what respect. *OAC* 710:1-5-47; *Enterprise Management Consultants, Inc., supra*. However, where an evidentiary foundation has not been laid or the records upon which the audit is based establish no basis for assessing a tax, the audit and assessment in the initial instance cannot be sustained as supported by substantial evidence. *Dugger, supra*.

## II. INCOME TAX AND IRS ADJUSTMENTS

1. Income tax is imposed on the Oklahoma taxable income<sup>5</sup> of every resident individual. 68 O.S. 2011, § 2355(B). *See, OAC*, 710:50-3-1.<sup>6</sup> A "resident individual" is defined to mean "a natural person who is domiciled in this state". 68 O.S. 2011, § 2353(4).

2. Every resident individual having gross income, or gross receipts, for the taxable year in an amount sufficient to require the filing of a federal income tax return, if single, or if married and either living or not living with their spouse must make a return stating specifically the taxable income and, where necessary, the adjusted gross income and the adjustments provided in the

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<sup>5</sup> Defined as "'taxable income' as reported (or as 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[.]" 68 O.S. 2011, § 2353(12).

<sup>6</sup> This rule provides: "All taxpayers must file Oklahoma Income Tax Returns. 'Taxpayer' means any person subject to income tax imposed by Oklahoma Statutes, or whose income is in whole or in part, subject to income tax imposed by any provision of the Oklahoma Statutes."

Oklahoma Income Tax Act (“Act”)<sup>7</sup> to arrive at Oklahoma taxable income and, where necessary, Oklahoma adjusted gross income. 68 O.S. 2011, § 2368(A)(1) and (2).

3. A federal income tax return must be filed by every individual having for the taxable year gross income which equals or exceeds the exemption amount (zero bracket) and the standard deductions applicable to the individual. IRC § 6012(a)(1)(A) and (B). An individual who has \$400.00 or more in net earnings from self-employment must file a return regarding the self-employment tax notwithstanding that such income is less than the zero bracket amount. IRC § 6017.

4. A taxpayer’s filing status and any elections, such as itemized deductions as opposed to the Oklahoma standard deduction, shall be the same as on the taxpayer’s federal income tax return, except when the Act specifically provides otherwise. 68 O.S. 2011, § 2353(3); *OAC* 710:50-3-35.

5. The time prescribed in § 223 of the Uniform Tax Procedure Code for the assessment of income tax is tolled and extended until the taxable income for any year of a taxpayer under the Internal Revenue Code (“IRC”) had been finally determined under applicable federal law. 68 O.S. 2011, § 2375(H)(1). If, in such final determination, the taxable income is changed or corrected from the amounts reported on the federal return of the taxpayer and such change or correction affects the Oklahoma taxable income of the taxpayer, an amended Oklahoma income tax return must be filed by the taxpayer reporting the corrected Oklahoma taxable income within one (1) year after such final determination and the Tax Commission must make assessment or refund within two (2) years from the date the amended return is filed, unless a waiver is agreed to and signed. 68 O.S. 2011, § 2375(H)(2). If the taxpayer fails to file an amended Oklahoma income tax return reporting the corrected Oklahoma taxable income, the statute of limitations is tolled until the return is filed. 68 O.S. 2011, § 2375(H)(3).

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<sup>7</sup> 68 O.S. 2011, § 2351 et seq., as amended.

6. The income information furnished by the IRS shall be that upon which any tax liability is computed. *OAC* 710:50-5-10(a). Unless otherwise indicated, all income is considered to be from Oklahoma sources, as well as all deductions and credits, to the extent allowed by the Act. *Id.* When the federal taxable income of a taxpayer is changed or corrected from the amounts reported on the federal return of the taxpayer, the Tax Commission may audit every item of income, deduction, credit or any other matter relating to allocation or apportionment, even though the items or matters are not affected by the change or correction. 68 O.S. 2011, § 2375(H)(4). When the changed or corrected items or matters do not relate to allocation or apportionment, the Tax Commission is bound by the IRS revisions. *Id.*

## II. AUDITS AND INVESTIGATIONS

1. The Tax Commission has the authority to audit or investigate any tax return or report as it deems necessary. 68 O.S. 2011, § 221(A). The Tax Commission may assess, correct or adjust any report or return as a result of the audit or investigation. 68 O.S. 2011, § 221(B). Besides the information required on any state tax return or report, upon request or demand for production, a state taxpayer must furnish any information deemed necessary to determine the state tax liability. 68 O.S. 2011, § 248; *OAC* 710:50-3-22.

## **ANALYSIS**

1. The issue presented for decision is whether Protestants have shown the assessment is in any respect erroneous?

2. Protestants have offered no factual or legal arguments in opposition to the Division's adjustments to the 2015 Return.

3. The Commission in its adjudicatory capacity must examine the merits of any timely filed protest, even where no reasons are articulated for the protest. 68 O.S. 2011, § 221(D). Here, the assessment conforms to the revenue laws and the rules of the Commission. Protestants have

failed to state a claim upon which relief may be granted. *See, Fent v. Contingency Review Bd.*, 2007 OK 27, ¶23, 163 P.3d 512.<sup>8</sup>

### RECOMMENDATIONS

The protest should be denied. The amount in controversy, inclusive of any additional accrued and accruing interest, should be fixed as the deficiency due and owing.

### 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).

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<sup>8</sup> In *Fent*, the Court held “the absence of advocacy alters the nature of the appellate process by imposing upon the court the burden of researching and testing unsupported legal propositions.” Appellate courts will not be forced to become an active advocate for a party whose failure to brief or argue has produced a total intellectual vacuum. *Id.*