

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-10-28-05 / PRECEDENTIAL
ID: P-86-348
DATE: OCTOBER 28, 1987
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

ORDER

This comes on before the Oklahoma Tax Commission pursuant to regular assignment on the agenda. The Commission, having reviewed the facts and authorities presented therein, and being fully advised in the premises, finds and orders that the Findings, Conclusions and Recommendations of the Administrative Law Judge, filed herein on the 9th day of October, 1987, marked as Exhibit "A", attached hereto and hereby incorporated by reference as though fully set out herein, be and the same are hereby adopted as the Order of the Commission.

It is further determined that the statement of law contained herein is precedential in nature; thus, it is hereby ordered that this document be expunged of the protestant's name and identifying data, and that it be made available for public inspection at the M. C. Connors Building, 2501 Lincoln Boulevard, Oklahoma City, Oklahoma.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. A hearing was had, at which hearing the Income Tax Division of the Oklahoma Tax Commission (hereinafter Division) appeared by.- and through OTC ATTORNEY, Attorney with the General Counsel's Office of the Oklahoma Tax Commission, and the Protestant appeared not.

STATEMENT OF FACTS

By letter dated June 4, 1986, the Division issued an assessment for the 1983 tax year in the total amount of One Hundred Thirty-four Dollars and Sixteen Cents (\$134.16), with Ninety-six Dollars (\$96.00) representing additional tax due and Thirty-eight Dollars and Sixteen Cents (\$38.16) representing additional interest due. The Division's assessment was based on information made available by the Internal Revenue Service pursuant to Section 6103 of the Internal Revenue Code. More specifically, the Protestant's federal adjusted gross income was adjusted upward as a result of a disallowance of a portion of a claimed deduction.

The Protestant protested the assessment, apparently on the basis that the assessment was not timely.

On the day before the hearing, the Protestant appeared in the office of OTC ATTORNEY, Attorney of the General Counsel's Office, and paid the tax and interest assessed. The Protestant indicated that he was aware of the hearing the following day, did not plan to attend, but did not wish to withdraw his protest either.

ISSUES

1. Whether the Division's assessment letter of June 4, 1986, for the 1983 income tax year was timely.

APPLICABLE LAW

68 O.S. 1981, Section 223(a) provides as follows:

No assessment of any tax levied under the provisions of any state tax law except as provided in the following paragraphs of this section, shall be made after the expiration of three years from the date the return was required to be filed or the date the return was filed, whichever period expires the latter, and no proceedings by tax warrant or in court without the previous assessment for the collection of such tax shall be begun after the expiration of such period.

The 1983 tax return at issue was required to be filed by April 15, 1984. Thus, pursuant to the authority of Section 223(a), assessment could be made any time before April 15, 1987. The Division's assessment letter of June 4, 1986, was well within the statutory limitations.

68 O.S. 1981, Section 2353(13) provides as follows:

"Oklahoma adjusted gross income" means "adjusted gross income" as reported to the Federal Government (or as would have been reported by the taxpayer had a return been filed), or in the event of adjustments thereby by the Federal Government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided;

The Protestant's 1983 Federal Income Tax Return was adjusted by the Federal Government and the Division merely mirrored the Federal Government's adjustment. The starting point for the Oklahoma Income Tax Code is federal adjusted gross income.

Based upon the above and foregoing, the Protestants' protest is denied.

CONCLUSIONS OF LAW

In view of the above and foregoing findings of fact and law applicable thereto, the undersigned Administrative Law Judge, based upon the facts and circumstances of this specific case, concludes as follows:

(1) That the Oklahoma Tax Commission has jurisdiction in this matter.

(2) That the Income Tax Division's assessment was timely pursuant to 68 O.S. 1981, Section 223.

(3) That pursuant to 68 O.S. 1981, Section 2353(13), Oklahoma adjusted gross income means adjusted gross income as reported to the Federal Government or as adjusted by the Federal Government.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the income tax protest of PROTESTANTS be denied.

OKLAHOMA TAX COMMISSION