

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 86-03-25-11 / NON-PRECEDENTIAL  
**ID:** P-85-250  
**DATE:** MARCH 25, 1986  
**DISPOSITION:** DENIED  
**TAX TYPE:** WITHHOLDING  
**APPEAL:** NO APPEAL TAKEN

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

The above styled cause comes on for consideration pursuant to the assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission, and hearing had at which hearing the Income Withholding Tax Section of the Income Tax Division of the Oklahoma Tax Commission was represented by OTC ATTORNEY, Attorney, and the Protestant was represented by the secretary of the corporation, SECRETARY. There was no testimony taken on behalf of either the Protestant or the Division concerning the issues at hand, exhibits were entered into evidence although not itemized herein and arguments were made by the respective parties and the case was submitted for a decision.

### **STATEMENT OF FACTS**

The facts and circumstances of this case are undisputed. The facts reflect that the Protestant, an Oklahoma corporation, had been paying income withholding tax to the Income Tax Division of the Oklahoma Tax Commission for the period July of 1983 through June of 1985 in quarterly payments. The Income Withholding Tax Section of the Income Tax Division of the Oklahoma Tax Commission did on August 16, 1985 assess the Protestant for penalty and interest based upon the Protestant's payment of income withholding tax on a quarterly basis instead of a monthly basis as prescribed by statute. The assessment of penalty and interest was in the amount of Seven Hundred Sixty-four Dollars and Four Cents (\$764.04) representing penalties and One Hundred Fifty-two Dollars and Eighty-one Cents (\$152.81) representing interest for a total aggregate amount of Nine Hundred Sixteen Dollars and Eighty-five Cents (\$916.85). Said assessed amount was adjusted at the hearing to reflect a payment of penalty and interest for three months of the assessed period and this credit reduces the total amount of penalty and interest assessed as per the hearing date to Seven Hundred Eighty-nine Dollars and Sixty-one Cents (\$789.61). The Protestant did timely file a protest with the Income Withholding Tax Section of the Income Tax Division on September 9, 1985 by and through the secretary of the corporation, SECRETARY.

### **ISSUES AND CONTENTIONS**

It is the Protestant's contention that it has been unduly punished if in fact the assessment is upheld in view of the fact that the Protestant had been making quarterly reports since their incorporation and that all income withholding taxes due and owing for the quarter were paid, and further that the Income Withholding Tax Section of the Income Tax Division was remiss in its duty in not bringing the matter to the attention of the Protestant prior to the assessment period.

It is the contention of the Income Withholding Tax Section of the Income Tax Division that the Protestant was aware of the reporting requirements as set out by statute in view of the fact Protestant did remit the quarterly taxes paid on monthly report booklets provided to the Protestant by the Income Withholding Tax Section of the Income Tax Division which recite thereon the identification number of the Protestant, the frequency of filing, the period covered and the due date of the payment which reflect that the Protestant was to pay over income withholding taxes on a monthly basis.

The issue is whether or not the assessment dated August 16, 1985 is correct, proper and pursuant to the legislative mandates contained within the provisions of the Withholding Tax Code pursuant to Section 2385.1 et seq. of Title 68 of the Oklahoma Statutes.

### **APPLICABLE LAW**

Section 2385.1 of Title 68 of the Oklahoma Statutes defines employer as such term is to be used in the administration of the income withholding tax provisions and there is no question but that the Protestant is an employer within the definition of the term contained within this section. Section 2385.2(a) of Title 68 of the Oklahoma Statutes directs that every employer making payments of wages shall deduct and withhold from said wages paid to their respective employee a tax in an amount to be determined in accordance with the tax tables which designate the rate of tax to be withheld from the employees' salaries. Section 2385.3(a) of Title 68 of the Oklahoma Statutes directs as follows:

(a) Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall, for the quarterly period beginning July 1, 1961, and for each quarterly period thereafter, on or before the fifteenth day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file return with each such payment; and such return shall be in such form as the Tax Commission shall prescribe; except that where the amounts withheld are more than Five Hundred Dollars (\$500.00) per quarter, the employer withholding such amounts shall for each monthly period beginning July 1, 1968, and for each monthly period thereafter, on or before the fifteenth day of each succeeding month pay over to the Commission the amounts so withheld, and shall file a return monthly, as herein above provided, . . .

If in the event an employer fails to make payment to the Oklahoma Tax Commission as required by the provisions of Section 2385.3 supra, the Income Withholding Code provides pursuant to Section 2385.6(a) of Title 68 of the Oklahoma Statutes a penalty and interest to be assessed against the employer for the failure to comply with the payment provisions as heretofore recited pursuant to the provisions of Section 2385.3(a) supra. The directive contained within the penalty provisions of Section 2385.6(a) further provides that the penalty and interest heretofore mandated shall be added to and become a part of the tax assessed under the Income Withholding Tax Code.

Exhibit No. 3 reflects Oklahoma Tax Commission Form OW3, which is the reporting return for income withholding tax withheld and paid to the Oklahoma Tax Commission. The form used by Protestant and filed with the Oklahoma Tax Commission reflects the Protestant's corporate name, the Protestant's federal identification number, the filing frequency which clearly reflects monthly, the tax period covered, and the due date. The Form OW3 admitted into evidence reflects that the return was signed by the secretary of the Protestant, dated, and the amount of tax paid for three months reflecting no interest or penalty added thereto. Clearly the Protestant was aware, based upon the evidence, that the Protestant was to file on a monthly basis pursuant to the directives of Section 2385.3(a) supra, and in view of the fact that the Protestant failed to properly report and remit the tax, the penalty and interest provisions of Section 2385.6(a) supra direct that the Oklahoma Tax Commission assess penalty and interest as contained within that provision.

### **CONCLUSIONS**

In view of the above and foregoing factual situation and law applicable thereto, the undersigned Administrative Law Judge concludes as follows, to-wit:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the evidence reflects that the Protestant was aware of the reporting period as per forms provided by the Oklahoma Tax Commission in compliance with the provisions of Section 2385.3(a) of Title 68 of the Oklahoma Statutes, but continued to pay over income withholding tax on a quarterly basis.
- (3) That the provisions of Section 2385.6(a) of Title 68 of the Oklahoma Statutes directs that in the event the employer fails to properly remit and pay over to the Oklahoma Tax Commission income withholding tax as directed to the provisions of Section 2385.3(a) that the interest and penalty provisions of said section shall be computed thereon and added to and become a part of the tax and so assessed.
- (4) That the protest of the assessment of COMPANY be denied.

### **DISPOSITION**

In view of the above and foregoing findings and conclusions, the OKLAHOMA TAX COMMISSION ORDERS that the protest herein be denied, and that the assessment of penalty and interest in the amount of Seven Hundred Eighty-nine Dollars and Sixty-one Cents (\$789.61) be deemed due and owing until paid in full.

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.