JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-03-10-006 / NOT PRECEDENTIAL**
ID: **P9700323**
DATE: **03-10-98**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 6, 1994, the District Court ordered PROTESTANT, PROTESTANT d/b/a PROTESTANT & ASSOCIATES and as an Individual, to pay, pursuant to Tax Warrant XXX, ("Tax Warrant") delinquent withholding tax for the period of October, 1987, through August, 1993, to the Oklahoma Tax Commission.

The Division, by letter dated November 2, 1993, issued a Notice of Proposed Assessment of Taxes against PROTESTANT for withholding tax, interest and penalty in the estimated amount of $9,928.00 for the periods of April, 1989, through September, 1989, and April, 1990, through September, 1993, which are included in the Tax Warrant.

By Order issued December 7, 1993, a determination was made that PROTESTANT was delinquent in the remittance of withholding tax in the amount set forth in the Notice of Proposed Assessment.

The periods of October, 1987, through September, 1988, included in the Tax Warrant and the amounts attributed thereto, are based on reported but unremitted withholding taxes of PROTESTANT.

The evidence is unclear as to whether the remaining amounts of withholding taxes for the period of October, 1988, through March, 1990, included in the Tax Warrant, are based on an estimate which was assessed against PROTESTANT or whether they represent the reported but unremitted withholding taxes of PROTESTANT.

The amount currently owed by PROTESTANT for the Tax Warrant is as follows:

Tax:	$ 5,193.33
Interest thru 11/30/97:	6,640.32
Penalty	1,939.70
Fees:	208.00
TOTAL:	$14,181.35

By letter dated September 26, 1997, PROTESTANT was notified that her income tax refund in the amount of $239.00 had been suspended and that the Division intended to apply the refund to the outstanding withholding tax liability.

PROTESTANT filed a written protest claiming that the amount of withholding tax liability is incorrect and that the statute of limitations has run on the collection of any assessment estimated by the Tax Commission.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Tax Commission. 68 O.S. Supp. 1995, § 205.2.

2. The amount of delinquent Oklahoma tax, penalty and interest thereon, due and owing by a taxpayer pursuant to any state tax law shall be deducted from any income tax refund due to such taxpayer prior to the payment of such refund. 68 O.S. Supp. 1995, § 205.2E. A taxpayer may file an objection to such action and request a hearing. 68 O.S. Supp. § 205.2B. At the hearing, it shall be determined whether the claimed sum is correct or whether an adjustment to the claim shall be made. *Id*. Further, no action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt. *Id*.

3. The withholding tax liability of PROTESTANT is a valid debt owed to the State of Oklahoma. An estimated assessment of taxes may be made without limitation of time. 68 O.S. § 221(C). Further, a tax warrant filed pursuant to Section 231 of Title 68 of the Oklahoma Statutes is not subject to any dormancy statute. 68 O.S. § 231(I)(2).

4. PROTESTANT has not come forward with any evidence that the claimed sum is not correct nor cited any authority that the collection of the sum is prohibited. The refund of income taxes in the amount of $239.00 is properly applied toward satisfaction of the debt PROTESTANT owes to the State of Oklahoma.

DISPOSITION

THEREFORE, IT WAS DETERMINED that the protest of PROTESTANT to the claim of the Account Maintenance Division to the income tax refund of $239.00 be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.