JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-03-23-010 / NOT PRECEDENTIAL**
ID: **P9900002**
DATE: **03-23-99**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including Exhibits A through G attached to the Position Letter of the Division and admitted in this cause, the undersigned finds:

1. That MR. PROTESTANT, owes sales, withholding, and tourism tax, penalty, and interest to the State of Oklahoma which is attributable to his ownership and operation of a business known as ANONYMOUS Pizza, located IN ANYTOWN, Oklahoma.

2. That this liability was established by and through proposed assessments which MR. PROTESTANT, did not protest, and tax warrants which were filed in AN ANONYMOUS County, State of Oklahoma.

3. That as of January 31, 1999, the sales tax liability of MR. PROTESTANT, is $7,594.58, inclusive of tax in the amount of $2,800.00, interest in the amount of $4,514.58, and penalty in the amount of $280.00.

4. That as of January 31, 1999, the withholding tax liability of MR. PROTESTANT, is $498.71, inclusive of tax in the amount of $175.00, interest in the amount of $279.96, and penalty in the amount of $43.75.

5. That as of January 31, 1999, the tourism tax liability of MR. PROTESTANT, is $151.84, inclusive of tax in the amount of $56.00, interest in the amount of $90.24, and penalty in the amount of $5.60.

6. That as of January 31, 1999, the aggregate amount owed by MR. PROTESTANT, is $8,245.13.

7. That Protestants are due a refund of income tax in the amount of $681.00 as claimed on their 1995, 1996, and 1997 state income tax returns.

8. That the refund is attributable solely to the employment of MR. PROTESTANT.

9. That Protestants timely protested the Division's notice of application of the income tax refund to the sales, withholding, and tourism tax liability of MR. PROTESTANT.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. Supp. 1997, § 205.2(B); that the Tax Commission is authorized to deduct from any state tax refund due to a taxpayer the amount of delinquent state tax, and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law prior to payment of the refund, 68 O.S. Supp. 1997, § 205.2(E); that in the event of a protest to the application to deduct the delinquent taxes from the refund due the taxpayer, the only issues subject to determination are whether the claimed sum is correct or whether an adjustment to the claim shall be made, 68 O.S. Supp. 1997, § 205.2(B); that here the evidence proves the claimed sum is correct, and due and owing, and that no adjustment to the claim of the Division is required since the income tax refund of Protestants is solely due to the employment of MR. PROTESTANT.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of MR. PROTESTANT and MS. PROTESTANT, 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.