

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 99-04-06-008 / NOT PRECEDENTIAL
ID: P9700234
DATE: 04-06-99
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. That on or about July 11, 1988, the Division caused to be issued proposed assessments of withholding tax, interest and penalty against each of the Protestants for the 3rd and 4th quarters of 1987.

2. That the total amount assessed was \$2,582.12, inclusive of tax in the amount of \$1,871.83, penalty in the amount of \$467.96, and interest accrued through July 15, 1988, in the amount of \$242.33.

3. That Protestants received the proposed assessments.

4. That Protestants did not protest the proposed assessments nor seek an abatement of the assessments within the time period allowed by statute.

5. That tax warrant nos. ITW-XXX-01 and ITW-XXX-02 were filed against Protestant on December 27, 1988, in AN ANONYMOUS County.

6. That Protestants' liability as of October 31, 1997, was \$5,175.93.

7. That Protestants are due refunds of income tax in the amount of \$348.00 as claimed on their 1984 amended Oklahoma income tax return and \$761.00 as claimed on their 1996 Oklahoma income tax return.

8. That Protestants are also indebted to the State of Oklahoma in the amount of \$8,454.82 for withholding taxes under tax warrant nos. ITW-YYY-01 and ITW-YYY-02 filed in AN ANONYMOUS County on July 19, 1994, for the periods of April 1, 1982 through December 31, 1982 and July 1, 1983 through December 31, 1983.

9. That Protestants timely protested the Division's notice of application of the income tax refunds to the withholding liability, asserting that the withholding tax liability had been discharged in bankruptcy.

10. That Protestants were discharged from chapter 7 bankruptcy on August 30, 1988.

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); and that withholding tax, as a trust fund tax, is not dischargeable in bankruptcy, 11 U.S.C. § 523(a)(1)(A). See, *Shank v. Washington State Department of Revenue*, 792 F.2d 829 (9th Cir. 1986) and Oklahoma Tax Commission Order No. 90-02-06-061.

DISPOSITION

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