

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 1999-09-14-006 / NOT PRECEDENTIAL
ID: P9900164
DATE: 09-14-99
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 Protestant owned and operated a sole proprietorship known as ANONYMOUS Cafe during the period of January, 1994 through at least August, 1994.

2. That Protestant signed the sales tax returns for the periods of August, September and October, 1994, which returns reported taxes due of \$509.39, \$705.01 and \$495.60, respectively.

3. That Protestant also signed the withholding tax returns for the period of April, 1994 through September, 1994, which returns reported an aggregate amount of tax due of \$109.18.

4. That according to Protestant, she was not aware that the taxes had not been remitted.

5. That Protestant's estranged husband and daughter operated the business on and after August, 1994.

6. That the business was sold in January, 1995.

7. That on or about July 16, 1985, the Division caused to be issued a proposed sales tax assessment against Protestant for the periods of July and November, 1984.

8. That an estimated aggregate sales tax liability of \$850.00 was assessed for the audit periods.

9. That the proposed assessment was forwarded by certified mail to the address of the business.

10. That Protestant did not received notice of the proposed assessment.

11. That because the assessment was not protested, tax warrant nos. XXX and ZZZ were filed against Protestant on June 23, 1986, in ANONYMOUS County.

12. That as of June 30, 1999, Protestant's admitted liability was \$6,236.93, consisting of sales tax in the amount of \$1,710.00, withholding tax in the amount of \$109.18, interest in the amount of \$4,219.45 and penalty in the amount of \$198,30.

13. That Protestant filed her 1998 Oklahoma Individual Income Tax Return electronically on March 8, 1999, claiming a refund in the amount of \$115.00.

14. That the refund is attributable solely to the employment and withholding of Protestant.

15. That on April 13, 1999, the Division notified Protestant of its intent to apply her 1998 income tax refund to the liability.

16. That Protestant timely protested the Division application, asserting that it was her belief the taxes had been paid.

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 a portion of the claimed sum, greater than the amount of the refund, is correct; that is, it is derived from an admitted liability, and it is due and owing. In addition the evidence proves that no adjustment to the claim of the Division is required since the income tax refund of Protestant is solely due to the employment and withholding of Protestant.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of Protestant be denied. It WAS further DETERMINED that tax warrant nos. XXX and ZZZ be withdrawn since there is competent evidence that Protestant did not receive notice of the proposed assessment.

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.