

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2001-01-30-002 / NOT PRECEDENTIAL  
**ID:** P9700325  
**DATE:** 01-30-01  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME / WITHHOLDING  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about February 19, 1993, the Division caused to be issued proposed withholding tax assessments against Protestant in his capacity as Secretary/Treasurer of PROTESTANT CORPORATION and as an individual.

2. The proposed assessments cover the periods of March, 1991, May, 1992, through October, 1992, and December, 1992.

3. The total amount assessed, inclusive of penalty and interest accrued through March 6, 1993, was \$31,439.98.

4. The notices of proposed assessments, sent by certified mail, were addressed to Protestant AT HIS LAST KNOWN ADDRESS. The notices were returned to the Division marked "unclaimed" on or about March 19, 1993.

5. Protestant failed to protest Division's assessments resulting in the assessments becoming final, and Tax Warrants Nos. ITW-99999999-99 and ITW-99999999-99 were filed against Protestant in ANONYMOUS county on or about March, 1995.

6. Protestant's current withholding tax liability pursuant to the above-referenced warrants is as follows:

Withholding Tax	\$10,505.41
Interest through 11/30/97	13,147.47
Penalty	<u>2,835.07</u>
Total	\$26,487.95

7. Protestant filed a joint Oklahoma state income tax return for 1996 on or about August 15, 1997. A refund in the amount of \$327.00 was claimed.

8. By letter dated September 19, 1997, the Division notified Protestants by certified mail that their income tax refund was suspended and was to be applied to the outstanding withholding liability of Tax Warrants ITW-99999999-99 and ITW-99999999-99.

9. Protestant, by letter dated September 22, 1997, protested the suspension of the income tax refund. In the protest letter, Protestant contends that he was terminated as an employee of PROTESTANT CORPORATION in April, 1992. He further states that he was later rehired, but that during the periods in question, he did not sign any checks and that he was not responsible either directly or indirectly for payroll or withholding tax reporting or payment.

10. The Division prorated the income tax refund between PROTESTANT AND PROTESTANT'S SPOUSE and refunded that portion of the refund attributable to SPOUSAL income. SPOUSE is not a debtor owing a debt to the Tax Commission under Tax Warrants ITW-99999999-99 and ITW-99999999-99. PROTESTANT's portion of the refund, which is available to apply toward the debt owed to the Tax Commission, is \$189.66.

### **ISSUE**

Whether the notice of the proposed assessments of withholding taxes were given to Protestant in accordance with the pertinent statutes, 68 O.S. Supp. 1995, §§ 208 and 221, governing notice of proposed assessments.

### **CONTENTIONS**

Protestant contends that the letter sent by the Division was insufficient to place him on notice of the proposed assessment. In particular, Protestant refers to the fact that the envelope which contained the assessment letter was addressed to PROTESTANT in his corporate capacity as an officer of PROTESTANT CORPORATION,

The Division contends that the assessment was final when a timely protest was not filed to the proposed assessments issued on or about February 19, 1993. The proposed assessments were mailed to the last-known address of the Protestant. The last signed report contained in the records of the Division proposing the assessment was the 1992/93 Franchise Tax Return of PROTESTANT CORPORATION. Page four of that return reflects the same address for PROTESTANT as for the Corporation's registered agent. The Division searched the income tax records and discovered that Protestant had not filed an individual tax return for 1991. Protestant had filed a individual Oklahoma return for 1990. The notice of proposed assessment was sent to the address reflected on the 1990 return.

### **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, and 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, § 205.2.E. A taxpayer may file an objection to such action and request a hearing. 68 O.S. Supp. 1995, § 205.2.B. 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. A challenge to the validity of the debt requires a determination that the notice of the assessment, which gave rise to the debt, was provided in a manner that satisfied due process requirements.

4. The assessment of taxes or additional taxes shall be proposed in writing and shall be mailed to the taxpayer at the taxpayer's last-known address. 68 O.S. 1991, § 221. Last-known address currently means the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice. 68 O.S. Supp. 1995, § 208.

5. In 1993, at the time of the mailing of the proposed assessment to Protestant, the term last-known address was not defined by statute. The controlling test is whether in light of all the relevant circumstances the Division reasonably considers the address to which the proposed assessment is mailed to be the taxpayer's last-known address. See *Mulder v. C.I.R.*, 855 F.2d 208 (5th Cir. 1988). The focus is on the information available at the time of the mailing of the proposed assessment. Each case, however, turns on its own particular facts and circumstances. *King v. C.I.R.*, 857 F.2d 676 (8th Cir. 1988).

6. In this matter, the Division exercised reasonable diligence in ascertaining a correct address for Protestant. Since the address provided on the franchise tax return as Protestant's address was that of the Corporation's registered agent, the Division searched Commission records to obtain Protestant's last-known address. The 1990 income tax return was the most recent information available to the Division at the time of mailing.

7. Protestant testified that he did not live at the address after October of 1992. However, Protestant again used that address on his 1992 individual income tax return. Protestant's 1992 return was signed April 15, 1993, after the mailing of the assessments. Furthermore, Protestant did not give notice to the Tax Commission that his address or his responsibilities within the company had changed.

8. The assessment letters dated February 19, 1993, advised Protestant that the Division proposed assessments of withholding tax, interest and penalty against Protestant as an officer of PROTESTANT CORPORATION and as an individual. The assessment letters stated the periods and amounts at issue. Protestant's argument, that the notices of proposed assessment were rendered insufficient because the envelope containing the assessment was addressed to Protestant only in his corporate capacity, is without merit.

9. When the facts and circumstances are considered, it is concluded that the Division acted with reasonable diligence in ascertaining a correct address for Protestant for purposes of providing notice of the proposed assessment. Having done so, the assessment was final and absolute when it was not protested within thirty days of the mailing of the proposed assessment. Accordingly, the suspension of the income tax refund is proper under 68 O.S. Supp. 1995, § 205.2.

10. Protestant's protest to the suspension of his 1996 income tax refund should be denied.

### DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION based upon the specific facts and circumstances of this case, that the protest of PROTESTANT to the claim of the Account Maintenance Division to PROTESTANT'S 1996 income tax refund 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.