

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-03-08-009 / NOT PRECEDENTIAL
ID: P0000217
DATE: 03-08-01
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 1st day of February, 2001, the protest of PROTESTANT to the claim of the Account Maintenance Division of the Oklahoma Tax Commission to PROTESTANT'S income tax refund comes on for consideration before Christy J. Caesar, Administrative Law Judge. A hearing was held in this matter pursuant to the provisions of Section 301 et seq. of Title 75 of the Oklahoma Statutes. PROTESTANT (hereinafter "Protestant") represents herself in this matter. The Account Maintenance Division is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. Notice of the hearing was mailed to Protestant at her last known address, yet she did not appear. At the conclusion of the hearing, this matter was submitted for decision.

FINDINGS OF FACT

1. Protestant was listed as Secretary/Treasurer of ABC COMPANY, Inc. on the corporation's 1994/1995 and 1996/1997 Franchise Tax Returns provided to the Oklahoma Tax Commission and dated September 26, 1994, and August 21, 1996, respectively.

2. A proposed assessment of withholding tax for the period June, 1998, through November, 1998, was issued to Protestant as Secretary of ABC COMPANY, Inc. and as an individual. The proposed assessment was issued on December 11, 1998, in the amount of \$534.18, inclusive of interest and penalty.

3. A proposed assessment of withholding tax for the period July, 1995, through December, 1995, and September, 1996, through May, 1998, was issued against Protestant as Secretary of ABC COMPANY, Inc. and as an individual. The proposed assessment was issued on June 19, 1998, in the amount of \$2,449.25, inclusive of interest and penalty.

4. A proposed assessment of withholding tax for the period June, 1998, through May, 1999, was issued against Protestant as Secretary of ABC COMPANY, Inc. and as an individual. The proposed assessment was issued on July 2, 1999, in the amount of \$792.38, inclusive of interest and penalty.

5. The proposed assessments were sent by certified mail to Protestant at 9999 N. ANONYMOUS Ave., ANYCITY, OK. The return receipts were signed by PROTESTANT and returned to the Tax Commission.

6. Protestant did not protest the proposed assessments. Furthermore, Protestant did not file any response to the assessments issued by letters dated December 11, 1998, and June 19, 1998¹, which could be considered an abatement request provided for in Section 221(e) of Title 68.

7. The Oklahoma Tax Commission issued and caused to be filed against Protestant, Tax Warrant No. ITWXXXXXXXX-XX² and ITWXXXXXXXX-XX³.

8. On May 5, 2000, Protestant was notified by the Oklahoma Tax Commission that her income tax refund of \$313.00 for 1999 had been delayed due to a reported withholding tax liability.

9. The refund is attributable solely to the income of Protestant.

10. Protestant filed a written protest on May 9, 2000, stating that she had not been involved with the business for several years, that her son operates the business and that he asserts he does not owe the tax.

11. Except for the warrant penalty and release/filing fees in the amount of \$50.22, the liability for the periods of July, 1995, through September, 1995; November, 1995, through December, 1995, and June, 1998, through May, 1999, in the amount of \$711.60 was paid upon application of a portion of a payment received in the amount of \$839.74. The remainder of the payment was applied toward periods not at issue in this matter.

12. Protestant's outstanding withholding tax liability for the period of October, 1995, and September, 1996, through May, 1998, is \$2,271.39, consisting of withholding tax in the amount of \$1,143.62, interest calculated to October 12, 2000, in the amount of \$575.65, delinquent penalty in the amount of \$285.90, warrant penalty in the amount of \$234.22, and warrant release/filing fees in the amount of \$32.00.

¹The only periods and amounts at issue in this matter were assessed pursuant to the assessment letter issued June 19, 1998.

²Tax Warrant ITWXXXXXXXX-XX was filed September 4, 1998, for the period July, 1995, through December, 1995, and September, 1996, through May, 1998, in the amount of \$2,673.56.

³Tax Warrant ITWXXXXXXXX-XX was filed August 30, 1999, for the period June, 1998, through May, 1999, in the amount of \$887.62.

13. A hearing on the protest was held on November 29, 2000.

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. 1997, §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. 1997, § 205.2E. A taxpayer may file an objection to such action and request a hearing. 68 O.S. Supp. 1997, § 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 revised withholding tax, interest, penalties and fees are a valid debt of Protestant to the State of Oklahoma. The refund of income taxes in the amount of \$313.00 requested by Protestant on her 1999 income tax return was properly suspended in partial satisfaction of the debt she owes to the State of Oklahoma in the amount of \$2,271.39.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION that the protest to the claim of the Account Maintenance Division to PROTESTANT'S income tax refund of \$313.00 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.