JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-04-24-07 / NOT PRECEDENTIAL**
ID: **P9800195**
DATE: **04-24-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Protestants failed to file tax returns for tax years 1981 and 1982 and are indebted to the State of Oklahoma for income tax, penalty and interest for those periods.

2. This liability was established by and through a proposed assessment dated November 1, 1985 which Protestants did not protest.[1]

3. The assessment was based on Internal Revenue Service Revenue Agents Report dated August 31, 1984, and numbered 00000-00-00.

4. Additionally, PROTESTANT failed to file tax returns for tax years 1985, 1986, 1987, 1988 and 1989 and he is indebted to the State of Oklahoma for income tax, penalty and interest for those periods.

5. This liability was established by and through proposed assessments dated January 14, 1994 which PROTESTANT did not protest.

6. The assessments are based on Internal Revenue Service Agents Reports dated February 11, 1993, and numbered 00000-00, 00000-00, 00000-00, 00000-00 and 00000-00.

7. On April 24, 1994, Tax Warrant No. ITI-99-999999-99 was filed against PROTESTANT for the period January 1, 1988, through December 31, 1989.

8. On September 21, 1994, Protestants filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Oklahoma. On January 5, 1995, the United States Bankruptcy Court, ordered that Protestants be released from all dischargeable debts.

[1] An assessment, based on PROTESTANT's wage and tax statement, was issued against him for the tax year 1981 by letter dated July 2, 1985; however, the assessment was subsequently obsoleted by the Division.

9. On or about March 21, 1997, Protestants filed their 1996, Oklahoma Individual Income Tax Return, Form 511-EZ with attached Form 538-S. Protestants reported a refund of $35.00.

10. By letter dated April 23, 1997, the Division advised Protestants that their request for refund had been delayed due to their outstanding tax liability for years 1981, 1982 and 1985 through 1989. The established liability as of April 23, 1997, was $14,884.23, consisting of the following amounts:

Tax Year	1981	1982	1985	1986
Tax Due	$ 985.00[2]	$1,206.00	$ 821.00	$ 972.00
Penalty Due	500.00	0.00	82.00	97.00
Interest Due	2,297.13	2,711.62	1,402.20	1,485.13
Remaining Balance	$3,747.13	$3,917.62	$2,305.20	$2,554.13

Tax Year	1987	1988	1989
Tax Due	$ 755.00	$ 151.00	$ 61.00
Penalty Due	76.00	15.00	6.00
Interest Due	1,017.68	179.93	63.54
Remaining Balance	$1,848.68	$ 345.93	$ 130.54

11. By letter dated April 28, 1997, Protestants filed a protest to the Division's notice of application of their 1996 income tax refund of $35.00, and requested a hearing.

12. The letter was treated as a request for determination of dischargeability based on Protestants' bankruptcy and as a request for waiver of penalty and interest. By letter dated August 8, 1997, the Division advised Protestants that they should pay the delinquent taxes due before a request for waiver could be processed.

13. By letter dated September 8, 1997, Protestants renewed their protest to the Division's interception of their 1996 refund and again requested a hearing.

14. By memorandum dated March 17, 2000, the Division's representative advised that the assessment letter issued Protestants for the 1981 tax year did not reflect a credit for PROTESTANT's withholding in the amount of $284.00; however, the tax amount has been reduced accordingly. This adjustment reduces Protestants' 1981 Oklahoma income tax to $701.00.

[2] A payment of $15.00 received October 20, 1989, from the Oklahoma County Court Clerk was previously applied to the tax due for tax year 1981.

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. Protestants' debt to the Tax Commission falls within the exceptions to dischargeability found in the United States Bankruptcy Code. Tax debts "with respect to which a return, if required - was not filed," are not dischargeable debts. 11 U.S.C. § 523(1)(B)(i). Protestants' debt arose from their failure to file required tax returns; therefore, the Order granting Protestants' release from dischargeable debts under Chapter 7 of the Bankruptcy Code has no impact on the claim made by the Tax Commission.

4. Protestants have not come forward with any evidence that the claimed sum is not correct nor cited any authority that the collection of the sum is prohibited. The refund of income taxes in the amount of $35.00 was properly suspended in partial satisfaction of the debt Protestants owed to the State of Oklahoma for tax year 1981.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT to the Account Maintenance Division's claim to the income tax refund in the amount of $35.00 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.