

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-08-14-010 / NOT PRECEDENTIAL
ID: P0100094
DATE: 08-14-01
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 11th day of July, 2001, the above styled and numbered cause comes on for decision pursuant to a hearing held in accordance with 68 O.S. Supp. 1997, § 205.2(B). Protestants appear pro se. The Account Maintenance Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Protestants did not appear at the hearing. The Division moved for the denial of the protest, standing by its Amended Position Letter filed in this cause on May 23, 2001, and the exhibits attached thereto. At the hearing and by letter dated May 31, 2001, the Court notified the parties of its Order directing the Division to adjust the amount the Division proposed to intercept and report the adjusted warrant intercept amount and the method used to calculate the amount.

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

1. That Protestant, held the office of President of XYZ Inc., a corporation, during the period of June 30, 1993 through June 30, 1998.

2. That on or about July 16, 1999, the Division caused to be issued a proposed withholding tax assessment against Protestant, as President of XYZ Inc. and as an individual, for the periods of April, 1997 through August, 1997 and September, 1997 through March, 1999, in the total aggregate amount of \$99,675.09, consisting of tax in the actual amount of \$12,164.23 for the earlier period and the estimated amount of \$57,000.00 for the latter period, interest accrued through August 27, 1999 in the amount of \$13,369.81 and penalty in the amount of \$17,141.05.

3. That the proposed assessment was forwarded to Protestants' last known address in accordance with 68 O.S. 1991, § 208.

4. That Protestant neither protested the proposed assessment nor sought an abatement of the assessment within the time period allowed by statute.

5. That Tax Warrant Nos. ITW9999999999-99, ITW8888888888-88 and ITW7777777777-77, evidencing the liability for the withholding tax assessment, were filed against Protestant on October 20, 1999, and September 24, 1999, respectively, in ANONYMOUS County, Oklahoma.

6. That on or about October 1, 1999, the Division caused to be issued a proposed withholding tax assessment against Protestant, as President of XYZ Inc. and as an individual, for the period of April, 1999 through August, 1999, in the aggregate amount of \$18,618.06, consisting of tax in the estimated amount of \$15,000.00, interest accrued through November 17, 1999 in the amount of \$768.06 and penalty in the amount of \$2,850.00.

7. That this assessment was forwarded to Protestants' last known address in accordance with 68 O.S. 1991, § 208.

8. That Protestant neither protested this assessment nor sought an abatement of the assessment within the time period allowed by statute.

9. That the aggregate amount owed by Protestant is \$125,510.82.

10. That a refund of income tax in the amount of \$712.00 was claimed on the joint 2000 state income tax return of Protestants, which return was filed electronically.

11. That the income tax refund claim is attributable to the employment and withholding of both Protestants, as follows:

	PROTESTANT	SPOUSE	COMBINED
W-2'S	\$37,750.00	\$ 8,000.00	\$45,750.00
REFUNDS	126.50	126.00	253.00
BUS INCOME*	397.00	397.00	794.00
FARM LOSS*	5,132.00	5,132.00	10,264.00
TOTAL	\$33,141.50	\$ 3,391.50	\$36,533.00
WITHHOLDING	\$ 1,520.00	\$ 84.00	\$ 1,604.00
OKLA TAX	\$ 811.72	\$ 80.28	\$ 892.00
REFUND	\$ 708.00	\$ 3.72	\$ 712.00

* Income and loss divided equally between Protestants because Federal schedules were not provided.

12. That by letter dated March 1, 2001, the Division notified Protestants of its intent to apply the 2000 income tax refund to the withholding tax liability of Protestant.

13. That Protestants timely protested the Division's notice, asserting the corporation was not in business during 1998 and 1999, but had ceased doing business in approximately April, 1997.

14. That at the hearing the Division proposed to adjust the amount of its warrant intercept to an amount of \$587.40, which amount was calculated by dividing the income attributable to Protestant by Protestants' total income and multiplying the resultant percentage to Protestants' refund claim.

15. That pursuant to the order of the Court, the Division recalculated the amount of the refund claim attributable to both Protestants by comparing the income, withholding and tax liability of each of the Protestants.

16. That by memorandum filed June 12, 2001 in this cause, with notice to Protestants, the Division proposed to apply \$708.00 of Protestants' 2000 refund claim to the withholding tax liability of Protestant.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. Supp. 1997, § 205.2(B); that the 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 of the refund to any delinquent taxes, 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 the liabilities are correct and the amounts are due and owing. Further, the undersigned finds that, based on equity, the amount of the refund which should be subject to warrant intercept is \$708.00, as last proposed by the Division.

DISPOSITION

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