

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-09-04-040 / NOT PRECEDENTIAL
ID: P0000209
DATE: 09-04-01
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 31st day of July, 2001, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. Protestants represent themselves in this matter. The Account Maintenance Division is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. A hearing was held on November 29, 2000, pursuant to the provisions of Section 309 of title 75 and Section 205.2(B) of title 68 of the Oklahoma Statutes, and upon submission of additional documentation, the case was submitted for decision. The undersigned finds:

1. The *Business Registration* filed by PROTESTANT CORPORATION with the Tax Commission on July 25, 1995, lists PROTESTANT B as President and PROTESTANT A as Vice President of the corporation and gives the mailing address of each as XXX ANY STREET, ANONYMOUS, OK.

2. The *Oklahoma Annual Franchise Tax Return* filed by PROTESTANT CORPORATION for the period July, 1998, through June, 1999, lists MS. X as President and PROTESTANT A as Secretary, and lists the home address of each as XXXXX ANY DRIVE, ANY TOWN, OK.

3. No sales tax reports for PROTESTANT CORPORATION were filed for the periods of December, 1998, through July, 1999.

4. No withholding tax reports for PROTESTANT CORPORATION were filed for the periods of November, 1998, and January, 1999, through July, 1999.

5. On September 3, 1999, the Account Maintenance Division issued proposed assessments against PROTESTANT A, as Secretary of PROTESTANT CORPORATION and as an individual, d/b/a PROTESTANT CORPORATION and against PROTESTANT B, as President of PROTESTANT CORPORATION and as an individual, d/b/a PROTESTANT CORPORATION, for sales tax and withholding tax for the following periods and in the following amounts:

Sales TaxDecember, 1998, through July, 1999

Estimated Tax Due	\$ 6,400.00
Interest through 10/15/99	440.51
Penalty	<u>640.00</u>
TOTAL DUE	\$ 7,480.51

Withholding TaxNovember, 1998, and January, 1999, through July, 1999

Estimated Tax Due	\$ 1,950.00
Interest through 10/15/99	134.57
Penalty	412.50
TOTAL DUE	\$ 2,497.07

6. The notices were mailed to PROTESTANT A, XXXXX ANY DRIVE, ANY TOWN, OK and to PROTESTANT B, XXXXX ANY DRIVE, ANY TOWN, OK, by certified mail, return receipt requested. The notices were returned to the Tax Commission marked "unclaimed".

7. No protests to the proposed assessments were filed by Protestants.

8. On October 22, 1999, sales tax warrant number STS9999999999-99 was filed against PROTESTANT A, Secretary, PROTESTANT CORPORATION and as an individual, XXXXX ANY DRIVE, ANY TOWN, OK for the periods December, 1998, through July, 1999.

9. On November 1, 1999, withholding income tax warrant number ITW8888888888-88 was filed against PROTESTANT A, Secretary, PROTESTANT CORPORATION and as an individual, XXXXX ANY DRIVE, ANY TOWN, OK for the periods November, 1998, and January, 1999, through July, 1999.

10. On October 22, 1999, sales tax warrant number STS7777777777-77 was filed against PROTESTANT B, President, PROTESTANT CORPORATION and as an individual, XXXXX ANY DRIVE, ANY TOWN, OK for the periods December, 1998, through July, 1999.

11. On November 1, 1999, withholding income tax warrant number ITW6666666666-66 was filed against PROTESTANT B, President, PROTESTANT CORPORATION and as an individual, XXXXX ANY DRIVE, ANY TOWN, OK for the periods November, 1998, and January, 1999, through July, 1999.

12. The Oklahoma Tax Commission suspended Protestants' income tax refund for 1999 in the amount of \$485.00 and sent notice to them of the suspension on July 21, 2000. The notice stated that the funds would be applied to warrant numbers STS-9999999999-00 and ITW-8888888888-88, total liability amount \$11,830.98, and advised Protestants to reply within ten days of receipt of the letter if they did not agree with the information contained in the notice.

13. Protestants responded to the letter of suspension in writing. In their letter they stated that the business had closed during 1998 and that no sales tax had been collected because most of their customers were sales tax exempt.

14. A hearing was held in this matter on November 29, 2000, with additional time granted for the filing of actual reports and additional documentation.

15. By status report filed July 2, 2001, Division advised that PROTESTANT A filed a withholding tax report for November, 1998, through July, 1999, showing no withholding tax due, and a sales tax report for December, 1998, through July, 1999, indicating a sales tax liability of \$2,225.90. However, the tax was not remitted to the Tax Commission.

16. Upon the filing of the sales tax and withholding tax reports, the Division revised the proposed assessments to reflect the admitted liabilities, plus applicable fees, penalties and interest, as follows:

Sales Tax

December, 1998, through July, 1999

Tax Due	\$ 2,225.92
Interest through 04/15/01	654.46
Penalty	222.56
Warrant Penalty	200.00
Fees	<u>16.00</u>
TOTAL DUE	\$ 3,318.94

Withholding Tax

November, 1998, and January, 1999, through July, 1999

Warrant Penalty	\$ 200.00
Fees	16.00
TOTAL DUE	\$ 216.00

CONCLUSIONS OF LAW

Based upon the foregoing findings of facts the undersigned concludes:

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 sales tax, interest, penalties and fees are a valid debt of Protestants to the State of Oklahoma. However, the tax warrant penalty in the amount of \$200.00 relating to the withholding tax is not owed by Protestants. 68 O.S. § 231.1. The refund of income taxes in the amount of \$485.00 requested by Protestants on their 1999 income tax return was properly suspended in partial satisfaction of the debt they owe to the State of Oklahoma in the amount of \$3,334.94.

DISPOSITION

THEREFORE, IT IS DETERMINED that the protest of PROTESTANTS A AND B to the claim of the Account Maintenance Division to the income tax refund of \$485.00 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.