JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-10-30-010 / NOT PRECEDENTIAL**
ID: **P0100071**
DATE: **10-30-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 26th day of September, 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 A Senior Deputy General Counsel and A Legal Research Assistant, General Counsel's Office of the Oklahoma Tax Commission. A hearing was held on April 25, 2001, pursuant to the provisions of Section 205.2(B) of Title 68 of the Oklahoma Statutes. Notice of the hearing was mailed to Protestants at their last known address, yet they did not appear. Upon submission of additional information by the Division, the case was submitted for decision. The undersigned finds:

1. A proposed assessment of sales tax for the period May, 1997, through May, 1998, was issued to PROTESTANT A d/b/a PROTESTANT'S BUSINESS on June 26, 1998, in the aggregate amount of $34,452.81, consisting of estimated tax in the amount of $28,860.00, interest to July 31, 1998, in the amount of $2,706.81, and penalty in the amount of $2,886.00.

2. The notice was mailed to PROTESTANT A d/b/a PROTESTANT BUSINESS, P.O. Box XXXX, ANONYMOUS, OK, by certified mail, return receipt requested. The return receipt was signed by PROTESTANT A and returned to the Tax Commission.

3. A notation dated July 10, 1998, and initialed by "SK" appears on a copy of the proposed assessment letter and states that PROTESTANT A called and stated that he only had the business for one month and that the prior owner took it back and resold it to someone else.

4. On August 24, 1998, sales tax warrant number STS9999999999-99 was filed against PROTESTANT A d/b/a PROTESTANT'S BUSINESS, P.O. Box XXXX, ANONYMOUS, OK, for the periods May, 1997, through May, 1998.

5. By statement dated September 28, 1998, PROTESTANT A maintained that he operated PROTESTANT'S BUSINESS for one month, from May 1 to June 1, 1997.

6. On the Business Registration signed by PROTESTANT A on May 9, 1997, showing a change in business ownership on May 1, 1997, PROTESTANT B is listed as manager and the officer or employee responsible for remitting Oklahoma Income Tax withheld from employees.

7. No documentation was provided to show that any assessment or tax warrant has been issued against PROTESTANT B.

8. The Oklahoma Tax Commission suspended the income tax refund of PROTESTANTS A and B for tax year 2000 in the amount of $458.00 and sent notice to them of the suspension on February 9, 2001. The notice stated that the funds would be applied to warrant number STS9999999999-99, total liability amount $45,532.82, 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.

9. Protestants responded to the letter of suspension in writing, stating that they operated PROTESTANT'S BUSINESS from the end of April to the end of May.

10. A hearing was held in this matter on April 25, 2001, but Protestants did not appear. The record was left open for further response from the Division.

11. By memorandum filed July 12, 2001, the Division advised that PROTESTANTS A AND B operated PROTESTANT'S BUSINESS for the month of May, 1997, under sales tax permit number 000000, the permit number issued to the previous owner. Sales tax permit number 999999, for which they had applied, was never issued because they did not provide the physical location of the business on their business registration application. Additionally, the Division advised that the previous owner showed sales of approximately $100.00 per month by the business.

12. By memorandum filed July 18, 2001, the Division advised that the proposed assessment had been adjusted to reflect a liability period of May, 1997, in the aggregate amount of $1,384.98, consisting of $700.00 estimated sales tax, interest through July 31, 2001, in the amount of $393.98, penalty in the amount of $70.00, warrant penalty in the amount of $200.00 and fees in the amount of $21.00. Further, the Division advised that Protestants' joint Oklahoma Individual Income Tax Return for 2000 was filed electronically and, thus, no W-2 forms were available.

13. Protestants have not provided copies of W-2 forms relating to their 2000 Oklahoma Individual Income Tax Return.

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 0.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 PROTESTANT A to the State of Oklahoma. However, the tax warrant penalty in the amount of $200.00 should be reduced in accordance with Section 231.1 of Title 68. While PROTESTANT B is listed on the Business Registration as the responsible party for remitting the taxes, no assessment has been issued against her.

4. Only income attributable to the responsible party may be intercepted. However, in this instance Protestants have failed to provide the necessary documentation to show what portion of the income for the year 2000 was attributable to PROTESTANT A and what portion was attributable to PROTESTANT B.

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 $458.00 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.