

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2001-10-30-012 / NOT PRECEDENTIAL  
**ID:** P0100126  
**DATE:** 10-30-01  
**DISPOSITION:** SUSTAINED IN PART / DENIED IN PART  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 24th day of September, 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, A AND B, 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 offered into evidence exhibits A through H and urged the denial of PROTESTANT A's protest. On August 23, 2001, the Division filed a *Supplement to the Position Letter of the Account Maintenance Division* whereby the Division proposed an apportionment of the amount of the refund to be intercepted and the method used to calculate the apportionment.

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

1. That Protestant A held the office of President and Chief Executive Officer of XYZ corporation, during the audit period.

2. That on October 11, 1996 and January 10, 1997, the Division caused to be issued proposed sales and withholding tax assessments against Protestant A, as President of the Corporation and as an individual, for the periods and the amounts as follows:

### WITHHOLDING TAX, INTEREST<sup>1</sup> AND PENALTY

	(11/95-06/96)	(07/01/96-07/25/96)
Tax:	\$ 24,231.35 <sup>2</sup>	\$ 3,500.00 <sup>3</sup>
Interest:	3,491.34	273.29
Penalty:	<u>6,182.82</u>	<u>875.00</u>
Total:	\$ 33,905.51	\$ 4,648.29

<sup>1</sup> The amount assessed was accrued through February 21, 1997.

<sup>2</sup> Represents the actual amount of tax reported, but unremitted by the Corporation during the audit period.

<sup>3</sup> Represents an estimate of the tax due for the period based on the previous filings of the Corporation.

**SALES TAX, INTEREST<sup>4</sup> AND PENALTY**

(01/01/96-07/25/96)

Tax:	\$ 590.00 <sup>5</sup>
Interest:	30.37
Penalty:	<u>59.00</u>
Total:	\$ 679.37

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

4. That by letter dated May 8, 1997, Protestant A filed a protest to the proposed assessments.

5. That by letter dated June 9, 1997, the Division denied Protestant A relief from the assessments under Section 221(e) of the Uniform Tax Procedure Act, 68 O.S. 1991, § 201 et seq., finding that the protest did not demonstrate by a preponderance of the evidence that the assessments or any portions thereof were clearly erroneous. The letter also notified Protestant A of his right to appeal the Division's determination.

6. That there is no record Protestant A appealed the Division's denial.

7. That Tax Warrants evidencing the sales and withholding tax liabilities were filed against Protestant A on December 19, 1996 and February 27, 1997, in ANONYMOUS County, Oklahoma.

8. That the aggregate amount owed by Protestant A as of the filing date of the Tax Warrants was \$39,795.08.

9. That this liability remains outstanding.

10. That a refund of income tax in the amount of \$3,451.00 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:

---

<sup>4</sup> The amount assessed was accrued through November 22, 1996.

<sup>5</sup> Represents an estimate of the tax due for the period based on the previous filings of the Corporation.

	<b>PROTESTANT A</b>	<b>PROTESTANT B</b>	<b>COMBINED</b>
W-2'S	\$ 52,000.00	\$ 24,651.00	\$ 76,651.00
K-1	\$(49,589.00)	(.00)	\$(49,589.00)
TOTALS	\$ 2,411.00	\$ 24,651.00	\$ 27,062.00
%s	11%	89%	100%
WITHHOLDING	\$ 2,931.00	\$ 1,220.00	\$ 4,151.00
OK TAX	\$ 77.00	\$ 623.00	\$ 700.00
REFUND	\$ 2,854.00	\$ 597.00	\$ 3,451.00

12. That by letter dated April 18, 2001, the Division notified Protestants of its intent to apply the 2000 income tax refund to the tax liabilities of Protestant A.

13. That Protestants timely protested the Division's notice, asserting that PROTESTANT A was an employee of the Corporation, not an owner.

### **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 the amount of the refund which should be subject to warrant intercept is \$2,854.00, as last proposed by the Division.

### **DISPOSITION**

THEREFORE, based on the above and foregoing findings and conclusions, it is recommended that the protest of Protestants A AND B be sustained in part and denied in part in accordance with the above.

**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.