**JURISDICTION:** **OKLAHOMA TAX COMMISSION - DECISION**
**CITE:** **2001-11-20-003 / NOT PRECEDENTIAL**
**ID:** **P0100187**
**DATE:** **11-20-01**
**DISPOSITION:** **DENIED**
**TAX TYPE:** **INCOME**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 31st day of October, 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. Protestant represents herself in this matter. The Account Maintenance Division is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. Protestant did not appear at the hearing. The Division moved for denial of the protest, standing on its *Position Letter* filed in this cause on September 13, 2001, and the exhibits attached thereto and its *Supplement to the Position Letter* filed in this cause on September 25, 2001, and the exhibit attached thereto.

## FINDINGS OF FACT

1. Protestant was listed on XYZ COMPANY Business Registration form under item number five entitled "Names of Partners, Corporate Officers, and Managing Officer" as manager. The form was signed by PROTESTANT and filed with the Oklahoma Tax Commission on October 20, 1998.

2. Sales tax permit number 999999 was issued to PROTESTANT AND SPOUSE on October 20, 1998, to operate the business.

3. A notice of proposed assessment of sales tax for the period April 1999 through July 2000 was issued PROTESTANT, Partner, XYZ COMPANY, on August 4, 2000, in the aggregate estimated amount of $10,045.00, inclusive of interest and penalty.

4. The notice was sent by certified mail to PROTESTANT at 9999 ANONYMOUS Drive, ANYTOWN, OK. The notice was returned stamped "return to sender / unclaimed."

5. Protestant failed to protest Division's assessment, resulting in the assessment becoming final, and Tax Warrant No. STS9999999999-99 was filed against Protestant in ANONYMOUS County on October 11, 2000.

6. On June 4, 2001, Protestant was notified that her income tax refund of $398.00 for 2000 had been delayed due to a reported sales tax liability.

7. Protestant filed a written protest on July 10, 2001, asserting that the XYZ COMPANY had gone out of business over a year ago; that she was not considered an owner of the business, just an employee; and that she had no idea any taxes were owed.

8. Protestant's outstanding sales tax liability for the period April 1999 through June 1999 and September 1999 through July 2000 is $11,609.24, consisting of estimated tax in the amount of $8,400.00, interest through August 20, 2001, in the amount of $2,148.24, delinquency penalty in the amount of $840.00, warrant penalty in the amount of $200.00 and fees in the amount of $21.00.

## CONCLUSIONS OF LAW

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*. Here, the evidence proves that the claimed sum is correct, and due and owing. Furthermore, no adjustment to the claim to the Division is required since the income tax refund of Protestant is solely due to the employment and withholding of Protestant. The refund of income taxes in the amount of $398.00 requested by Protestant on her 2000 income tax return was properly suspended in partial satisfaction of the debt she owes to the State of Oklahoma in the amount of $11,609.24.

## DISPOSITION

THEREFORE, IT IS DETERMINED that the protest of PROTESTANT to the claim of the Account Maintenance Division to the income tax refund of $398.00 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.