

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-04-23-016 / NOT PRECEDENTIAL  
**ID:** P0100077  
**DATE:** 04-23-02  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 27th day of March, 2002, the protest of PROTESTANTS to the claim of the Account Maintenance Division of the Oklahoma Tax Commission to their income tax refund comes on for consideration before AN Administrative Law Judge. A hearing was held in this matter pursuant to statute. PROTESTANT B represents herself in this matter. PROTESTANT A is represented by A CPA. The Account Maintenance Division is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. Notice of the hearing was mailed to Protestants at their last known address. PROTESTANT B did not appear. THE CPA responded by letter dated April 26, 2001, on behalf of PROTESTANT A, requesting information regarding this matter. Upon submission of additional filings by the parties, this matter was submitted for decision.

### FINDINGS OF FACT

1. Pursuant to a Business Registration form filed with the Oklahoma Tax Commission and dated October 17, 1995, PROTESTANT B was issued sales tax permit number XXXXXX.

2. On April 10, 2000, a notice of proposed assessment of sales tax and withholding tax was issued to PROTESTANT B's BUSINESS, for the period December 1999 through March 2000 and January 2000 through March 2000, respectively, in the following amounts, inclusive of interest and penalty:

Sales Tax	\$ 3,274.00
Withholding Tax	\$ 111.00

The notice also indicated that Protestant had an outstanding admitted liability for sales tax for the periods May 1999 and July 1999 through November 1999 in the amount of \$3,619.00. The notice was sent by certified mail to PROTESTANT B at 000 Main Street, ANONYMOUS, OK. The signature on the return receipt shows the name OF A THIRD PARTY.

3. On October 27, 2000, a notice of proposed assessment of sales tax was issued to PROTESTANT B for the period June 2000 through August 2000, in the amount of \$1,567.65, inclusive of interest and penalty. The notice was sent by certified mail to PROTESTANT B at A P.O. Box IN ANY TOWN, OK. The signature on the return shows the name OF A THIRD PARTY.

4. PROTESTANT B did not protest the proposed assessments. Furthermore, she did not file any response to the assessments, which could be considered an abatement request provided for in Section 221(E) of Title 68.

5. The Oklahoma Tax Commission issued and caused to be filed against PROTESTANT B Tax Warrant Nos. STS9999999999-99<sup>1</sup> and STS8888888888-88<sup>2</sup>.

6. Records of the Tax Commission indicate that four estimated tax credits for PROTESTANTS A AND B were paid to the State of Oklahoma for calendar year 1999, as follows:

- (A) \$ 679.00 credit from the 1998 income tax refund from the joint return for PROTESTANTS A AND B.
- (B) \$ 375.00 tax payment from the joint bank account belonging to PROTESTANTS A AND B.
- (C) \$1,500.00 tax payment from the joint bank account belonging to PROTESTANTS A AND B.
- (D) \$1,500.00 tax payment from the joint bank account belonging to PROTESTANTS A AND B.

7. PROTESTANTS A AND B filed their 1999 state income tax return reporting and paying tax in the amount of \$3,310.00. The calculations on the return included only two of the credits paid during the year; specifically, credits in the amounts of \$679.00 and \$1,500.00 (items A and D above).

8. Subsequently, an adjustment to the return was made to include the remaining two credits, in the amounts of \$375.00 and \$1,500.00 (items B and C above), plus credit for underpayment penalty assessed in the amount of \$238.00 and interest assessed in the amount of \$313.00, resulting in a total refund of \$2,426.00.

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<sup>1</sup> Tax Warrant STS9999999999-99 was filed December 11, 2000, for the period June, 2000, in the amount of \$590.20.

<sup>2</sup> Tax Warrant STS8888888888-88 was filed May 30, 2000, for the period May, 1999, and December, 1999, through March, 2000, in the amount of \$2,734.91.

9. On November 27, 2000, PROTESTANTS A AND B were notified by the Oklahoma Tax Commission that their income tax refund of \$2,426.00 for 1999 had been delayed due to a reported sales tax liability.

10. PROTESTANT B filed a written protest on December 11, 2000, stating that she does not understand how the Division arrived at the amount due and that she closed the business the end of June 2000.

11. PROTESTANT B's sales tax liability for the period of May 1999, December 1999, March 2000 and June 2000, consists of tax in the amount of \$2,071.34, interest of \$361.92, penalty of \$207.13, warrant penalty of \$252.20, service charges of \$150.00 and fees of \$32.00. The outstanding periods of May 1999, December 1999 and March 2000, are based on actual reports filed with the Commission and signed by PROTESTANT B. The period of June 2000 is based on an estimated amount.

12. PROTESTANT A is not a debtor owing a debt to the Tax Commission under Tax Warrants STS9999999999-99 and STS8888888888-88.

13. A hearing on the protest was held on April 30, 2001.

14. THE CPA attached copies of page one of the PROTESTANTS' Form 1040 for year 1998 and the Schedule C to correspondence of May 24, 2001, wherein THE CPA requested that the Division take note that PROTESTANT A received salaries and wages working for the hospital in ANONYMOUS and that he also received partnership income and that "PROTESTANT B's income is reported as a loss on line 12, and is referenced also by a copy of her Schedule C for that year." Although he thought PROTESTANT A should receive all of the refund, he was agreeable to splitting the refund evenly.

15. The Division and THE CPA reached an agreement that one-half of the refund amount (\$1,213.00) would be disbursed to PROTESTANT A.

### **CONCLUSIONS OF LAW**

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 sales tax, interest, penalties and fees in the amount of \$3,074.59 are a valid debt of PROTESTANT B to the State of Oklahoma. PROTESTANT B has not come forward with any evidence that the claimed sum is not correct nor cited any authority that the collection of the sum is prohibited. The refund of taxes, after the equal division between the PROTESTANTS, in the amount of \$1,213.00 is properly applied toward satisfaction of the debt she owes to the State of Oklahoma.

### **DISPOSITION**

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, that the protest of PROTESTANTS to the claim of the Account Maintenance Division to the income tax refund be denied, with half of the funds, in the amount of \$1,213.00, to be applied in partial satisfaction of her established liability.

### **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.