

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-07-23-007 / NOT PRECEDENTIAL
ID: P0200052
DATE: 07-23-02
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT

Now on this 14th day of June, 2002, the above styled and numbered cause comes on for decision pursuant to a hearing held in accordance with 68 O.S. Supp. 1997, Section 205.2(B). PROTESTANT appears *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.

Protestant did not appear at the hearing. The Division moved for the denial of the protest, standing by its Position Letter filed in this cause on May 6, 2002, and the exhibits attached thereto.

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. That Protestant owned and operated a business in ANYTOWN, Oklahoma, known as the ABC Shop.
2. That Protestant filed a Business Registration form with the Tax Commission on September 13, 1994 and identified himself as the owner of the business.
3. That on the Business Registration form, Protestant listed his principal taxable product or service as "NONE-ALL SALES TAX-EXEMPT FROM LOCAL, CITY & STATE TAXES."
4. That on January 16, 1998, the Division caused to be issued a proposed sales tax assessment against Protestant for the period of December 1995 through December 1997.
5. That the sales tax assessment proposed an the estimated amount due of \$6,323.52, consisting of tax in the amount of \$5,000.00, interest accrued through February 19, 1998 in the amount of \$823.52 and penalty in the amount of \$500.00.
6. That on January 16, 1998, the Division caused to be issued a proposed withholding tax assessment against Protestant for the period of October 1995 through December 1997.

7. That the withholding tax assessment proposed an estimated amount of \$1,243.21, consisting of tax in the amount of \$900.00, interest accrued through February 19, 1998 in the amount of \$148.21 and penalty in the amount of \$195.00.

8. That the assessment notices were sent by certified mail to Protestant's last-known address.

9. That the notices were returned marked "unclaimed."

10. That Protestant did not protest the proposed assessments nor seek an abatement of the assessments within the time period allowed by statute.

11. That Tax Warrants No. STS 98999999-99 and ITW 98999999-99, evidencing the liability for the above-stated periods, were filed against Protestant in ANONYMOUS County on February 24, 1998 and March 17, 1998, respectively.

12. That the total aggregate amount in controversy is \$6,210.89, plus accruing interest.

13. That on or about January 31, 2002, Protestant electronically filed his 2001 Oklahoma Individual Income Tax Return, claiming a refund in the amount of \$378.00.

14. That the refund is attributable solely to the employment and withholding of Protestant.

15. That pursuant to 68 O.S. 1991, Section 205.2, the Division intercepted Protestant's income tax refund and on February 20, 2002, notified Protestant of his right to protest the petition to apply the full amount of the refund to Protestant's outstanding sales and withholding tax liability.

16. That Protestant timely responded in writing to the Division's notice, asserting that (1) the business was sold on October 1, 1995, (2) that his prior attempts to resolve this matter have been ignored, (3) that during his ownership all taxes due were paid, and (4) that no sales tax should have been assessed since "this was an Indian owned business on trust property".

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. Supp. 1997, Section 205.2(B); that the Tax 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, Section 205.2(E); that in the event of a protest to the application to deduct the delinquent taxes from the refund due the taxpayer,

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, Section 205.2(B); and that Protestant has not presented any evidence to show the assessed taxes are incorrect, nor to show any adjustments are required to the liabilities.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is recommended that the protest 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.