

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-08-13-016 / NOT PRECEDENTIAL
ID: P0200060
DATE: 08-13-016
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT

Now on this 21st 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 First Deputy 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 23, 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 on June 5, 1997, Protestant purchased stock in and became president/secretary-treasurer of CORPORATION X.
2. That on January 26, 2000, the Division caused to be issued a proposed sales tax assessment against Protestant for the period of June 6, 1997 through March 31, 1998.
3. That the sales tax assessment proposed an amount due of \$4,212.40, consisting of tax in the amount of \$3,048.22, interest accrued through March 1, 2000, in the amount of \$859.35, and penalty in the amount of \$304.83.
4. That the assessment is based on an examination of the records of CORPORATION X during a field audit performed by the Division.
5. That the assessment notice was sent by certified mail to Protestant's last-known address, 9999 N.W. XXth Street, BIGCITY, Oklahoma.
6. That the notice was returned marked "unclaimed."
7. That Protestant did not protest the proposed assessment nor seek an abatement of the assessment within the time period allowed by statute.
8. That Tax Warrant No. STS 9999-999999-99, evidencing the liability for the above-stated periods, was filed against Protestant in ANONYMOUS County on October 10, 2000.

9. That on or about February 17, 2002, Protestant electronically filed his 2001 Oklahoma Individual Income Tax Return, reporting an address of 9999 N.W. XXth Street, BIGCITY, Oklahoma. The return claimed a refund in the amount of \$549.00

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

11. That pursuant to 68 O.S. 1991, Section 205.2, the Division intercepted Protestant's income tax refund and on February 28, 2002, notified Protestant of his right to protest the petition to apply the full amount of the refund to Protestant's outstanding sales tax liability.

12. That Protestant timely responded in writing to the Division's notice, transmitting a letter regarding the withdrawal of an assessment in an earlier case.

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); that the previously withdrawn assessment was reinstated after the Division secured evidence showing Protestant was an officer of the Corporation during the relevant time period; 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.