**JURISDICTION:** **OKLAHOMA TAX COMMISSION - DECISION**
**CITE:** **2002-08-16-004 / NOT PRECEDENTIAL**
**ID:** **P0200063**
**DATE:** **08-16-02**
**DISPOSITION:** **DISMISSED AS TO PROTESTANT**
**SUSTAINED AS TO SPOUSE**
**TAX TYPE:** **INCOME**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT

NOW on this 24th day of July, 2002, 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 himself in this matter. The Account Maintenance Division is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. A hearing was held on June 5, 2002, pursuant to the provisions of Section 309 of Title 75 and Section 205.2(B) of Title 68 of the Oklahoma Statutes. Notice of the hearing was mailed to PROTESTANTS at their last known address, yet they did not appear. At the conclusion of the hearing, this matter was submitted for decision. The undersigned finds:

1. Protestant was listed as the owner of COMPANY X on the Oklahoma Sales Tax Permit Application filed with the Oklahoma Tax Commission on July 22, 1985, and the application for reinstatement of his sales tax permit.

2. On August 7, 1989, the Division issued a proposed mixed beverage tax assessment against PROTESTANT d/b/a COMPANY X for the periods of August 1, 1986, through March 31, 1989, in the total aggregate amount of $16,654.62, consisting of tax in the amount of $12,532.27, interest accrued through September 15, 1989, in the amount of $2,799.12 and penalty in the amount of $1,323.23.

3. On August 7, 1989, the Division issued a proposed sales tax assessment against PROTESTANT d/b/a COMPANY X for the period August 1, 1986, through March 31, 1989, in the total aggregate amount of $10,076.22, consisting of tax in the amount of $7,584.35, interest accrued through September 15, 1989, in the amount of $1,733.43 and penalty in the amount of $758.44.

4. The assessments[1] were sent by certified mail to PROTESTANT d/b/a COMPANY X, 999 ANONYMOUS ST, ANYTOWN, OK. The return receipt was signed.

[1] The mixed beverage and sales tax assessments referenced audit number XXXXXXX.

5. By letter dated September 6, 1989, and received September 8, 1989, Protestant wrote the Division regarding the audit stating "I am asking for a 90 day extention (sic) regarding taxes on [COMPANY X] as recommended by you."

6. Written confirmation to Protestant that the request for extension was granted was not contained in the file in this matter, nor was it provided at hearing.

7. Protestant neither protested this assessment nor sought an abatement of the assessment within the time period allowed by statute.

8. On April 6, 1990, the Division issued a proposed mixed beverage tax assessment against Protestant d/b/a COMPANY X, for the period of April 1, 1989, through October 16, 1989, in the aggregate amount of $441.39, consisting of tax in the amount of $160.58, interest accrued through May 15, 1990, in the amount of $15.11, delinquency penalty in the amount of $10.70 and late filing penalty in the amount of $255.00. The proposed assessment[2] was sent by certified mail to PROTESTANT d/b/a COMPANY X, 9999 South XXst Ave., ANYTOWN, OK. The return receipt was signed PROTESTANT A.

9. Protestant neither protested this assessment nor sought an abatement of the assessment within the time period allowed by statute.

10. Tax Warrant Nos. ATG99999999-99, ATG99999999-01 and STS99999999-99, evidencing the liability for the mixed beverage and sales tax assessments, were filed against Protestant A, on August 1, 1990.

11. Protestant A, in a letter dated January 3, 1991, to the Audit Division, set forth the reasons he believed the audit, number XXXXXXX, to be in error. The letter was stamped received September 29, 2000.

12. By letter dated January 10, 2001, the Audit Division, in response to Protestant's letter received September 29, 2000, advised Protestant A, in part, as follows:

> The proposed assessment became absolute and final December 5, 1989. At that time you had one year from the date the assessment became final in which to provide predominant evidence that the assessment was erroneous. Since the Tax Commission failed to receive correspondence from you within that time a Tax Warrant was issued.

13. A refund of income tax in the amount of $478.00 was claimed on the joint 2001 state income tax return of PROTESTANT and SPOUSE.

14. The refund is attributable solely to the employment and withholding of SPOUSE.

[2] The mixed beverage tax assessment referenced audit number FAZZZZZZZ.

15. Pursuant to Section 205.2 of Title 68, the Division intercepted PROTESTANT and SPOUSE's 2001 income tax refund. By letter dated February 28, 2002, the Division notified PROTESTANTS that their income tax refund of $478.00 for 2001 had been delayed due to a reported tax liability as follows:

| | | | |
|---|---|---|---|
| Mixed Beverage | FA 08/1/86 — 10/16/89 | ATG99999999-99 | |
| | | ATG99999999-01 | $30,779.30 |
| Sales | FA 08/1/86 — 03/31/89 | STS99999999-99 | $22,675.88 |

16. Protestant filed a written protest on March 5, 2002, stating:

> I proved you wrong on these taxs (sic), on two different occasions you kept my State Return for a few years then gave it to me for two years, then started keeping it. Again.
>
> You wanted me to pay taxes on mixed Drinks at $4.00, when I was selling the Liquor as shots for $1.00 & $1.25.

17. SPOUSE did not file a protest to the Division's notice of application of the income tax refund to the mixed beverage and sales tax liability.

18. SPOUSE is not a debtor owing a debt to the Tax Commission under Tax Warrant Nos. ATG99999999-99, ATG99999999-01 and STS99999999-99.

## CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the undersigned concludes:

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, ∋ 205.2(E). A taxpayer may file an objection to such action and request a hearing. 68 O.S. Supp. 1997, ∋ 205.2(B). 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. In the case of a joint return, the intercept notice must contain the statutorily prescribed statements provided for in Section 205.2(3), as follows:

a. the name of any taxpayer named in the return against whom no debt or final judgment is claimed,

b. the fact that a debt or final judgment is not claimed against the taxpayer,

c. the fact that the taxpayer is entitled to receive a refund if it is due regardless of the debt or final judgment asserted against the debtor,

d. that in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the district court or the agency named in the notice within thirty (30) days after the date of the mailing of the notice, and

e. if the taxpayer against whom no debt or final judgment is claimed fails to apply in writing for a hearing within thirty (30) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund.

Although SPOUSE did not file a request for hearing within thirty days from the notice of refund intercept, it cannot be found that she has waived her right to a refund because the letter sent to SPOUSE was insufficient to meet the notice requirements of Section 205.2(3) of Title 68.

4. The sales and mixed beverage taxes, interest, penalties and fees in the amount of $61,019.46[3] are a valid debt of PROTESTANT to the State of Oklahoma. However, because only income attributable to the responsible party may be intercepted, none of the refund, in this instance, is subject to warrant intercept.

## DISPOSITION

THEREFORE, IT IS THE DETERMINATION of the undersigned that SPOUSE's share of the income tax refund, in the amount of $478.00, should be refunded forthwith and that the protest of PROTESTANT to the claim of the Account Maintenance Division to the income tax refund be dismissed.

**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.

[3] Interest is calculated through April 30, 2002.