

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-08-16-006 / NOT PRECEDENTIAL  
**ID:** P0200073  
**DATE:** 08-16-02  
**DISPOSITION:** DENIED AS TO PROTESTANT A /  
SUSTAINED AS TO PROTESTANT B  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

NOW on this 8th 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. Protestants represent themselves 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 27, 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. Sales tax reports for the periods March 1999 and May 1999 were filed on April 15, 1999, and June 17, 1999, respectively. The reports were signed by PROTESTANT A. Checks tendered in payment of the amounts reflected on these reports were returned insufficient. PROTESTANT B signed these checks.

2. The Oklahoma Tax Commission issued and caused to be filed against PROTESTANT A, Tax Warrant No. STSXXXXXXXXXX-00 for the period March 1999 and May 1999 for sales tax, interest, delinquency penalty, tax warrant penalty, filing fees and service charges in the amount of \$852.84.

3. On February 19, 2002, Protestants filed a joint Oklahoma individual income tax return for tax year 2001 claiming a refund in the amount of \$719.00.

4. On March 20, 2002, Protestants were notified that their income tax refund of \$719.00 for 2001 had been delayed due to a reported sales tax liability.

5. Protestants filed a written protest on March 27, 2002, stating that "we were under the impression that all debts listed on page 1 had been discharged. . . ."

6. The refund is attributable to the income of both Protestants.

7. The sales tax liability based on the reports filed for the period of March 1999 and May 1999 was \$1,019.65, consisting of tax in the amount of \$596.54, interest calculated through May 31, 2002, in the amount of \$220.92, delinquency penalty in the amount of \$59.66, tax warrant penalty in the amount of \$71.53, fees in the amount of \$21.00 and service charges in the amount of \$50.00.

8. A payment of \$309.88 has been applied to the sales tax liability, resulting in a balance due of \$709.77.

9. PROTESTANT B is not a debtor owing a debt to the Tax Commission under Tax Warrant No. STSXXXXXXXXXX-00. The Division is prepared to refund her pro-rata portion of their 2001 refund in the amount of \$323.55. PROTESTANT A's portion of the refund, which is available to apply toward the debt owed to the Tax Commission, is \$395.45.

**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. Section 205.2(B) permits procedural challenges to the validity of the debt asserted by the Tax Commission. At a minimum, Section 205.2(B) requires a determination of whether the debt asserted was an admitted liability on a return filed by the taxpayer or was properly assessed and has become final. The sales taxes at issue herein are an admitted liability on sales tax returns filed by PROTESTANT A.

4. Protestant's debt to the Tax Commission falls within the exceptions to dischargeability found in the United States Bankruptcy Code. 11 U.S.C. § 523(a)(1)(A). Debts with respect to "a tax required to be collected or withheld and for which the debtor is liable in whatever capacity" are not dischargeable debts. 11 U.S.C. 507(a)(8)(C). Protestant's debt arose from unremitted sales tax which is paid by the consumer/user to the vendor, in this case PROTESTANT A d/b/a PROTESTANT'S COMPANY, as trustee for the State. 68 O.S. Supp. 1996, § 1361(A). Protestant is liable for the unremitted sales tax in his capacity as the vendor. *Id.*

5. The sales tax, interest, penalties, service charges and fees are a valid debt of Protestant A to the State of Oklahoma. The refund of income taxes in the amount of \$395.45, which is PROTESTANT A's pro-rata share of the total amount of \$719.00, is properly applied toward satisfaction of the debt he owes to the State of Oklahoma in the amount of \$709.77.

**DISPOSITION**

THEREFORE, IT IS THE DETERMINATION of the undersigned that the protest to the claim of the Account Maintenance Division to the income tax refund of \$395.45 of PROTESTANT A be denied. It is further DETERMINED that the protest of PROTESTANT B be sustained and that her pro-rata share of the income tax refund in the amount of \$323.55 be refunded forthwith.

**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.