JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-08-21-011 / NOT PRECEDENTIAL**
ID: **P0200072**
DATE: **08-21-02**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT

Now on this 28th 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.

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

1. That an office audit of CORPORATION was performed by the Notice to Show Cause Section of the Business Tax Division for the period of July, 1987 through January, 1988.

2. That as a result of the audit, the Show Cause Section caused to be issued a proposed assessment of sales tax in the estimated amount of $11,930.00 against Protestant as Secretary of the Corporation.

3. That notice of the proposed assessment, sent by certified mail, was addressed to Protestant, "PROTESTANT, Secretary, CORPORATION, 999 W. ANONYMOUS ST, ANYTOWN, OK."

4. That the notice was issued on or about February 26, 1988.

5. That the notice was returned to the Commission on or around March 12, 1998, marked "unclaimed".

6. That by Verified Response filed June 13, 2002, the Division through AN Auditor verified that the address utilized to give notice of the assessment to Protestant was obtained from the Corporation's franchise records.

7. That the address listed for Protestant on the Corporation's franchise tax records was provided by Protestant's ex-husband, not Protestant.

8. That the jointly filed 1986 individual income tax return of Protestant and her ex-husband reports an address of [THE SAME ADDRESS].

9. That the Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, Form 4868, which accompanied the 1986 income tax return was executed by Protestant on August 15, 1987.

10. That Protestant and her ex-husband filed both personal and corporate bankruptcy on behalf of the Corporation on February 12, 1988.

11. That the bankruptcies were discharged on June 24, 1988.

12. That the address listed for Protestant in the bankruptcy petition was P.O. Box XXX, OTHERTOWN, Oklahoma.

13. That the amount of liability for sales taxes reported to the Tax Commission from the bankruptcy proceeding of the Corporation was $6,459.73.

14. That Protestant testified that she and her ex-husband separated after the Tax Commission attempted to serve her papers and that she did not live at the address in ANYTOWN at that time. She further stated that the papers were address to [INCORRECT FIRST NAME], not [PROTESTANT'S NAME].

15. That Protestant also testified that she and her ex-husband separated at the time of the filing of the bankruptcy.

16. That Protestant testified that the lawyer who handled the filing of the bankruptcy for her and her ex-husband advised them that all of their debts were identified and that the bankruptcy would take care of the tax problem.

17. That Protestant received a divorce from her ex-husband on August 7, 1989.

18. That the Divorce Decree recites that "all back taxes due to state or federal govts" shall be the responsibility of her ex-husband which according to Protestant she had insert in the Decree because her ex-husband had owed taxes before on previous businesses.

19. That Protestant testified that she did not know the taxes for the CORPORATION were outstanding until her income tax refund for the 1995 tax year was intercepted. She stated that she did not pursue her protest of the 1995 intercept of her income tax refund because she REMARRIED and moved to ANOTHER STATE.

20. That Protestant and her ex-husband filed joint state income tax returns for the 1987 and 1988 tax years. Each of these returns reports a different address for the taxpayers.

21. That a refund of income tax in the amount of $470.00 was claimed by Protestant on her 2001 state income tax return.

22. That the income tax refund is attributable solely to the employment and withholding of Protestant.

23. That pursuant to 68 O.S. 1991, Section 205.2, the Division intercepted Protestant's income tax refund and on March 20, 2002, notified Protestant of her right to protest the petition to apply $380.25 of the refund to Protestant's outstanding sales tax liability.

24. That $89.75 of the 2001 income tax refund was applied to Protestant's income tax liability for the 1999 tax year.

25. That the application of the $89.75 of her 2001 income tax refund to her 1999 income tax liability is not disputed by Protestant.

26. That at the hearing in this cause, the Division conceded that the portion of Protestant's 2001 income tax refund claim consisting of a Sales Tax Relief Credit in the amount of $80.00 did not constitute an overpayment of income tax and as such the Division advised that this amount would be refunded to Protestant.

27. That the amount in controversy is $300.25.

28. That the amount due and owing by Protestant for sales tax as reflected in the Division's records is the amount reported to the Commission from the bankruptcy proceeding of the corporation.

29. That Protestant timely responded in writing to the Division's notice, transmitting with the protest a copy of her divorce decree, and asserting that she did not have an ownership interest in the Corporation, never had any control over the accounts payable, was not a signatory on the corporate operating account and could not have paid any of the debts of the Corporation.

30. That Protestant argued at the hearing that since the notice was addressed to [INCORRECT FIRST NAME] instead of [PROTESTANT'S NAME], the notice was deficient and the post office would not have forwarded it to her.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the 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 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 of the refund to any delinquent taxes, 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 no action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt, *Id.*; that a challenge to the validity of the debt requires a determination that the notice

which gave rise to the debt was provided in accordance with the statutory requirements, Oklahoma Tax Commission Order No. 2001-01-30-002; that at the time the notice was mailed in this cause the statutory notice requirements mandated that the notice be mailed to the taxpayer at the last-known address given by the taxpayer, 68 O.S. 1981, Sections 208 and 221(a); that where the Commission relies on information which is not provided by the taxpayer for determining the taxpayer's last-known address, some other assurance of actual notice is required, ***Pollack v. Oklahoma Tax Commission***, No. 76,767 (C.A. Okla. 1992)[1]; that the misspelling of the name of the taxpayer is of no consequence, whether the name be *idem sonans*, where there is no uncertainty or ambiguity that the notice refers to the taxpayer and the variance in names is not such as to be material or mislead the taxpayer to his prejudice, ***Ex Parte Moulton***, 56 Okla.Crim. 186, 36 P.2d 309 (1934) and ***M.J. Spaulding Implement Co. v. Goforth***, 54 Okla. 705, 154 P. 649 (1916); that in all proceedings before the Tax Commission, the taxpayer has the burden of proof to show the action of the Commission is incorrect, and in what respect, Rule 710:1-5-47 of the *Oklahoma Administrative Code* and ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988); that notwithstanding the Division relied on information provided by another to determine Protestant's last-known address, the address was the same as the address given by Protestant as her address on the return last filed by her, that further the evidence does not clearly show Protestant did not have actual notice of the assessment - the evidence shows as a whole that it is more probable than not that Protestant was aware of the assessment, but chose to ignore it hoping it would go away, that further no evidence was presented to show that a [PERSON WITH INCORRECT FIRST NAME] lived at the address to which the notice was forward or within the town of ANYTOWN and that the envelope containing the notice listed thereon the show cause case number and sales tax permit number of the Corporation. Further, the undersigned finds that Protestant has not presented any evidence to show the assessed taxes are incorrect, nor to show any adjustments are required to the liabilities as reflected in the Division's records.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED 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.

[1] Unpublished decision.