

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-09-19-029 / NOT PRECEDENTIAL  
**ID:** P0200098  
**DATE:** 09-19-02  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

**FINDINGS OF FACT**

Now on this 9th day of August, 2002, the above styled and numbered cause comes on for decision pursuant to a hearing held in accordance with 68 O.S. Supp. 1997, § 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 June 21, 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 was listed as Secretary of CORPORATION on the Application for Oklahoma Sales Tax Permit received by the Oklahoma Tax Commission on March 16, 1987.
2. That on December 7, 1987, the Division caused to be issued proposed sales and franchise tax assessments against Protestant, as Secretary of CORPORATION, and as an Individual, as follows:

**SALES TAX**

(03/87, 04/87, 06/87 through 10/87)

Tax	\$26,216.46
Interest to 12/07/87	1,623.86
Penalty	<u>2,621.65</u>
<b>TOTAL</b>	<b><u>\$30,461.97</u></b>

**FRANCHISE TAX**

(1987/1988)

Tax	\$ 40.00
Interest to 12/07/87	2.40
Penalty	<u>4.00</u>
TOTAL	<u>\$ 46.40</u>

3. That on December 9, 1988, the Division caused to be issued a proposed sales tax assessment against Protestant, as Secretary of CORPORATION and as an Individual, as follows:

**SALES TAX**

(12/01/87 through 02/28/88)

Tax	\$15,000.00
Interest to 01/21/89	265.93
Penalty	<u>1,500.00</u>
TOTAL	<u>\$19,159.53</u> <sup>1</sup>

4. That the total aggregate amount in controversy is \$49,667.90, plus accruing interest.
5. That notices of the proposed assessments were sent by certified mail to Protestant at her last-known address.
6. That the notices were returned marked "attempted--unknown."
7. That Protestant did not protest the proposed assessments nor seek an abatement of the assessments within the time period allowed by statute.
8. That tax warrants, evidencing the liability for the above-stated sales tax periods, were filed against Protestant in Oklahoma County as follows:

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<sup>1</sup> The Division's letter dated December 19, 1988, contained a typographical error. The amount of interest should have been shown as **\$2,659.53** instead of \$265.93.

NON - PRECEDENTIAL DECISION OKLAHOMA TAX COMMISSION

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Filed on October 6, 1988

STS 88002039  
STS 88002040  
STS 88002041  
STS 88002042  
STS 88002044

Filed on February 14, 1989

STS 89000376

9. That on March 16, 1995, Protestant was notified that her income tax refund for tax year 1994 had been suspended due to her outstanding sales tax liability. Protestant protested the suspension of her 1994 income tax refund and following a hearing, an Oklahoma Tax Commission Order was issued finding that the sales tax assessment against Protestant (as set out in Paragraph 2 above) was valid and denying the protest to the suspension of Protestant's 1994 income tax refund.

10. That on or about January 19, 2002, Protestant filed her 2001 Oklahoma Individual Income Tax Return, claiming a refund in the amount of \$249.00.

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

12. That pursuant to 68 O.S. 1991, § 205.2, the Division intercepted Protestant's income tax refund in the amount of \$209.00 (adjusted due to Sales Tax Credit) and on February 25, 2002, notified Protestant of her right to protest the petition to apply the amount of \$209.00 to Protestant's outstanding sales tax liability.

13. That Protestant timely responded in writing to the Division's notice, asserting that (1) that she is not responsible for any of the sales tax of CORPORATION; (2) that she was just an employee; and (3) that the Tax Commission should find the people responsible for these taxes.

### **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, § 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, § 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, § 205.2(B); and that here the evidence proves the claimed sum is correct, due and owing, and no adjustment to the claim of the Division is required.

### **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.