

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-09-26-006 / NOT PRECEDENTIAL
ID: P0200110
DATE: 09-26-02
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT

Now on this 22nd 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 is represented by AN Attorney at Law. 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.

Neither Protestant nor his attorney appeared at the hearing. The Division moved for the denial of the protest, standing by its Position Letter filed in this cause on July 30, 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 the 1995 Franchise Tax Report submitted to the Oklahoma Tax Commission, Protestant was listed as President and Secretary of CORPORATION X as of June 30, 1995.

2. That on October 8, 1999, the Division caused to be issued a proposed sales tax assessment against Protestant for the period of October 1, 1996 through October 31, 1997. That the assessment proposed a total amount due of \$5,122.62, inclusive of tax in the amount of \$3,659.02, interest accrued through November 15, 1999, in the amount of \$1,097.70, and penalty in the amount of \$365.90.

3. That on October 8, 1999, the Division caused to be issued a proposed mixed beverage tax assessment against Protestant for the period of January 10, 1997 through October 31, 1997, during which time the corporation was suspended. That the assessment proposed a total amount due of \$12,096.21, inclusive of tax in the amount of \$5,854.44, interest accrued through November 15, 1999, in the amount of \$1,756.33, delinquency penalty in the amount of \$585.44, and \$5.00 A Day Penalty in the amount of \$3,900.00.

4. That the assessments are based on a routine mixed beverage depletion audit of the business.

5. That notices of the proposed assessments were sent by certified mail to Protestant at the address given on the 1995 Franchise Tax Return.

6. That the notices were returned marked "unclaimed."

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 No. STS 9999999999-01 and ATG 9999999999-01, evidencing the liability for the above-stated periods, were filed against Protestant in ANONYMOUS County on July 23, 2001.

9. That the aggregate amount owed by Protestant is \$17,218.83, plus accruing penalty and interest.

10. That on or about February 11, 2002, Protestant filed his 2001 Oklahoma Individual Income Tax Return, claiming a refund in the amount of \$347.00.

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 \$347.00 and on February 28, 2002, notified Protestant of his right to protest the petition to apply the amount of \$347.00 to Protestant's outstanding tax liability.

13. That by and through his attorney, Protestant timely responded in writing to the Division's notice, stating (1) that Protestant did not own the corporation for the relevant periods, (2) that he had sold all stock in the corporation, and (3) that pertinent information would be forwarded to the Tax Commission.

14. 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 \$40.00 did not constitute an overpayment of income tax and as such the Division advised that this amount would be refunded to Protestant.

15. That the amount in controversy is \$307.00.

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.