JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-01-14-003 / NOT PRECEDENTIAL**
ID: **P0200143**
DATE: **01-14-03**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 13th day of December, 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 set pursuant to the provisions of Section 205.2(B) of Title 68 of the Oklahoma Statutes. Upon request of Protestant, the hearing was stricken and the case submitted for decision on the briefs, files and records. The undersigned finds:

FINDINGS OF FACT

1. Sales tax reports for the periods January 1985 and March 1985 through December 1985 were filed on February 20, 1986. The reports were signed by PROTESTANT. The sales tax reports designated PROTESTANT as the taxpayer and the sales tax permit number as "Applied".

2. The Oklahoma Tax Commission issued and caused to be filed against PROTESTANT, Tax Warrant No. STS99999999 for the period January 1985 for sales tax, interest and penalty in the amount of $283.01. The Oklahoma Tax Commission also issued and caused to be filed against PROTESTANT, Tax Warrant No. STS88888888 for the period March 1985 through December 1985 for sales tax, interest and penalty in the amount of $2,472.94.

3. On March 7, 2002, PROTESTANT AND PROTESTANT'S SPOUSE filed a joint Oklahoma individual income tax return for tax year 2001 claiming a refund in the amount of $456.00.

4. On March 20, 2002, PROTESTANT AND PROTESTANT'S SPOUSE were notified by the Oklahoma Tax Commission that their income tax refund of $456.00 for 2001 had been delayed due to a reported sales tax liability.

5. Protestant filed a written protest on March 29, 2002, stating that "[t]his is the first and only notification of a tax liability I have ever received, so I certain there have been or there is a falsified tax report filed using my social security number." Protestant also requested copies of the sales tax reports.

6. Subsequent to receipt of copies of the sales tax reports, Protestant by letter of August 30, 2002, stated that the "figures would have had to be inserted by MR. A (signature on bottom of reports) or another party, based upon my 1985 and 1986 Federal 1040 filings."

7. The sales tax liability, based on the reports filed for the period of January 1985 and March 1985 through December 1985, is $8,573.86, consists of tax in the amount of $2,283.50, interest calculated through August 31, 2002, in the amount of $6,062.02, and delinquency penalty in the amount of $228.34.

8. PROTESTANT'S SPOUSE is not a debtor owing a debt to the Tax Commission under Tax Warrant Nos. STS99999999 and STS88888888.

9. The refund, in the amount of $456.00, is attributable to Protestant's income and is available to apply toward the debt owed to the Tax Commission.

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 and signed by PROTESTANT.

4. Although the lien has been extinguished and released by virtue of the fact that Tax Warrants STS99999999 and STS88888888 were not refiled prior to November 1, 2001, the underlying debt or its validity as a debt or claim to be collected under 68 O.S. ∋ 205.2 is not effected.

5. The sales tax, interest and penalties are a valid debt of Protestant, to the State of Oklahoma. The refund of income taxes in the amount of $456.00, requested by PROTESTANT AND PROTESTANT'S SPOUSE on their 2001 income tax return was properly suspended in partial satisfaction of the debt he owes to the State of Oklahoma in the amount of $8,573.86.

DISPOSITION

THEREFORE, IT IS THE RECOMMENDATION of the undersigned Administrative Law Judge that the protest of PROTESTANT to the claim of the Account Maintenance Division to the income tax refund of $456.00 of PROTESTANT AND PROTESTANT'S SPOUSE 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.