JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-03-06-003 / NOT PRECEDENTIAL**
ID: **P0200149**
DATE: **03-06-03**
DISPOSITION: **SUSTAINED IN PART / DENIED IN PART**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 7th day of February, 2003, 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 of the Oklahoma Tax Commission. A hearing was held, and upon submission of additional documentation, the case was submitted for decision. The undersigned finds:

1. The partnership of PROTESTANT A AND MR. X operated a business, A MIXED BEVERAGE ESTABLISHMENT, under sales tax permit 999999 and mixed beverage permit 999999 at XXXX N.E. ZZ Street, BIGCITY, Oklahoma.

2. On February 23, 1996, PROTESTANT CORPORATION applied for a new sales tax permit to operate THE MIXED BEVERAGE ESTABLISHMENT based on a change in business ownership. PROTESTANT CORPORATION was listed as the owner of the establishment located at XXXX N.E. ZZ, BIGCITY, Oklahoma, and PROTESTANT A was listed as an officer of the corporation. PROTESTANT CORPORATION was issued sales tax permit number 888888. It appears from the Division's records that a new mixed beverage permit was not applied for in the corporate name and that the corporation used the mixed beverage number 999999 issued to the partnership.

3. On August 16, 1996, the Account Maintenance Division issued mixed beverage, sales and withholding tax assessments[1] against PROTESTANT A & MR. X as an Individual & Partner in THE PARTNERSHIP d/b/a THE MIXED BEVERAGE ESTABLISHMENT for the periods and amounts as follows:

[1] The sales and mixed beverage tax assessments are based on amounts reported but unremitted. The withholding tax assessment is based on an estimate.

Mixed Beverage Tax
October 1995 through February 1996

Tax	$3,388.44
Interest through 10/04/96	353.23
Penalty	459.65
Late filing penalty	250.00
Total	$4,451.32

Sales Tax
November 1995 through December 1995

Tax	$2,520.05
Interest through 10/04/96	284.86
Penalty	252.00
Insufficient funds check charge	25.00
Total	$3,081.91

Withholding Tax
October 1995 through June 1996

Tax	$ 75.00
Interest through 10/04/96	5.29
Penalty	16.25
Total	$ 96.54

4. The assessments were mailed to PROTESTANT A, XXXXX ANONYMOUS ROAD, ANYTOWN, OK, by certified mail, return receipt requested. The return receipt was signed.

5. PROTESTANT A did not protest the proposed assessments nor seek an abatement within the time period allowed by statute.

6. Tax Warrant No. ITW99999999-99 was filed against PROTESTANT A on October 10, 1996, and Tax Warrant Nos. STS99999999-99 and ATG99999999-99 were filed against PROTESTANT A on May 6, 1997.

7. On September 12, 1997, the Division issued a proposed assessment of sales tax against PROTESTANT A, as President of PROTESTANT CORPORATION, and as an individual, for the period February 1996 through July 1997 in the estimated aggregate amount of $13,356.17, consisting of tax in the amount of $10,800.00, interest accrued through October 29, 1997, in the amount of $1,476.17 and penalty in the amount of $1,080.00.

8. The assessment was mailed to PROTESTANT A, XXXXX ANONYMOUS ROAD, ANYTOWN, OK, by certified mail, return receipt requested.

9. The assessment was returned to the Tax Commission with the notation "refused".

10. PROTESTANT A did not protest the proposed assessment nor seek an abatement within the time period allowed by statute.

11. Tax Warrant No. STS88888888-88 was filed against PROTESTANT A on November 25, 1997.

12. On December 23, 1998, the Division issued a proposed mixed beverage tax assessment against PROTESTANT A/MR. X d/b/a THE MIXED BEVERAGE ESTABLISHMENT for the period December 1, 1995, through May 31, 1998, in the aggregate amount of $26,783.87, consisting of tax in the amount of $10,982.17, interest accrued through December 31, 1998, in the amount of $2,899.52, delinquency penalty in the amount of $1,212.89 and late filing penalty in the amount of $11,689.29.

13. On December 23, 1998, the Division issued a proposed sales tax assessment against PROTESTANT A/MR. X d/b/a THE MIXED BEVERAGE ESTABLISHMENT for the period December 1, 1995, through February 14, 1996, in the aggregate amount of $1,647.49, consisting of tax in the amount of $1,084.17, interest accrued through December 31, 1998, in the amount of $454.91, and delinquency penalty in the amount of $108.41.

14. On December 23, 1998, the Division issued a proposed sales tax assessment against PROTESTANT CORPORATION d/b/a THE MIXED BEVERAGE ESTABLISHMENT and PROTESTANT A, President, and as an individual, for the period February 15, 1996, through May 31, 1998, in the aggregate amount of $5,871.72, consisting of tax in the amount of $4,968.53, interest accrued through December 15, 1998, in the amount of $406.33, and penalty in the amount of $496.86.

15. The assessments were mailed certified mail to PROTESTANT A and were subsequently returned to the Tax Commission.

16. The assessments were remailed by certified mail to PROTESTANT A, XXXXX ANONYMOUS ROAD, ANYTOWN, OK, the address indicated on PROTESTANT A and SPOUSE'S 1997 state income tax return. The return receipts were signed by a person with the last name of XYZ[2].

[2] The person's first name was not decipherable.

17. PROTESTANT A did not protest the proposed assessments nor seek abatement within the time period allowed by statute.

18. Tax Warrant Nos. ATG77777777-77, STS77777777-77 and STS7777777777-77, evidencing the mixed beverage and sales tax liabilities of PROTESTANT A, were filed June 15, 1999, June 25, 1999, and July 28, 2000, respectively.

19. On April 15, 2002, Protestants filed a joint Oklahoma individual income tax return for tax year 2001 claiming a refund in the amount of $1,356.00.

20. On April 26, 2002, Protestants were notified by the Oklahoma Tax Commission that their income tax refund of $1,356.00 for 2001 had been delayed due to outstanding mixed beverage, sales and withholding tax liabilities.

21. A protest was filed by letter dated May 1, 2002.

22. The records of the Division indicate that there are presently no outstanding amounts due for the mixed beverage, sales and withholding tax assessments issued by letters dated August 16, 1996, or for the sales tax assessment issued by letter dated December 23, 1998, for the period December 1, 1995, through February 14, 1996.

23. Worksheets submitted by the Division indicate that the outstanding amounts and periods are as follows:

Mixed Beverage Tax
December 1, 1995, through May 31, 1998 (Depletion Audit)

Tax	$ 5,431.43
Interest through 9/30/02	7,251.79
Penalty	1,212.89
Late filing penalty	11,689.29
Tax Warrant Penalty	200.00
Fees	21.00
Total	$25,806.40

Sales Tax
February 15, 1996, through May 31,1998 (Depletion Audit)

Tax	$ 4,968.53
Interest through 9/30/02	3,173.05
Penalty	496.86
Warrant Penalty	200.00
Fees	21.00
Total	$ 8,859.44

Sales Tax

March through June 1996, September 1996, November 1996, January 1997, February 1997 and June 1997[3]

Tax	$ 4,549.99
Interest through 9/30/02	4,018.51
Penalty	454.99
Warrant Penalty	200.00
Fees	21.00
Total	$ 9,244.49

24. PROTESTANT B (SPOUSE) is not a debtor owing a debt to the Oklahoma Tax Commission under the remaining Tax Warrants.

25. At the hearing, PROTESTANT B testified that the business was closed May 1996 and in an effort to reopen the business in 1998, she met with Tax Commission personnel and paid the outstanding sales, mixed beverage and tourism associated with the MIXED BEVERAGE ESTABLISHMENT. However, Protestants did not provide proof of payment of the outstanding amounts of sales and mixed beverage tax or the date the business closed.

CONCLUSIONS OF LAW

Based upon the foregoing findings of facts the undersigned concludes:

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Tax Commission. 68 0.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. In those cases where the debt is established by an assessment, Section 205.2(B) required the determination that notice of the assessment either was actually received by the taxpayer or was given in such a manner as to meet minimum procedural due process requirements.

[3] The amounts due for the months of May 1996 and June 1996 are based on actual reports filed by the Corporation; the amounts for the remaining months are based on estimates.

4. The assessment of taxes or additional taxes shall be proposed in writing and shall be mailed to the taxpayer at the taxpayer's last known address. 68 O.S. 1991, ϑ 221(a).

5. The assessment for the mixed beverage tax related to the depletion audit for the period of December 1995 through May 1998 and the assessments for sales tax related to the depletion audit for the periods of February 15, 1996, through May 31, 1998, and the monthly periods of March 1996 through June 1996, September 1996, November 1996, January 1997, February 1997 and June 1997 were mailed by certified mail to PROTESTANT A at XXXXX ANONYMOUS ROAD, ANYTOWN, OK. The records of the Tax Commission indicate PROTESTANT A's address was, at the time the sales and mixed beverage tax assessments were issued, and remains, XXXXX ANONYMOUS ROAD, ANYTOWN, OK. Therefore, the mixed beverage and sales tax, interest, penalties and fees in the amount of $43,910.33 are a valid debt due the State of Oklahoma. The refund of income taxes in the amount of $1,172.35, which is PROTESTANT A's pro-rata share of the total amount of $1,356.00, is properly applied toward satisfaction of the debt he owes to the State of Oklahoma in the amount of $43,910.33.

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 $1,172.35 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 $183.65 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.