

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-04-22-03 / NOT PRECEDENTIAL
ID: P0000185
DATE: 04-22-03
DISPOSITION: DENIED IN PART / SUSTAINED IN PART
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Protestant and/or his former spouse filed a joint 1981 Oklahoma income tax return on April 15, 1982. Wage statements were attached to the return indicating that Protestant earned income during 1981.

2. The 1981 returned showed a balance due of \$78.24; however, the Division found no record of payment.

3. Tax Commission records indicate a notice of nonpayment/bill for the 1981 tax, including penalty and interest, was sent to Protestant and his former spouse at the address listed on the return. The notice was returned marked "moved, no address".

4. On August 10, 1989, the Income Tax Division issued Tax Warrant No. ITI99999999-00 against Protestant and his former spouse in the aggregate amount of \$173.91, consisting of tax in the amount of \$78.24, interest to August 10, 1989, in the amount of \$91.76, and penalty in the amount of \$3.91, for tax year 1981.

5. Protestant's former spouse filed a joint 1982 Oklahoma income tax return on April 13, 1983, on behalf of Protestant and herself. Wage statements were attached to the return indicating that Protestant earned income during 1982.

6. The 1982 return showed a balance due of \$236.00; however, the Division found no record of payment.

7. Tax Commission records indicate a notice of nonpayment/bill for the 1982 tax, penalty and interest was sent to Protestant and his former spouse at the address listed on the 1982 return. The notice was returned marked "addressee unknown" and "no forwarding order on file/unable to forward".

8. On September 19, 1988, the Income Tax Division issued Tax Warrant No. ITI88888888 against Protestant and his former spouse in the aggregate amount of \$477.12, consisting of tax in the amount of \$236.00, interest to September 19, 1988, in the amount of \$229.32, and penalty in the amount of \$11.80, for tax year 1982.

9. The Tax Commission found no record of the filing of an Oklahoma income tax return by Protestant for tax year 1983. Pursuant to Revenue Agents Report/Service Center Report dated January 21, 1987, and numbered 87299-39, the Tax Commission issued a proposed assessment for tax year 1983 in the aggregate amount of \$686.76, consisting of income tax in the amount of \$388.00, interest to April 16, 1988, in the amount of \$279.36, and penalty in the amount of \$19.40.

10. Records of the Tax Commission indicate that the 1983 assessment was sent to Protestant at the address handwritten on the Revenue Agents Report. The only record as to whether the letter was returned is a handwritten notation which states "3-25-88 no better add".

11. On August 18, 1989, the Income Tax Division issued Tax Warrant No. IT17777777-00 against Protestant in the aggregate amount of \$767.34, consisting of tax in the amount of \$388.00, interest to August 18, 1989, in the amount of \$359.94, and penalty in the amount of \$19.40, for tax year 1983.

12. Tax year 1984 is not at issue.

13. The Tax Commission found no record of the filing of an Oklahoma income tax return by Protestant for tax year 1985. Pursuant to Revenue Agents Report/Service Center Report dated January 21, 1987, and numbered 87299-38, the Tax Commission issued a proposed assessment for tax year 1985 in the aggregate amount of \$587.69, consisting of income tax in the amount of \$419.00, interest to April 2, 1988, in the amount of \$147.69, and penalty in the amount of \$21.00.

14. Records of the Tax Commission indicate that the 1985 assessment was sent to Protestant at the address apparently provided in the Revenue Agents Report. The letter was returned, per computer records maintained by the Tax Commission.

15. On August 18, 1989, the Income Tax Division issued Tax Warrant No. IT16666666-00 against Protestant in the aggregate amount of \$677.85, consisting of tax in the amount of \$419.00, interest to August 18, 1989, in the amount of \$237.85, and penalty in the amount of \$21.00, for tax year 1985.

16. Protestant filed an Oklahoma income tax return for 1996 on April 15, 1998, with a filing status of single, showing a refund due in the amount of \$154.00. By letter dated July 9, 1998, the Central Processing Division advised Protestant of an adjustment to the return, which resulted in an adjusted refund in the amount of \$231.00.

17. Protestant filed an Oklahoma income tax return for 1997 on April 15, 1998, with a filing status of married filing joint return, showing a refund due in the amount of \$418.00. A Wage and Tax Statement attached to the return show that all income on the return is attributable to Protestant.

18. Protestant filed an Oklahoma income tax return for 1998 on April 15, 1999, with a filing status of head of household, showing a refund due in the amount of \$11.00.

19. By letter dated May 16, 1998, the Tax Commission sent a notice to Protestant that his refund in the amount of \$418.00 had been delayed due to an income tax liability for 1981, 1982, 1983 and 1985.

20. By letter dated July 10, 1998, the Tax Commission sent a notice to Protestant that his refund in the amount of \$231.00 had been delayed due to an income tax liability for 1981, 1982, 1983 and 1985.

21. By letter dated May 18, 1999, the Tax Commission sent a notice to Protestant that his refund in the amount of \$11.00 had been delayed due to an income tax liability for 1981, 1982, 1983 and 1985.

22. Subsequent to notification that his refunds were being intercepted to apply against a tax liability, Protestant filed several letters protesting the application of his refunds and the underlying liability. Protestant contends that for 1981 the tax has been paid; that for 1982 he was unaware a return had been filed, was eligible for a refund and did not sign the return; that for 1983 he was incarcerated, did not work and did not file a return; and that in 1985 he did not work or file a return. The Division stated at hearing that they construed Protestant's letters as timely protests to the application of his refunds for tax years 1996, 1997 and 1998.

23. Upon request, the Internal Revenue Service notified the Oklahoma Tax Commission that Protestant's original documents and attachments for his 1983 and 1985 income tax returns had been destroyed; however, a transcript for those years was provided. Protestant's 1983 federal return, filed February 23, 1987, reflects the filing status of married filing separate, thus showing the income was attributable solely to Protestant. Protestant's 1985 federal return, filed February 23, 1987, reflects the filing status of single. The transcript does not indicate the source of Protestant's income.

24. By letter dated September 16, 1998, the Oklahoma Department of Corrections shows that Protestant was incarcerated from September 17, 1982, through August 9, 1984. At that time Protestant was released to a House Arrest Program, which was completed with supervision ending on October 4, 1984.

25. A hearing on the protest was held on April 4, 2001.

26. The amount currently owed by Protestant for the 1981 tax year consists of interest in the amount of \$193.43 and penalty in the amount of \$3.91.¹

¹ The Division previously applied a portion of Protestant's 1997 refund, in the amount of \$78.24, to the 1981 tax liability.

CONCLUSIONS OF LAW

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, § 205.2E. A taxpayer may file an objection to such action and request a hearing. 68 O.S. Supp. 1997, § 205.2B. 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.

4. The 1981 income tax at issue is an admitted liability on an income tax return signed by Protestant. Therefore, the income tax, penalty and interest for the 1981 tax year is a valid debt due the State of Oklahoma.

5. The income tax for 1982 is also based on a filed return. However, in this instance, Protestant did not sign the return. Protestant's former wife signed on his behalf. In the event an individual is unable to make his own return, the return shall be made by a duly-authorized agent or by the guardian or other person charged with the care of the person or property of the individual. 68 O.S. 1981 §2368(C). The 1982 Oklahoma Form 511 contains a provision under the spouse's signature line which states "If filing jointly, BOTH must sign". Protestant argues that he did not know his wife was going to file for them both. No evidence was provided to indicate that Protestant had authorized his wife or any other person to make, sign or file the 1982 return on his behalf. Therefore, the 1982 income tax return is not an admitted liability of Protestant and the amount of income tax reflected thereon is not a valid debt due the State of Oklahoma.

6. In those cases where the debt is established by an assessment, Section 205.2(B) requires 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.

7. 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, § 221.

8. In 1988, at the time of the mailing of the proposed assessment to Protestant, the term "last-known address" was not defined by statute. Thus, the issue is whether the Division exercised "reasonable diligence" in ascertaining Protestant's correct address for purpose of providing notice to Protestant. See, Oklahoma Tax Commission Order No. 90-03-22-022. See also, *Alta Sierra Vista, Inc. v. Commissioner*, 62 T.C. 367 (1974), aff'd 538 F.2d 334 (9th Cir. 1976). The controlling test is whether in light of all the relevant circumstances the Division reasonably considers the address to which the proposed assessment is mailed to be the taxpayer's last-known address. See *Mulder v. C.I.R.*, 855 F.2d 208 (5th Cir. 1988). The focus is on the information available at the time of the mailing of the proposed assessment. *Id.* Each case, however, turns on its own particular facts and circumstances. *King v. C.I.R.*, 857 F.2d 676 (9th Cir. 1988).

9. The assessment letters for the 1983 and 1985 tax years indicate that the assessments were issued against Protestant at 9999 N.W. 99th, ANYCITY, OK. A handwritten notation on a copy of the 1983 assessment letter states "3-25-88 no better add". The computer records maintained by the Tax Commission indicate that the 1985 assessment letter was returned. THE Principal Tax Auditor with the Account Maintenance Division testified that the address appears to have been obtained from the Revenue Agents Reports. He stated that he was unsure whether that address information which was handwritten on the reports was contained on the reports when received from the IRS or was written in at the Tax Commission. THE AUDITOR stated that generally in these cases the Audit Division would utilize the address information provided by the IRS for assessment purposes. He added that in those cases when an assessment is returned, the Division would take steps to look for a more current address.

Although, there was the handwritten notation on the 1983 assessment and a return mail designation as to the 1985 assessment, there was no evidence or testimony presented from which to ascertain the relevant circumstances surrounding the Division's making of the notation or the computer entry. In absence of supporting documentation, it cannot be concluded from the record that the Division exercised reasonable diligence to discover a correct address for Protestant for purposes of providing notice of the proposed assessments. Therefore, the income tax, penalty and interest for the 1983 and 1985 tax years are not valid debts owed to the Oklahoma Tax Commission.

Based on the foregoing, Protestant's 1996 refund, in the amount of \$231.00, a portion of his 1997 refund, in the amount of \$103.76, and his 1998 refund, in the amount of \$11.00, should be credited to Protestant's account. Additionally, a portion of Protestant's 1997 refund, in the amount of \$197.34, should be applied in full satisfaction of Protestant's remaining liability for tax year 1981.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case that the protest to the claim of the Account Maintenance Division to his 1996, a portion of his 1997 and 1998 refund be sustained and that the protest to the partial suspension of Protestant's 1997 refund as applied to the 1981 tax liability be denied. It is further DETERMINED that a portion of Protestant's 1997 refund be applied to the remaining liability for tax year 1981, in the amount of \$197.34, that Protestant's 1996 refund in the amount of \$231.00, a portion of his 1997 refund, in the amount of \$103.76, and his 1998 refund in the amount of \$11.00, be credited to his account, and that the assessments and related tax warrants for 1982, 1983 and 1985 be withdrawn.

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.