

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-11-18-22 / NOT PRECEDENTIAL
ID: P0300131
DATE: 11-18-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 16th day of October, 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. Protestant represents herself 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 held. Notice of the hearing was mailed to Protestant at her last-known address, yet she did not appear.

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. The Business Registration form filed with the Oklahoma Tax Commission on October 27, 2000, lists PROTESTANT as owner of The ABC Shop and bears her signature. The address listed for PROTESTANT on the Business Registration is P.O. Box XXX, ANYTOWN, Oklahoma 99999.

2. An office audit of the business showed that no tax reports were filed or remittances made for the sales tax period of November 2000 through July 2001.

3. A notice of proposed assessment of sales tax for the period of November 2000 through July 2001 was issued against PROTESTANT, The ABC Shop, on July 13, 2001, in the aggregate estimated amount of \$6,150.00, inclusive of interest and penalty.

4. The assessment notice, sent by certified mail to Protestant's last-known address, P.O. Box XXX, ANYTOWN, Oklahoma 99999, was returned marked "unclaimed" and "return to sender".

5. Protestant did not protest the proposed assessment nor seek an abatement within the time period allowed by statute.

6. On August 28, 2001, the Tax Commission issued and caused to be filed against Protestant Tax Warrant No. STS-999999999 for the period of November 1, 2000, through July 31, 2001, in the amount of \$6,402.60, inclusive of interest, penalty and fees.

7. Protestant filed a 2002 Oklahoma income tax return, claiming a refund due in the amount of \$270.00.

8. On April 25, 2003, Protestant was notified by the Oklahoma Tax Commission that her income tax refund for 2002 in the amount of \$150.00 (adjusted due to sales tax credit) had been delayed due to a reported sales tax liability of \$7,649.79.

9. The refund is attributable solely to the income of Protestant.

10. By letter dated May 7, 2003, Protestant, filed a written protest stating, "I did not make a quarter of what you say. We closed down in Feb. 01 due to not making enough money." Protestant also requested that sales tax reports be provided to her.

11. Division correspondence indicates that the requested reports were forwarded to Protestant on June 12, 2003.

12. No actual reports for the periods at issue have been filed, nor any documentation provided to show an ending date for the business.

13. Protestant's outstanding sales tax liability for the period of November 2000 through July 2001 is \$8,111.52, inclusive of penalties, fees and interest through September 12, 2003.

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 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. 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.

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. 2001, § 221(a).

5. The assessment for the sales tax for the period of November 1, 2000, through July 31, 2001, was mailed by certified mail to PROTESTANT, P.O. Box XXX, ANYTOWN, Oklahoma 99999. The records of the Tax Commission indicate PROTESTANT'S address was, at the time the sales tax assessment was issued, and remains, P.O. XXX, ANYTOWN, Oklahoma 99999. Therefore, sales tax, interest, penalties and fees in the amount of \$8,111.52 are a valid debt due the State of Oklahoma. Protestant's income tax refund in the amount of \$150.00 was properly suspended in partial satisfaction of the debt she owes to the State of Oklahoma in the amount of \$8,111.52.

DISPOSITION

THEREFORE, IT IS THE DETERMINATION of the undersigned that the protest of PROTESTANT to the claim of the Account Maintenance Division to the income tax refund of \$150.00 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.