

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-12-09-04 / NOT PRECEDENTIAL
ID: P0300096
DATE: 12-09-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 8Tth day of October, 2003, 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 A AND PROTESTANT B (hereinafter "Protestants") appear pro se. The Account Maintenance Division of the Tax Commission (hereinafter "Division") is currently represented by the General Counsel's Office of the Tax Commission. Protestants did not appear at the hearing.

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the *Division's Memorandum Brief* filed on August 27, 2003, and the Division's *Addendum to Division's Memorandum Brief* filed on September 18, 2003, and the exhibits attached to each of the pleadings, the undersigned finds:

1. That Protestant A was listed as an officer of CORPORATION X on the Employer's Registration Report filed with the Oklahoma Tax Commission on October 19, 1987.
2. That according to records of the Oklahoma Tax Commission, both Protestants were officers of CORPORATION X for the period of July 1990 through June 1991.
3. That according to the records of the Oklahoma Tax Commission, CORPORATION X ceased doing business on February 29, 1992.
4. That on March 28, 1997, the Division caused to be issued against Protestants a proposed assessment of withholding tax, interest, and penalty in the aggregate amount of \$34,620.81, consisting of actual tax for the period of January 1991 through February 1991, in the amount of \$1,665.33; estimated tax for the period of March 1991 through May 1991, in the amount of \$3,600.00; actual tax for the period of June 1991 through February 1992, in the amount of \$11,253.52; interest accrued through May 9, 1997, in the amount of \$13,972.24; and penalty in the amount of \$4,129.72.

5. That the notices of the proposed assessment were sent by certified mail to Protestants at the address on record with the Oklahoma Tax Commission.

6. That service of the notices was accepted by PROTESTANT A.

7. That Protestants did not protest the proposed assessment nor seek an abatement of the assessment within the time period allowed by statute.

8. That Tax Warrants No. ITW XXXXXXXX-01, ITW XXXXXXXX-02, ITW ZZZZZZZZ-01, and ITW ZZZZZZZZ-02, evidencing the liability for the above-stated periods, were filed against Protestants in ANONYMOUS county on May 16, 1997.

9. That on or about January 21, 2003, Protestants filed their 1999 Oklahoma Individual Income Tax Return, claiming a refund in the amount of \$56.00.

10. That the refund is attributable solely to the employment and withholding of Protestant B.

11. That on or about January 21, 2003, Protestants filed their 2000 Oklahoma Individual Income Tax Return, claiming a refund in the amount of \$92.00.

12. That the refund is attributable solely to the employment and withholding of Protestant A.

13. That pursuant to 68 O.S. 1991, § 205.2, the Division intercepted Protestants' income tax refunds in the aggregate amount of \$148.00 and on March 14, 2003, notified Protestants of their right to protest the petition to apply the amount of \$148.00 to Protestants' outstanding tax liability.

14. That Protestants timely responded in writing to the Division's notice, stating that they disagree and this was part of a 1994 bankruptcy procedure.

15. That through its **Addendum to Division's Memorandum Brief** filed on September 18, 2003, the Division advised of release of the 1999 refund in the amount of \$56.00 and the withdrawal of the assessment against PROTESTANT B for the reason that there is no objective evidence in the file other than a notation in the Commission's internal computer system to indicate that she was ever a responsible party for the withholding tax of the corporation.

16. That the amount in controversy is \$92.00.

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 of Protestant be denied.

ADDENDUM TO RECOMMENDATION OF DENIAL OF PROTEST

Now on this 5th day of November, 2003, the *Recommendation of Denial of Protest* issued in the above styled and number cause on October 8, 2003, comes on for further consideration.

Upon review of the *Recommendation of Denial of Protest*, the undersigned finds that the following conclusions of law should be added thereto, to-wit:

That on its face, the proposed assessment issued March 28, 1997, insofar as it assesses "actual" tax against Protestant i.e., the tax assessed for the periods of January 1991 through February 1991 and June 1991 through February 1992, and all related penalty and interest, is out of time and is barred, 68 O.S. 1991, § 223(A); that the filing of a bankruptcy petition by a taxpayer does not preclude the Tax Commission from assessing a tax, but only precludes the Tax Commission from an action to collect the tax; that tax warrant no. ITW-XXXXXXXX-01 should be canceled by the Tax Commission; that tax warrant no. ITW-ZZZZZZZZ-01 should be withdrawn and reissued to only evidence the liability of Protestant for the assessed "estimated" tax, i.e., the tax assessed for the period of March 1991 through May 1991, and any related penalty and interest.

That the undersigned further finds that the final conclusion of law should be stricken and the following conclusion of law substituted therefor, to-wit:

That the evidence proves the amount claimed by the Division is incorrect, insofar as the claim includes the amount of the "actual" tax, penalty and interest for the periods of January 1991 through February 1991 and June 1991 through February 1992, that the remaining amount claimed by the Division, i.e., the "estimated" tax, penalty and interest for the period of March 1991 through May 1991 is in excess of the income tax refund claim of Protestant, and is due and owing, and that Protestant has not presented any evidence to show an adjustment to the income tax refund claim is required.

THEREFORE, the *Recommendation of Denial of Protest* issued in this cause on October 8, 2003, is hereby amended to strike the final conclusion of law therein and to add and/or substitute therefor the above and foregoing conclusions of law.

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.