

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-12-09-05 / NOT PRECEDENTIAL
ID: P0300120
DATE: 12-09-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 5th day of November, 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 appears pro se. The Account Maintenance Division of the Tax Commission (hereinafter "Division"), is represented by an Assistant General Counsel and an Legal Research Assistant, General Counsel's Office of the Tax Commission.

Protestant did not appear at the hearing. The Division presented testimony and evidence in support of the denial of Protestant's protest to the interception of their income tax refund.

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

1. That at all times relevant herein, Protestant A held the office of Vice-President of The Corporation ("Corp"), d/b/a Business X.
2. That Corp's quarterly withholding tax report filed for the last quarter of 1999 bears the signature of Protestant A.
3. That checks dated January 14, 2000 and April 5, 2001, which are written on the general account of Corp and are made payable to the Tax Commission, bear the signature of Protestant A.
4. That on August 19, 2002, the Division proposed the assessment of withholding tax, interest and penalty against Protestant A, as an officer of Corp and as an individual, for the period of January 1, 2000 through March 31, 2002, in the aggregate amount of \$26,079.23, inclusive of tax in the amount of \$17,604.30, interest accrued through September 30, 2002, in the amount of \$4,073.81 and penalty in the amount of \$4,401.12.
5. That the proposed assessment was forwarded by regular mail to the last known address of Protestant A, as reflected on the records of the Division.
6. That Protestant A, did not timely respond to the proposed assessment which resulted in the Tax Commission filing tax warrant number ITW-9999-999999-99 in ANONYMOUS County, Oklahoma, evidencing the liability of Protestant A to the State of Oklahoma for the proposed amount of the assessment.

7. That Protestant B, was named on the Business Registration of Company Z, LLC ("Co. Z"), a limited liability company, as both a member of and the officer or employee responsible for remitting Oklahoma income tax withheld from employees for Co. Z.

8. That the withholding tax reports filed on behalf of Co. Z for the periods of April 2001 through June 2001, July 2001 through September 2001, October 2001 through December 2001, and January 2002 through March 2002, bear the signature of Protestant B.

9. That the sales tax reports filed on behalf of Co. Z, inclusive of the periods beginning March 2001 and ending May 2002, bear the signature of Protestant B.

10. That several checks written on the general account of Co. Z for the period in question which are made payable to the Tax Commission for both sales and withholding taxes bear the signature of Protestant B.

11. That Protestant B, executed a pay plan agreement on behalf of Co. Z which resulted from a Notice to Show Cause Hearing held April 24, 2002.

12. That on June 28, 2002, the Division proposed the assessments of sales tax, interest and penalty for the periods of June 2001 through March 2002 and May 2002 and withholding tax, interest and penalty for the period of January 2001 through March 2001 against Protestant B, as a member of Co. Z and as an individual, in the aggregate amounts of \$17,597.34 and \$870.32, respectively, consisting of sales tax in the amount of \$14,494.72, withholding tax in the amount of \$600.00, interest accrued through August 16, 2002, in the amount of \$1,773.48 and penalty in the amount of \$1,599.46.

13. That on August 9, 2002, the Division proposed the assessment of withholding tax for the periods of January 2001 through March 2001 and April 2002 through June 2002 against Protestant B, as a member of Co. Z and as an individual, in the aggregate amount of \$1,469.17, inclusive of tax in the amount of \$1,100.00, interest accrued through October 25, 2002, in the amount of \$149.17 and penalty in the amount of \$220.00.

14. That the proposed assessments were forwarded by regular mail to the last known address of Protestant B, as reflected on the records of the Division.

15. That Protestant B, did not timely respond to the proposed assessment which resulted in the Tax Commission filing tax warrant number STS-8888-888888-88 in ANONYMOUS County, Oklahoma, evidencing the liability of Protestant B, to the State of Oklahoma for the proposed amount of the sales tax assessment for the period of June 2001 through March 2002, tax warrant number ITW-7777-777777-77 in ANONYMOUS County, Oklahoma, evidencing the liability of Protestant B, to the State of Oklahoma for the proposed amount of the withholding tax assessment for the period of January 2001 through March 2001 and tax warrant number ITW-5555-555555-55 in Anonymous County, Oklahoma, evidencing the liability of Protestant B, to the State of Oklahoma for the proposed amount of the withholding tax assessment for the period of April 2002 through June 2002.

16. That Protestants, filed their married filing joint 2002 Oklahoma Individual Income Tax Return, Form 511, claiming a refund in the amount of \$531.00.

17. That pursuant to 68 O.S. 1991, § 205.2, the Division intercepted Protestants' income tax refund in the amount of \$531.00 and by letters dated April 25, 2003, notified Protestants of their right to protest the petition to apply the amount of their refund to the outstanding tax liabilities.

18. That Protestant timely responded in writing to the Division's notice, claiming another party was the "primary owner" of Corp. and Co. Z and the IRS had found them "not responsible for the money owed because they could not take out any loans to repay taxes because no collateral was in our names."

19. That the amount in controversy is \$531.00.

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 Protestants have failed to present any evidence to show the tax warranted liabilities are incorrect, and not due and owing, or to show an adjustment to income tax refund is required.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is determined that the protest 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.