

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-12-16-04 / NOT PRECEDENTIAL
ID: P0300151
DATE: 12-16-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 4th day of November, 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, and Legal Research Assistant, 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 conclusion of the hearing, the case was submitted for decision.

FINDINGS OF FACT

1. The Business Registration form filed with the Tax Commission on October 18, 1994, listed PROTESTANT as the owner of the ANONYMOUS Lounge and bore her signature. The address for PROTESTANT and the business on the Registration form was 9999 N.W. ZZth, BIGCITY, OK.

2. On April 8, 1999, the Audit Division issued proposed assessments against PROTESTANT d/b/a ANONYMOUS Lounge, for sales and tourism taxes for the period April 1, 1996, through July 31, 1997, and in the following amounts:

Sales Tax

Tax	\$11,283.73
Interest to 05-31-99	4,017.33
Penalty	<u>1,128.36</u>
Total	\$16,429.42

Tourism Tax

Tax	\$ 134.73
Interest through 05-31-99	49.52
Penalty	<u>13.48</u>
Total	\$ 197.73

3. The proposed sales tax assessment issued against PROTESTANT indicated that it was mailed by certified mail; however, the certified mailing number was not reflected on the face of the assessment. The Division submitted a copy of a return receipt card at hearing bearing the number Z999999999 and indicating PROTESTANT, DBA ANONYMOUS Lounge, 8888 ANYSTREET, BIGCITY, OK, as the addressee. AN EMPLOYEE of the Account Maintenance Division, who researches and prepares files, testified that the return receipt card "represents that the letter was sent certified mail, received and signed for."

4. The proposed tourism tax assessment issued against PROTESTANT bore the number Z888888888. Included in the file was a copy of the same certified mail receipt reflecting the number Z888888888, indicating PROTESTANT, DBA ANONYMOUS Lounge, 8888 ANYSTREET, BIGCITY, OK, as the addressee. The receipt was signed by an individual other than Protestant and unknown to the Division.

5. THE ACCOUNT MAINTENANCE DIVISION EMPLOYEE testified further that at times, specific dates unknown to her, proposed assessments to the same entity for different tax types, for the same period and under the same audit number, as was the case in this instance, could have been mailed in the same envelope.

6. The address of 8888 ANYSTREET, BIGCITY, OK, to which both assessments were mailed, was reflected on an Oklahoma Tourism Tax Report prepared by the auditor, setting forth taxpayer's information, audit period, and the tourism tax, interest and penalty due as a result of the audit. The report did not bear the Protestant's signature.

7. Protestant's 1997 Oklahoma income tax return filed April 7, 1998, indicates her address at the time was 8888 ANYSTREET, BIGCITY, OK.

8. Protestant's 1998 Oklahoma income tax return, filed April 5, 1999, reflected the address of P.O. Box XXXXXX, BIGCITY, OK.

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

10. Tax Warrant Nos. STS9999999999-00 and STR8888888888-00 were filed against PROTESTANT, DBA ANONYMOUS Lounge, 9999 S. XXXXX Ave., BIGCITY, Oklahoma, on July 28, 2000, in BIG County.

11. THE ACCOUNT MAINTENANCE DIVISION EMPLOYEE testified that the address utilized on the tax warrants was ascertained from Protestant's most recent income tax return at the time of the filings.

12. On April 15, 2003, Protestant filed an Oklahoma income tax return as head of household for tax year 2002 claiming a refund in the amount of \$256.00.

13. On June 27, 2003, Protestant was notified that her income tax refund of \$176.00 for 2002 had been delayed due to a reported sales and tourism tax liability. THE ACCOUNT MAINTENANCE DIVISION EMPLOYEE testified at hearing that the Division did not seek interception of the \$80.00 sales tax relief credit Protestant claimed on the return.

14. By letter dated July 11, 2003, and received by the Division on July 22, 2003, PROTESTANT filed a protest to the interception of the income tax refund stating that the people who took over the business evidently used her sales tax number and, "The only thing I ever received was years ago, and I knew it was a mistake because it had draft beer sales, and I did not buy or sell draft beer, and was no longer there. I assumed this was all a big mistake that had been [taken] care of."

CONCLUSION 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, § 205.2(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.

4. 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.

5. 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(a).

6. The Business Registration and the computer records for Protestant's tourism account show both Protestant's address and the business address to be 9999 N.W. ZZth, BIGCITY, OK. However, the records submitted indicate that the business ceased operation in July 1997 prior to the audit being performed, which would have caused the auditor to investigate other records of the Tax Commission to ascertain an address for Protestant.

7. Protestant's 1997 income tax return and the Tourism Tax Report both support the address to which the assessments were mailed. Notwithstanding that the evidence reveals a post office box address provided on Protestant's 1998 Oklahoma income tax return, filed April 5, 1999, three days prior to the mailing of the assessments, the evidence does not clearly show Protestant did not have actual notice of the assessments. The return receipt for the assessments was signed, though not by Protestant, and returned. Her letter of protest indicates she received notice of some liability. The evidence shows as a whole that it is more probable than not that Protestant was aware of the assessments, but chose to make no response. Therefore, the sales and tourism tax assessments against Protestant are a valid debt owing the State of Oklahoma. Thus, the refund of income taxes for 2002 claimed by Protestant on her income tax return was properly suspended.

8. The protest should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT to the claim of the Account Maintenance Division to the income tax refund of \$176.00 be denied and that her income tax refund in the amount of \$176.00 be applied in satisfaction of the debt she owes the State of Oklahoma.

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.