

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-12-16-05 / NOT PRECEDENTIAL
ID: P0300146
DATE: 12-16-03
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 10th 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 (hereinafter "Protestant") appears pro se. The Account Maintenance Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, 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 the 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 Protestant was the owner of and did business as THE Inn in ANYTOWN, Oklahoma, during the relevant periods herein.

2. That on March 22, 1995, the Division caused to be issued a proposed tourism tax assessment against Protestant for the periods of August 1994 and October, 1994 through March, 1995.

3. That the tourism tax assessment proposed an estimated tax due amount of \$56.00.

4. That the proposed assessment was forwarded by certified mail to Protestant's last known address as reflected by the records and files of the Notice to Show Cause Section of the Business Tax Division.

5. That the notice of the proposed assessment was returned "unclaimed."

6. That Protestant did not timely protest the proposed assessment nor seek an abatement of the assessment within the time period allowed by statute.

7. That on May 25, 1995, the Tax Commission caused to be filed against Protestant tax warrant no. STR-9999-999999-99 in ANONYMOUS County, State of Oklahoma.

8. That the total amount of indebtedness of Protestant to the State of Oklahoma represented by the warrant was \$87.06, consisting of tourism tax in the amount of \$49.53, interest of \$2.26, penalty of \$4.27, tax warrant penalty of \$15.00 and filing fees of \$16.00.

9. That on March 22, 1995 and October 28, 1995, the Division caused to be issued proposed sales tax assessments against Protestant for the period of October, 1994 through March, 1995.

10. That the sales tax assessments proposed an aggregate estimated tax due of \$3,926.00.

11. That the proposed assessments were forwarded by certified mail to Protestant's last known address as reflected by the records and files of the Notice to Show Cause Section of the Business Tax Division and the Technical Section of the Account Maintenance Division.

12. That the March 22, 1995 notice was returned "unclaimed."

13. That the October 28, 1995 notice was accepted by the Protestant.

14. That Protestant did not timely protest the proposed assessments nor seek an abatement of the assessments within the time period allowed by statute.

15. That on May 22, 1995 and May 25, 1995, the Tax Commission caused to be filed against Protestant tax warrant nos. STS-8888-888888-88 and STS-7777-777777-77 in ANONYMOUS County, State of Oklahoma.

16. That the total amount of indebtedness of Protestant to the State of Oklahoma represented by the warrants was \$3,692.63, consisting of sales tax in the amount of \$3000.00, interest of \$101.79, penalty of \$318.84, tax warrant penalty of \$215.00, filing fees of \$32.00 and other fees of \$25.00.

17. That Protestant filed a 2002 head of household with qualifying person, State of Oklahoma, Oklahoma Individual Income Tax Return, claiming a refund in the amount of \$383.00.

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

19. That pursuant to 68 O.S. 1991, § 205.2, the Division intercepted Protestant's income tax refund in the amount of \$263.00 and on April 25, 2003, notified Protestant of her right to protest the petition to apply the amount of \$263.00 to Protestant's outstanding tax liability.

20. That Protestant timely responded in writing to the notice, stating that the business closed on November 17, 1994 and that the warrants created a lien against her sister's property which taxes were paid in full.

21. That the Division responded to Protestant's letter by two separate letters.

22. That the first letter of the Division advised Protestant that her indebtedness to the State of Oklahoma had been adjusted to reflect an out of business date of November 17, 1994, that tax warrant no. STS-5555-555555-55, representing an indebtedness for sales tax, interest, penalty, warrant penalty, filing fees for the period of April 1, 1995 through April 15, 1995, had been withdrawn, that her adjusted liability for sales tax for the periods of August, 1994 (actual) and October, 1994 through November 17, 1994 (estimated) was \$2,242.12 and that her adjusted liability for tourism tax for the periods of August, 1994 and October, 1994 through November 17, 1994 (estimated) was \$82.51.

23. The second letter of the Division advised Protestant that the tax represented by tax warrant no. STS-4444-444444-44 had been paid, however, a balance in the amount of \$221.00, consisting of warrant penalty of \$200.00, filing fees of \$8.00 and release fees of \$13.00, remained due.

24. That the amount in controversy is \$263.00.

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 sum claimed by the Division is correct, due and owing, and no adjustment to the income tax refund claim is required.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest of Protestant 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.