JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-12-18-10 / NOT PRECEDENTIAL**
ID: **P0300061**
DATE: **12-18-03**
DISPOSITION: **SUSTAINED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Business Registration form filed by PROTESTANT CORPORATION with the Tax Commission on July 13, 1994, lists PROTESTANT A as President and PROTESTANT B as Secretary of the corporation.

2. No sales tax reports were filed or payments made by PROTESTANT CORPORATION for the periods of April 1995 through December 1999.

3. No withholding tax reports were filed or payments made by PROTESTANT CORPORATION for the periods of October 1994 through March 1995, August 1997, September 1997, December 1997 through March 2000 and July 2000 through September 2000.

4. On December 1, 2000, the Account Maintenance Division issued proposed assessments against PROTESTANT A, as President of PROTESTANT CORPORATION and against PROTESTANT B, as Secretary of PROTESTANT CORPORATION, for sales and withholding tax for the following periods and in the following amounts:

Sales Tax

April 1995 through December 1999

Estimated Tax	$2,500.00
Interest to 01-11-01	1,216.60
Penalty	250.00
Total	$3,966.60

Withholding Tax

May 1994, October 1994 through March 1995, August 1997, September 1997, December 1997 through March 2000, July 2000 through September 2000

Estimated Tax	$ 800.00
Interest through 01-11-01	297.47
Penalty	197.00
Total	$1,294.47

5. The proposed assessments issued against PROTESTANT A bear the number 0000 0000 0000. Included in the file is a copy of a certified mail receipt reflecting the same number indicating PROTESTANT A, PROTESTANT CORPORATION, 9999 W. ANONYMOUS, BIGCITY, OK, as the addressee. The proposed assessments issued against PROTESTANT B bear the number 9999 9999 9999. Included in the file is a copy of a certified mail receipt reflecting the same number indicating PROTESTANT B, PROTESTANT CORPORATION, 9999 W. ANONYMOUS, BIGCITY, OK, as the addressee.

6. PROTESTANTS A AND B did not protest the proposed assessments nor seek an abatement within the time period allowed by statute.

7. The files and records of the Division contain no evidence of service of the proposed assessments, either by the return of the notices or by return of the return receipts cards bearing numbers 0000 0000 0000 or 9999 9999 9999.

8. Tax Warrant Nos. STS-XXXX-XXX-01 and ITW-XXXX-XXX-01 were filed against PROTESTANT A and Tax Warrant Nos. STS-ZZZZ-ZZZ-02 and ITW-ZZZZ-ZZZ-02 were filed against PROTESTANT B on April 24, 2001, in ANONYMOUS County.

9. PROTESTANT'S address was listed as 9999 W. ANONYMOUS, BIGCITY, Oklahoma, on their 1999 income tax return, which was filed on or about February 7, 2000.

10. A withholding tax report for PROTESTANT CORPORATION was filed for the third quarter 1994 but the tax reported thereon was not remitted. The report was signed by XYZ. The amount outstanding is set forth as follows:

Tax	$ 914.69
Interest to 04-30-03	1,115.15
Penalty	228.67
Payment[1]	384.00
Total	$1,874.51

11. On February 21, 2003, Protestants filed a joint Oklahoma income tax return for tax year 2002 claiming a refund in the amount of $113.00.

12. On March 14, 2003, Protestants were notified that their income tax refund of $113.00 for 2002 had been delayed due to a reported sales and withholding tax liability.

[1] This amount represents Protestant's income tax refund for the 2001 tax year, which was intercepted by the Division. Division's counsel indicated that Protestants withdrew the protest to the claim of the Division to their 2001 income tax refund and allowed the Division to apply the refund to the corporation's withholding tax liability for the third quarter 1994.

13. By letter dated March 31, 2003, PROTESTANT A filed a protest stating, "I DO NOT OWE YOU ANY MONEY. MY BUSINESS WENT BELLY UP. I NEVER GOT TO SELL ANYTHING."

14. Division's counsel, on April 23, 2003, provided PROTESTANTS worksheets outlining their outstanding sales and withholding tax liability and requested documentation to support their contention that they were not in business during the estimated tax periods.

15. The Division did not receive any response from Protestants.

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. The withholding tax for the third quarter 1994 is an admitted liability for the corporation based on the signed return. However, no evidence was presented to show that the amount reflected on the third quarter 1994 withholding tax return was assessed PROTESTANTS as officers of the corporation and as individuals. Therefore, the amount reflected on the return is not a valid debt due the State of Oklahoma by Protestants.

5. 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.

6. 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). Although the evidence presented indicates that the proposed sales and withholding were properly addressed, the copies of certified mail receipts by themselves are insufficient to show that the sales and withholding tax assessments were actually mailed to Protestants. Therefore, the sales and withholding tax assessments against Protestants are not a valid debt owing the State of Oklahoma. Thus, the refund of income taxes for 2002 claimed by Protestants on their income tax return was not properly suspended.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, that the protest to the claim of the Account Maintenance Division to the income tax refund of $113.00 be sustained and that their income tax refund in the amount of $113.00 be refunded. It is further DETERMINED that the sales and withholding tax assessments issued by letters dated December 1, 2000, against Protestants and related tax warrants be withdrawn.

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.