JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2004-02-12-02 / NOT PRECEDENTIAL
ID: P0300145
DATE: 02-12-04
DISPOSITION: SUSTAINED IN PART / DENIED IN PART
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matter comes on for entry of a final order of disposition. A hearing was held herein before one of the Commission's Administrative Law Judges, and notice of such hearing was mailed to Protestant as provided by law. Protestant did not appear. Upon conclusion of said hearing, the Administrative Law Judge, on October 30, 2003, entered findings of fact, conclusions of law, and a recommendation that the foregoing protest be sustained and that the underlying tax warrants be withdrawn.

The Audit Division has filed objections to those findings and recommendation, and a request for oral argument before the Commission en banc. Having examined the files and records herein and being fully advised, the Commission finds the Division's objection regarding whether one of the underlying assessments was mailed to the taxpayer at taxpayer's last known address is well taken. Oral argument before the Commission en banc, however, would not be of significant assistance to our deliberations. We therefore deny the request for oral argument en banc, and enter the following findings of fact, conclusions of law, and final order. OAC 710:1-5-41.

FINDINGS OF FACT

1. On February 12, 1999, the Audit Division issued proposed assessments against PROTESTANT, as President of PROTESTANT'S ESTABLISHMENT, for sales taxes for the following audit numbers and periods and in the following amounts:

Audit No. AAAAAAA

April 1, 1997, through January 20, 1998

Tax	$ 982.99
Interest to 3-31-99	205.96
Penalty	98.28
Total	$1,287.25

Audit No. BBBBBBB

January 21, 1998, through July 31, 1998

Tax	$ 933.49
Interest through 3-31-99	106.75
Penalty	93.33
Total	$1,133.57

5. The proposed assessment issued against PROTESTANT for Audit No. AAAAAAA indicates it was mailed by certified mail number 9999999999 to "99999 E 99 ST STE 999, BIGCITY, OK". The letter, bearing the postmark of February 12, 1999, was returned on February 16, 1999 and marked "NO SUCH STREET #" by the postal service. A handwritten notation on the envelope states "last known address per ITI 1999 return" and was dated and initialed on "2-22-99".

6. The proposed assessment issued against PROTESTANT for Audit No. BBBBBBB indicates it was mailed by certified mail number 1111111111 to "99999 E 99ST ST STE 999, BIGCITY, OK". The letter, bearing the postmark of February 12, 1999, was returned and marked "UNCLAIMED" by the postal service. The file also contains a copy of a returned envelope reflecting the same address and not sent by certified mail, bearing the postmark of February 16, 1999, which was returned by the postal service on February 20, 1999, with the notation "MOVED LEFT NO ADDRESS / UNABLE TO FORWARD". Handwritten notations on both returned envelopes state "last known address per 1997 ITI return" and were dated and initialed on "3-24-99".

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

8. Tax Warrant No. STSXXXXXXXXXX-XX was filed against PROTESTANT, President, PROTESTANT ESTABLISHMENT, and as an Individual, for Audit No. AAAAAAA, on November 9, 1999, in ANONYMOUS County. The tax warrant was for the period March 1, 1997 through January 20, 1998.

9. Tax Warrant No. STSZZZZZZZZZZ-ZZ was filed against PROTESTANT, President, PROTESTANT ESTABLISHMENT, and as an Individual, for Audit No. BBBBBBB, on November 9, 1999, in ANONYMOUS County. The tax warrant was for the period January 21, 1998 through July 31, 1998.

10. On January 27, 2003, Protestant electronically filed an Oklahoma income tax return as head of household for tax year 2002 claiming a refund in the amount of $293.00.

12. On February 4, 2003, Protestant was notified that his income tax refund of $213.00[1] for 2002 had been delayed due to a reported sales tax liability.

13. By letter filed February 10, 2003, PROTESTANT filed a protest stating that he had provided documents several years ago disagreeing with the liability, including papers from ABLE Commission showing he did not own the business in question during the period at issue, and was told the Tax Commission would look into the matter.

14. A printout of the "Profiles Entity Browse" screen, submitted by the Division at hearing, reflects Protestant's address as 99999 E. 99st Street, Apt. 999, with effective dates of July 24, 1997, and February 10, 1998; 88888 S. 888th East Ave., ANYTOWN, OK, effective date February 17, 1999; and 777 W. ANY St., ANYTOWN, OK 74012, effective date January 27, 2003.

CONCLUSIONS 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.

[1] The Division did not seek to intercept Protestant's claimed sales tax relief credit in the amount of $80.00.

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). As of February 12, 1999, taxpayer's address last known to the Commission was 99999 E. 99st Street, Apt. 999, BIGCITY, OK. Five days later, with the filing of taxpayer's 1998 income tax return, taxpayer informed the Commission of a new address, in ANYTOWN, OK. Here, the evidence shows that the proposed sales tax assessment under Audit No. AAAAAAA was not sent to the then last known address of Protestant. Through a typographical error, this proposed assessment was sent to the correct address, but on 45th Street, not 41st Street as reflected in the Commission's files. This notice was returned by the postal service. The file contains no indication of further attempts at service. The proposed assessment was not mailed or served as provided by law, and the associated tax warrant subsequently issued thereon was issued in error. The debt claimed as a result thereof is not a valid debt, and Protestant's protest should be sustained insofar as it pertains to Tax Warrant No. STSXXXXXXXXXX-XX.

6. The proposed sales tax assessment under Audit No. BBBBBBB, however, was sent to the Protestant's address last known to the Commission as of the date it was mailed. While the "Profiles Entity Browse" screen submitted by the Division indicates Protestant's address as 8888 S. 888th East Ave., ANYTOWN, OK as of February 17, 1999, this has no effect on the sufficiency of the certified mailing five days earlier. The liability outstanding on Tax Warrant No. STSZZZZZZZZZZ-ZZ is a valid debt owing to the State of Oklahoma, and Protestant's protest should be denied insofar as it pertains to this liability.

DISPOSITION

IT IS, THEREFORE, ORDERED, that the lien against PROTESTANT evidenced by Tax Warrant No. STSXXXXXXXXXX-XX be withdrawn and held for naught. Any tax refunds previously suspended and applied to this liability are hereby ordered to be reapplied to the liability evidenced by Tax Warrant No. STSZZZZZZZZZZ-ZZ. Protestant's protest to the suspension of his 2002 income tax refund and to the claim of the Account Maintenance Division on account of the tax liability evidenced by Tax Warrant No. STSZZZZZZZZZZ-ZZ, is 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.