JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-03-02-02
ID: P-03-179-H
DATE: MARCH 2, 2004
DISPOSITION: DENIED
TAX TYPE: INCOME INTERCEPT
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held in this matter on December 16, 2003, at approximately 10:00 a.m. and upon conclusion of the hearing the record in this matter was closed and this case was submitted for decision December 16, 2003.

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence and the position letters, briefs and supplemental arguments of the parties, the undersigned finds:

FINDINGS OF FACT

1. That TAXPAYER (hereinafter "Protestant"), was listed and signed as the managing officer of BUSINESS, LLC on the Oklahoma Tax Commission Business Registration Application filed on or about June 10, 1998.[1]

2. That on September 24, 1999, the Division caused to be issued a proposed sales tax assessment[2] against the Protestant for the periods of June 1998 through May 1999, with interest through October 29, 1999, as follows:

Estimated Tax:	$4,375.00
Penalty:	437.50
Interest:	536.08
Total:	$5,348.58

3. That on or about September 24, 1999, the proposed assessment was forwarded by certified mail to the last known address of BUSINESS, 555 ANY STREET, XYZ TOWN, OKLAHOMA, as reflected on BUSINESS, LLC's Business Registration application.[3]

4. That the notice of proposed assessment was returned marked "moved".[4]

5. That on or about October 8, 1999, the proposed assessment was forwarded by certified mail to the Protestant's last known address according to the records of the Oklahoma Tax Commission to 123 FAKE STREET, XYZ TOWN, OKLAHOMA.[5]

6. That the second notice of proposed assessment was returned marked "unclaimed".[6]

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

8. That on November 24, 1999, the Division caused to be filed against the Protestant tax warrant no. SALES TAX WARRANT 1 in Payne County, State of Oklahoma.[7]

9. That the total amount of indebtedness[8] of the Protestant to the State of Oklahoma represented by the warrant was as follows:

Sales Tax:	$4,021.07
Penalty:	402.10
Interest:	519.23
Tax Warrant Fees:	216.00
Total:	$5,158.40

10. That on or about September 14, 1998, the Protestant signed a sales tax report for period of August 1998, and remitted the tax due in the amount of $296.77, by check no. 18, which was also signed by the Protestant.[9]

11. That on April 15, 2003, the Protestant filed an individual income tax return with the State of Oklahoma for tax year 2002 claiming a refund in the amount of $383.00.[10]

12. That the 2002 return and W-2 Wage & Tax Statement attached thereto reflect that the income is attributable solely to the employment and withholding of Protestant.[11]

13. That on June 27, 2003, the Division notified the Protestant that the 2002 income tax refund in the amount of $383.00 was to be applied to the sales tax liability represented by tax warrant no. SALES TAX WARRANT 1, and further advised the Protestant of her right to protest the application of the refund to the outstanding sales tax liability.[12]

14. That by letter received by the Division on July 25, 2003, the Protestant timely protested the application of the 2002 refund to the outstanding sales tax liability.[13]

15. The records of the Division[14] reflect that the balance, through November 30, 2003, of sales tax warrant no. SALES TAX WARRANT 1 is as follows:

Sales Tax:	$4,000.00
Penalty:	400.00
Interest:	2,927.32
Tax Warrant Fees:	221.00
Total:	$7,548.32

CONCLUSIONS OF LAW

1. That the Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[15]

2. That the Oklahoma 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.[16]

3. 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.[17] No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[18]

4. A challenge to the validity of the debt requires a determination that the notice of assessment, which gave rise to the debt, was provided in a manner that satisfies due process requirements.[19]

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 in accordance with statutory due process requirements.[20]

6. In a divorce, the Court may order either spouse to hold the other harmless as to debts[21], but the Court cannot enter orders affecting the indemnified spouse's liabilities to other parties not before the Court[22].

7. That in all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof[23] to show the action of the Commission is incorrect, and in what respect.[24]

8. That in this matter the Protestant has failed to meet her burden of proof. The Protestant has not presented any evidence or made any allegation that the sum claimed by Division is incorrect, or that the sum is not due and owing. No adjustment to the income tax refund claim is required and the balance due shall be a continuing debt until paid in full[25]

In finding that the Division complied with statutory due process requirements in providing the notice of the assessment to the Protestant, the assessment was final and absolute when it was not protested within thirty (30) days[26] of the mailing of the proposed assessment.

In this matter no allegation was made or evidence submitted by the Protestant to dispute the Division's testimony, and exhibits admitted into evidence. According to the records of the Oklahoma Tax Commission the balance of tax warrant no. SALES TAX WARRANT 1 was $7,548.32, with interest calculated through November 30, 2003, and no adjustment should be made to the claim. The Protestant's 2002 income tax refund in the amount of $383.00 is due solely to the income of Protestant and the balance of the debt far exceeds the amount of the Protestant's 2002 refund.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based on the above and foregoing findings and conclusions, 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.

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[1]See Exhibit "A". The Protestant does not dispute that she signed the business registration application.

[2]See Exhibit "B".

[3]See Note 1.

[4]See Note 2.

[5]See Exhibit "C". The Protestant testified that this was her home address at the time the assessment was mailed and continues to be her home address today. The Protestant further testified that during the pendency of her divorce she was living at temporary place(s). The Division was not notified of any change(s) in address of the Protestant.

[6]See Note 5.

[7]See Exhibit "D". The Division also listed the Protestant's address on the tax warrant as 123 FAKE STREET, XYZ TOWN, OKLAHOMA.

[8]See Note 7.

[9]See Exhibit "H". The Protestant does not dispute that she signed and submitted the August 1998 sales tax report and the check. This exhibit also addresses the replacement of the estimated sales tax amount of the assessment for August 1998 with the actual sales tax amount reflected on the report and credit for the remittance.

[10]See Exhibit "E". The Protestant's address on the 2002 return is listed as 123 FAKE STREET, XYZ TOWN, OKLAHOMA.

[11]See Note 10.

[12]See Exhibit "F".

[13]See Exhibit "G". The basis of the protest as stated in the letter was that the Protestant did not have any responsibility or authority as to BUSINESS, LLC, which was under the control of her husband, EX-HUSBAND, during the assessment period. The Protestant

further stated that she was divorced from her husband on August 21, 2001, and that pursuant to the divorce decree, he was the sole owner and solely responsible for the debts and liabilities of BUSINESS, LLC. A copy of the divorce decree attached to the protest filed with the Court states in pertinent part [**hold the Plaintiff (Protestant) harmless from ... any taxes or other liabilities due and owing on account of the respective corporations awarded the defendant**].

[14]See Exhibit "I".

[15]68 O.S. § 205.2(B):

> If the district court or agency asserting the claim receives a written request from the debtor or taxpayer against whom no debt or final judgment is claimed requesting a hearing, the agency or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt or final judgment asserted by the district court or the agency, no action shall be taken in furtherance of the collection of the debt or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act.

[16]68 O.S. § 205.2(E):

> The Tax Commission shall 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 such refund.

[17]See Note 15.

[18]See Note 15.

[19]See Note 15 and *Commission Order No. 2001-01-30-002.*

[20]68 O.S. § 208:

> Any notice required by this article, or any state tax law, to be given by the Tax Commission shall be in writing and may be served personally or by mail. If mailed, it shall be addressed to the person to be notified at the last-known address of such person. As used in this article or any other state tax law, "last-known address" shall mean the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice, or if no address appears on the records of that division,

> the last address given as appears on the records of any other division of the Tax Commission. If no such address appears, the notice shall be mailed to such address as may reasonably be obtainable. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. If the notice has been mailed as provided in this section, failure of the person to receive such notice shall neither invalidate nor be grounds for invalidating any action taken pursuant thereto, no shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.

[21]See *Commission Order No. 1994-01-06-025,* citing ***Teel v. Teel***, 1988 OK 151, 766 P.2d 994.

[22]See Note 21, citing ***Stevenson v. Stevenson***, 1984 OK CIV APP 10, 680 P.2d 642.

[23]*OAC 710:1-5-200(f).* The standard of review in an administrative proceeding is preponderance of the evidence. *Oklahoma Tax Commission Order No. 1999-04-08-003* (citing Oklahoma Tax Commission Order No. 1991-10-17-061. OAC 710:1-5-77(b) provides in pertinent part that "preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[24]*OAC 710:1-5-47*. See ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.

[25]68 O.S. §205.2(C) in pertinent part states:

> However, if the tax refund due is inadequate to pay the collection expense and debt or final judgment, the balance due the state agency or the district court shall be a continuing debt or final judgment until paid in full.

[26]Prior to July 1, 2002, a taxpayer had thirty (30) days after a proposed assessment was mailed within which to file a written protest. 68 O.S. § 221 was amended, effective July 1, 2002, to provide a sixty (60) day protest period.