

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-06-29-17
ID: P-04-047-K
DATE: JUNE 29, 2004
DISPOSITION: DENIED
TAX TYPE: INCOME INTERCEPT
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing held was held in this cause on April 21, 2004, in accordance with 68 O.S. 2001, § 205.2(B). Protestant, TAXPAYER, Social Security Number XXX-XX-XXXX, did not appear at the hearing although notice of the hearing was served on Protestant in accordance with 68 O.S. 2001, § 208. OTC ATTORNEY, Assistant General Counsel, General Counsel's Office of the Tax Commission represents the Account Maintenance Division of the Tax Commission (hereinafter "Division").

FINDINGS OF FACT

Upon review of the file and records, including the recording of the hearing and the exhibits received into evidence, the undersigned finds:

1. That during the period of October, 1999 through June, 2001, Protestant was co-owner of and did business as COMPANY.¹
2. That the business, COMPANY, was not registered with the Oklahoma Tax Commission.²
3. That the business was operated out of a shop building located behind the residence at OKLAHOMA ADDRESS 1.³
4. That an audit of the business was commenced for the reason that the records of the Oklahoma Employment Security Commission ("OESC") reflected that Oklahoma income tax was withheld from the wages of the employees of the business, but the records of the Tax Commission did not reflect the filing of any withholding tax returns or the remittance of the withheld income tax to the Commission.⁴
5. That although the auditor requested the withholding tax records of the business, none were provided and consequently, a jeopardy audit was conducted based on five percent (5%) of the amount of wages reported to the OESC.⁵
6. That as a result of the audit, the Division caused to be issued, by letter dated October 10, 2002, a proposed withholding tax assessment against Protestant for the period of October, 1999 through June, 2001 in the amount \$17,125.33, inclusive of tax in the amount of \$10,875.00, interest accrued through November 15, 2002, in the amount of \$3,531.58, and penalty in the amount of \$2,718.75.⁶

7. That the proposed assessment was mailed to OKLAHOMA ADDRESS 1, Protestant's last known address as reflected by the income tax records of the Commission.⁷
8. That the letter of assessment was not returned nor did Protestant protest the assessment or seek an abatement thereof within the time period allowed by statute.⁸
9. That Tax Warrant No. ITW NUMBER, evidencing the liability of Protestant for the withholding tax, interest and penalty assessed for the above-stated period, was filed against Protestant in Oklahoma County on April 8, 2003.⁹
10. That on or about January 25, 2004, Protestant electronically filed her 2003 State of Oklahoma Individual Income Tax Return, Form 511, claiming a refund in the amount of \$779.00.¹⁰
11. That the filing status reflected on Protestant's 2003 Oklahoma income tax return was "Head of household with qualifying person".¹¹
12. That the refund claimed on the 2003 income tax return is attributable solely to the employment and withholding of Protestant.¹²
13. That pursuant to 68 O.S. 2001, § 205.2, the Division intercepted Protestant's income tax refund, and on January 27, 2004, notified Protestant of her right to protest the petition to apply the intercepted refund to Protestant's outstanding tax liability.¹³
14. That a timely protest of the notice of intercepted refund was received by the Division on March 16, 2004, stating: (1) that TAXPAYER never owned the business; (2) that her husband had owned the business at one time, but filed bankruptcy on the company; (3) that the bankruptcy included the Tax Commission, and (4) that the LLC papers for the company do not show her name.¹⁴
15. That the update liability of Protestant to the Tax Commission for withholding tax, interest, penalty, warrant penalty, release fee and filing fee is \$19,578.14 and the amount in controversy is \$779.00.¹⁵

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. 2001, § 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. 2001, § 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. 2001, § 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 intercepted refund is required.

DISPOSITION

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

¹ Exhibit A which is a copy an Oklahoma Employment Security Commission record showing the Employer name, Address and Status. OTC AUDITOR, Field Auditor, Audit Division of the Tax Commission testified that Protestant was also listed as co-owner of COMPANY on the audit lead and the joint income tax returns filed by Protestant and her then husband, EX-HUSBAND.

² Testimony of OTC AUDITOR.

³ Testimony of OTC AUDITOR.

⁴ Paragraph 1 of the Statement of Facts of the Division's MemorandumBrief filed in the Office of the Administrative Law Judge on April 13, 2004.

⁵ Testimony of OTC AUDITOR wherein he stated that he visited by telephone with a female who identified herself as TAXPAYER and made an on premise visit to the residence.

⁶ Exhibit B.

⁷ Exhibits B, C and C-1, and the Testimony of OTC AUDITOR.

⁸ Paragraph 3 of the Statements of Fact of the Division's Memorandum Brief and the Testimony of OTC AUDITOR. See also, 68 O.S. 2001, §221(C) and (E).

⁹ Exhibit D.

¹⁰ Exhibit E.

¹¹ See, Note 10.

¹² See, Note 10.

¹³ Exhibit F.

¹⁴ Exhibit G.

¹⁵ Exhibit H and E.