JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-07-13-10
ID: P-04-038-H
DATE: JULY 13, 2004
DISPOSITION: DENIED
TAX TYPE: INCOME INTERCEPT
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held in the matter on April 26, 2004, at 9:30 a.m. PROTESTANT d/b/a RESTAURANT ("Protestant") appears *pro se*.[1] Upon conclusion of the hearing the record in this matter was closed. The case was submitted for decision on April 26, 2004.

FINDINGS OF FACT

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:

1. Oklahoma Tax Commission records contain a business registration form dated February 20, 1999, identifying Protestant as the owner of RESTAURANT, a restaurant located at OKLAHOMA ADDRESS.[2]

2. By letters dated September 22, 2000, the Division sent proposed assessments for delinquent sales and tourism tax to the Protestant at his last-known address as it appeared on his business registration form.[3] The assessments, covering the tax period from April 1999 through May 2000, assessed additional sales and tourism tax in the following amounts:

Sales Tax		**Tourism Tax**	
Tax	$1,750.00	Tax	$280.00
Interest	248.92	Interest	39.77
Penalty	175.00	Penalty	28.00
Total	$2,173.92	Total	$347.77

3. Protestant failed to protest the assessments within thirty (30) days and the assessment became final.

4. Tax Warrants No. WARRANT 1 and No. WARRANT 2 were filed in Stephens County against Protestant for the delinquent amounts.[4]

5. On or about February 6, 2004, Protestant filed a 2003 Oklahoma individual income tax return claiming a refund of $94.00.[5]

6. On February 11, 2004, the Division notified the Protestant that his $54.00 refund had been delayed due to his outstanding sales and tourism tax liability.[6]

7. By letter dated March 1, 2004, the Protestant filed a protest to the Division's claim to his 2003 income tax refund stating that he was not responsible for the liability.[7]

8. A hearing was held April 26, 2004, at 9:30 a.m. during which the Protestant reasserted his claim that he is not the person responsible for the liability.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[8]

2. 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.[9]

3. 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.[10] No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[11]

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.[12]

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.[13]

6. In all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof[14] to show the action of the Commission is incorrect, and in what respect.[15]

7. In this matter the Protestant has failed to meet his 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.[16]

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[17] 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. WARRANT 1 was $2,394.92, and the balance of Tax Warrant No. WARRANT 2 was $403.55, with interest calculated through November 10, 2000, and no adjustment should be made to the claim. The Protestant's 2003 income tax refund in the amount of $54.00 is due solely to the income of Protestant and the balance of the debt far exceeds the amount of the Protestant's 2003 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] "*Pro se*" is defined as "For himself; in his own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court." Black's Law Dictionary 5th Edition 1099 (1979).

[2] Exhibit "A".

[3] Exhibits "B" and "G". The assessments were sent by certified mail to the Protestant's last-known address according to the records of the Oklahoma Tax Commission. The assessments were returned "unclaimed". Interest on both assessments was calculated through November 10, 2000.

[4] Exhibit "C".

[5] Exhibit "D". Forty Dollars of the $94.00 refund resulted from a credit for sales tax relief and was not intercepted by the Division.

[6] Exhibit "E".

[7] Exhibit "F". Protestant states in his letter that he allowed his nephew, NAME SIMILAR TO PROTESTANT'S to use his social security number to obtain a sales tax permit. Protestant asserts that he worked for his nephew at the restaurant but that he did not own or otherwise run the business.

[8] 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.

[9] 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.

[10] See Note 8.

[11] See Note 8.

[12] See Note 8 and *Commission Order No. 2001-01-30-002*.

[13] 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, nor shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.

[14] 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.

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

[16] 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.

[17] 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.