JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-05-03-09
ID:	P-04-179-H
DATE:	MAY 3, 2005
DISPOSITION:	DENIED
TAX TYPE:	INCOME INTERCEPT
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

TAXPAYER ("Protestant") appears *pro se.*[1] OTC ATTORNEY 1, and OTC ATTORNEY 2, Office of General Counsel, Oklahoma Tax Commission, represent the Account Maintenance Division of the Oklahoma Tax Commission ("Division").

PROCEDURAL HISTORY

A hearing in this matter was originally scheduled for January 20, 2005, at 9:30 a.m. On January 12, 2005, the Division filed a Motion To Issue Amended Scheduling Order.[2] On January 13, 2005, the Division's motion was granted and the hearing was rescheduled for February 15, 2005, at 9:30 a.m., with briefs and/or position letters due on or before February 8, 2005. The Protestant did not file a response. The Division filed its Position Letter on February 8, 2005. The hearing was held on February 15, 2005, at approximately 9:30 a.m. The Protestant was present at the hearing. The Division called one witness, DIVISION'S WITNESS, Unit Manager, Account Maintenance Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division's Exhibits A through M were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on February 15, 2005.

FINDINGS OF FACT

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

1. On July 11, 1989, the Protestant was charged in Oklahoma County with filing false and fraudulent Oklahoma income tax returns for tax years 1987 and 1988.[3]

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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 1099 (5th ed. 1979).

[2] The Protestant had requested an accounting of all payments made during his restitution plan. The information had to be obtained from the Division and the Department of Corrections.

[3] Division's Exhibit A. *State of Oklahoma v. PROTESTANT AND MRS. PROTESTANT,* In the District Court of Oklahoma County, Case Number XX-99-99999. The Defendants were charged under OKLA. STAT. ANN. tit. 68, § 2376(B) (West 2001), which states:

> Any person, natural or corporate, or any officer or agent of any corporation who, with intent to defraud the state, or evade the payment of any income tax, files a state income tax return

2. On March 6, 1990, the Protestant plead guilty to the charges of filing false and fraudulent Oklahoma income tax returns for tax years 1987 and 1988.[4]

3. In connection with his guilty plea, the Protestant agreed to pay restitution, by making monthly payments in the amount of $496.80, beginning on April 1, 1990, and continuing on the first of every month, until the total amount of the restitution to the Oklahoma Tax Commission in the amount of $59,616.00 was paid in full.[5]

4. The records of the Division indicate that the Protestant did not make any restitution payments until July 22, 1999.[6]

5. On or about July 19, 1999, the Protestant entered into a Second Restitution Agreement ("Second Agreement") in which he agreed to make monthly payments in the amount of $400.00, beginning on August 1, 1999, and continuing thereafter on the first of each month, until the full amount of the restitution to the Oklahoma Tax Commission was paid in full. The amount of restitution remained $59,616.00, as set out in the original restitution agreement.[7]

6. The Protestant has made restitution payments under the Second Agreement totaling $26,293.00, from July 22, 1999, to January 10, 2005.[8]

7. The Tax Commission has also intercepted income tax refunds in the amount of $7.00 from the Protestant's 2000 tax return, $136.00 from the 2001 tax return, and $107.00 from the 2002 tax return. The refunds totaling $250.00 were applied to the outstanding tax balance for the 1987 tax year.[9]

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which is false in any material items or particular, shall be guilty, upon conviction, of a felony and shall be punished as provided for in subsection A of Section 241 of this title.

[4] Division's Exhibit B.

[5] Division's Exhibit C.

[6] Division's Exhibit D. At the hearing, the Protestant testified that he attempted to make payments according to the terms of the March 12, 1990, *Summary of Restitution Payments* and that his checks were returned to him by the Tax Commission, because the records did not reflect that he owed any balances on the 1987 and 1988 income tax returns as filed.

[7] Division's Exhibit E. The Protestant testified that this matter did not come up again, until he filed for bankruptcy, and listed the liabilities for the tax years 1987 and 1988. It was at this time the Second Agreement was entered into with the District Court in July 1999.

[8] Division's Exhibit D.

[9] Division's Exhibit F.

8. On August 27, 1999, Tax Warrant #1 was filed in Cleveland County against the Protestant. The total amount due at the time of filing, including tax, interest, and penalty, was $60,287.68.[10]

9. As of January 12, 2005, the Protestant's income tax liability[11] for the 1987 and 1988 tax years is as follows:

	1987	1988	Total
Tax Due	$ 0.00	$26,538.00	$26,538.00
Interest	10,225.45	23,716.13	33,941.58
Penalty	2,464.20	2,815.90	5,280.10
Total	$12,689.65	$53,070.03	$65,759.68

10. On February 25, 2004, the Protestant filed his 2003 Oklahoma individual income tax return, which indicates a filing status of single and a total refund due in the amount of $158.00.[12]

11. On November 12, 2004, the Division notified the Protestant of its intent to apply $118.00 of the Protestant's 2003 income tax refund to the outstanding liability for the 1987 and 1988 tax years.[13]

12. The Division received a letter of protest from the Protestant on December 8, 2004, and another letter dated November 17, 2004 (received December 21, 2004). The Protestant timely protested the Division's claim to the 2003 income tax refund. The Protestant also requested that the Division provide an accounting of how his restitution payments had been applied to the tax years 1987 and 1988.[14]

13. The Protestant does not dispute his liability. The basis of the protest is that the amount of the refund is too small to have a significant impact on reducing the liability, and as a matter of equity, the Protestant should be allowed to keep his refund since he has abided by the terms of the Second Agreement.[15]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[16]

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[10] Division's Exhibit L. The Protestant's original income tax returns for the tax years 1987 and 1988 were filed on April 13, 1988, and April 15, 1989, respectively.

[11] Division's Exhibit H. This amount excludes any fees due on the filing of the tax warrant.

[12] Division's Exhibit I and Exhibit M. The refund amount also includes a $40.00 sales tax relief credit, which is not subject to the Division's claim.

[13] Division's Exhibit J and Exhibit K.

[14] Division's Exhibit K.

[15] During the hearing the Protestant explained the basis of his protest.

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.[17]

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.[18] No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[19]

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.[20]

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.[21]

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[16] OKLA. STAT. ANN. tit. 68, § 205.2(B) (West 2001):

> 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.

[17] OKLA. STAT. ANN. tit. 68, § 205.2(E) (West 2001):

> The Tax Commission shall deduct from any state 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.

[18] See Note 16.

[19] See Note 16.

[20] See Note 16 and *Commission Order No. 2001-01-30-002*.

[21] OKLA. STAT. ANN. tit. 68, § 208 (West 2001):

> 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.

6. In all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof[22] to show the action of the Commission is incorrect, and in what respect.[23]

7. The Protestant has failed to meet his burden of proof. The Protestant admits to owing the income tax liability as set out by the Second Agreement and has offered no evidence to show that the amount is incorrect. The Protestant was represented by counsel[24] both times he entered into restitution agreements in District Court. The refund at issue is solely attributable to the income of the Protestant. The remaining liability owed on the 1987 and 1988 tax years is well in excess of Protestant's refund of $118.00. The Protestant has not cited any authority, which supports his equitable position for receiving the full amount of his 2003 refund.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest to the claim of the Account Maintenance Division to the income tax refund of the Protestant should be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.

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.

[22] OKLA. ADMIN. CODE § 710:1-5-200(f) *(2004)*. 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*. OKLA. ADMIN. CODE § 710:1-5-77(b) (2004), 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.

[23] OKLA. ADMIN. CODE § 710:1-5-47 (2004). See *Enterprise Management Consultants, Inc. v. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

[24] The Protestant testified that his attorney was ATTORNEY.