JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-10-04-15
ID:	P-05-085-K
DATE:	OCTOBER 4, 2005
DISPOSITION:	DENIED
TAX TYPE:	INCOME INTERCEPT
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held in this cause on August 18, 2005, in accordance with 68 O.S. Supp. 2003, § 205.2(B). Protestants, HUSBAND and WIFE, did not appear at the hearing although notice of the hearing was served on Protestants in accordance with 68 O.S. 2001, § 208. DIVISION'S ATTORNEY, 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 Protestant, HUSBAND, is indebted to the State of Oklahoma for sales tax he failed to remit during the periods January, 1985, and March through December, 1985. Division's Exhibits 1 through 11[1], 12 and 13[2], 14 and 15[3] and 20[4].

---

[1] Sales tax reports for the periods January, 1985, and March through December, 1985. Report form 13-15-R-85. The reports were prepared by PREPARER in response to a show cause proceeding and filed February 20, 1986. Testimony of AUDITOR. The reports identify the taxpayer as HUSBAND and are signed by HUSBAND for a business conducted in Nowata, Oklahoma known as B & D TV. ALJ's Exhibit 1.

[2] Sales tax reports for the periods January, 1985, and March through December, 1985. Report form 13-23-R-5-91. The reports were prepared by EMPLOYEE on March 27, 1997, in preparation for the re-filing of sales tax warrants STS11111111 for the period January, 1985 and STS22222222 for the period March through December, 1985. Testimony of AUDITOR. Again, the reports identify the taxpayer as HUSBAND; include his social security number (999-99-9999) and sales tax permit number (111111). The previous sales tax reports, Division's Exhibits 1 through 11, designated an "applied" for sales tax permit number.

[3] Print outs of the Tax Warrant System – Tax Warrant Detail screen showing tax warrants STS 11111111 and STS 22222222 were issued against HUSBAND, Entity Identification number 999999999 and Account number 111111, for the periods in question on March 7, 1986 and filed in Nowata County, State of Oklahoma on April 10, 1986. The tax warrants expired on November 1, 2001, in accordance with 68 O.S. 2001, § 231(B). Attachments 1 and 2 to Protestants' Exhibit 1.

[4] Copy of *Oklahoma Tax Commission Order No. 2003-01-14-003*, wherein the Commission adopted the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 13th day of December, 2002 in the case styled and numbered, "In the Matter of the Protest of HUSBAND to the Claim of the Account Maintenance Division to the Income Tax Refund of HUSBAND and WIFE, Case No. P-02-143." The ALJ in the *Proposed Order* recommended that the protest of HUSBAND to the claim of the Account Maintenance Division to the income tax refund of HUSBAND. and WIFE on their 2001 income tax return be denied as the refund was properly suspended in partial satisfaction of the debt owed to the State of Oklahoma.

2. That as of July 31, 2005, Protestant, HUSBAND'S, liability to the State of Oklahoma is $8,884.72, consisting of tax in the amount of $1,827.50, interest in the amount of $6,828.88 and penalty in the amount of $228.34. Division's Exhibit 19.

3. That a married filing joint 2004 Oklahoma income tax return was filed by Protestants reporting federal adjusted gross income of $103,309.00 and an overpayment of Oklahoma income tax of $258.00. Division's Exhibit 16.

4. That Protestants requested $136.00 of the overpayment be credited to their 2005 estimated tax and $122.00 of the overpayment be refunded to them. Division's Exhibit 16.

5. That pursuant to 68 O.S. 2001, § 205.2(E), the Division intercepted Protestants' income tax refund in the amount of $122.00, and by letter dated March 14, 2005, notified Protestants of the intercept. Division's Exhibit 17.

6. That by letter dated April 18, 2005; Protestants protested the interception of the claim for refund. Division's Exhibit 18 and Protestants' Exhibit 1[5].

7. That the Division does not claim a debt against WIFE.

8. That in response to Protestants' protest letter, the Division by letter dated June 7, 2005, advised that with respect to the Injured Spouse claim, the income and deductions reported on the 2004 income tax return were prorated and all of the refund is attributable to the income and withholding of Protestant, HUSBAND. ALJ's Exhibit 1.

9. That by letter dated July 30, 2005, Protestant, HUSBAND, requested that the income tax refund be released pursuant to OAC, 710:1-5-11(a) upon the information provided. Protestants' Exhibit 2. Attached to the letter were the sales tax reports for January, 1985 and March through December, 1985. Regarding the reports, Protestant states that they were not filed or amounts inserted by him and that the amounts do not march his 1985-1986 federal 1040 filing. Protestant requests that this matter be resolved based on accurate sales tax claimed, approximately $410.00 based on the federal 1040.

10. That Protestant, HUSBAND, does not dispute that he signed the sales tax reports.

11. That the net refund of $122.00 claimed by Protestants is attributable to the income and withholding of Protestant, HUSBAND, since the withholding of Protestant, WIFE, was insufficient to cover her allocated portion of Protestants' 2004 income tax liability. *Addendum to Position Letter of Account Maintenance Division* filed August 17, 2005.

---

[5] Attached to Protestants' letter of April 18, 2005, were *Tax Warrant and Lien Expiration Acknowledgement* for Tax Warrant STS11111111 dated August 9, 2002, *Tax Warrant and Lien Expiration Acknowledgement* for Tax Warrant STS22222222 dated August 9, 2002, January 16, 2003 letter transmitting a certified copy of *Oklahoma Tax Commission Order No. 2003-01-14-003* and the *Proposed Order* of the Administrative Law Judge issued December 13, 2002, March 14, 2005 Notice of Intercept issued to HUSBAND, March 14, 2005 Notice of Intercept issued to WIFE and *Injured Spouse Claim and Allocation*, Form 505, submitted by WIFE.

12. That the amount in controversy is $122.00.

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 the relief which may be granted in this cause is restricted to that which is requested, however it should be noted that the entire amount of the overpayment of income taxes is subject to interception by the Division, See, Oklahoma Tax Commission Order No. 91-06-06-004(Prec.) and Oklahoma Tax Commission Order No. 2000-09-19-041; 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 Protestants, HUSBAND and WIFE, 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.