JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-10-18-05
ID:	P-05-086-H
DATE:	OCTOBER 18, 2005
DISPOSITION:	SUSTAINED IN PART/DENIED IN PART
TAX TYPE:	INCOME INTERCEPT
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

PROCEDURAL HISTORY

On July 20, 2005, the Division forwarded the protest file to the Office of Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.[3] A notice setting this matter for hearing on August 16, 2005, at 1:30 p.m. was sent to the last-known address of the Protestant.[4] The hearing was held as scheduled on August 16, 2005, at approximately 1:30 p.m. The Protestant did not appear at the hearing. For the record it was noted that the Protestant had not contacted the Division, its representative, or this office. The Division called one witness, AUDITOR, Auditor, Account Maintenance Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division's Exhibits A through G were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on August 16, 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 October 10, 2000, the Protestant filed a Business Registration as the sole proprietor of the RESTAURANT located at INTERSTATE and FAKE ROAD, SMALLTOWN

[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] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] OKLA. STAT. ANN. tit. 68, § 208 (West 2001). The notice was sent to the address of P.O. Box 111, SMALLTOWN, Oklahoma 99999.

Oklahoma 99999. The Protestant listed her mailing address on the Business Registration as Rt. 9, Box 999, SMALLTOWN, Oklahoma 99999.[5]

2. On June 18, 2001, a "Notice of Proposed Assessment of Taxes" was sent to the Protestant by Certified Mail, Return Receipt Requested. The Return Receipt was signed by the Protestant on June 20, 2001.[6] The assessment proposed estimated amounts for the following delinquent periods and tax types:

Sales Tax	$1,568.00	03/01 through 06/01
Tourism Tax	$ 57.00	10/00, 03/01 through 06/01
Withholding Tax	$ 342.00	10/00 through 06/01

The assessment also noted that the Protestant had outstanding sales tax liability for reports filed without remittances in the amount of $1,284.00 for 11/00, 12/00, and 02/01.[7]

3. On August 13, 2001, Tax Warrant No. STS1[8] was filed against the Protestant for sales tax for 10/01/2000 through 10/31/2000 and 03/01/2001 through 06/30/2001, as follows:

Total Tax	$1,750.00
Interest to Date of Issuance	73.19
Penalties to Date of Issuance	175.00
Tax Warrant Penalty	199.82
Filing Fee	26.00
Total Amount Due	$2,224.01

4. The Protestant filed her 2004 Oklahoma Individual Income Tax Return reflecting a refund due in the amount of $363.00, which included a Sales Tax Relief Credit in the amount of $80.00.[9]

5. On February 9, 2005, the Division notified the Protestant of its intent to apply $283.00 of the Protestant's 2004 income tax refund to the outstanding sales tax liability covered by Tax Warrant No. STS1 in the amount of $2,798.84.[10]

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[5] Division's Exhibit B. The Protestant is also known as VARIOUS COMBINATIONS OF NAME AND INITIALS

[6] Division's Exhibit B.

[7] Division's Exhibit A. The Division did not receive a protest to the proposed assessment.

[8] Division's Exhibit C. The Division's assessment does not contain an estimated sales tax liability for October 2000. According to Division's Exhibit G, this period is estimated and, according to testimony of the Division's witness, has not been assessed.

[9] Division's Exhibit D. The address on the 2004 return was P.O. Box 111, SMALLTOWN, OK.

[10] Division's Exhibit E and Exhibit G.

6. On February 16, 2005, the Division received a timely letter of protest to the Division's claim to the 2004 income tax refund. The Protestant asserted that the RESTAURANT was not open the last six (6) months covered by the assessment and also included a claim of hardship due to the Protestant's income.[11]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[12]

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.[13]

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.[14] No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[15]

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.[16]

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[11] Division's Exhibit F.

[12] 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.

[13] 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.

[14] *See* Note 12.

[15] *See* Note 12.

[16] *See* Note 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.[17]

6. In all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof to show the action of the Commission is incorrect, and in what respect.[18]

7. The Protestant has failed to meet her burden of proof. The Protestant has offered no evidence to show that the amount is incorrect. However, the tax warrant filed by the Division contains the period of October 2000, which was not assessed according to the record. The Division's records should be corrected, but the remaining sales tax liability for the periods of March 1, 2001, through June 30, 2001, represented by Tax Warrant No. STS1 is still well in excess of the Protestant's refund of $283.00. The Protestant has not cited any authority which supports her equitable position for receiving the full amount of her 2004 refund.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case that the protest should be sustained in part and denied in part.

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the findings and conclusions as set out above that the protest be sustained as to the sales tax period of October 2000, which was not assessed against the Protestant.

It is further the ORDER of the OKLAHOMA TAX COMMISSION, based upon the findings and conclusions as set out above, that the protest to the claim of the Division to the 2004 income tax refund of the Protestant should be denied.

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[17] 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. 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.

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

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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.