JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-11-30-03 (NON-PRECEDENTIAL)
ID:	P-05-002-K
DATE:	NOVEMBER 30, 2005
DISPOSITION:	DISMISSED
TAX TYPE:	INCOME INTERCEPT
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS cause comes on for decision pursuant to assignment regularly made by the Tax Commission to ALJ, Administrative Law Judge.

A hearing was held in this cause on October 11, 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. 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 on April 8, 1988, as a result of a field audit of the books and records of Protestant, HUSBAND, the Division issued a withholding tax assessment against HUSBAND d/b/a CONSTRUCTION COMPANY for the period of January, 1985 through December, 1986, in the total amount of $8,433.36, inclusive of tax in the amount of $5,198.06, interest accrued through April 15, 1988 in the amount of $1,833.89 and delinquency penalty in the amount of $1,401.41. Exhibit 1.

2. That the withholding tax assessment was not timely protested and as a result the Tax Commission on January 14, 1991 caused to be filed against HUSBAND d/b/a CONSTRUCTION COMPANY, Tax Warrant No. ITW 01 in Oklahoma County, Oklahoma, for the unpaid withholding tax, interest and penalty. Exhibit 2.[1]

3. That the Protestants filed their 2001 joint State of Oklahoma personal Income Tax Return on April 15, 2005, claiming a refund of $947.00. Exhibit 3.

4. That the Protestants filed their 2002 joint State of Oklahoma personal Income Tax Return on October 8, 2004, claiming a refund of $253.00. Exhibit 4.

[1] The total amount reported due, including interest accrued through the date of issuance of the Tax Warrant was $10,601.29.

5. That the Protestants filed their 2003 joint State of Oklahoma personal Income Tax Return on October 8, 2004, claiming a refund of $850.00. Exhibit 5.

6. That the Protestants filed their 2004 joint State of Oklahoma personal Income Tax Return on April 15, 2005, claiming a refund of $108.00. Exhibit 6.

7. That pursuant to 68 O.S. Supp. 2003, § 205.2, the Division intercepted Protestants' joint income tax refunds for tax years 2001 through 2004, and by separate letters to each of the Protestants dated October 20, 2004, May 13, 2005 and May 24, 2005, notified Protestants of their rights to protest the petitions to apply the intercepted refunds to the withholding tax liability of Protestant, HUSBAND. Exhibits 7 through 12.

8. That a letter of protest to the interception of the 2002 and 2003 income tax refunds of Protestants was filed January 11, 2005. Exhibit 13.

9. That a letter of protest to the interception of the 2001 and 2004 income tax refunds of Protestants has not been filed. Testimony of AUDITOR.[2]

10. That as of July 31, 2005, the liability of Protestant, HUSBAND, for withholding tax, interest and penalty is $17,939.87, inclusive of tax in the amount of $2,638.06, interest of $13,900.40 and penalty of $1,401.41. Exhibit 14.

11. That the amount in controversy is $1,103.00.

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. Supp. 2003, § 205.2(B); including the dismissal thereof, *OAC*, 710:1-5-46(c)[3]; 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. Supp. 2003, § 205.2(E); that when the Tax Commission seeks to collect a final judgment the Division is required to send notice to the judgment debtor by first class mail at his/her last known address, 68 O.S. Supp. 2003, § 205.2(A)(2)[4]; that the debtor may contest the claim by sending a written request to the Division for a hearing to protest the claim and if the debtor fails to apply for a hearing within sixty (60) days after the receipt of the notice, the debtor shall be deemed to have waived his or her opportunity to contest the claim, 68 O.S. Supp. 2003, § 205.2(A)(2)(d); and that here the evidence proves the Protestants failed to timely contest the Division's claim to their joint income tax refunds for tax years 2001 through 2004 by sending a written request for a hearing to protest the claim within sixty (60) days of receipt of the notices.

---

[2] Auditor II, Account Maintenance Division, Oklahoma Tax Commission.

[3] Amended at Ok Reg. 1517, eff. 6-11-05.

[4] When the Tax Commission seeks to collect a debt not reduced to final judgment the Division is required to send notice to the debtor by regular mail at his/her last known address. 68 O.S. Supp. 2003, § 205.2(A)(2).

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is ORDERED that the protest of Protestants, HUSBAND and WIFE be dismissed. It is further ORDERED that income tax refunds of Protestants for tax years 2001 through 2004, in the aggregate amount of $2,158.00, be applied to the withholding tax liability of HUSBAND d/b/a CONSTRUCTION COMPANY as evidenced by the April 8, 1988 proposed withholding tax assessment and the records of the Account Maintenance Division of the Tax Commission.

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.