JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-12-15-13 (NON-PRECEDENTIAL)
ID:	P-05-132-H
DATE:	DECEMBER 15, 2005
DISPOSITION:	DENIED
TAX TYPE:	INCOME INTERCEPT
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

TAXPAYER ("Protestant") appears pro se.[1] The Account Maintenance Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On September 15, 2005, the protest file was received from the Division for further proceedings consistent with the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.[3] On October 6, 2005, the parties were notified by mail that this matter was set for hearing on November 3, 2005, at 1:30 p.m. The notice was mailed to the Protestant at his last known address.[4] The hearing was held on November 3, 2005, at 1:30 p.m. The Protestant did not appear. It was noted for the record that the Protestant had not contacted the Division or this office concerning the hearing. 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 1 through 15 were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and this matter was submitted for decision on November 3, 2005.

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, the undersigned finds:

1. On August 3, 1994, the Protestant d/b/a BUSINESS filed Oklahoma Sales Tax Reports for January 1994 through July 1994, pursuant to a Notice to Show Cause Order.[5] The

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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] 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 mailed to the Protestant at 123 FAKE STREET, ANYTOWN, Oklahoma 99999. The notice was not returned by the U.S. Postal Service as undelivered.

[5] Division's Exhibits 1 through 7. All seven (7) sales tax reports were signed by the Protestant.

Protestant entered into a pay plan agreement with the Collections Division of the Oklahoma Tax Commission based upon the balances of the sales tax reports.[6]

2. As part of the pay plan, the Division filed Tax Warrant STS-01 on September 6, 1994, against the Protestant in RANDOM County, Oklahoma.[7]

3. On April 15, 2005, the Protestant filed his 2004 Oklahoma Income Tax Return, jointly with SPOUSE claiming a refund of $413.00.[8]

4. On May 24, 2005, the Division notified the Protestant by letter of its intent to apply the 2004 income tax refund in the amount of $413.00 to the outstanding sales tax liability.[9]

5. On May 24, 2005, the Division notified SPOUSE by letter that the Division intended to apply the 2004 income tax refund to the Protestant's outstanding sales tax liability. The letter advised SPOUSE that she could assert her claim for refund by filing Oklahoma Tax Commission Form 505, Injured Spouse Claim and Allocation.[10]

6. On July 26, 2005, the Division received a timely filed letter of protest from the Protestant.[11] No protest was received from SPOUSE.

7. On August 5, 2005, the Division responded to the Protestant by letter stating that the pay plan had not been completed and that only $887.72 had been received, which had been applied to the outstanding sales tax liability.[12]

8. As of August 31, 2005, the balance of the Protestant's sales tax liability was $9,261.91.[13]

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[6] Division's Exhibit 8. The letter from the Pay Plan Section confirmed the terms and conditions of the pay plan and noted that on August 3, 1994, a payment of $425.00 was received for payment of the tourism tax for the months of January 1994 through July 1994 in the amount of $54.58, and the down payment for the sales tax pay plan in the amount of $370.42. The pay plan was set up for eighteen (18) months, beginning September 3, 1994, with monthly payments of $258.65. At the time of the letter, the sales tax owed was $4,156.08, plus penalty of $378.57, interest of $483.63, and a tax warrant filing fee of $8.00, for a total due of $5,026.28.

[7] Division's Exhibit 9.

[8] Division's Exhibit 10. The address on the return is 99999 ANYSTREET, SMALLTOWN, OK 99999.

[9] Division's Exhibit 11. The notice was mailed to99999 ANYSTREET, SMALLTOWN, OK 99999.

[10] Division's Exhibit 12. The notice was mailed to 99999 ANYSTREET, SMALLTOWN, OK 99999.

[11] Division's Exhibit 13. The basis of the protest was that all the taxes had been paid in full through a CPA in BIG CITY, but that the Protestant's ex-wife had destroyed all of the records after seven (7) years. The Protestant listed a new address of 123 FAKESTREET, ANYTOWN, OK 99999.

[12] Division's Exhibit 14. Only the initial down payment of $370.42 and two (2) monthly payments of $258.65 were received under the pay plan agreement, for a total of $887.72.

[13] Division's Exhibit 15.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[14]

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.[15]

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.[16] No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[17]

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.[18]

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.[19]

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[14] 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.

[15] 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.

[16] *See* Note 14.

[17] *See* Note 14.

[18] *See* Note 14.

[19] 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

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.[20]

7. The Protestant has failed to meet his burden of proof. The Protestant has offered no evidence to show that the amount is incorrect or that any adjustment to the claim should be made.

DISPOSITION

It is 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 TAXPAYER 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.

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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.

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