JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-05-01-38 (NON-PRECEDENTIAL)
ID:	P-07-029-H
DATE:	MAY 1, 2007
DISPOSITION:	DENIED
TAX TYPE:	INCOME INTERCEPT
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Account Maintenance Division ("Division"), Oklahoma Tax Commission, appears by and through OTC ATTORNEY 1, Assistant General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On February 23, 2007, the protest file was received by this office 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 March 6, 2007, a letter was mailed to the parties stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-07-029-H. The letter also advised the parties that the matter had been set for hearing before the undersigned on March 22, 2007, at 1:30 p.m., with position letters or memorandum briefs due on or before March 15, 2007. The notice of hearing was sent to the last known address of the Protestant.[4] On March 9, 2007, the Division's Memorandum Brief was filed with this office. No further filings were received from the Protestant.

The hearing was held as scheduled on March 22, 2007, at 1:30 p.m. The Protestant did not appear at 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 A through H were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on March 22, 2007.

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[1] "**pro se**" (proh **say** *or* **see**), *adv*. & *adj*. [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (8th ed. 2004), available at *http://westlaw.com*. (March 16, 2006).

[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 PROTESTANT'S ADDRESS.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence and the Division's Brief, the undersigned finds:

1. On February 13, 1998, the Division issued a proposed Sales Tax Assessment[5] against the Protestant, as Vice-President of RESTAURANT,[6] and as an Individual, for the estimated periods of March 1997 through December 1997, as follows, to-wit:

Sales Tax:	$18,000.00
Interest thru 03/27/98:	1,565.77
Penalty:	1,800.00
Total	$21,365.77

2. The proposed Sales Tax Assessment was sent to the Protestant via certified mail ####, with a return receipt requested, to PROTESTANT'S ADDRESS. The Protestant signed the return receipt or "green card" on February 14, 1998.[7]

3. The Protestant did not file a protest to the proposed Sales Tax Assessment, which became final thirty (30) days from February 13, 1998, the date the assessment was mailed by the Division.[8]

4. On September 5, 2006, Tax Warrant No. STS###03 was filed with the County Clerk of RANDOM County as L-###.[9]

5. On October 3, 2006, the Tax Commission received the Protestant's State of Oklahoma Income Tax Return (Form 511) for the 2005 tax year claiming a refund of $923.00.[10]

6. On October 16, 2006, the Division mailed a notice to the Protestant that her 2005 income tax refund for $923.00 has been delayed to a reported liability owed to the Tax

[5] Division's Exhibit A.

[6] *See* Division's Exhibit C. The Business Registration was received by the Tax Commission on or about January 7, 1997, and lists the Protestant as the Vice-President of RESTAURANT. RESTAURANT received its Certificate of Incorporation on December 5, 1996, from the Oklahoma Secretary of State.

[7] Division's Exhibit B.

[8] Testimony of AUDITOR. *See* OKLA. STAT. tit. 68, § 221(C) (West 2001). *See also* OKLA. STAT. ANN. tit. 68, § 221(E) (West 2001).

[9] Division's Exhibit D. The tax warrant reflects the total balance due for the estimated periods of March 1997 through December 1997 as $44,427.11.

[10] Division's Exhibit G. The Protestant's income tax return and the W-2 attached to the return both reflect that the Protestant's address as PROTESTANT'S ADDRESS.

Commission for Sales Tax for the Periods of March 1997 through December 1997, as reflected by Tax Warrant No.STS###03.[11]

7. On December 8, 2006, the Division received a timely filed protest to the proposed intercept of the Protestant's income tax refund for the 2005 tax year. The basis of the protest is that the Protestant was an investor only in RESTAURANT and did not have authority to sign checks or to make any decisions.[12]

8. The balance of Sales Tax, with interest calculated through March 30, 2007,[13] is as follows, to-wit:

Sales Tax:	$ 6,247.43
Interest:	10,698.09
Penalty:	927.76
TW Fees	226.00
Total	$18,099.28

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]

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[11] Division's Exhibit E.

[12] Division's Exhibit F.

[13] Division's Exhibit H. Subsequent to the assessment, Actual Sales Tax Reports were filed by RESTAURANT for the periods of March 1997 through December 1997, with Sales Tax totaling $9,277.43 and payments of $3,030.00 equaling $6,247.43 in Sales Tax still due.

[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.

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] The Division sent the proposed assessment to the last known address of the Protest by certified mail, return receipt requested. The Protestant signed the return receipt or "green card" on February 14, 1998. The Division's notice of assessment was provided in a manner that satisfied due process requirements.

5. 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.[19]

6. The Protestant has failed to meet her 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. The Protestant has not cited any authority, which supports her equitable position for receiving the full amount of her 2005 refund.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest to the claim of the Division to the 2005 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.

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[16] *See* Note 14.

[17] *See* Note 14.

[18] *See* Note 14.

[19] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999). *See Enterprise Management Consultants, Inc. v. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.