JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-06-19-03 (NON-PRECEDENTIAL)
ID:	P-07-046-H
DATE:	JUNE 19, 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 March 21, 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 28, 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-07-046-H. The letter also advised the parties that this matter had been set for hearing on April 19, 2007, at 1:30 p.m., with position letters or memorandum briefs due on or before April 12, 2007.

On April 11, 2007, the Division's Memorandum Brief was filed; however, no further filings were received from the Protestant.

The hearing was held as scheduled on April 19, 2007, at 1:30 p.m. The Protestant appeared not. The Division called two (2) witnesses, SUPERVISOR, Supervisor, Review Section of the Audit Division, who testified regarding the records of the Audit Division on the withholding assessment issued against the Protestant, and 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 April 19, 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.

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 Memorandum Brief, the undersigned finds:

1. On May 23, 1988, the Division issued a proposed withholding tax assessment[4] against the Protestant f/k/a MAIDEN NAME, as Secretary/Treasurer of COMPANY, and as an individual for the period of January 1, 1985, through December 31, 1988, as follows, to-wit:

Tax Due:	$4,913.80
Interest through 06/15/88:	1,882.80
Delinquency Penalty:	2,006.61
Total Amount Due:	$8,803.21

2. The proposed withholding tax assessment was sent by certified mail, return receipt requested. The Protestant signed the "green card" on June 3, 1988.[5]

3. The proposed withholding tax assessment was not protested within thirty (30) days of the mailing of the proposed assessment. The withholding tax assessment became final and the Division issued Tax Warrant XXX against the Protestant, which was filed in the Tulsa County Clerk's Office on March 22, 1991.[6]

4. On February 18, 2006, the Protestant and her spouse electronically filed their Joint Oklahoma Income Tax Return for the 2005 tax year, claiming a refund of $1,987.00.[7]

5. On March 9, 2006, the Division notified the Protestant by letter that her refund for the 2005 tax year had been delayed due to a reported liability to the Tax Commission reflected by Tax Warrant XXX.[8]

6. On March 9, 2006, the Division notified the Protestant's spouse by letter that his refund for the 2005 tax year had been delayed due to a reported liability owed to the Tax Commission by the Protestant.[9]

7. On March 30, 2006, the Division received a timely filed letter of protest to the proposed intercept of the Protestant's refund for the 2005 tax year. The Protestant notes in the

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[4] Division's Exhibit A.

[5] Division's Exhibit B. The last-known address of the Protestant, according to the records of the Tax Commission, was LAST KNOWN ADDRESS.

[6] Division's Exhibit C.

[7] Division's Exhibit D through D-1.

[8] Division's Exhibit E.

[9] Division's Exhibit F.

letter of protest that she has been divorced from her ex-husband since June 23, 1989, and that the debt of the business belongs to her ex-husband and his partner.[10]

8. The Protestant's spouse did not file a protest to the Division's notice to him mailed on March 9, 2007.

9. At the request of the Protestant, on April 10, 2007, the Division mailed a letter[11] to the Protestant, updating the liability represented by Tax Warrant XXX, as follows, to-wit:

Tax:	$ 1,327.80
Interest through 04/18/07:	13,711.62
Per Diem of $0.54	
Penalty:	2,006.61
Total	$17,046.03
Warrant Penalty:	Expired
Filing Fees:	Expired
Release Fees:	13.00
Balance Due:	$17,059.03

CONCLUSIONS OF LAW

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

[10] Division's Exhibit G. The letter is unsigned, but PROTESTANT'S NAME is typed on the letter.

[11] Division's Exhibit H. During the hearing, the Administrative Law Judge advised the Division that he was taking judicial notice of the materials contained in the court file for completing the factual details and background of this protest. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). The balance on the letter *already* takes into account the Division's application of the Protestant's refund for the 2005 tax year for $1,987.00. The remaining payments were the result of refund intercepts by the Division against the Protestant totaling $3,358.00. The Division has also intercepted refunds from the Protestant's ex-husband totaling $228.00. The Division has applied a total of $3,586.00 towards the original tax balance of $4,913.80.

[12] OKLA. STAT. ANN. tit. 68, § 205.2(B) (West Supp. 2007):

> 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.

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]

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 respects.[18]

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[13] OKLA. STAT. ANN. tit. 68, § 205.2(E) (West Supp. 2007):

> 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.

[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 (June 25, 1999). *See Enterprise Management Consultants, Inc. v. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

7. The Protestant has failed to meet her burden of proof. The Protestant has not presented any evidence that the Division's claim to the refund for the 2005 tax year is incorrect, or whether an adjustment to the claim should be made by the Division. The Protestant has not cited any authority, which supports the equitable position for receiving the full amount of the refund for the 2005 tax year.[19]

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 Protestant's refund for the 2005 tax year should be denied.

ADDENDUM TO FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

On April 30, 2007, the Division filed a Memorandum explaining the inconsistency between the date of the assessment letter and the dates of the audit period.

Upon consideration of the *Findings, Conclusions and Recommendations* and the Division's explanation, the undersigned finds that the following *Finding* should be added to and incorporated in the *Findings, Conclusions and Recommendations*:

1. Due to a typographical error, the audit period of January 1, 1985, through December 31, 1986, was reflected as January 1, 1985, through December 31, *1988*, on the assessment issued by the Division on May 23, 1988. The audit period of January 1, 1985, through December 31, 1986, was correctly stated on Tax Warrant No. xxx filed March 22, 1991, and the Division's Notices of Warrant Intercept mailed to the Protestant and her spouse on March 9, 2006.[20]

The undersigned further finds that the *Finding* as set out above should be added to and incorporated in the *Findings, Conclusions and Recommendations:*

THEREFORE, the *Findings, Conclusions and Recommendations* issued on April 23, 2007, are amended to include and incorporate the above and foregoing finding of fact.

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[19] For the sake of argument, if there was a "hold-harmless clause" in the Protestant's divorce decree regarding the debt of the business, the court cannot enter orders affecting the indemnified spouse's liabilities to other parties not before the court. *See* OTC Order No. 1994-01-06-025 (January 6, 1994), *citing, Teel v. Teel*, 1988 OK 151, 766 P.2d. 994. *See also Stevenson v. Stevenson*, 1984 OK CIV APP 10, 680, P.2d 642.

[20] *See* Division's Memorandum. *See also* Division's Exhibits A, C, E, F and H.

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.