JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-06-26-03 (NON-PRECEDENTIAL)
ID:	P-07-056-H
DATE:	JUNE 26, 2007
DISPOSITION:	SUSTAINED
TAX TYPE:	INCOME INTERCEPT
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 22nd day of May, 2007, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

PROCEDURAL HISTORY

On April 24, 2007, the Account Maintenance Division's Memorandum Brief was filed with the office of the Administrative Law Judge of the Oklahoma Tax Commission. On May 14, 2007, the Protestant's Position Letter was filed with the office of the Administrative Law Judge.

A hearing before the Administrative Law Judge was held as scheduled on May 14, 2007, at 9:30 a.m. The Protestant failed to appear. The Division called two (2) witnesses, SUPERVISOR, Supervisor, Audit Review Section of the Audit Division, and AUDITOR, Auditor, Account Maintenance Division, Oklahoma Tax Commission, who testified regarding the records of the Divisions. The Division's Exhibits A through J were identified, offered and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on May 14, 2007.

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 Commission finds:

1. On October 13, 1986, the Protestant as an Officer of COMPANY executed a "Consent Fixing Period of Statute of Limitation Upon Assessment or Refund of Sales and or Use" with the Audit Division f/k/a Business Tax Division ("Audit Division") for the period of October 1, 1983, through September 30, 1986.[1]

[1] Division's Exhibit I. Any assessment or refund of sales/use taxes must have been made on or before January 31, 1987. The Protestant, through counsel, had been in contact with the Tax Commission concerning COMPANY and the arrangements to be made for the sales tax audit. *See* Division's Exhibit J.

2. On January 27, 1987, the Audit Division issued proposed sales tax assessments[2] against COMPANY, PRESIDENT, President, and as an Individual, VICE-PRESIDENT, Vice-President, and as an Individual, and SECRETARY, Secretary and Treasurer, and as an Individual, for the period of October 1, 1983, through September 30, 1986, as follows, to-wit:

Tax:	$33,277.18
Interest:	10,360.92
Penalty:	3,327.75
Total:	$46,965.85

3. The Audit Division mailed all of the proposed sales tax assessments by certified mail, return receipt requested to the business address of COMPANY, BUSINESS ADDRESS.[3]

4. At the time the proposed sales tax assessments were issued by the Audit Division, it was "common practice that if, at the time of audit, the auditor was unable to get a current address, all assessment letters were sent to the corporation's address."[4]

5. When the proposed sales tax assessment was issued against the Protestant, the Audit Division did not check Tax Commission records for the Protestant's address, but used the address from the audit in accordance with the Division's established procedures at the time.[5]

6. The Protestant did not file a protest to the proposed sales tax assessment within thirty (30) days of the mailing of the assessment, resulting in the proposed sales tax assessment becoming final.[6] Tax Warrant XXX was filed in the COUNTY County Clerk's Office on October 17, 1988, with the Protestant's address reflected as HOME ADDRESS.[7]

7. On March 25, 2006, the Protestant electronically filed his Oklahoma Individual Income Tax Return (Form 511) for the 2005 tax year, reflecting a refund of $1,642.00.[8]

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[2] Division's Exhibit A.

[3] Division's Exhibit B. The green card was signed, but not by the Protestant.

[4] Testimony of SUPERVISOR.

[5] Testimony of SUPERVISOR.

[6] OKLA. STAT. ANN. tit. 68, § 221(E) (West 2001).

[7] Division's Exhibit C. The Division was advised during the hearing that the Administrative Law Judge was taking judicial notice of the court file containing an audit packet, which was forwarded by the Division as part of the protest file on this matter, for completing the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). The court file contains a list of COMPANY'S officers, including the Protestant. The address listed is HOME ADDRESS. SUPERVISOR testified that this information was used by the Tax Warrant Section for issuing the tax warrants.

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

8. On April 11, 2006, the Division sent the Protestant a letter notifying him that his refund for the 2005 tax year had been delayed due to a reported liability owed to the Tax Commission reflected by Tax Warrant XXX.[9]

9. On May 1, 2006, the Division received a timely filed letter of protest, which also made a request under the Open Records Act[10] for a copy of his file and the file on COMPANY.[11]

10. In response, the Audit Division sent the Protestant a pay-off of Tax Warrant XXX,[12] as follows, to-wit:

Tax Due:	$ 22,268.18
Interest through 05/31/07:	106,192.81
Penalty:	3,327.75
OTC Filing Fees:	13.00
FCC Release Fees:	13.00
Total	$131,814.74

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[13]

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.[14]

3. 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.[15] Section 208 of Title 68 has been amended twice.[16] The proposed

[9] Division's Exhibit E.

[10] OKLA. STAT. ANN. tit. 51, § 24A.1 et seq. (West 2001).

[11] Division's Exhibit F.

[12] Division's Exhibit H.

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

[14] 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.

[15] OKLA. STAT. ANN. tit. 68, § 208 (West 2001).

[16] *See* 1989 Okla. Sess. Laws c. 249, § 7, eff. July 1, 1989 and 1993 Okla. Sess. Laws c. 146, § 6.

assessment in this matter was issued on January 27, 1987. The version of Section 208 in effect at the time the proposed sales tax assessment was issued is as follows, to-wit:

> Any notice of hearing before the Tax Commission 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 mailing the same. If mailed, it shall be addressed to such person at the address given in the last report or return filed by him, pursuant to the provisions of this article, or any state tax law, or is no report or return has been filed, then to such address as may be obtainable.[17]

4. 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]

The Protestant makes several assertions in his position letter, but the most compelling argument is the challenge to the validity of the debt. The Protestant states that the proposed assessment was sent to COMPANY'S business address of BUSINESS ADDRESS, and the green card does not bear his signature. The Protestant also states that his last-known address (at the time the assessment was issued) was HOME ADDRESS, the address used on the tax warrant. The Protestant asserts that the Division's actions deprived him of his rights to due process, because he did not know that the proposed sales tax assessment had been issued, so he could not file a timely protest to the proposed sales tax assessment.

The Division's position is that the Protestant was afforded the opportunity to object to the proposed assessment and have the merits of his protest decided by an Administrative Law Judge and he failed to do so within the proscribed statute of limitations. The Division asserts that the address used on the proposed assessment was "the last-known address" found by the Tax Commission, and that the only two issues to be decided at a hearing on a protest to the interception of a refund under Section 205.2(B) of Title 68[19]:

1. Whether the claimed sum is correct; or
2. Whether an adjustment to the claim shall be made.

5. 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 statutory requirements which implement constitutional guarantees.[20]

In a previous case discussing the pre-July 1, 1989, version of Section 208, the Commission concluded, "While the Division mailed the notice of proposed assessment to

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[17] OKLA. STAT. tit. 68, § 208 (West 1987).

[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.

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

[20] OKLA. STAT. tit. 68, § 208 (West 1987).

taxpayer at the address shown on the Business Tax Division records, there is no evidence that the address was taxpayer's last-known address, as provided by him."[21]

The Commission further concluded, "Based on the facts presented, the conclusion that is reached is that PROTESTANT was not provided statutory notice of the proposed assessment."[22]

The purpose of the rules for *Administrative Proceedings Related to Protests*[23] is to give the taxpayer, or the taxpayer's representative, a reasonable way to have the case considered fairly, and to give the taxpayer an opportunity to resolve disagreements with the Tax Commission or one of its various divisions without having to go through a formal hearing.[24]

The Rules of Practice and Procedure Before the Oklahoma Tax Commission shall govern all contested proceedings before the Oklahoma Tax Commission or its delegated Administrative Law Judge. These Rules shall be given the most reasonable meaning, taken in their context, and will be construed to secure due process in the proper resolution of every controversy. They shall not be construed to limit legal rights or obligations of any party.[25]

The Division's position is direct and concise, that the proposed sales tax assessment was mailed to the Protestant at his last-known address. The Protestant was afforded the opportunity to file a timely protest to the sales tax assessment, but failed to do so.

In *Shamblin v. Beasley*, 1998 OK 88, ¶12, 967 P.2d 1200, the Supreme Court of Oklahoma held:

> Service is not subject to invalidation for *any departure* from the mode prescribed by statute. When it is alleged that there was want of strict compliance with statutory requirements for service, the court must in every case determine whether the found departure offends the standards of due process and thus may be deemed to have deprived a party of its fundamental right to notice. Notice is a jurisdictional requirement and a *sine qua non* element of due process. The latter notion requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections. As the Constitution inexorably commands, no one's rights may be

[21] OTC Order No. 96-03-05-007 (March 5, 1996), 1996 WL 875911 (Okl. Tax. Com.).

[22] The Commission also noted, "The current law provides a definition of last-known address that was not contained in the statutes in 1988 when the proposed assessment at issue herein was mailed." *See* 68 O.S. Supp. 1993, § 208. The conclusion reached in this matter is based on the statutory notice requirement in effect in 1988. For a contrast in the conclusions reached by the Tax Commission after amendments to Section 208, *See* OTC Order No. 2001-01-30-002 (January 30, 2001), 2001 WL 648313 (Okl. Tax. Com.).

[23] OKLA. ADMIN. CODE § 710:1-5-20 through 710:1-5-49.

[24] OKLA. ADMIN. CODE § 710:1-5-20(a) (June 25, 1999).

[25] OKLA. ADMIN. CODE § 710:1-5-21.

> adversely affected in the absence of due and timely notice that affords a full and fair opportunity to defend. The right to be heard is of little value unless a party is fairly and timely apprised of what interests are sought to be affected by process that is triggered. (Citations omitted.)

In this matter, in the absence of evidence showing protestant had actual notice, the Division's failure to check other records of the Tax Commission for the correct address of protestant after failing to obtain a receipt of notice with protestant's signature constituted a failure of the Division to comply with the pre-1989 requirements of Section 208 of Title 68. The Protestant has met his burden of proof.

ORDER

Protestant's protest should be and the same is hereby sustained.

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.