JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-06-26-04 (NON-PRECEDENTIAL)
ID:	P-07-047-K
DATE:	JUNE 26, 2007
DISPOSITION:	DENIED
TAX TYPE:	INCOME INTERCEPT
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

STATEMENT OF THE CASE

By letter dated May 9, 2006, the Division notified Protestant that a portion of her 2005 income tax refund had been intercepted and would be applied to a reported liability owed by Protestant to the Oklahoma Tax Commission. Protestant timely protested the Division's proposed action.

On March 22, 2007, the Division referred its file to the Office of the Administrative Law Judges ("ALJ's Office") for further proceeding consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The protest was docketed as Case No. P-07-047-K and assigned to ALJ, Administrative Law Judge.[3]

A hearing was scheduled for May 3, 2007, by letter issued March 29, 2007.[4] The notice was forwarded to Protestant's last-known address in accordance with 68 O.S. 2001, § 208. Protestant neither responded to the notice nor appeared at the hearing. The Division called two witnesses; SUPERVISOR, Supervisor, Audit Review, who testified regarding the audit and assessment records and AUDITOR, Auditor III, who testified regarding the income tax refund intercept records. Exhibits A, B and F through L, including Exhibit G-1 were identified, offered and admitted into evidence. Upon conclusion of the Division's case, the record was closed and the case was submitted for decision.[5]

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:

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[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC*, 710:1-5-22(b).

[4] OAC, 710:1-5-29 and 68 O.S. Supp. 2003, § 205.2(B).

[5] *OAC*, 710:1-5-39(a).

1. At all times relevant herein, Protestant operated a sole-proprietorship known as BUSINESS. Exhibits A and B.

2. As the result of an out-of-business audit conduct by the Business Tax Division of the Tax Commission, a proposed sales tax assessment and a proposed mixed beverage tax assessment were issued against Protestant for the audit period of July 1, 1985 through May 31, 1986. Exhibits A and B. Testimony of SUPERVISOR.

3. The assessments dated September 30, 1987, were sent via certified mail in the same envelope to Protestant's business address. Exhibits A and B. Testimony of SUPERVISOR.

4. The assessments were returned bearing a stamp "Return to Sender Moved, Not Forwardable". Exhibit B.

5. In a previous income tax refund intercept proceeding between Protestant and the Tax Commission, it was determined that "the Division acted with reasonable diligence in ascertaining a correct address for Taxpayer for purposes of providing notice" and "[h]aving done so, the assessment[s] [became] final and absolute when [they were] not protested within thirty days of the mailing" of the same. Oklahoma Tax Commission Order No. 95-11-13-011, Page 7, Paragraph 6 of the Conclusions of Law. It was further determined that "Taxpayer's protest to the suspension of her * * * income tax refund should be denied." Id., at Paragraph 7 of the Conclusions of Law.

6. A tax warrant (No. STS XXX 01) representing the amount of indebtedness owing to the Tax Commission by reason of the proposed sales tax assessment issued against Protestant was filed with the COUNTY County Clerk on February 4, 1998.[6] Exhibit F.

7. On April 10, 2006, Protestant filed a 2005 Oklahoma income tax return, Form 511, reporting a "single" filing status and requesting a refund of the overpayment of her income tax for the 2005 tax year in the amount of $164.00. Exhibit G. The total refund consists of withholding of $105.00, a refundable Sales Tax Relief Credit of $40.00 and an Oklahoma Earned Income Credit of $19.00. Exhibit G.

8. Pursuant to 68 O.S. Supp. 2003, § 205.2(E), the Division intercepted $124.00 of the refund requested by Protestant (the total refund less the refundable Sales Tax Relief Credit) and by letter dated May 9, 2006, notified Protestant that the intercepted funds would be applied to her outstanding indebtedness owed to the Tax Commission as reflected by tax warrant no. STS XXX . Exhibits G-1 and H. Testimony of AUDITOR.

9. By letter mailed July 7, 2006, Protestant timely protested the interception of her refund, asserting:

[6] A second tax warrant (No. ATG XXX-03) representing the amount of indebtedness owing to the Tax Commission by reason of the proposed mixed beverage tax assessment was also filed against Protestant. Oklahoma Tax Commission Order No. 95-11-13-011, page 3. AUDITOR testified that warrant no. STS XXX 01 has not been re-filed.

> I [Protestant] allege [sic] that the validity of action is moot because first & foremost the Statute [sic] of Limitations boundaries prevail.

Exhibits I and K.

10. As of April 17, 2007, Protestant's sales tax indebtedness to the Tax Commission is $9,875.04, consisting of tax of $2,203.59[7], interest of $7,438.69 and penalty of $232.76. Exhibit J.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. Jurisdiction of the parties and subject matter of this action is vested in the Tax Commission. 68 O.S. Supp. 2003, § 205.2(B).

2. 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).

3. The only issues subject to determination in this proceeding are: (1) whether the claimed sum is correct, and (2) whether an adjustment to the claim is required by the evidence. 68 O.S. Supp. 2003, § 205.2(B).

4. In all proceeding before the Tax Commission, the taxpayer bears the burden of proof to show the action of the Commission is incorrect, and in what respect. *OAC*, 710:1-5-47. *See*, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.

5. Here, the evidence proves the sum claimed by the Division is correct, due and owing, and no adjustment to the intercepted refund is required. The proposed assessments issued against Protestant are not barred by the statute of limitation on assessments. 68 O.S. Supp. 2006, § 223(A). Further, Protestant's indebtedness to the Tax Commission for the unpaid taxes, interest and penalties is not extinguished because the tax warrants were not re-filed; merely the attendant liens against Protestant's property were extinguished. See, 68 O.S. 2001, §§ 231 and 234. No bar exists to the Division's action of collecting the indebtedness Protestant owes to the Tax Commission.

6. Protestant's protest to the application of $124.00 of her 2005 income tax refund to the outstanding liability she owes to the Tax Commission should be denied.

[7] AUDITOR testified that this amount consists of the amount of the sales tax assessed ($2,327.59) less the amount intercepted.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is ORDERED that the protest of Protestant, PROTESTANT, 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.