JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-06-26-07 (NON-PRECEDENTIAL)
ID:	P-07-034-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 (hereinafter "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 4, 2006, the Division notified Protestant that 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 by letter dated May 29, 2006, timely protested the Division's proposed action.

On March 5, 2007, the Division referred its file; consisting of the protest letter, warrant intercept letter, copy of Protestant's 2005 Oklahoma income tax return, tax warrants filed against Protestant, liability update/Excel worksheet, assessment letters issued against Protestant, business registration, actual sales tax reports and various reports filed and documents signed by Protestant, 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].

A hearing was scheduled for April 3, 2007, by letter issued March 6, 2007. Protestant responded to the notice by letter dated March 9, 2007, however she did not appear at the hearing. The Division called one witness, AUDITOR, Auditor, who testified regarding the records of the Division. Exhibits A through G were identified, offered and admitted into evidence. Upon conclusion of the Division's case, the hearing was concluded, the record was closed and the case was submitted for decision.[3]

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

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:

1. On November 5, 2004, the Division issued a proposed sales tax assessment against Protestant, as President of COMPANY, D/B/A BUSINESS, and as an individual. Exhibit A.

2. A total amount of $2,349.41 was assessed against Protestant. Exhibit A.

3. The assessment was forwarded to Protestant's last-known address as reflected by the files and records of the Division. Exhibit B.

4. Protestant did not file a protest to the proposed assessment. Testimony of AUDITOR.

5. A tax warrant (No. XXX-01) representing the amount of indebtedness owing to the Tax Commission by reason of the proposed assessment was filed against Protestant with the ANY COUNTY County Clerk on December 13, 2005. Exhibit C.

6. On March 19, 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 $92.00. Exhibit D.

7. Pursuant to 68 O.S. Supp. 2003, § 205.2(E), the Division intercepted the refund and by letter dated May 5, 2006, notified Protestant that the refund would be applied to her outstanding indebtedness owed to the Tax Commission as reflected by tax warrant no. STS XXX-01. Exhibit E.

8. By letter dated May 29, 2006, Protestant timely protested the interception of the refund, requesting that she be relieved of the tax burden and that it be placed on the responsible person; her father, and asserting that she never had anything to do with the company, other than to agree to allow her father to name her as an officer of the company. Exhibit F.

9. In response to the hearing notice, Protestant writes in part:

> I have already expressed that I do not owe such taxes. My father is the one you should be going after. I had nothing to do with his company after the year 2000, and up to then, I was just a name on paper. If you have documents with my signature after that year, then I can only surmise that my father forged my signature.

March 9, 2007 letter.

10. As of April 30, 2007, Protestant liability to the Tax Commission is $3,135.24. Exhibit G.

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.

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

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.