JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **2008-08-05-04 / NON-PRECEDENTIAL**
ID: **P-08-031-K**
DATE: **AUGUST 5, 2008**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME INTERCEPT**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

STATEMENT OF THE CASE

By letter dated August 16, 2007, the Division notified Protestant that a portion of his 2006 income tax refund had been suspended due to a reported liability for withholding taxes owed to the Commission. Protestant timely protested the suspension. See, *Order Denying Motion to Dismiss* issued May 12, 2008.

On March 24, 2008, the file was referred 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-08-031-K and assigned to ALJ, Administrative Law Judge.[3]

A hearing was scheduled for April 22, 2008, by letter issued March 26, 2008.[4] The hearing was cancelled and a show cause hearing was scheduled for April 28, 2008, upon the Division's filing of a *Motion to Dismiss for Lack of Jurisdiction*. The show cause hearing was held as scheduled with all parties in attendance. The *Order Denying Motion to Dismiss* was issued May 12, 2008.

A hearing on Protestant's protest was scheduled for May 28, 2008, by letter issued May 14, 2008. 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, who testified regarding the income tax refund intercept records. Exhibits A, and C through L, were identified, offered and admitted into evidence. The record was held open for the Division to submit a copy of the notice of suspension sent to PROTESTANT'S SPOUSE. On May 29, 2008, the Division filed a *Post-Hearing Memorandum* in

[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).

which the Division notified the court that a copy of the notice could not be retrieved due to the document destruction procedures of the Division. On June 2, 2008, Protestant's protest to the suspension of his 2006 income tax refund was submitted for decision.[5]

FINDINGS OF FACT

Upon review of the file and records, including the tape recording of the hearing, the exhibits received into evidence and the pleadings of the parties, the undersigned finds:

1. A proposed withholding tax assessment was issued against Protestant as Manager of COMPANY and as an individual for the period inclusive of July 1, 2005 through December 31, 1998, in the aggregate amount of $11,318.04, consisting of tax of $6,763.11, interest accrued through January 31, 2000, of $2,864.11 and penalty of $1,690.82. Division's Exhibits A, C and E.

2. The proposed assessment letter was sent by certified mail on three (3) separate occasions to three (3) separate addresses. On each occasion the letter was returned "unclaimed". The letter was first sent on January 11, 2000 to ADDRESS 1 in CITY, Oklahoma. Division's Exhibit A. The letter was re-mailed on February 11, 2000 to ADDRESS 2 in CITY, Oklahoma pursuant to the Taxpayer's List of Principal Officers, Partners or Members (LLC). Division's Exhibits C and D. The letter was subsequently re-mailed on March 24, 2000 to ADDRESS 3 CITY, Oklahoma. Division's Exhibit E.

3. The records of the Division and the U.S. postal service indicate that the last-known address of Protestant at the time of the mailings of the proposed assessment was ADDRESS 3 in CITY, Oklahoma. Division's Exhibits A, C and F.

4. The proposed assessment became "final" as provide by § 221(E) of the Uniform Tax Procedure Code ("Code") and on August 4, 2000, tax warrant no. ITW 2000 XXX was filed against Protestant in COUNTY, Oklahoma as authorized by § 231.

5. A 2006 resident joint Oklahoma income tax return (Form 511) was filed by Protestant and his spouse on April 17, 2007, claiming a refund in the amount of $364.00. The refund consists of excess withholding of $244.00 and an Oklahoma Sales Tax Relief Credit of $120.00. $325.00 of the $327.00 in Oklahoma income tax withholding reported on the return is attributable to the employment of Protestant. Division's Exhibit G.

6. On August 16, 2007, Protestant was notified by letter that "your 2006 income tax refund in the amount of $244.00 had been delayed due to a reported liability owed to the Oklahoma Tax Commission." Division's Exhibit H.

7. Protestant's spouse was also notified by letter that the 2006 income tax refund had been delayed due to a reported liability owed to the Oklahoma Tax Commission. Testimony of AUDITOR. See, *Division's Post-Hearing Memorandum*.

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

8. Protestant timely protested the suspension of the refund, asserting that he was nothing more than an employee of the Corporation, that his ex-wife is responsible for the debt and that he was exonerated of the debt by the Internal Revenue Service. Division's Exhibit I. See, *Order Denying Motion to Dismiss*.

9. The amount in controversy is $244.00.

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, Protestant failed to present evidence to show he timely protested the proposed withholding tax assessment or requested an adjustment or abatement of the assessment. See, 68 O.S. Supp. 1999, § 221(C) and (E), as amended by Laws 2002, c. 458, § 1, eff. July 1, 2002. As such the proposed assessment became final and absolute, and the Tax Commission is without jurisdiction to consider the merit of Protestant's appeal. 68 O.S. Supp. 1999, § 221(E); ***Matter of Phillips Petroleum Co.***, 1982 OK 112, 652 P.2d 283.

6. The evidence presented by the Division proves the claimed sum of indebtedness is correct, due and owing; and no adjustment to the indebtedness or the amount of the suspended refund is required. Accordingly, Protestant's protest to the Division's claim to the 2006 income tax refund should be and the same is hereby denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT, be denied. It is further ORDERED that the amount in controversy be applied to the indebtedness owed to the Division.

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.