

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 2008-10-28-12 / NON-PRECEDENTIAL
ID: P-08-055-H
DATE: OCTOBER 28, 2008
DISPOSITION: REMANDED
TAX TYPE: IRS LEVY
APPEAL: NO APPEAL TAKEN

ORDER

The above matter comes on for consideration by the Oklahoma Tax Commission this 28th day of October, 2008. 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 5th day of September, 2008, the Commission denies the Application for Hearing En Banc of the Account Maintenance Division and finds that the provisions of Sections 6331, 6332 and 6334 of Title 26 of the United States Code are relevant legal authority which should be considered in determining if the Oklahoma Tax Commission acted properly in disbursing funds of the Protestant to the Internal Revenue Service. The Commission further finds that any conflicts between the provisions of Section 205.2 of Title 68 of the Oklahoma Statutes and Sections 6331, 6332 and 6334 of Title 26 of the United States Code should be resolved in favor of the federal statutes.

The Commission takes judicial notice that the Oklahoma Tax Commission and the Internal Revenue Service have entered into a Memorandum of Understanding for the operation of the State Income Tax Levy Program for Individuals pursuant to Treasury Order 150-10 and the above referenced federal statutes. The Commission finds that this Memorandum may determine the property upon which the Internal Revenue Service has imposed a levy; that the Administrative Law Judge made no finding of fact with regard to whether the property at issue in this case is included in the type of property specified in this Memorandum of Understanding; and that a proper resolution of this case requires a finding of fact on that issue.

The Commission further finds that even though the parties agreed that this matter would be submitted on briefs and the protestant failed to request an oral hearing in this matter, there appears to be a dispute between the parties with regard to the question of whether or not the Internal Revenue Service has issued a levy to the Oklahoma Tax Commission on property of the protestant held by the Tax Commission; that although the record in this matter includes the briefs of the parties, no hearing was held, no testimony was taken and no documentary evidence was properly admitted for consideration in resolving disputed issues of fact; that the Administrative Law Judge made no finding of fact with regard to the question of whether or not the Internal Revenue service has issued a levy to the Oklahoma Tax Commission on property of the protestant held by the Tax Commission; and that a proper resolution of this protest requires a finding of fact on this question.

Therefore, the Commission orders that this matter be remanded to the Honorable ALJ with directions to hold such hearings and further proceedings as may be necessary to make such

revisions to the Findings, Conclusions and Recommendations previously issued as may be warranted by the provisions of this Order.

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.