

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-01-14-01 / NON-PRECEDENTIAL
ID: P-85-214
DATE: JANUARY 14, 1986
DISPOSITION: DENIED
TAX TYPE: GROSS PRODUCTION
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration, pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission, and hearing had, at which hearing the Protestant, COMPANY, appeared not nor by counsel and the Gross Production Tax Division of the Oklahoma Tax Commission appeared by OTC ATTORNEY, Attorney. The notice of hearing was mailed by certified mail, return receipt requested, to Protestant by the undersigned and Protestant received said notice, as evidenced by the return receipt. SUPERVISOR, Field Audit Supervisor, and AUDITOR, Field Auditor, of the Gross Production Tax Division, testified on behalf of the Division and in regard to the assessment of gross production tax. Exhibits were received into evidence which are not herein itemized. Thereafter, the Gross Production Tax Division by and through their attorney, OTC ATTORNEY, requested that the Protestant be declared in default and, in view of the fact Protestant failed to notify the General Counsel's Office, the Administrative Law Judge's Office, or the Gross Production Tax Division in regard to the protest hearing, the request for default was granted.

STATEMENT OF FACTS

The Gross Production Tax Division of the Oklahoma Tax Commission, on February 28, 1985, issued an assessment against the Protestant, COMPANY and to the attention of PRESIDENT, the Protestant's President, said assessment based upon a field audit conducted by AUDITOR, Field Auditor of the Gross Production Tax Division. Following the assessment dated February 28, 1985, the Protestant timely its their protest to said assessment. The total amount of the assessment by the Gross Production Division of the Oklahoma Tax Commission was in the amount of Thirty-five Thousand Nine Hundred Thirty-eight Dollars and Sixty-five Cents (\$35,938.65) which represented gross production tax, petroleum excise tax, tax on oil recovered from unknown sources, penalty and interest. Subsequent to the assessment, the Protestant paid to the Gross Production Tax Division of the Oklahoma Tax Commission Eighteen Thousand Six Hundred Forty-two Dollars and Forty Cents (\$18,642.40) representing exactly the payment of gross production tax exclusive of penalty and interest and took issue with the remaining portions of the assessment. The contested amount of Seventeen Thousand Two Hundred Ninety-six Dollars and Twenty-five Cents (\$17,296.25) representing gross production tax penalty of One Thousand Eight Hundred Sixty-four Dollars and Twenty-six Cents (\$1,864.26); interest on the gross production tax assessed of One Thousand Seven Hundred Fifty-seven Dollars and Thirty-six Cents (\$1,757.36); petroleum excise tax in the amount of Two Hundred Thirty-two Dollars and Fifty-eight Cents (\$232.58); penalty on petroleum excise tax of Twenty-three Dollars and Twenty-eight Cents (\$23.28); interest on petroleum excise tax of

Twenty-one Dollars Ninety-one Cents (\$21.91); and unknown source tax of Thirteen Thousand Three Hundred Ninety-six Dollars and Eighty-six Cents (\$13,396.86).

PROTESTANT'S CONTENTIONS

The Protestant contends per his protest letter that the audit computations by the auditor of the Gross Production Tax Division were incorrect and that the amount of the remaining assessment for unknown source tax; the penalty and the interest on the assessed but paid gross production tax; the petroleum excise tax, penalty and interest; and any additional accrued interest and penalty should be waived by the Oklahoma Tax Commission.

DIVISION'S CONTENTIONS

The Gross Production Tax Division contends that pursuant to audit by the auditor of the Gross Production Tax Division, the assessment for petroleum excise tax, penalty and interest; gross production tax penalty and interest; the tax on oil from unknown sources; and interest accruing thereon from the date of the assessment is correct and proper and that the protest should be denied.

ISSUE

The sole issue presented is whether or not the assessment by the Gross Production Tax Division is correct, proper, and pursuant to the statutory authority granted to the Gross Production Tax Division of the Oklahoma Tax Commission.

ARGUMENTS AND AUTHORITY

The Gross Production Tax Division of the Oklahoma Tax Commission has been granted the authority and the power, pursuant to Section 1001 of Title 68 of the Oklahoma Statutes, entitled Gross Production Tax Code, to examine the books, records and files of persons, firms, corporations and/or associations to correctly compute the amount of gross production tax due the State of Oklahoma. The Gross Production Tax Division of the Oklahoma Tax Commission is further required and is vested with the duty to ascertain and to collect in addition to the gross production tax a tax on oil from unknown sources pursuant to Section 1003 of Title 68 of the Oklahoma Statutes. Section 1101 of Title 68 of the Oklahoma Statutes provides a petroleum excise tax on oil and directs that the Oklahoma Tax Commission, Gross Production Tax Division, shall determine the amount of excise tax due thereon in the same manner as the Gross Production Tax Division of the Oklahoma Tax Commission collects gross production tax.

The Gross Production Tax Division, pursuant to the authority vested with the Gross Production Tax Division by and through the statutes, audited the Protestant and found, based upon a review of the Protestant's books and records, that there had been an under-reporting of the amount of gross production tax, petroleum excise tax, and tax on oil from unknown sources reported by the Protestant and therein assessed, based upon said review of the books and

documents of the Protestant, an assessment in the amount of Thirty-five Thousand Nine Hundred Thirty-eight Dollars and Sixty-five Cents (\$35,938.65), said amount including penalty and interest pursuant to statute. Protestant, subsequent to said protest, paid the Gross Production Tax Division the amount of Eighteen Thousand Six Hundred Forty-two Dollars and Forty Cents (\$18,642.40) representing only gross production tax as assessed in the assessment of February 28, 1985 by the Division, leaving the remainder of the assessment in the amount of Seventeen Thousand Two Hundred Ninety-six Dollars and Twenty-five Cents (\$17,296.25) at issue contending that said amounts were incorrect.

The Protestant failed to appear or present any evidence or documentation showing that the computation of additional taxes as per the assessment by the Gross Production Tax Division was incorrect, improper or outside the scope of the authority granted to the Gross Production Tax Division of the Oklahoma Tax Commission under the applicable statutes. Rather, the field audit supervisor and the field auditor of the Gross Production Tax Division testified that the audit of the Protestant was pursuant to the authority granted to the Gross Production Tax Division of the Oklahoma Tax Commission and that said assessment for additional petroleum excise tax, gross production tax penalty and interest, and tax on oil from unknown sources was ascertained from the books and records of the Protestant. The audit work papers and findings reflected that the Protestant's beginning inventory for the first month of the audit period and the ending inventory for the last month of the audit period exceeded the amount of available and reported inventory sold by the Protestant during the audit period, therein creating greater sales by the Protestant than the measured inventory reported and filed with the Gross Production Tax Division of the Oklahoma Tax Commission for the period in question. The fact that there was more inventory sold by the Protestant than the Protestant reported as having available to sell quite properly necessitated an increase in the gross production tax due and owing from the Protestant as per the assessment and audit by the Gross Production Tax Division of the Oklahoma Tax Commission, thereon reflecting unreported gross production tax, petroleum excise tax and tax on oil from unknown sources, all pursuant to the statutory provisions of Sections 1001, 1003, and 1101 of Title 68 of the Oklahoma Statutes.

The Oklahoma Tax Commission, Gross Production Tax Division, is charged with the duty and the responsibility to correctly ascertain and compute the amount of gross production tax pursuant to Section 1001; the tax on oil from unknown sources pursuant to Section 1003; and petroleum excise tax pursuant to Section 1101 of Title 68 of the Oklahoma Statutes, and pursuant to the audit of the books and records of the Protestant in the case at bar, an assessment for additional taxes was assessed. The Gross Production Tax Division properly assessed penalty and interest pursuant to the provisions of Section 217 of Title 68 of the Oklahoma Statutes as to the assessed gross production tax and petroleum excise tax. Further, the Protestant's request that penalty and interest be waived must be denied since the Protestant failed to satisfactorily explain its failure to properly report and pay the tax assessed as per Protestant's books and records.

In view of the fact that there is absolutely no evidence admitted or presented by the Protestant to show that the assessment and/or the audit conducted by the Gross Production Tax Division of the books and records of the Protestant was improper, the audit is deemed correct.

CONCLUSION

In view of the above and foregoing factual situation and applicable law thereto, the Administrative Law Judge concludes as follows:

- (1) That the Administrative Law Judge has jurisdiction in this matter.
- (2) That pursuant to Sections 1001, 1003 and 1101 of Title 68 of the Oklahoma Statutes, the assessment by the Gross Production Tax Division of the Oklahoma Tax Commission was correct and proper. That Section 217 of Title 68 of the Oklahoma Statutes provides for the assessment and collection of penalty and interest and said assessment was proper, due and owing.
- (3) That Protestant failed to satisfactorily explain its failure to pay the assessed tax when due and therein failed to comply with the provisions of Section 220 of Title 68 of the Oklahoma Statutes concerning the waiver of penalty and interest by the Oklahoma Tax Commission.
- (4) That the protest of the Protestant, COMPANY, by and through its president, PRESIDENT, should be denied and Protestant held in default.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of COMPANY, by and through its president, PRESIDENT, should be denied, and that the Protestant be required to pay the assessment of additional tax on oil from unknown sources, petroleum excise tax, and the penalties and interest as assessed and any additional interest accrued thereon from the date of the assessment until paid.

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.