JURISDICTION:	**OKLAHOMA TAX COMMISSION DECISION**
CITE:	**86-04-29-13 / NON-PRECEDENTIAL**
ID:	**P-85-227 / P-85-228**
DATE:	**APRIL 29, 1986**
DISPOSITION:	**DENIED**
TAX TYPE:	**SALES / WITHHOLDING**
APPEAL:	**DISMISSED / OK S.CT. 66,619**
	DECISION NOT PUBLISHED

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, PROTESTANT, appeared in person and represented by his attorney, ATTORNEY. The Sales and Use Tax Division and the Income Withholding Tax Section of the Income Tax Division appeared and represented by OTC ATTORNEY, attorney, and ASSISTANT, legal research assistant, from the General Counsel's office of the Oklahoma Tax Commission.

Opening statements were made by the respective parties and exhibits, not itemized herein, were received into evidence. PROTESTANT testified on his own behalf and MANAGER testified on behalf of the Sales and Use Tax Division and the Income Withholding Section of the Income Tax Division of the Oklahoma Tax Division. Closing arguments were presented by the respective parties and additional time was allowed for the filing of briefs in support of the respective positions, upon receipt of which the case was submitted for a decision.

STATEMENT OF FACTS

On May 16, 1980, CAR DEALERSHIP, Inc. was incorporated under the laws of the State of Oklahoma and the Certificate of Incorporation issued from the Secretary of State of the State of Oklahoma to the incorporators and the stockholders of CAR DEALERSHIP, Inc. The shareholders of record of said corporation being PRESIDENT and PROTESTANT.

The by-laws of CAR DEALERSHIP, Inc. pursuant to Section 5.2 sets forth the duties of the President of the Corporation and that as per the date of incorporation, PRESIDENT served as President of the Corporation and that PROTESTANT served as the Chairman of the Board of Directors of the Corporation. Under the minutes of the annual meeting of the Board of Directors, the President was directed under those minutes to strictly adhere to all government regulations applicable to the company and to maintain close personal supervision of such matters to insure that no violation occurred. Further, the President of the Corporation was to maintain the total management and control of the Corporation as per the resolution adopted by the Board of Directors at the annual meeting of the Board of Directors dated May 23, 1980. The minutes reflect that a management contract was entered into between CAR DEALERSHIP, Inc. and CONSULTANT, Inc. to provide CAR DEALERSHIP, Inc. with management consultation and systems review, CONSULTANT being a holding company owned by PROTESTANT. The minutes reflect that the accounting firm of ACCOUNTING FIRM, Inc. would serve as CAR

DEALERSHIP, Inc.'s company auditor, said firm being also the accounting firm that represents PROTESTANT and his other business interests and holdings through CONSULTANT.

CAR DEALERSHIP, Inc. continued to conduct business from the date of its incorporation up until February of 1983 when CONSULTANT, by and through MANAGER, who as chief executive officer of said CONSULTANT, was notified by PRESIDENT that CAR DEALERSHIP, Inc. was "out of trust" with CAR FINANCE CORPORATION in the amount of approximately four hundred thousand dollars and that a check payable to CAR FINANCE CORPORATION had been returned. On or about February 8, 1983, following the notification that CAR DEALERSHIP, Inc. had fallen "out of trust" with the CAR FINANCE CORPORATION, MANAGER was sent to CAR DEALERSHIP, Inc. by PROTESTANT to monitor and report back to CONSULTANT and to PROTESTANT concerning the "out of trust" situation with CAR FINANCE CORPORATION at CAR DEALERSHIP, Inc. On or about February 8, 1983, a special meeting of directors was held at which meeting an Assignment from CAR DEALERSHIP, Inc. of all accounts receivable were assigned to CAR FINANCE CORPORATION in the approximate amount of Three Hundred Ninety-Four Thousand Nine Hundred Eighty-Three Dollars ($394,983.00), said document signed by both PRESIDENT as President of CAR DEALERSHIP, Inc. and by PROTESTANT as Vice-President, although there is some question concerning whether or not at that point in time PROTESTANT was in fact Vice-President of the Corporation. There was also a Security Agreement executed wherein CAR DEALERSHIP, Inc. assigned all of the parts and accessories as inventoried in the amount of Four Hundred Forty-One Thousand Six Hundred Fifty-Four Dollars ($441,654.00), said parts and accessories held as inventory at the business location of CAR DEALERSHIP, Inc. in CITY, Oklahoma, said assignment to CAR FINANCE CORPORATION. Thereafter, on or about March 16, 1983, at a special meeting of the Board of Directors of CAR DEALERSHIP, Inc., PRESIDENT was removed from office as President and PROTESTANT was elected unanimously as President of CAR DEALERSHIP, Inc., said election and removal of the former President effective March 1, 1983.

PROTESTANT had guaranteed the floor plan for CAR DEALERSHIP, Inc. with CAR FINANCE CORPORATION and therein became an indispensable party following the "out of trust" situation that developed with CAR DEALERSHIP, Inc. and CAR FINANCE CORPORATION after the incident on or about February 8, 1983. During negotiations with CAR FINANCE CORPORATION and PROTESTANT, it was decided that MANAGER would be appointed to manage the affairs of CAR DEALERSHIP, Inc. on a day-to-day basis. The appointment of MANAGER to the management position of CAR DEALERSHIP, Inc. after March of 1983 was acceptable to PROTESTANT as well as CAR FINANCE CORPORATION in view of the great deal of confidence and ability that PROTESTANT as well as CAR FINANCE CORPORATION had in MANAGER. The options available following the initial negotiations with CAR FINANCE CORPORATION and with PROTESTANT concerning the "out of trust" situation dealing with the floor plan at CAR DEALERSHIP, Inc. were operate under the auspices of CAR FINANCE CORPORATION, and try to sell the dealership and/or obtain refinancing, and/or to close the doors of CAR DEALERSHIP, Inc. and sustain the loss of the "out of trust" liability with CAR FINANCE CORPORATION concerning the floor plan wherein PROTESTANT was the guarantor with CAR FINANCE CORPORATION concerning the floor plan.

The business of CAR DEALERSHIP, Inc. continued to operate under the direction of PROTESTANT by and through his appointed manager, MANAGER, under the auspices of CAR FINANCE CORPORATION, until the close of CAR DEALERSHIP, Inc. in June, 1983. In an effort to reduce the debt of CAR DEALERSHIP, Inc. to CAR FINANCE CORPORATION concerning the "out of trust" situation as to the floor plan of the cars sold by CAR DEALERSHIP, Inc., PROTESTANT allowed CAR FINANCE CORPORATION to review all disbursement of monies and/or accept their direction as to what liabilities would and would not be paid out of the gross revenues of CAR DEALERSHIP, Inc. from March, 1983 until the closing of CAR DEALERSHIP, Inc. in June, 1983. PROTESTANT was directly involved in the operation of CAR DEALERSHIP, Inc. from March, 1983 through the close of business in June, 1983 by personally visiting the company location on a daily basis and/or obtaining reports on a personal basis, or by telephone conversations with MANAGER who, during this period of time, worked hand-in-hand with CAR FINANCE CORPORATION concerning the reduction of debt due CAR FINANCE CORPORATION from CAR DEALERSHIP, Inc. concerning the "out of trust" situation pertaining to the floor plan of the cars sold at CAR DEALERSHIP, Inc. MANAGER served as a mere employee and under the specific direction and guidelines concerning the operation of CAR DEALERSHIP, Inc. issued to him by PROTESTANT during the period of March, 1983 through June, 1983. MANAGER was granted the authority to issue checks payable from CAR DEALERSHIP, Inc. to the respective creditors to insure tight control concerning the "out of trust" situation with CAR FINANCE CORPORATION and that CAR FINANCE CORPORATION would in fact review the bills that were to be paid out of the company account. MANAGER, during the period of March through June, 1983 while managing CAR DEALERSHIP, Inc., did provide PROTESTANT with a list of all creditors on a monthly basis owed by CAR DEALERSHIP, Inc. which included a list of all taxes due and owing, said list of creditors made available on a once a month accounting of the overall workings of CAR DEALERSHIP, Inc. CAR DEALERSHIP, Inc. was operated from the month of March, 1983 until the close of business in June, 1983 on a very rigid business budget concerning the payment of creditors of the company, such as in the matter of payroll wherein only the net payroll was made and the taxes, although withheld from the paychecks of the employees of CAR DEALERSHIP, Inc. said withheld funds were not paid over to the Income Tax Division. Likewise sales tax collected was not remitted to the Sales Tax Division of the Oklahoma Tax Commission in view of the fact there were no funds within the company in which to pay the sales tax so collected, said funds having been used to reduce the debt of CAR DEALERSHIP, Inc. to presumably CAR FINANCE CORPORATION in regard to the "out of trust" situation with the company. It was MANAGER'S understanding, having discussed this matter with PROTESTANT, that once the company was sold or refinancing was made available that these debts would in fact be paid out of the proceeds of the sale or refinancing. The business stance taken by CAR DEALERSHIP, Inc. concerning the payment of its debts including payments due CAR FINANCE CORPORATION as its major creditor was authorized by PROTESTANT, who was the President, guarantor, and majority stockholder of CAR DEALERSHIP, Inc., and the employer of MANAGER. Although CAR FINANCE CORPORATION did not in actuality control the business workings of CAR DEALERSHIP, Inc. during the period in question, the independence of PROTESTANT in operating CAR DEALERSHIP, Inc. was far from being autonomous in view of the "out of trust" position of the company. PROTESTANT'S acquiescence in allowing CAR FINANCE CORPORATION the privilege of advising what

creditors should and should not be paid out of the proceeds realized from the day-to-day operations of CAR DEALERSHIP, Inc. was a business decision PROTESTANT agreed to in order to attempt to sell and/or obtain refinancing.

On June 11, 1985, the Sales and Use Tax Division of the Oklahoma Tax Commission pursuant to sales tax reports filed with the Sales Tax Division on July 18, 1983 did issue an assessment for the admitted liability of Twenty Thousand Four Hundred Forty-Nine Dollars and Forty-Four Cents ($20,449.44) and interest of Six Thousand Eight Hundred Thirteen Dollars and Six Cents ($6,813.06) for a total sales tax liability and interest due thereon until June 11, 1985 of Twenty-Seven Thousand Two Hundred Sixty-Two Dollars and Fifty Cents ($27,262.50) against CAR DEALERSHIP, Inc. and/or PROTESTANT as President and/or individually. Likewise the Income Withholding Tax Section of the Income Tax Division of the Oklahoma Tax Commission did on July 8, 1985 issue an assessment against PROTESTANT for income withholding tax based upon admitted income withholding tax reports filed with the Income Withholding Tax Section of the Income Tax Division by CAR DEALERSHIP, Inc. signed by PROTESTANT, President, said reports dated August 19 representing the period of January through June, 1983 in the total amount of Twenty-Eight Thousand One Hundred Thirty-Six Dollars and Forty-Eight Cents ($28,136.48) representing income withholding tax of Twenty Thousand Two Hundred Two Dollars and Seventy-Six Cents ($20,202.76) and penalty and interest in the amount of Seven Thousand Nine Hundred Thirty-Three Dollars and Seventy-Two Cents ($7,933.72). Said assessments for Sales Tax and Income Withholding Tax were duly protested by PROTESTANT and a hearing requested.

ISSUES AND CONTENTIONS

The issue to be determined in the case at bar is whether or not, pursuant to the Oklahoma Sales Tax Code and the Income Withholding Tax Section of the Oklahoma Income Tax Act, PROTESTANT would in fact be liable for the admitted yet delinquent sales tax and the admitted yet delinquent income withholding tax due from CAR DEALERSHIP, Inc. as assessed by the respective taxing divisions of the Oklahoma Tax Commission.

It is the contention of the Protestant that PROTESTANT was not the proper party to be assessed in view of the fact that he was not the person required to collect the sales tax imposed under the Sales Tax Code as such being a principal officer of CAR DEALERSHIP, Inc. and therein could not be personally liable for said sales tax collected yet not remitted and further that the Protestant did not, during the period in question concerning the assessment, have control or authority concerning the payment of wages to the employees of CAR DEALERSHIP, Inc. pursuant to the provisions of the Income Withholding Tax Section of the Income Tax Act and therefore was not an officer who had a duty to withhold or remit withholding taxes to the Income Tax Division of the Oklahoma Tax Commission.

It is the Division's position that PROTESTANT was a Director of CAR DEALERSHIP, Inc. from the time of its incorporation until the close of business of said corporation and that PROTESTANT acted as Vice-President of CAR DEALERSHIP, Inc. in February, 1983 and thereafter, as of March 1, 1983, became the President of CAR DEALERSHIP, Inc., that he had control and took an active interest in the business affairs of CAR DEALERSHIP and that as

principal officer during the period of time in which the sales tax and income withholding tax assessments were issued, that he therefore became the person liable for the respective taxes, interest and penalties as assessed pursuant to reports filed with the respective divisions from the corporation.

It should be initially noted that an ancillary issue was raised at the protest hearing involving a check dated June 1, 1983 in the amount of Seven Thousand Five Hundred Seventy-Six Dollars and Sixty-Nine Cents ($7,576.69) paid over to the Oklahoma Tax Commission Sales Tax Division, the issue being whether or not proper credit had been given for the payment of said Seven Thousand Five Hundred Seventy-Six Dollars and Sixty-Nine Cents ($7,576.69) and that if not, it should be withdrawn from the sales tax assessment. Notification from the General Counsel's office to this office reflects that this amount had been properly credited on a pre-assessment delinquency and that these funds represented taxes outside the assessment period and that proper credit had in fact been given for the payment of such.

APPLICABLE LAW

Section 1350 et seq. of Title 68 of the Oklahoma Statutes contain the Oklahoma Sales Tax Code and pursuant to the provisions of Section 1361 of Title 68 of the Oklahoma Statutes, the consumer is to pay the tax, the vendor is to collect the tax and said section also directs that the tax so collected shall be deemed "held in trust" for the State of Oklahoma. The pertinent provisions of Section 1361 supra as such applies to the case at bar are as follows:

> (A) The tax levied by this article shall be paid by the consumer or user to the vendor as trustee for and on account of this state. Each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by this article, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by this article, and in the case of a corporation, each principal officer thereof, shall be personally liable for said tax.
>
> (D) Any sum or sums collected or required to be collected in this article shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the collecting vendor shall have a fiduciary duty to the State of Oklahoma in regards to such sums and shall be subject to the trust laws of this state. Any vendor who willfully or intentionally fails to remit the tax, after the tax levied by this article was collected from the consumer or user, and appropriates the tax held in trust to his own use, or to the use of any person entitled thereto, without authority of law shall be guilty of embezzlement. (Emphasis added)

The Income Withholding Tax Section of the Oklahoma Income Tax Act is provided pursuant to Section 2385.1 et seq. of Title 68 of the Oklahoma Statutes, Section 2385.1(b) of Title 68 of the Oklahoma Statutes defines the term "employer" to mean as follows:

> (b) The term "employer" shall mean any person (including any individual, fiduciary, estate, trust, partnership or corporation) transacting business in or

> deriving any income from sources within the State of Oklahoma for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" shall mean the person having control of the payment of such wages.

Section 2385.2 of Title 68 of the Oklahoma Statutes provides and/or creates a duty on every employer who makes and/or pays wages to deduct and withhold from the wages paid to his, her or its employees a determined amount of income withholding tax. Section 2385.3 of Title 68 of the Oklahoma Statutes thereafter requires that the employer, after deducting and withholding from the employees' wages income withholding tax, that said tax so deducted and withheld shall be paid over to the Oklahoma Tax Commission. Section 2385.3(d) provides for the imposition of liability on an employer for failing to remit the income withholding tax so deducted and withheld from the employees' wages and further provides that these sums shall be deemed "held in trust" for the State of Oklahoma. Section 2358.3(d) provides as follows:

> Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma. The term "employer" as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer or employee of a corporation, or a member is under a duty to act for a corporation or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title. Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall be deemed to be <u>held in trust</u> for the State of Oklahoma. (Emphasis added)

Review of the foregoing statutes direct with no ambiguity that the sales taxes collected as well as the income withholding tax deducted and withheld are to be held in trust for the State of Oklahoma and as such, that the corporation by and through its officers are personally and individually liable for the payment of those taxes collected, withheld and/or deducted, yet not remitted to the State of Oklahoma.

The Protestant contends that for the assessment period that even though PROTESTANT was, after March, 1983, the President of CAR DEALERSHIP, Inc., he did not have control or authority as to the payment of wages to employees of CAR DEALERSHIP, Inc. nor could he be deemed the principal officer responsible for the collecting and remitting of sales tax to the Oklahoma Tax Commission and in view of these facts, that he cannot be held personally liable for the sales tax assessed and the income withholding tax assessed by the respective taxing divisions of the Oklahoma Tax Commission. The facts as presented at the hearing and the evidence admitted do not reflect or sustain the contentions of the Protestant in regard to his involvement with the corporate enterprise of CAR DEALERSHIP, Inc.

The facts and evidence reflect that from the date of incorporation under the laws of the State of Oklahoma that the Protestant was a major stockholder in the corporation; that CAR DEALERSHIP, Inc. retained as its consultant on a contract basis CONSULTANT, which in effect was a holding company of the Protestant; that CAR DEALERSHIP, Inc. also retained as its company auditor ACCOUNTING FIRM, Inc., said accounting firm also being the accounting firm of the Protestant's holding company, CONSULTANT; that Protestant was the guarantor with CAR FINANCE CORPORATION on the floor plan of the automobiles held and sold by CAR DEALERSHIP, Inc.; that of the two classes of stock of CAR DEALERSHIP, Inc. that Protestant held and was allowed control of the voting shares of stock in the Corporation; that Protestant served as Chairman of the Board of Directors of CAR DEALERSHIP, Inc.; and that annual reports were submitted by CONSULTANT, Inc. concerning the business activities of CAR DEALERSHIP, Inc. Furthermore that as of February 8, 1983 Protestant executed as Vice-President and PRESIDENT as the President, an Assignment in the amount of Three Hundred Ninety-Four Thousand Nine Hundred Eighty-Three Dollars ($394,983.00) of accounts receivable to CAR FINANCE CORPORATION as well as an Assignment of Money Due or to Become Due from CAR DEALERSHIP, Inc. to CAR FINANCE CORPORATION. That a Security Agreement was also executed on February 8, 1983 wherein the parts and accessories as inventoried were assigned from CAR DEALERSHIP, Inc. to CAR FINANCE CORPORATION in the amount of Four Hundred Forty-One Thousand Six Hundred Fifty-Four Dollars ($441,654.00). That as of March 16, 1983, PROTESTANT became President of CAR DEALERSHIP, Inc. effective March 1, 1983 and that Protestant accepted the election as President of CAR DEALERSHIP, Inc. by executing an acceptance thereof. (See Exhibits 1, 2 and P-2)

Admittedly the business activities of CAR DEALERSHIP, Inc. from February 8, 1983 until the close of business in June, 1983, was conducted in a less than desirous atmosphere, yet the fact that the Protestant permitted CAR FINANCE CORPORATION to wield influence over the proper method of conducting business of the corporation does not in fact relieve the Protestant of the trust duties imposed upon CAR DEALERSHIP, Inc. and Protestant by the laws of the State of Oklahoma.

The fact that CAR DEALERSHIP, Inc. had fallen "out of trust" with CAR FINANCE CORPORATION in the amount of Four Hundred Thousand Dollars ($400,000.00) and that the Protestant as guarantor of said floor plan does not relieve the responsibilities of the Protestant in complying with the laws of this State being the same State that permitted and afforded the Protestant and CAR DEALERSHIP, Inc. the privileges of conducting business under the protection of the laws of the State of Oklahoma. The Protestant had the business option and the wherewithal from the first notification that CAR DEALERSHIP, Inc. had fallen "out of trust" with CAR FINANCE CORPORATION to close the doors and cease business of CAR DEALERSHIP, Inc. and therein default on the "out of trust" situation with CAR FINANCE CORPORATION or to continue to conduct business in the expectation of either selling or refinancing the corporate structure and reverse the "out of trust" matter. The Protestant, who from the facts presented at the hearing is obviously a learned businessman, opted for the second alternative with the understanding and agreement that CAR FINANCE CORPORATION would be permitted great latitude in the conducting of the day-to-day business operations of CAR DEALERSHIP, Inc. This business decision was made by the Protestant, who at the time was

viewed by CAR FINANCE CORPORATION as the guarantor, controlling stockholder and principal party in regard to the corporate business entity known as CAR DEALERSHIP, Inc.

The Protestant has attempted to buttress his argument concerning the liability of the Protestant by citing numerous federal cases concerning the liability of officers of corporations concerning 26 U.S.C.A. (I.R.C. 1954) Section 6672. Review of the rationale of the respective courts concerning the liability of officers of a corporation only reinforces the Divisions' assertions that the Protestant is in fact liable for the assessments of sales tax and income withholding tax, based upon the evidence and facts admitted at the hearing. See Sorenson v. United States of America, 521 F.2d 325 (1975), Fitzgerald v. United States of America, 407 F.Supp. 1132 (1976), Kalb v. United States of America, 505 F.2d 506 (1974) and Garnett v. United States of America, 385 F.Supp. 665 (1974), Braden v. United States of America, 318 F.Supp. 1189 (1970). In the Braden supra, decision, that court recited certain specific facts on which courts in the past had relied upon in determining whether or not individuals were responsible parties for the payment of taxes withheld from wages of employees therein listing five specific factors which when applied to the facts and circumstances aduced at the hearing, could lead to but one conclusion, that being that the Protestant is in fact the responsible party and/or principal officer who owed a duty of responsibility to the State of Oklahoma to assume that both the sales tax collected and/or the income withholding tax deducted and withheld from the employees' wages at CAR DEALERSHIP, Inc. were properly remitted and accounted for. See Kadah v. United States of America, 600 F.Supp. 1302 (1985) and McGlothin v. United States of America, 720 F.2d 6 (1983).

The Division cites Preston Thomas Construction, Inc. v. Central Leasing Corporation, Okl.App., 518 P.2d 1125, as support for liability of the Protestant concerning his position as an officer of the corporation and liability for the taxes so assessed and find the decision of the Court of Appeals of Oklahoma, Division 2, to be applicable to the case at bar as to the officer's personal liability wherein the court recited the rule of law concerning such:

> "...an officer or director of a corporation is personally liable for the wrongful use of funds entrusted to it if (1) he receives any of the money; (2) if he participates in the wrongful asset distribution; (3) or, being ignorant of the wrongdoing, he is negligent in failing to learn of and prevent it. The law will not permit an officer or director to escape personal responsibility for his corporation's intentional malfeasance by preserving a state of ignorance through a gross or willful neglect of duties."

Review of the applicable statutes in the case at bar, Section 1361 supra and Section 2385.3 and the general accepted rule of law upheld by the Oklahoma Supreme Court concerning statutory construction being the plainly expressed intent of the Legislature is to be followed without further inquiry to be mandatory. In determining the intent of the Legislature, one must look at the entire statute and not, as Protestant has propounded, of particularizing certain phrases gleaned from the statute as a whole and therein attempting to debase the overall intent and scheme of the Legislature in enactment of the statute. See Estate of Kasishke v. Oklahoma Tax Commission, 541 P.2d 848 (Okla. 1975); In the Matter of the Request of Ham Production, 671 P.2d 50, and Home State Production Company v. Board of Equalization, 416 P.2d 917 (Okla.

1966). There is no ambiguity concerning the duty and/or responsibility in the case at bar as such applies to the Protestant being an officer, stockholder and member of the Board of Directors of CAR DEALERSHIP, Inc. The duty, responsibility and the trust agreement entered into between the Protestant and the State of Oklahoma, irrespective of the business problems encountered cannot lightly be disregarded and should those duties and responsibilities be misused and/or mismanaged, then, in that event, the statutes direct where liability shall be placed. In the case at bar, that liability rests with the Protestant herein, PROTESTANT.

CONCLUSIONS

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

(1) That the Oklahoma Tax Commission has jurisdiction in this matter.

(2) That the assessment for Sales Tax, plus penalty and interest in the amount of Twenty-Seven Thousand Two Hundred Sixty-Two Dollars and Fifty Cents ($27,262.50) issued June 11, 1985 is correct and proper and that the assessment for Income Withholding Tax in the amount of Twenty-Eight Thousand One Hundred Thirty-Six Dollars and Forty-Eight Cents ($28,136.48) issued July 8, 1985 is correct and proper.

(3) That the Protestant, PROTESTANT, pursuant to the directives of Section 1361 of Title 68 of the Oklahoma Statutes, was in fact a principal officer of CAR DEALERSHIP, Inc. and as such, those sales tax so collected by the Corporation and held in trust, yet not remitted, are due and owing as assessed against PROTESTANT.

(4) That the Protestant, pursuant to the provisions of Section 2385.3 was in fact an officer of the Corporation and as such, an officer with a duty to insure that income withholding taxes are withheld and remitted from the wages of the employees of CAR DEALERSHIP, Inc. and that said sums withheld were to be held in trust for the State of Oklahoma and in view of the fact that these funds were not remitted, the Protestant is in fact liable for the Oklahoma Income Withholding Tax deducted and withheld yet not remitted to the State of Oklahoma.

(5) The protests of PROTESTANT as to the assessment of Oklahoma Sales Tax and Oklahoma Income Withholding Tax should be denied.

DISPOSITION

It is the ORDER of the undersigned Administrative Law Judge of the Oklahoma Tax Commission that the protests of PROTESTANT be denied and that the assessment for Oklahoma sales tax and interest in the amount of Twenty-Seven Thousand Two Hundred Sixty-Two Dollars and Fifty Cents ($27,262.50) with interest computed thereon to June 11, 1985 be deemed correct and proper and interest continue to accrue thereon from the date of said assessment until paid in full, and further, that the assessment for income withholding tax, penalty and interest in the amount of Twenty-Eight Thousand One Hundred Thirty-Six Dollars and Forty-Eight Cents

($28,136.48) be deemed correct and proper and interest continue to accrue thereon from the date of said assessment until paid in full, and that the protests of 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.