

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-12-02-06 / NON-PRECEDENTIAL
ID: M-86-246
DATE: DECEMBER 2, 1986
DISPOSITION: ORDER COMPELLING DOCUMENTS UPHELD
TAX TYPE: UNCLAIMED PROPERTY
APPEAL: AFFIRMED / OK S.CT. 67,984
DECISION NOT PUBLISHED

FINDINGS AND CONCLUSIONS

Now on this 2nd day of December, 1986, the above styled cause comes on for consideration before the Oklahoma Tax Commission, and hearing had, at which hearing Protestant, PROTESTANT, appeared by and through NAME, Attorney-In-Fact for PROTESTANT and GENERAL COUNSEL, General Counsel, State Banking Department and the Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission by and through OTC GENERAL COUNSEL, General Counsel and OTC ATTORNEY, Attorney.

The protest hearing was held on September 8, 1986 before the Oklahoma Tax Commission En Banc. Opening statements were made by the parties. DEPUTY, Deputy Commissioner of the State Banking Department testified on behalf of Protestant. SUPERVISOR, Audit Supervisor, testified on behalf of the Estate Tax and Unclaimed Property Division. Closing arguments were then made by each party, and additional time was permitted to allow Protestant and the General Counsel's Office to file additional briefs. By agreement of the parties, the exclusive issue at the protest hearing was the authority of the Oklahoma Tax Commission to audit the records of PROTESTANT.

FINDINGS OF FACTS

1. Protestant, PROTESTANT, is a bank chartered by the State of Oklahoma.
2. Protestant was selected for audit by the Estate Tax and Unclaimed Property Division of the Oklahoma Tax Commission. Two record requests were given to the bank in anticipation of the commencement of the audit.
3. The audit commenced on April 21, 1986, with an Opening Conference on the bank premises. The auditors were provided with bank records relevant to their examination for compliance with the Uniform Disposition of Unclaimed Property Act.
4. Within several days of the commencement of the audit, the auditors were informed by Protestant's President that the records previously provided were being withdrawn based upon the Oklahoma Financial Privacy Act.
5. On July 3, 1986, pursuant to application by the Division, the Oklahoma Tax Commission issued an Order Compelling Production of Documents, attached hereto as Exhibit I. [OMITTED].

6. Protestant filed a written protest to the Order with the Oklahoma Tax Commission on August 8, 1986. The protest was filed on behalf of Protestant by and through ATTORNEY, Attorney, NAME, Attorney-in-Fact, COMMISSIONER, Banking Commissioner, and the Oklahoma Bankers Association.

7. Audits of banking organizations by the Unclaimed Property Division are conducted to determine whether the bank is holding presumed abandoned property, such as checking accounts, savings accounts, and cashiers' checks, which should have been reported to the Oklahoma Tax Commission.

8. An examination of PROTESTANT for the purpose of determining whether the bank is holding property which should have been reported to the Oklahoma Tax Commission requires that the Oklahoma Tax Commission unclaimed property auditors have access to records which contain customer names.

9. An audit for presumed abandoned property cannot be effectuated without access to bank records containing customer names.

10. Bank customers are not the subject of examination by the Oklahoma Tax Commission unclaimed property auditors. The Unclaimed Property Division does not investigate individual customers for civil or criminal action.

11. Information obtained by auditors during an audit of a banking organization for presumed abandoned property is treated in a confidential manner.

12. The State Banking Department examines State chartered banks to ascertain the financial condition, the soundness of management and conformity with the applicable banking laws.

13. As part of the examination of state chartered banks, examiners for the State Banking Department check for defalcation of dormant accounts by bank employees.

14. When the State Banking Department discovers during an examination of a bank that the bank is in violation of the unclaimed property laws, the bank is advised to remit the money to the Oklahoma Tax Commission.

ISSUES

WHETHER THE PROHIBITIONS OF THE FINANCIAL PRIVACY ACT
DISALLOW THE EXAMINATION OF STATE CHARTERED BANKS BY
THE OKLAHOMA TAX COMMISSION FOR COMPLIANCE WITH THE
UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

WHETHER THE OKLAHOMA TAX COMMISSION IS AUTHORIZED BY LAW TO ISSUE A SUBPOENA FOR A BANK CUSTOMER’S FINANCIAL RECORD.

Applicable Law

The statutory law of Oklahoma applied to the facts of this case is found at 60 O.S. 1981, § 651 et seq., 68 O.S.1981, § 103, and 6 O.S. 1981, § 2201 et seq. The relevant Sections of Title 60 are as follows:

§ 651. Definitions

As used in this act, unless the context otherwise requires:

(a) “Banking organization” means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in this state.

(d) “Holder” means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on any obligation subject to this act.

(f) “Owner” means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or the owner of record of corporate stock or other evidence of beneficial ownership in a business organization or a person claiming under him by reason of a decree of a court of record or by reason of an instrument in writing executed by such owner of record.

(j) “Commission” means the Oklahoma Tax Commission.

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§ 652. Property held by banking or financial organizations

The following property held or owing by a banking or financial organization is presumed abandoned:

1. Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven (7) years:

a. increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest, or

b. corresponded in writing with the banking organization concerning the deposit, or

c. otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization;

2. No such deposit shall be presumed abandoned, however, if one or more statements or other business communications concerning such deposit have been sent by first-class mail by the banking or financial organization involved to the depositor thereof at least once each year for a period of at least three (3) years, and no such statement or communication has been returned for inability to make delivery to the addressee;

3. Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven (7) years:

a. increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends, or

b. corresponded in writing with the financial organization concerning the funds or deposit, or

c. otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization;

4. No such funds or deposits shall be presumed abandoned, however, if one or more statements or other business communications concerning such deposit have been sent by first-class mail by the banking or financial organization involved to the depositor thereof at least once each year for a period of at least three (3) years, and no such statement or communication has been returned for inability to make delivery to the addressee;

5. Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit and drafts, that has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within seven (7) years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization;

6. Any sum payable on a travelers' check, unless the owner has within fifteen (15) years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization. Provided

that no travelers' check shall be presumed abandoned if one or more statements or other business communications concerning such travelers' check have been sent by first-class mail by the banking or financial organization involved to the purchaser thereof, at least once each year for a period of three (3) years, and no such statement or communication has been returned for inability to make delivery to the addressee; or

7. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency, or collateral deposit in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by owner for more than seven (7) years from the date on which the lease or rental period expired; except as otherwise provided by other laws of this state.

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§ 661. Report of abandoned property

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the Oklahoma Tax Commission with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of Twenty-five Dollars (\$25.00) or more presumed abandoned under this act;

2. in case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last-known address according to the life insurance corporation's records;

3. the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that (A) items of value under Twenty-five Dollars (\$25.00) each may be reported in the aggregate, and (B) on request of the holder, the Oklahoma Tax Commission may, in its discretion, approve the reporting of one or more categories of unclaimed funds in the aggregate on an estimated basis, whenever it shall appear that each of the items in any such category has a value of less than Twenty-five Dollars (\$25.00) and the cost of reporting such items would be disproportionate to the amounts involved; and,

4. the date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property.

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§ 678. Failure to report property--Examination or records

If the Commission has reason to believe that any person has failed to report property in accordance with this act, it may make a demand by certified mail, return receipt requested, that such report be made, and filed with the Commission. The report of abandoned property or any other report required shall be made and filed with the Commission within sixty (60) days after receipt of the demand.

The Commission may at reasonable times and upon reasonable notice examine the records of any person if the Commission has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

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The relevant Sections of Title 6 are as follows:

§ 2201. Short title

This act shall be cited as the Financial Privacy Act. Its purpose is to maintain the privacy and confidentiality of the records of customers of financial institutions.

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§ 2202. Definitions

(a) "Financial institution" means any office or branch of a bank, savings bank, savings association, building and loan association, and savings and loan association located in the State of Oklahoma.

(b) "Financial record" means any original of, or any copy of, any record held by a financial institution, or any information derived therefrom, pertaining to a customer's relationship with the financial institution.

(c) "Government authority" means any agency, board, commission or department of the State of Oklahoma, or any officer, employee, representative, or agent thereof.

(d) "Customer" means any person, corporation, partnership or other legal entity, or authorized representative thereof, who utilized or utilizing a service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the customer's name.

(e) "Supervisory agency" means, with respect to any particular financial institution, any state agency, board, commission or department which has

statutory authority to examine the financial condition or business operations of that institution. Laws 1979, c. 191, § 2.

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§ 2203. Financial institutions prohibited from disclosing financial records unless

A financial institution is prohibited from giving, releasing or disclosing any financial record to any government authority unless:

(a) it has written consent from the customer for the specific record requested: or

(b) it has been served with a subpoena issued pursuant to Section 4 for the specific record requested.

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§ 2204. Subpoena of financial records

(a) A court of competent jurisdiction, state agency or legislative committee may issue a subpoena for a customer's financial record only if such subpoena is authorized by law. Said subpoena shall specify what financial record is sought. A subpoena issued by a state agency or legislative committee shall be enforced pursuant to Section 315 of Title 75 of the Oklahoma Statutes.

(b) A copy of the subpoena shall be served on the customer or mailed to his last-known address on or before the date the subpoena is served on the financial institution.

(c) The customer shall have fourteen (14) days after the subpoena was served or mailed in which to file a Motion to Quash the subpoena on the following grounds:

(i) that the financial record sought is incompetent, irrelevant or immaterial for the purpose or purposes for which it is sought;

(ii) that the release of the financial record would cause an unreasonable burden or hardship under the circumstances;

(iii) that the government authority seeking said financial record is attempting to harass the customer;

(iv) that there is no merit in the purpose or purposes for which said financial record is sought.

If the subpoena was issued by the district court, the motion to quash the subpoena shall be filed in the district court that issued the subpoena. If the subpoena was issued by a state agency or a legislative committee, the motion to quash the subpoena shall be filed with the state agency or legislative committee that issued the subpoena.

(d) A copy of the motion to quash filed by the customer shall be served by personal service or by mail on:

(i) a chairman, presiding officer, or any member of the governing body of the government authority seeking the records,

(ii) any officer of the financial institution which has been served the subpoena, at least ten (10) days before any hearing on the motion to quash.

(e) Failure of the customer to file a motion to quash in the time provided for a subsection (c) shall constitute a waiver of his right to object to the release or disclosure of the financial record sought by the government authority.

(f) During the period for filing the motion to quash and continuing until a ruling is made on such motion, if one is filed, the financial institution shall make available to its customer a copy of the records sought and shall preserve the original records without alteration.

The relevant portions of Title 68 are as follows:

§ 103. Conduct of hearings—Products of books and records—Perjury

In the performance of its duties, as defined by law, the Tax Commission, or any member thereof, shall have the power to administer oaths, to conduct hearings, and to compel the attendance of witnesses and the production of the books, records and papers of any person, firm, association or corporation.

Any person, or any member of any firm or association, or any official, agent or employee of any corporation, who shall fail or refuse to testify, or who shall fail or refuse to produce any books, records or papers which the Commission shall require; or who shall fail or refuse to permit the examination of the same; or who shall fail or refuse to furnish any other evidence or information which the Commission, or any member thereof, may require; or who shall fail or refuse to answer any question which may be put to him by said Commission, or any member thereof, touching the business, property, assets or effects of any such person, firm, association or corporation, or the valuation thereof or the income or profits therefrom, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more

than Five Hundred Dollars (\$500.00), or by imprisonment in the jail of the county where such offense shall have been committed for not more than one (1) year, or by both such fine and imprisonment.

Any person, or member of any firm or association, or any official, agent or employee of any corporation, who shall knowingly make false answer to any question which may be put to him by the Commission, or any member thereof, touching the business, property, assets or effects of any such person, firm, association or corporation, or the valuation thereof or the income of profits therefrom; or who shall make or present any false affidavit concerning any list, schedule, statement, report or return, or for any other purpose, filed with the Commission or required to be filed by this Code or by any other law of the state, shall be guilty of perjury, and, upon conviction, shall be punished as provided by law.

CONCLUSIONS OF LAW

In view of the above and foregoing factual situation and applicable law thereto, the Oklahoma Tax Commission concludes as follows:

- (1) The Oklahoma Tax Commission has jurisdiction of this matter.
- (2) The Oklahoma Tax Commission is authorized and mandated to administer and enforce the Uniform Disposition of Unclaimed Property Act, 60 O.S. § 651 et seq.
- (3) The Uniform Disposition of Unclaimed Property Act of the State of Oklahoma was enacted for a public reason and for the benefit, as well as for the protection, of the rights of unlocatable owners of abandoned property.
- (4) PROTESTANT is a “banking organization” and a “holder” within the definitions of the Uniform Disposition of Unclaimed Property Act.
- (5) PROTESTANT is required to report and remit the types of property which are in its custody set out in Section 652 of the Uniform Disposition of Unclaimed Property Act, to the Oklahoma Tax Commission on an annual basis as required by Section 661 of the Uniform Disposition of Unclaimed Property Act.
- (6) The Oklahoma Tax Commission is authorized by the Uniform Disposition of Unclaimed Property Act to examine the records of a banking organization when the Commission has reason to believe that the banking organization has failed to report property that should have been reported pursuant to the Uniform Disposition of Unclaimed Property Act.
- (7) In the enforcement of the Uniform Disposition of Unclaimed Property Act, the Oklahoma Tax Commission is a supervisory agency examining the business operations of the banking organizations to determine compliance with state law.

(8) Bank customers have no duties imposed upon them by the Uniform Disposition of Unclaimed Property Act.

(9) No exclusions from the mandates of the reporting requirements exist in the Uniform Disposition for Unclaimed Property Act for State chartered banks.

(10) No exclusions from the authority of the Oklahoma Tax Commission to examine for compliance with the Uniform Disposition of Unclaimed Property Act exists for State chartered banks.

(11) Regulation LX-8 of the Oklahoma Tax Commission protects the confidentiality of information regarding bank customers obtained or coming into the custody of the Oklahoma Tax Commission auditors during an examination of the bank records. Disclosure of confidential information obtained during the bank audit is permitted only in specific instances pertaining only to the administration and enforcement of the Uniform Disposition of Unclaimed Property Act. In no instance is information pertaining to a bank customer permitted to be disclosed to any person or entity except as permitted by Regulation LX-8.

(12) The Oklahoma Tax Commission is the sole state agency charged with the duty to enforce compliance with the Uniform Disposition of Unclaimed Property Act by State chartered banks.

(13) The purpose of the Financial Privacy Act, to maintain the privacy and confidentiality of the records of customers of Financial institutions, and the purpose of the Uniform Disposition of Unclaimed Property Act, to protect the rights of unlocatable owners of abandoned property held by banking organizations, are not inconsistent. The enforcement of the Uniform Disposition of Unclaimed Property Act by the Oklahoma Tax Commission is not in violation of the purpose of the Financial Privacy Act. The purpose for which disclosure of the information is sought is determinative of the protection afforded by the Financial Privacy Act.

(14) The Oklahoma Tax Commission is authorized in 68 O.S. 1981, § 103 to issue subpoenas for financial records of bank customers.

(15) Rules of the State Banking Department have no force and effect upon the enforcement of the Uniform Disposition of Unclaimed Property Act by the Oklahoma Tax Commission.

DISPOSITION

The Order Compelling Production of Documents is upheld. PROTESTANT is ordered to produce for examination those documents of the bank set forth in the Order Compelling Production of Documents issued the 3rd day of July, 1986.

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.