

**JURISDICTION: OKLAHOMA TAX COMMISSION DECISION**  
**CITE: 87-10-30-18 / PRECEDENTIAL**  
**ID: P-85-266**  
**DATE: OCTOBER 30, 1987**  
**DISPOSITION: DENIED**  
**TAX TYPE: SALES**  
**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 ADMINISTRATIVE LAW JUDGE, by the Oklahoma Tax Commission. A hearing was had before PRESIDING, Administrative Law Judge, at which hearing PROTESTANT, appeared not nor by counsel, and the Sales Tax Division of the Oklahoma Tax Commission appeared by and through ASSISTANT GENERAL COUNSEL, Attorney. Notice of the hearing was mailed by certified mail, return receipt requested, to Protestant. Protestant received the notice, as evidenced by the return receipt. Exhibits, not herein itemized, were received into evidence.

**STATEMENT OF FACTS**

CORPORATION, an Oklahoma corporation, was authorized to do business by the Oklahoma Secretary of State on or about September 7, 1983. CORPORATION applied for and was issued a sales tax permit. Records filed with the Oklahoma Tax Commission listed the following individuals as officers of CORPORATION for the fiscal years 1983 through 1985:

NAME, President  
NAME, Vice President  
NAME, Secretary  
PROTESTANT, Treasurer

PROTESTANT herein, in addition to being Treasurer of CORPORATION was also on the Board of Directors of CORPORATION.

The Sales Tax Division conducted a field audit of the records and files of CORPORATION for the period November 1, 1983 through December 31, 1984, and as a result thereof, by letter dated April 26, 1985, issued a proposed assessment for additional sales tax, interest and penalty. Said assessment was based upon sales tax liability for amounts collected which had not been remitted and for sales to persons who did not hold a valid sales tax permit or to persons who held a permit but were not regularly in the business of reselling items that were purchased as exempt.

Protestant timely filed a protest of the proposed assessment, which was received by the Sales Tax Division on May 13, 1985. The protest letter did not challenge the amount of the assessment. However, the protest letter did state that the corporation had filed Chapter 11 Bankruptcy and that the automatic stay provisions of Section 362 should apply.

On May 11, 1986, the United States Bankruptcy Court dismissed the request for discharge made by CORPORATION. The assessment has become final with respect to the corporation and the other officers.

**ISSUE**

Since the bankruptcy proceeding has been dismissed, the only question remaining is whether the Protestant, as an officer of the corporation, is liable for the corporation's sales tax liability.

**APPLICABLE LAW**

Title 68 O.S.A. 1985, § 1361 states 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 practical 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 is collected from the consumer or user, and appropriates the tax held in trust to his own use or to the use of any person not entitled thereto, without authority of law shall be guilty of embezzlement. [Emphasis Added]

In the Oklahoma Supreme Court case of Preston-Thomas Construction, Inc. v. Central Leasing Corp., 518 P.2d 1125 (1973), the Court held the officers of a corporation personally liable for use of funds entrusted to the corporation if the officers received any of the money, if they participated in a wrongful asset distribution, or if being ignorant of the wrongdoing, they were negligent in failing to learn of and prevent the wrongdoing. The Court stated:

Moreover, corporate directors and officers are presumed to know that which it is their duty to know and about which they have the means of knowing . . . or to state it another way, the officers are bound to know what they ought to know and would have known by proper attention to their business . . . and where the duty to know exists, ignorance resulting from neglected official duty creates the same liability as actual knowledge.

Preston-Thomas at 1127.

Rule 26 of the Rules of Practice and Procedure Before the Oklahoma Tax Commission states as follow:

In all proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may dismiss the case for lack of sufficient evidence and, thereafter, recommend that the Commission deny the protest solely upon the grounds of failure to prov[E] sufficient facts which would entitle the protestant to the requested relief.

The Protestant was the treasurer of the corporation for the audit period and either knew or should have known of the corporation's sales tax posture. The Protestant had the burden of proving that he was not a principal officer of the corporation. Having failed to appear at the hearing and having failed to meet his burden of proof, the Protestant is responsible for the tax on sales made by the corporation of which he was a principal officer.

**CONCLUSIONS OF LAW**

In view of the above and foregoing findings of fact and law applicable thereto, the undersigned Administrative Law Judge finds as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That under the provisions of 68 O.S. 1985, § 1361, each principal officer of a corporation is personally liable for sales tax owed by the corporation.
- (3) That Protestant failed to meet his burden of proof in showing that he was not liable for the taxes assessed.
- (4) That the sales tax protest of PROTESTANT should be denied.

**DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the sales tax protest of PROTESTANT be denied.

OKLAHOMA TAX COMMISSION