JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-01-20-003 / NOT PRECEDENTIAL**
ID: **P9600260**
DATE: **01-20-98**
DISPOSITION: **ABATEMENT GRANTED**
TAX TYPE: **SALES AND TOURISM**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this ____ day of December, 1997, the above-styled and numbered cause comes on for decision pursuant to a hearing held on July 11, 1996, to consider the Motion to Dismiss filed by the Account Maintenance Division of the Tax Commission (hereinafter "Division"). As grounds for the Motion, the Division argues that the Commission lacks jurisdiction to consider the merits of the protest since PROTESTANT, failed to respond to the assessment or request abate of the liability within the statutory time limit provided in 68 O.S. 1991, § 221(c) and (e). Protestant asserts that she did not receive notice of the assessment and therefore, the assessment is not final and absolute and consideration of the merits of the protest is appropriate.

Upon review of the file and records, including the record of the proceedings held on July 11, 1996 and the exhibits received into evidence, the undersigned finds:

1. That Protestant operated AN ANONYMOUS business in ANYTOWN, Oklahoma.

2. That on March 6, 1990, the Division caused to be issued proposed sales and tourism tax assessments against Protestant for the periods of August, 1989 through January, 1990 and April, 1989 through January, 1990, respectively.

3. That by even date the Division also caused to be issued an assessment of proposed sales tax adjustments for the periods of February, May and July, 1989.

4. That sales tax, interest and penalty was assessed for the period of August, 1989 through January, 1990 in the estimated amount of $2,761.00.

5. That the adjustments to the sales tax reports for the periods of February, May and July, 1989 resulted in a proposed liability of $134.00.

6. That tourism tax, interest and penalty was assessed for the period of April, 1989 through January, 1990 in the estimated amount of $118.00.

7. That the assessments were issued to the business address which was listed by Protestant as her mailing address.

8. That the assessments were returned "unclaimed".

9. That in April, 1990, an enforcement agent with the Tax Commission visited the location of Protestant's business and was advised by the owner of the building that the business of Protestant was closed as of December 1, 1989.

10. That in 1995 the Tax Commission caused to be issued tax warrants against Protestant.

11. That the tax warrants were issued in AN ANONYMOUS County wherein Protestant has resided since moving from ANYTOWN, OKLAHOMA in 1991.

12. That the warrants cover the periods of May, 1989, July, 1989 and August through November, 1989 for sales tax and April through November, 1989 for tourism tax.

13. That the amounts in controversy, inclusive of interest accrued through July 11, 1996, are as follows:

SALES TAX

Tax:	$1,619.86
Interest:	1,600.00
Fees:	216.00
Penalty:	240.00
TOTAL:	$3,675.86

TOURISM TAX

Tax:	$80.00
Interest:	80.09
Fees:	32.32
Penalty:	8.00
TOTAL:	$200.41

14. That in January, 1996, Protestant filed a letter of protest to the issuance of the tax warrants against her.

15. That Protestant testified and presented proof that she did not operate the business on and after March, 1989.

16. That sales tax reports for the periods of April, May, June and July, 1989, reflect filings under Protestant's name and permit number, however, the name of the business is reflected as MR. SMITH Pub.

17. That the signature appearing on the reports is not that of Protestant.

18. That remittances for the amounts shown by said reports are made on checks bearing the name of MR. SMITH'S Irish Pub.

19. That the name appearing on said check is that of JOHN ANONYMOUS, the individual who operated SMITH'S.

20. That Protestant did not operate the business of SMITH'S and did not give JOHN ANONYMOUS permission to operate SMITH'S under her permit number.

CONCLUSIONS OF LAW

WHEREFORE, based on the above findings, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction to consider the protest and the dismissal thereof in accordance with 68 O.S. 1991, § 207 and Rule 710:1-5-46 of the ***Oklahoma Administrative Code***, that the assessments were issued in accordance with Section 208 of the Uniform Tax Procedure Code and Protestant's failure to receive actual notice of the assessment is not grounds for invalidating the Division's action of issuing tax warrants, 68 O.S. Supp. 1989, § 208; that Protestant's failure to file a written protest to the assessments within thirty (30) days of the mailing thereof caused the assessments to become final and absolute and precludes the Commission from considering the merits of the protest, 68 O.S. 1991, § 221(e) and ***Matter of the Request of Hamm Production Co.***, 671 P.2d 50 (Okl. 1983); that the Division's delay in issuing the tax warrants denied Protestant's right to seek the remedy of abatement of the taxes in accordance with 68 O.S. 1991, § 221(e); and that Protestant proved by a preponderance of the evidence that the assessments issued against her are clearly erroneous.

DISPOSITION

THEREFORE, IT IS DETERMINED that the assessments issued against PROTESTANT, be deemed to have not become final and absolute and be abated. It is further DETERMINED that the tax warrants issued against PROTESTANT, be cancelled.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.