JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-02-26-008 / NOT PRECEDENTIAL**
ID: **P9700256**
DATE: **02-26-98**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the proposed sales tax assessment of May 9, 1997, the letter of protest, and the Division's Verified Response to Protest and attachments, the undersigned finds:

1. That on or about March 18, 1992, PROTESTANT filed a Petition for Bankruptcy in the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. XXXX.

2. That on or about October 13, 1992, the Commission filed a proof of claim in the amount of $2,498.32 for unpaid sales taxes for the period of November, 1990 through August, 1991.

3. That the proof of claim was based on an estimate of sales tax liability since PROTESTANT had failed to submit sales tax reports for the period in question.

4. That on or about March 27, 1997, the Bankruptcy Court entered an Order discharging PROTESTANT from all debts provided for in the Plan that are dischargeable under Bankruptcy Code § 1328(a).

5. That at the time of the Bankruptcy Court's Order, the Commission had received $556.75 on its claim.

6. That on April 25, 1997, the Division forwarded an assessment of sales tax, interest, and penalty against PROTESTANT for the period of November, 1990 through August, 1991.

7. That the assessment, based on actual sales tax reports submitted by PROTESTANT, set forth a liability of $2,571.85, inclusive of tax in the amount of $1,397.66, interest accrued through June 20, 1997, in the amount of $978.76, and penalty in the amount of $195.43.

8. That PROTESTANT filed a timely protest to the proposed assessments, asserting that the taxes were discharged through the bankruptcy proceedings.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. 1991, § 207; that Oklahoma's "sales tax" is a trust fund tax under the United States Bankruptcy Code, see 68 O.S. 1991, § 1361; that the dischargability of trust fund taxes is governed by Section 523(a)(1)(A) of the Bankruptcy Code, ***Shank v. Washington State Department of Revenue***, 792 F.2d 829 (9th Cir. 1986); that trust fund taxes are specifically excepted from discharge in bankruptcy, 11 U.S.C. § 523(a)(1)(A).

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of PROTESTANT, be denied. It WAS further DETERMINED that the total amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiency due and owing.

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.