

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 98-06-25-007 / NOT PRECEDENTIAL
ID: P9700313
DATE: 06-25-98
DISPOSITION: DENIED
TAX TYPE: WITHHOLDING
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the recording of the proceeding held on March 26, 1998, and the exhibits received into evidence, the undersigned finds:

1. The Division conducted an audit of the books and records of MR. ANONYMOUS, P.C. and determined that it withheld income tax from employee wages but did not report and remit the tax withheld to the Tax Commission (delinquent tax) and that it failed to withhold, report and remit tax on compensation paid to MR. ANONYMOUS, President of MR. ANONYMOUS, P.C. (additional tax).

2. The delinquent tax assessed was based on the tax withheld as reflected on employee wage and tax statements and payroll records. The additional tax assessed for 1996 was based on an average of the compensation paid MR. ANONYMOUS for 1994 and 1995 as indicated by the applicable 1099's. The average was divided by 12 to arrive at a tax amount due per month.

3. Pursuant to the audit, the Division issued a proposed withholding tax assessment against MR. ANONYMOUS, P.C. and MR. ANONYMOUS, President and as an individual, for the period of January 1, 1996, through February 28, 1997. The amounts assessed, inclusive of penalty and interest accrued through July 15, 1997, are as follows:

Tax	\$13,074.88
Interest	1,705.31
Penalty	<u>3,238.14</u>
Total	\$18,018.33

4. On July 8, 1997, Protestants filed a timely protest to the Division's proposed assessment.

5. Payments made after the assessment date, in the aggregate amount of \$2,750.00, have been deducted from the withholding tax assessed. The amended amount at issue herein is set forth as follows:

Tax	\$10,324.88
Interest	2,800.00
Penalty	<u>3,268.70</u>
Total	\$16,393.58

6. The above-referenced cause was set for hearing on March 26, 1998. Notice of the hearing was forwarded to Protestants at their last-known address, yet they did not appear.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestants sustained their burden of proving that the withholding tax at issue herein is incorrect. Protestants contend that the amount assessed is inaccurate, that Division did not explain how the tax was calculated and that Protestants did not receive a copy of the audit workpapers. Division contends that it utilized the files and records of Protestants to conduct the audit. Division further contends that on May 22, 1997, at the closing conference, the Division, pursuant to authority granted by a power of attorney, discussed the audit procedure with A CERTIFIED PUBLIC ACCOUNTANT, and provided copies of the audit workpapers.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. Section 2385.2 sets forth the requirement that employers who make payments of wages must withhold a set amount. Section 2385.3 requires that the amount withheld must be paid to the Tax Commission.

3. An "employer" is any person who transacts business in or derives any income from sources within Oklahoma for whom an individual performs or performed any service, of whatever nature, as the employee of such person and who controls the payment of the wages for such services. 68 O.S. 1991, § 2385.1(b).

4. Pursuant to *Oklahoma Administrative Code* 710:1-5-47, the burden of proof in all proceedings, unless otherwise provided by law, is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. Protestants have failed to present any evidence in support of their allegations.

Therefore, the protest should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusion of law, it is DETERMINED that the protests be denied. It WAS further DETERMINED that the amounts in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiencies 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.