

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 99-03-23-006 / NOT PRECEDENTIAL  
**ID:** P9600424 / P9600424A  
**DATE:** 03-23-99  
**DISPOSITION:** DENIED  
**TAX TYPE:** MIXED BEVERAGE / SALES / WITHHOLDING / TOURISM  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Notice of the hearing was forwarded to Protestants' representative in accordance with 68 O.S. 1991, § 208. Protestants neither appeared at the hearing nor responded to the notice thereof. The Division moved for the denial of the protest, standing on its position letter filed in this cause on April 28, 1997 and the exhibits attached thereto.

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. That during the Pre-hearing Conference conducted in this cause on January 6, 1997, Protestants indicated their agreement with the amount of withholding tax assessed. Protestants, however, requested a waiver of the penalty and interest which the Division agreed to recommend upon satisfactory payment of the assessed withholding tax.

2. That the subject of the current protest is the assessments of mixed beverage gross receipts tax, sales tax and tourism tax resulting from an audit of the alcoholic beverages available for sale (depletion audit) during the period of and including March 1, 1993 through December 31, 1995.

3. That although the mixed beverage establishment was closed at the time of the audit, the auditor was able to obtain and verify through a pour test of the bartender the pour rates for spirits, shots and wine. The auditor was also given a copy of the price list for the establishment and was able to review the books and records of the establishment.

4. That as a result of the depletion audit, mixed beverage gross receipt tax, sales tax and tourism tax were assessed on the proposed underreported sales of \$51,279.27. Additional sales and tourism taxes were assessed on "monthly sales from the monthly worksheets [that] were NOT figured (sic) into the sales report on the monthly Sales and Tourism Tax reports". The amounts assessed for each of the tax types, inclusive of penalty and interest accrued through April 15, 1996, are as follows:

**SALES TAX<sup>1</sup>**

Tax:	\$ 8,737.67
Interest:	1,312.76
Penalty:	<u>873.76</u>
TOTAL:	\$10,924.19

**MIXED BEVERAGE TAX**

Tax:	\$ 6,153.51
Interest:	975.89
Penalty:	<u>615.35</u>
TOTAL:	\$ 7,744.75

**TOURISM TAX**

Tax:	\$ 112.53
Interest:	16.78
Penalty:	<u>11.28</u>
TOTAL:	\$ 140.59

5. That Protestants timely protested the proposed assessments.

**APPLICABLE 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 proceeding, 68 O.S. 1991, § 207; that the authorized method of auditing a mixed beverage establishment is the depletion method, Rule 710:20-5-8 of the *Oklahoma Administrative Code*; that the depletion method is reasonable for determining the total gross receipts subject to tax under Section 576(A), ***Kifer v. Oklahoma Tax Commission***, 1988 OK CIV APP 34, 956 P.2d 162 (1997); that a proposed action of the Commission is presumed correct and the taxpayer bears the burden of showing it is incorrect, and in what respect, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988); and that Protestants have wholly failed to come forward with any evidence to show they are entitled to the relief requested, Rule 710:1-5-47 of the *Oklahoma Administrative Code*.

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<sup>1</sup>The proposed sales tax assessment was also issued against PROTESTANT OFFICER, as an officer of the Corporation and as an individual. Protestant OFFICER does not challenge her individual liability for the assessed sales tax, penalty and interest.

**DISPOSITION**

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of Protestant CORPORATION AND ITS OFFICERS be denied. It WAS further DETERMINED that the amounts in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiencies respectively 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.