

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 99-04-06-009 / NOT PRECEDENTIAL  
**ID:** P9600494  
**DATE:** 04-06-99  
**DISPOSITION:** DENIED  
**TAX TYPE:** MIXED BEVERAGE / SALES / TOURISM  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. At all times relevant, Protestant owned and operated the ANONYMOUS Motel at XXXX S. ANYSTREET in BIGCITY, Oklahoma. A restaurant and mixed beverage establishment were located within the premises of the motel. A mixed beverage license for purposes of operating the mixed beverage establishment was secured in the name of Protestant.

2. 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 August 1, 1993 through March 1, 1995.

3. The mixed beverage establishment was closed at the time of the audit. After discussing the audit with THE CORPORATE PRESIDENT, the auditor used average pour rates and average prices obtained from the Average Price List 2nd Edition for hotels in the Oklahoma City Area for purposes of the depletion audit. The audit is based on purchases only during the audit period since a beginning inventory was unavailable.

4. 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 \$32,636.51, after the allowance of the standard five percent (5%) variance. The records of the Division indicated a delinquency in sales tax for the period of November, 1994 through February, 1995. These delinquencies were included in the assessment. The amounts assessed for each of the tax types, inclusive of penalty and interest accrued through September 15, 1996, are as follows:

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

Tax:	\$ 3,228.02
Interest:	823.43
Penalty:	<u>322.82</u>
TOTAL:	\$ 4,374.27

**MIXED BEVERAGE TAX**

Tax:	\$ 3,856.20
Interest:	822.48
Penalty:	<u>385.62</u>
TOTAL:	\$ 5,064.30

**TOURISM TAX**

Tax:	\$ 39.56
Interest:	10.61
Penalty:	<u>3.95</u>
TOTAL:	\$ 54.12

5. Protestant timely protested the proposed assessments.

6. THE CORPORATE PRESIDENT testified that Protestant leased the operations of the mixed beverage establishment to MS. X during the period of July, 1993 through the middle of February, 1995. A copy of the lease was not produced.

7. The Division produced the mixed beverage tax reports filed under Protestant's tax permit number during the period of September, 1993 through February, 1995 and the checks in remittance of the taxes associated with the reports. Of the 18 reports filed, THE CORPORATE PRESIDENT's signature appears on 11 of the reports. The name of MS. Y appears on the reports filed for April, May and June, 1994. THE CORPORATE PRESIDENT testified that MS. Y was Protestant's employee before becoming MS. X's co-partner. The name of MS. X appears on the reports filed for August and September, 1994, however, THE CORPORATE PRESIDENT's name also appears on the September, 1994 Report. The name appearing on the remaining two reports, October and December, 1994, is MR. Z. THE CORPORATE PRESIDENT testified that MR. Z leased the motel property during this period. Of the 16 checks submitted in remittance of the taxes, 12 were signed by THE CORPORATE PRESIDENT, two had the name of MS. X appearing on them, one had the name of MR. Z, and one had the name of THE CORPORATE PRESIDENT's daughter.

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<sup>1</sup>The proposed sales tax assessment was also issued against THE CORPORATE PRESIDENT, as an officer of Protestant and as an individual. The liability of THE CORPORATE PRESIDENT is not at issue in this cause due to his filing of personal bankruptcy.

8. THE CORPORATE PRESIDENT testified that the reason his name appears on the reports and remittances is because he was assisting the individuals in preparing and remitting their taxes on time.

### ISSUES AND CONTENTIONS

The issue presented for decision is whether Protestant sustained its burden of proving that it should not be held liable for the assessed taxes.

Protestant contends that it should not be held liable for the taxes attributable to the operations of MS. X. In support of this contention, Protestant argues that it leased the club to MS. X during the audit period. Protestant further argues that it was merely assisting MS. X in preparing and remitting the taxes.

The Division contends that Protestant failed to sustain its burden of proof. In support of this contention, the Division cites Sections 532, 576 and 577 of Title 37 of the Oklahoma Statutes, Section 1364 of Title 68 of the Oklahoma Statutes and the Rules and Regulations promulgated thereunder and argues that the permit holder is liable for any taxes associated with the utilization of its permit.

The Division further contends that the evidence proves Protestant maintained control of the operations of the club. In the alternative, the Division argues that notwithstanding whether Protestant leased the club to MS. X, the actions of MS. X were committed with the knowledge, consent or acquiescence, expressed or implied, of Protestant.

### CONCLUSIONS OF LAW

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

2. The licenses and permits issued under the Oklahoma Alcoholic Beverage Control Act and the Oklahoma Sales Tax Code are not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated in the permit. 37 O.S. 1991, §§ 532 and 577(C) and 68 O.S. 1991, § 1364(D).

3. The tax liability of a holder of a mixed beverage tax permit extends to "any and all disposition by . . . any other persons on the premises of the mixed beverage tax permit holder." Rule 710:20-5-8(a) of the Oklahoma Administrative Code. The liability of a holder of a sales tax permit also extends to any person authorized to transact business for the holder under the permit. ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okla. 1988). See, Oklahoma Tax Commission Order No. 90-02-06-062.

4. In *Matter of Revocation of County Beverage License*, 620 P.2d 395, 397 (Okl. 1980), the Oklahoma Supreme Court held that for license revocation purposes, a mixed beverage license holder will be held liable for acts committed under authority of his license if those acts were committed with either the knowledge, consent or acquiescence, either express or implied, of the licensee. The same principle applies to tax liability. Oklahoma Tax Commission Order No. 92-10-13-004. In Order No. 92-10-13-004, the Commission found that the liability of the license holder requires at least the basic minimum of awareness of the commission of the acts in question.

5. Here, the evidence proves that at the very least Protestant had knowledge of, consented to or acquiesced in the utilization of its permits and licenses in the operation of the mixed beverage establishment. Accordingly, Protestant should be held liable for the assessed taxes.

6. Protestant's protest to the proposed assessments should be denied.

#### DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of the PROTESTANT CORPORATION 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.