JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-07-27-008 / NOT PRECEDENTIAL**
ID: **P9900007**
DATE: **07-27-99**
DISPOSITION: **DENIED**
TAX TYPE: **WITHHOLDING**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Business Registration of THE CORPORATION (hereinafter "corporation"), dated March 26, 1996, identifies Protestant as the president of the corporation.

2. Protestant is listed as president for the corporation on the Oklahoma Annual Franchise Tax return filed by the corporation for the 1996/1997 and 1997/1998 tax years.

3. Protestant's signature appears on the franchise tax returns for the tax years 1995/1996, 1996/1997 and 1997/1998. A corporate check remitted in payment of the franchise tax reported on the 1995/1996 return bears Protestant's signature. Protestant's signature was stamped on corporate checks remitted in payment of the franchise tax reported on the returns for tax years 1996/1997 and 1997/1998.

4. On October 16, 1998, the Division notified Protestant of an assessment for income tax withholding for the periods of July, 1997, and September, 1997, through February, 1998. The aggregate amount of the October 16, 1998, assessment was $14,334.21, consisting of tax in the amount of $10,262.28, interest accrued through November 20, 1998, in the amount of $1,506.38, and penalty in the amount of $2,565.55.

5. The amount of the tax assessed against the Protestant is based on the actual reported but unremitted withholding taxes of the corporation.

6. By letter dated November 9, 1998, Protestant protested the assessment. In the letter, Protestant states that AN ANONYMOUS CORPORATION owns 100% of the stock in THE CORPORATION, that he had visited with ANONYMOUS CORPORATION about the taxes and that "they will cooperate with the OTC in resolving this issue."

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. § 221.

2. The authority under which the proposed withholding tax assessment was made is 68 O.S. §§ 2385.2 and 2385.3.

3. The burden of proof in all proceedings before the Tax Commission, unless otherwise provided by law, is on Protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. *Oklahoma Administrative Code* 710:1-5-47. The denial of a protest to a proposed assessment is appropriate where the party opposing the proposed action fails to provide evidence which is sufficient to entitle the party to the relief requested. See, *Continental Oil Company v. Oklahoma State Board of Equalization*, 570 P.2d 315 (Okl. 1977).

4. Protestant has produced no evidence, nor did he raise any specific objections in his protest, to his liability for withholding tax as an "employer" of the corporation during the assessed periods. Protestant has failed to meet his burden of proving that he is not personally liable for the amounts assessed.

5. Protestant's protest to the proposed assessment should be denied. *Oklahoma Administrative Code* 710:1-5-47.

DISPOSITION

THEREFORE, IT WAS DETERMINED, based upon the specific facts and circumstances of this case, that the withholding tax protest of PROTESTANT, as President of THE CORPORATION and as an individual, d/b/a COMPANY ONE be denied.

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.