JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-11-30-006 / NOT PRECEDENTIAL**
ID: **P9900145**
DATE: **11-30-99**
DISPOSITION: **DENIED**
TAX TYPE: **FRANCHISE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. PROTESTANT, FEI No. XXX, is a subchapter S corporation, incorporated under the laws IN ANOTHER STATE.

2. Between 1991 and 1996, MR. SHAREHOLDER, Social Security No. ZZZ-ZZ-ZZZZ, was the corporation's only shareholder.

3. Protestant is a rental real estate business.

4. Protestant has not qualified to do business in Oklahoma.

5. During the period July 1, 1991, through February, 1997, Protestant owned commercial rental property in ANYTOWN, Oklahoma.

6. Protestant filed Oklahoma income tax returns for 1991 through 1996.

7. The company did not file Oklahoma franchise tax returns.

8. The Division audited Protestant, which revealed that it has the following amounts of capital employed in Oklahoma:

1991/1992	$111,318.21
1992/1993	$101,215.67
1993/1994	$ 93,320.18
1994/1995	$ 84,932.09
1995/1996	$ 79,750.90
1996/1997	$ 77,392.58

9. On March 9, 1999, the Division proposed to assess against Protestant delinquent franchise tax for the periods July 1, 1991, through June 30, 1997, in the aggregate amount of $1,308.64, consisting of tax in the amount of $688.75, interest accrued through April 1, 1999, in the amount of $551.01, and penalty in the amount of $68.88.

10. By a handwritten, unsigned note affixed to a returned copy of the assessment letter, received March 23, 1999, the proposed assessment was protested.

11. By notice dated June 3, 1999, a prehearing conference was set for July 12, 1999.

12. An introductory letter issued by the office of the Administrative Law Judge was returned with a notation, signed by MR. SHAREHOLDER, which stated, "There is no PROTESTANT and has not been for some time. The corp. went out of business."

CONCLUSIONS OF LAW

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

2. Franchise tax is imposed on every corporation qualified to do or doing business in Oklahoma in a corporate capacity, and specifically includes corporations organized under the laws of a state other than Oklahoma. 68 O.S § 1201. Section 1202 defines "doing business" as "each and every act, power or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organizations . . . ." The tax is measured by the amount of capital used, invested or employed by the corporation within this state. 68 O.S. § 1204. Capital is calculated according to 68 O.S. § 1209 of the Franchise Tax Code.

Based on Protestant's income tax returns, the Division determined that Protestant used, invested or employed capital in the operation of its real estate rental business in Oklahoma during the period at issue.

3. 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. *Oklahoma Administrative Code* 710:1-5-47.

4. Protestant has not presented any evidence that it did not use, invest or employ capital in Oklahoma for the franchise tax years 1991/1992 through 1996/1997 or that the calculation of the franchise tax is inaccurate. Therefore, Protestant has failed to meet its burden of proving in what respect the proposed assessment is incorrect.

5. The protest should be denied.

DISPOSITION

It WAS DETERMINED based upon the specific facts and circumstances of this case, that the franchise tax protest of PROTESTANT 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.