JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-11-16-018 / NOT PRECEDENTIAL**
ID: **P9700003**
DATE: **11-16-00**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. THE CLUB, doing business as MY COMPANY, "THE CLUB" hereafter, operated a bar or nightclub and dance hall located in ANY COUNTY, four miles north of SMALL CITY on Highway 11, outside of the city limits. THE CLUB charged an admission fee or cover charge to all patrons to enter the nightclub. THE CLUB also advertised free dance lessons, live music and drink specials along with other attractions. MS. "A", President of THE CLUB during the audit period, testified at hearing that the cover charge was a charge for dance lessons and was therefore a nontaxable service. However, MS. "A" admitted in her testimony that patrons were required to pay the advertised cover charge at the door in order to enter the nightclub but were not required to take dance lessons. The dance lessons were advertised as free once the patron entered the club and the cover charge was not paid to the dance instructors but was retained by THE CLUB. THE CLUB included the cover charge in its gross receipts on its sales tax reports filed with the Tax Commission but deducted the "gate charge" from gross receipts on its reports and did not remit sales taxes on the admission fee.

2. The Audit Division of the Oklahoma Tax Commission, "Division" hereafter, conducted a field audit of THE CLUB for the period July 1, 1993, through June 30, 1996. The Division issued its proposed assessments for sales tax and tourism tax on October 23, 1996. THE CLUB timely filed its protest letter to these proposed assessments on November 18, 1996. The Division withdrew its proposed assessment
for tourism tax at the hearing of this matter on April 23, 1998. The proposed sales tax assessment stands as follows:

Sales Tax	$11,257.99
Interest	2,951.98
Penalty	1,125.81
TOTAL	$15,335.78

3. The Division's auditor, testified that in her examination of the books and records of THE CLUB, she found that the taxpayer had deducted "gate" receipts from its taxable gross receipts. The Division concluded that the gate receipts were taxable and were not properly deducted from gross, receipts. THE CLUB contended at the hearing that the gate receipts were nontaxable fees for a service, ie. dance lessons, and were properly deductible.

ISSUE

Whether the "gate" receipts or admission fee charged by THE CLUB is subject to sales taxes.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest, 68 O.S. §§207,221.

2. The parties stipulated at the hearing of this matter that the proposed assessments were issued timely by the Division and the protest was filed timely by THE CLUB.

3. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 768 P.2d 359 (Okl. 1988). Failure to provide evidence which is sufficient to show an adjustment to the proposed assessment is warranted will result in the denial of the protest. *Continental Oil Company v. Oklahoma Tax Commission*, 570 P.2d 315 (Okla. 1977). The burden of proving a sale is not a taxable sale is on the person who made the sale, 68 O.S. 1991, § 1365(C).

4. The evidence presented in the hearing clearly demonstrates that the gate receipts collected by THE CLUB are taxable pursuant to 68 O.S. §1354(12) as an admission fee and were not properly deducted from the taxable gross receipts. The gate receipts were an admission charge to enter the nightclub and not a nontaxable fee for personal services. OAC 710:65-19-6(a) provides that admission fees to nightclubs are taxable as follows:

The total receipts accruing from sales of tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities, and free or complimentary admissions not included in (c) of this Section, which have a value equivalent to the charge that would have otherwise been made, are subject to sales tax. Places of amusement, sports, entertainment, exhibition, display or recreation include, but are not limited to, theaters, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, fairgrounds, race tracks, baseball parks, football stadiums, swimming pools, street fairs, dance halls, cabarets, nightclubs, golf courses, skating rinks, art exhibits, and gymnasiums. Places of amusement or entertainment also include all places where the public is charged a fee for admission to see any kind of display' or hear any kind of a program.

5. Protestant's protest to the proposed assessment should be denied.

DISPOSITION

It WAS DETERMINED based upon the specific facts and circumstances of this case, that the sales tax protest of THE CLUB, Inc., d/b/a MY COMPANY 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.