

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-12-12-017 / NOT PRECEDENTIAL
ID: P9800321 / P9800323
DATE: 12-12-00
DISPOSITION: DENIED
TAX TYPE: SALES / TOURISM / MIXED BEVERAGE / WITHHOLDING
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. COMPANY ONE operated a mixed beverage establishment or bar doing business as COMPANY "A" in ANYCITY, Oklahoma. COMPANY TWO operated a bar doing business as COMPANY "B" in ANYCITY, Oklahoma. MR. ANONYMOUS is the sole owner and President of both corporations and managed the business of the corporations during the audit period.

2. The Audit Division of the Oklahoma Tax Commission, "Division" hereafter, conducted an audit of COMPANY ONE and COMPANY TWO for the audit period December 12, 1995, through June 30, 1998, for sales tax, tourism tax, mixed beverage tax, and withholding tax. The Division issued proposed assessments to both corporations on October 16, 1998, for the following amounts:

COMPANY ONE d/b/a COMPANY "A":

	Sales Tax	Tourism Tax	Mixed Beverage	Withholding Tax
Tax	\$33,945.65	\$405.34	\$6,349.89	\$1,318.25
Interest	7,818.29	93.36	360.12	370.99
Penalty	3,394.57	40.55	634.99	329.50
TOTAL	\$45,158.51	\$539.25	\$7,345.00	\$2,018.74

COMPANY TWO d/b/a COMPANY "B":

	Sales Tax	Tourism Tax	Mixed Beverage	Withholding Tax
Tax	\$41,913.65	\$500.46	\$11,066.06	\$1,318.25
Interest	9,011.49	107.61	670.39	370.99
Penalty	4,191.35	50.06	3,010.26	329.50
TOTAL	\$55,116.49	\$658.13	\$14,746.71	\$2,018.74

3. By letters of November 16, 1998, MR. ANONYMOUS timely protested the Division's proposed assessments set out above. A hearing in this matter was set on June 2, 1999, as stated in the Notice of Hearing filed in this case by the Administrative Law Judge. MR. ANONYMOUS received notice of this hearing but did not appear at the hearing, and did not present any evidence or testimony, nor did he file a brief of authorities. After the hearing, the Administrative Law Judge advised MR. ANONYMOUS by letter of June 15, 1999 that the case would be submitted for disposition on June 30, 1999, unless MR. ANONYMOUS contacted the Administrative Law Judge before that date in order to submit anything further. MR. ANONYMOUS did not respond to this letter and the case stands submitted.

ISSUE

Whether the proposed assessments issued by the Division in this case are erroneous.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest, 68 O.S. § 207.
2. 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 (Okl. 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).
3. The standard burden of proof in administrative proceedings is "preponderance of evidence," see Oklahoma Tax Commission Order No. 91-10-170.61. Black's Law Dictionary, 1064 (5th ed. 1979) defines "preponderance of evidence" as "[E]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Id.* It is also defined to mean "evidence which is more credible and convincing to the mind . . . [T]hat which best accords with reason and probability." *Id.*
4. MR. ANONYMOUS and his two corporations have the burden of proof to show in what respects the proposed assessments are incorrect pursuant to OAC 710:1-4-47. The Protestants herein have not appeared at hearing and have offered no evidence for the Tax Commission to consider. Therefore, the Protestants have failed to prove sufficient facts which would entitle them to any relief and the protest herein must be denied for lack of evidence.
5. Protestant's protest to the proposed assessments should be denied.

DISPOSITION

It WAS the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the sales tax, tourism tax, mixed beverage tax and withholding tax protest of COMPANY ONE d/b/a COMPANY "A" and COMPANY TWO d/b/a/ COMPANY "B", and MR. ANONYMOUS, as President and as an individual, be denied.

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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.