

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-12-12-026 / NOT PRECEDENTIAL
ID: P9700203
DATE: 12-12-00
DISPOSITION: DENIED
TAX TYPE: SALES / WITHHOLDING
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. THE COMPANY d/b/a MY COMPANY, was located in ANYCITY, Oklahoma, operating under sales tax permit No. XXXXXX and FEI No. ZZ-ZZZZZZ.
2. At all times relevant to this proceeding, Protestant was listed as an officer of the corporation, had check signing authority and signed the sales tax reports for the business.
3. Division sent letters of proposed assessment for sales and withholding tax by certified mail on March 7, 1997. The proposed sales tax assessment covered the periods of January 1996, March 1996, June 1996, August 1996 through September 1996, and October 1996 through December 1996. The withholding tax assessment covered the period of October 1996 through December 1996.
4. Because Protestant provided evidence that he sold the corporation as of September 30, 1996, Division subsequently withdrew its withholding tax assessment and sales tax assessment for the period of October 1996 through December 1996.
5. Protestant's proposed sales tax liability is as follows:

Tax	\$17,426.76
Interest through 4/30/98	4,712.66
Fees (Insufficient funds)	50.00
Penalty	<u>2,116.60</u>
Total	\$24,306.02

6. Protestant filed a timely protest, dated April 7, 1997, to the proposed assessment.
7. At the hearing, Protestant argued that he is not responsible for the assessed sales taxes. Protestant testified that upon the sale of the business, the buyers agreed to pay any past due taxes. However, Protestant has been unable to produce a copy of the document which memorializes this agreement. Further, Protestant testified that he called the Tax Commission and was advised that the buyers of his business would not be issued a sales tax permit until the outstanding taxes were paid. When applying for a permit, Protestant alleged that the purchasers were prepared to pay the delinquent taxes but the Commission did not require payment before issuing the purchasers a sales tax permit.

ISSUE

Whether Protestant is relieved of liability for unremitted sales taxes because the Commission issued a sales tax permit to the purchasers of Protestant's business even though all taxes due the State by Protestant had not been settled.

CONCLUSIONS OF LAW

1. The Tax Commission has jurisdiction over the parties and subject matter in this proceeding pursuant to 68 O.S. 1991, § 207.

2. A "principal officer" or an officer or employee who is an "employer" of a corporation may be personally liable for the sales and withholding taxes of the corporation. 68 O.S. 1991, §§ 1361(A) and 2385.3(d).

3. Whether a "principal officer" or an "employer" is personally liable for the taxes of the corporation is determined in accordance with the standards for determining liability for payment of federal withholding tax pursuant to the Internal Revenue Code. 68 O.S. 1991, § 253.

4. The burden of proof in all proceedings before the Tax Commission unless otherwise provided by law is on the party opposing the action 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 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).

5. Protestant was an officer of the corporation. Protestant admitted that he was the person responsible for collecting and remitting sales tax to the Tax Commission during the periods at issue. Protestant does not dispute that the taxes are due.

6. Protestant contends that he is not personally liable because a sales tax permit was illegally issued to the new owners. Section 1364(H)¹ of Title 68 of the Oklahoma Statutes required that a permit holder, upon discontinuation of a business, surrender the permit and pay all accrued taxes. In the event the business is sold and taxes remain outstanding, the Commission cannot issue to the purchaser a sales tax permit to continue or conduct the business until all tax claims due have been settled. *Carlton Southwest, Inc. v. Oklahoma Tax Commission*, 789 P.2d 1192 (Okl.App. Dec. 1, 1989).

¹This subsection provides:

Any person operating under a permit as provided in this article shall, upon discontinuance of business by sale or otherwise, return such permit to the Tax Commission for cancellation, together with a remittance for any unpaid or accrued taxes. Failure to surrender a permit and pay any and all accrued taxes will be sufficient cause for the Tax Commission to refuse to issue a permit subsequently to such person to engage in or transact any other business in this state. In the case of a sale of any business, the tax shall be deemed to be due on the sale of the fixtures and equipment, and the Tax Commission shall not issue a permit to continue or conduct the business to the purchaser until all tax claims due the State of Oklahoma have been settled.

7. While it may be true that the permit should not have been issued to the purchasers of the business until the taxes were paid, Section 1364 does not shift liability of the tax to the purchaser. The liability for sales taxes remains with Protestant. The Tax Commission was not a party to the agreement, between Protestant and the purchasers, that taxes would be paid by the purchasers and therefore is not bound by the agreement. Accordingly, Protestant's protest to the proposed sales tax assessment should be denied.

DISPOSITION

Based on the findings of fact and conclusions of law, it WAS the DETERMINATION of the undersigned that the protest of PROTESTANT, as Vice President of THE COMPANY and as an individual, d/b/a MY COMPANY, should 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.