JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-12-14-005 / NOT PRECEDENTIAL**
ID: **P0000121**
DATE: **12-14-00**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Division conducted a routine mixed beverage depletion audit on THE COMPANY, an out-of-business located in ANYCITY, Oklahoma. No contact was made with the taxpayer; therefore, ANYCITY area average prices and regulation pour sizes of one and one-half ounces (1.5 oz.) for spirits and six ounces (6 oz.) for wine were used in conducting the audit.

2. The audit resulted in proposed assessments of sales tax, mixed beverage tax and tourism tax against THE COMPANY for the period of July 22, 1997, through April 30, 1998.

3. A proposed sales tax assessment was issued against PROTESTANT, as Treasurer and as an individual, for the above-referenced audit period, as follows:

Sales Tax	$365.98
Interest through 10-31-99	80.31
Delinquency Penalty	36.60
Total Due	$482.89

4. The records of the Oklahoma Tax Commission indicate that PROTESTANT was listed as treasurer on the 1997/1998 franchise tax return of THE COMPANY.

5. PROTESTANT signed sales tax reports for July and August, 1997.

6. A timely letter of protest was filed, stating that she worked part time for the business but was not an officer.

CONCLUSIONS OF LAW

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

2. Sales tax is levied and imposed on the gross receipts from the sale of drinks sold or dispersed by hotels, restaurants or bars, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere. 68 O.S. 1991, § 1354(1)(l).

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. Section 1361(A) of Title 68 of the Oklahoma Statutes provides that each principal officer of a corporation shall be personally liable for sales tax. When a proposed assessment is filed against a corporation for unpaid sales tax, the Tax Commission, in accordance with 68 O.S. 1991, § 253, must file a proposed assessment against the principal officers of the corporation.

5. The Division filed a proposed assessment against PROTESTANT, Treasurer of THE COMPANY Files and records of the Oklahoma Tax Commission indicate that she was treasurer of the corporation during the audit period. *Oklahoma Administrative Code* 710:65-7-3 identifies the treasurer of a corporation as a principal officer for sales tax purposes.

6. Protestant has wholly failed to come forward with any evidence in support of her protest and therefore, has failed to meet her burden of proving in what respect the proposed assessment is incorrect.

7. The protest 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 protest of PROTESTANT, as Treasurer of THE COMPANY and as an individual, d/b/a THE 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.