JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-01-30-005 / NOT PRECEDENTIAL**
ID: **P9600559**
DATE: **01-30-01**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. PROTESTANT'S CORPORATION, located in BIGCITY, Oklahoma, operated under FEI No. XX-XXXXXXX and sales tax permit No. 999999.

2. MR. X was the sole officer listed on the company's franchise tax forms for the periods at issue.

3. Protestant, while not listed as an officer on the company's franchise tax forms, identified herself as "Office Manager/Secretary/Treasurer" in her correspondence with the Tax Commission.

4. Protestant had check signing authority on the corporation's bank account.

5. Protestant prepared, signed and filed the sales tax reports for the company. Protestant partially paid the corporation's sales tax for the months of May, 1995, through January, 1996.

6. On September 13, 1996, Division mailed Protestant a letter of proposed assessment for certain periods from September, 1995, through June, 1996.

7. Based on information provided by Protestant, Division withdrew its proposed sales tax assessment for the period from February, 1996, through June, 1996. Division also withdrew its withholding tax assessment for February 1, 1996, through June 30, 1996.

8. Protestant's remaining sales tax liability covers the periods of May, 1995, June, 1995, and August, 1995, through January, 1996. Protestant's remaining proposed liability is for the following amounts:

Tax	$ 6,616.12
Interest through 8-31-97	2,124.54
Penalty	1,779.33
Total	$10,519.99

9. The matter was submitted for decision on briefs by the parties.

10. In her brief, Protestant states that in December of 1994, MR. X offered her and ANOTHER INDIVIDUAL each a twenty percent share of the company's stock after one year if they would handle the day to day operations of the business. As a result of the offer, Protestant assumed the title of Secretary. Protestant further states that she was instructed to make the company's bank loan her first priority, that she was required to seek approval before writing checks in excess of one thousand dollars and that MR. X often withdrew money from the company account, without warning, for personal use.

11. Protestant contends that although she had check signing authority, she does not feel she had ultimate control over the corporate funds.

12. Division contends that Protestant was the person responsible for collecting and remitting taxes to the state and is individually liable for the corporation's outstanding sales tax for the revised period.

ISSUE

Whether Protestant is a principal officer and thus personally liable for PROTESTANT CORPORATION'S delinquent sales tax.

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. Each principal officer of a corporation is personally liable for the sales tax required to be collected by such corporation under the Oklahoma Sales Tax Code. 68 O.S. § 1361(A).

3. The specific corporate officers considered by the Tax Commission to be principal officers are the president, vice president, secretary, treasurer or secretary/treasurer. *Oklahoma Administrative Code* 710:65-7-3.

4. Mere holding of one of these offices does not make the individual liable for taxes as a principal officer. Certain indicia are considered, such as:

(A) Limited responsibilities within the corporation (only responsibility is as keeper of the corporate seal),

(B) Limited duties within the corporation (only duty is taking minutes at Board of Directors meeting), and

(C) Limited authority within the corporation (could not write checks on the corporate account).*Id*.

5. The Tax Commission is directed by Section 253 of Title 68 to make such a determination of liability in accordance with the standards for determining liability for payment of federal withholding tax.

6. For federal withholding tax purposes, the responsible person is frequently defined as the person who has a final and significant, although not exclusive, word as to which bills or creditors should be paid. *Commonwealth National Bank of Dallas v. United States*, 665 F.2d 743, 757 (5th Cir. 1982). The definition encompasses all officers or employees who are so connected with the business as to have responsibility and authority to avoid default. *White v. United States*, 372. F.2d 513, 516 (Ct.Cl. 1967).

7. The determination of who is a responsible person is made on a case-by-case basis considering factors such as: (1) holding an office or owning stock in a corporation; (2) managing the day-to-day operations of the business; (3) making decisions as to the disbursement of funds and the payment of creditors; and (4) check signing authority. *Turnbull v. United States*, 929 F.2d 173, 178 (5th Cir. 1991).

8. The mere holding of office, by itself, does not render one responsible for the collection and payment of withholding taxes. *Bauer v. United States*, 543 F.2d 142, 149 (Ct. Cl. 1976). More than one individual may be found to be a "responsible person" for a particular tax period and liability may be imposed on both. *Turner v. United States*, 423 F.2d 448, 449 (9th Cir. 1970). Responsibility is a matter of status, duty, and authority, not knowledge. *Mazo v. United States*, 591 F.2d 1151, 1156 (5th Cir. 1979). Reasonable cause may excuse responsible persons, but mere delegation of responsibility to another does not constitute reasonable cause. *Id*. The control necessary to support liability under federal law is the ability to control the payment of corporate funds. *Wilson v. United States*, 250 F.2d 312, 316 (9th Cir. 1958).

9. 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).

10. Protestant has failed to provide sufficient evidence that she should not be held personally liable for the sales tax debts of PROTESTANT CORPORATION. Protestant, while not identified as an officer on the company's franchise tax returns, held herself out to be the Secretary of the corporation. She represented herself as being responsible for collecting and remitting sales tax in her correspondence with the Tax Commission. Furthermore, Protestant had check signing authority and significant control over the day-to-day operation of the business.

11. The protest should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the sales tax protest of PROTESTANT, as Secretary of PROTESTANT CORPORATION, and as an individual, 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.