

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-02-12-011 / NOT PRECEDENTIAL
ID: P000172B
DATE: 02-12-01
DISPOSITION: DENIED
TAX TYPE: SALES / MIXED BEVERAGE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 8th day of January, 2001, the above styled and numbered cause comes on for decision pursuant to Section 221(d) of the *Uniform Tax Procedure Code*. PROTESTANT (hereinafter "Protestant") appears pro se. The Audit Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Protestant did not appear at the Prehearing Conference scheduled in this cause for October 24, 2000. Thereafter, notice was served on the parties that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division. Protestant did not respond to this notice.

Upon review of the file and records, including the proposed sales and mixed beverage tax assessments of July 3, 2000, the letter of protest, and the Division's *Verified Response to Protest* and attachments, the undersigned finds:

1. That Protestant was listed as an officer of the corporation as of February 1, 1997, on a form filed with the Taxpayer Assistance Division of the Oklahoma Tax Commission on July 23, 1997.

2. That on July 3, 2000, the Division caused to be issued a proposed sales tax assessment against Protestant for the period of September 1, 1997 through October 31, 1998. That the assessment proposed a total amount due of \$798.98, inclusive of tax in the amount of \$591.90, interest accrued through July 15, 2000, in the amount of \$147.89, and penalty in the amount of \$59.19.

3. That on July 3, 2000, the Division caused to be issued a proposed mixed beverage tax assessment against Protestant for the period of January 21, 1998 through October 31, 1998, during which time the corporation was suspended. That the assessment proposed a total amount due of \$1,799.55, inclusive of tax in the amount of \$642.54, interest accrued through July 15, 2000, in the amount of \$192.76, delinquency penalty in the amount of \$64.25, and \$5.00 PER Day Penalty in the amount of \$900.00.

4. That the assessments are based on a routine mixed beverage depletion audit of the business.

5. That the aggregate amount in controversy is \$2,598.53.

6. That Protestant timely responded to the assessments, asserting that during the period of September 1, 1997 through October 31, 1998, [S]he (sic) was "not then or ever involved in the operation of the bar known as MY COMPANY."

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and the subject matter of this action, 68 O.S. 1991, § 207; that 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); that the Tax Commission is statutorily authorized to make an assessment "from any information in its possession or obtainable by it", 68 O.S. 1991, § 221(a); and that Protestant has wholly failed to come forward with any information to show he is entitled to the relief requested, Rule 710:1-5-47 of the *Oklahoma Administrative Code*.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest be denied. It is further DETERMINED that the amounts in controversy, inclusive of any additional accrued and accruing interest and penalty, be respectively fixed as the deficiencies due and owing.

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.