JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-06-05-016 / NOT PRECEDENTIAL**
ID: **P0100022**
DATE: **06-05-01**
DISPOSITION: **DENIED**
TAX TYPE: **SALES, MIXED BEVERAGE, AND TOURISM**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the proposed sales, mixed beverage, and tourism tax assessments of November 9, 2000, the letter of protest, and the Division's ***Verified Response to Protest***, the undersigned finds:

1. That on or about February 1, 1999, as a result of a no-contact audit of the business, the Division issued proposed sales, mixed beverage, and tourism tax assessments against Protestant.

2. That by letter dated June 29, 2000, PROTESTANT'S REPRESENTATIVE, submitted a letter to the Oklahoma Tax Commission, making a request for protest or revision. In his letter, PROTESTANT'S REPRESENTATIVE made the following statements:

   a. That he had purchased THE CORPORATION around March of 1997.

   b. That he had learned an audit was in progress at the time he purchased the club but he was not informed of the audit.

   c. That the business had been closed in August of 1997 for renovations; that on September 15, 1997, there was a fire in the business which caused damage; and that he was then locked out of the building due to a dispute regarding insurance money.

   d. That he never reopened the business at that location but moved to another location where he has been operating since that time.

   e. That shortly after the fire, he closed out the mixed beverage license with the Tax Commission in ANYCITY, Oklahoma, and paid all taxes that were due.

   f. That he has been informed of a liability based on the audit of approximately $12,000.00.

g. That he was never contacted about the audit and feels he should have had the opportunity to provide pertinent information.

h. That he is now told he cannot run his business due to the taxes owed and the Tax Commission's refusal to renew his sales or low-point beer license.

i. That he requests a "re-look" at the audit using the ending inventory to make adjustments.

j. That he realizes he is responsible for paying any back taxes and would like to have the opportunity to pay them and continue to operate his business.

k. That he is currently serving in the U.S. Army in the Middle East and until his return to Oklahoma in September of 2000, his point of contact is his sister, who is a corporate officer and well aware of all facts in this matter.

3. That by letter dated August 3, 2000, MS.ANONYMOUS,Secretary/Treasurer, OF THE CORPORATION, submitted a letter to the Oklahoma Tax Commission, enclosing an inventory list which had been submitted to the insurance company for the September, 1997 fire and a document regarding liquor and beer reported stolen.

4. That based on the above-mentioned letters and information received, the audit was reworked and resulted in revised sales, mixed beverage, and tourism tax assessments issued to Protestant by letter dated November 9, 2000, as follows:

Sales Tax

Tax	$ 322.29
Interest Thru 11/30/00	151.25
Penalty	32.23
TOTAL	$ 505.77

Mixed Beverage Tax

Tax	$2,104.76
Interest Thru 11/30/00	973.96
Penalty	210.48
TOTAL	$3,289.20

Tourism Tax

Tax	$ 17.54
Interest Thru 11/30/00	8.62
Penalty	1.76
TOTAL	$ 27.92

5. That the aggregate amount assessed, inclusive of interest accrued through November 30, 2000, is $3,822.89.

6. That notices of the revised assessments were forwarded to Protestant at its last known address. Protestant did not respond to the revised assessments.

7. That on or about January 24, 2001, the matter was forwarded to the Office of the Administrative Law Judges and a prehearing conference was scheduled.

8. That Protestant did not appear at the Pre-hearing Conference scheduled in this cause for March 15, 2001. 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.

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 it is entitled to any further relief, Rule 710:1-5-47 of the ***Oklahoma Administrative Code***.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of Protestant, THE CORPORATION, d/b/a COMPANY ONE, be denied. It WAS further DETERMINED that the amounts in controversy, inclusive of any additional accrued and accruing interest, 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.