JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-06-07-003 / NOT PRECEDENTIAL**
ID: **P9800260**
DATE: **06-07-01**
DISPOSITION: **SUSTAINED**
TAX TYPE: **SALES / WITHHOLDING**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above protest comes on for the entry of a final order. Upon review of the files and records herein, including the record of the hearing held before the Commission's Administrative Law Judge, the exhibits received into evidence and the argument of counsel before the Commission *en banc*, we find and conclude as follows:

MY CORPORATION (corporation") is a corporation organized and existing under the laws of the State of Oklahoma, and at all times material herein operated a mixed beverage establishment doing business as MY COMPANY in ANYCITY, Oklahoma. In 1989, when the corporation applied for and obtained a mixed beverage license from the ABLE Commission, and sales tax and mixed beverage tax permits from the Oklahoma Tax Commission, OFFICER TWO was a director of the corporation and its vice-president; OFFICER ONE was also a director of the corporation, and was its secretary/treasurer.

The Audit Division of the Oklahoma Tax Commission conducted an audit of the corporation and its operations covering the period of February 1, 1995 through December 31, 1997. As a result of that audit, the Division proposed assessments against the corporation and against protestants individually, as principal and responsible officers of the corporation, for deficient sales and withholding taxes totaling, after adjustments, $157,661.03, plus penalty and interest.

Although the evidence is conflicting, we find that these protestants[1] were not principal officers of this corporation during the time period covered by the audit.

[1] Other individuals were also assessed as principal officers. We make no findings as to them, and none should be inferred.

CONCLUSIONS OF LAW

Oklahoma statutes provide that the principal officers of any corporation shall be individually liable for the payment of the corporation's unpaid sales and withholding taxes, if such officers were officers of the corporation during the period of time for which an assessment against the corporation is made. 68 O.S. §§ 253, 1361(A), 2385.3(D).

In view of our finding that these protestants were not officers at the time in question, their protest should be sustained.

DISPOSITION

IT IS, THEREFORE, ORDERED that the above protest of PROTESTANTS be, and the same hereby is, sustained.

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.