JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-06-20-011 / NOT PRECEDENTIAL**
ID: **P9700139 / P9700141**
DATE: **06-20-01**
DISPOSITION: **DENIED**
TAX TYPE: **SALES / MIXED BEVERAGE / TOURISM**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. MS. PROTESTANT and her husband MR. PROTESTANT, owned and operated MY BUSINESS located at 9999 STREET in ANYCITY, Oklahoma. The Protestants sold beer, mixed beverages and food at MY BUSINESS. The Protestants held a sales tax permit but did not have a mixed beverage tax permit, a liquor license from the Alcoholic Beverage Laws Enforcement Commission or a State and County beer license. The liquor inventory at MY BUSINESS was illegally acquired for resale by Protestants at package stores rather than liquor wholesalers.

2. The ANYCITY Police Department and the ABLE Commission conducted an enforcement raid on the club in October, 1996. The illegal liquor inventory and all available business records of the club were seized by the Police Department in that raid. The sales and inventory records seized by the Police Department were turned over to the Audit Division for examination. The Protestants had filed sales tax reports and therefore the sales and tourism tax audits were conducted for the three (3) year period beginning in February of 1994. The Protestants never filed mixed beverage gross receipts tax reports and therefore the audit period begins on September 1, 1992, when the sales tax permit was issued.

3. The audit was conducted using the information and business records seized by the Police Department. The Division contacted the Protestants in an attempt to obtain additional or more accurate information and records, however, the Protestants failed to appear at the scheduled meeting and did not provide any additional records. The Protestants did not offer any cooperation to provide business records for the audit.

4. On February 12, 1997, the Division issued proposed sales tax and tourism tax assessments to MS. PROTESTANT, d/b/a MY BUSINESS for the period February 1, 1994 to December 31, 1996 and a proposed mixed beverage tax assessment for the period September 1, 1992 to December 31, 1996, in the following amounts:

	Mixed Beverage Tax	Sales Tax	Tourism Tax
Tax	$36,139.89	$22,683.00	$270.89
Interest	12,390.54	5,210.59	62.23
Penalty	3,613.89	2,268.30	27.10
Late Filing Penalty	64,500.00	-.00	-.00
TOTAL	$116,644.32	$30,161.89	$360.22

On March 17, 1997, the Division issued an identical mixed beverage tax assessment naming both MS. PROTESTANT and MR. PROTESTANT as the taxpayers responsible for the proposed assessment.

5. On February 21, 1997, the Protestants filed a timely request for a ninety (90) day extension of time in which to file a protest with the Division pursuant to 68 O.S. §221(F). By letter dated March 6, 1997, the Division granted Protestants a ninety (90) day extension in which to file a protest until June 11, 1997. On April 8, 1997, the Protestants timely filed a written protest to all proposed assessments issued by the Division.

6. A hearing in this matter was held before the Administrative Law Judge on May 8, 1998, in which the Division appeared and entered testimony of its auditor and exhibits supporting its assessment on the record as well as a position letter. The Protestants did not appear and did not offer any further evidence, testimony or legal authority.

ISSUE

Whether the assessment for mixed beverage tax, sales tax and tourism tax were properly issued to the Protestants.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest, 68 O.S. §207.

2. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. *Enterprise Management Consultant, Inc. v. Oklahoma Tax Commission*, 768 P.2d 359 (Old. 1988). Failure to provide evidence which is sufficient to show an adjustment to the proposed assessment is warranted will result in the denial of the protest. *Continental Oil Company v. Oklahoma Tax Commission*, 570 P.2d 315 (Old. 1977). The burden of proving a sale is not a taxable sale is on the person who made the sale, 68 O.S. 1991, §1365(C).

3. The standard burden of proof in administrative proceedings is "preponderance of evidence," see Oklahoma Tax Commission Order No. 91-10-17-061.

> "Preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. It also means evidence which is more credible and convincing to the mind or that which best accords with reason and probability.

4. The Protestants have the burden of proof to show in what respects the proposed assessments are incorrect pursuant to OAC 710:1-5-47. The Protestants herein have not appeared at hearing and have offered no evidence for the Tax Commission to consider. Therefore, the Protestants have failed to prove sufficient facts which would entitle them to any relief and the protest herein must be denied for lack of evidence. The Division properly based its assessment on the information in its possession, 68 O.S. §221(A).

5. Protestants' protest to the proposed assessment should be denied.

DISPOSITION

It WAS DETERMINED based upon the specific facts and circumstances of this case, that the sales tax, mixed beverage tax and tourism tax protest of MS. PROTESTANT d/b/a MY BUSINESS and the mixed beverage tax protest of MR. PROTESTANT 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.