JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-06-20-012 / NOT PRECEDENTIAL**
ID: **P9600279**
DATE: **06-20-01**
DISPOSITION: **DISMISSED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The documentary evidence in this case shows that the Audit Division, "Division" hereafter, issued a proposed assessment of sales taxes to PROTESTANT hereafter, on December 28, 1995, in the total amount due of $18,754.62. PROTESTANT did not respond in writing, file a protest or request an extension of time in which to protest within thirty (30) calendar days. The Division did not grant an extension of time in which to protest. The proposed assessment of sales taxes became final and absolute on January 27, 1996.

2. On April 25, 1996, PROTESTANT filed a protest "Under the provisions of Title 68 O.S. Section 221(F)." PROTESTANT and the Division then participated in a Prehearing Conference with the office of the Administrative Law Judge after which the parties agreed to try this case on stipulated facts. A Stipulation of Facts was filed in which the parties stipulated that the Division issued its proposed assessment on December 28, 1995, and PROTESTANT filed its protest on April 25, 1996. No stipulation or evidence was entered which demonstrates that PROTESTANT requested an extension of time in which to file its protest within thirty (30) days of the assessment letter pursuant to Section 221(F). No stipulation or evidence was entered which demonstrates that the Division ever extended the time for filing a protest in this case.

3. Each of the parties filed a brief in chief and a reply brief on the merits of the protest pursuant to the Scheduling Order entered in this case. Neither party offered any further evidence concerning jurisdiction of the Oklahoma Tax Commission to hear this protest. Lack of jurisdiction prevents a tribunal from exercising any power to issue an order or judgment in a case before it. Unlike other defenses, the issue of subject matter jurisdiction can be raised by any party to the action or the court itself, at any time. Wherever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action, 12 O.S. §2012(F)(3). Although neither party raised the issue of subject matter jurisdiction, the office of the Administrative Law Judge does so now on its own motion.

ISSUE

Whether PROTESTANT timely filed its protest in this matter to properly invoke the jurisdiction of the Oklahoma Tax Commission.

CONCLUSIONS OF LAW

1. In order for a court to render a valid judgment, the court must be vested with: (1) jurisdiction over the parties, (2) jurisdiction over the subject matter and (3) jurisdictional power to render the particular judgment. The failure of anyone of these three bases of jurisdiction will render a judgment void, *Matter of Estate of Mouse*, 864 P.2d 1284, 1993 OK 157.

2. The Tax Commission has proper jurisdiction over the person of the Protestant and the subject matter of this case pursuant to 68 O.S. §207. However, the Tax Commission lacks jurisdictional power over this protest because the Protestant did not file his protest within thirty (30) days of the mailing of the proposed assessment. The proposed assessment was mailed to Protestant on December 28, 1995. The thirty (30) day time period to protest expired on January 27, 1996, and there is no evidence on the record indicating that the Division granted the Protestant an extension of time to protest. The Protestant filed his protest by mail on April 25, 1996. Title 68 O.S. §221(C) requires that:

Within thirty (30) days after the mailing of the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a written protest, under oath, signed by the taxpayer or the taxpayer's duly authorized agent . . . .

Section 221(E) further provides that if the taxpayer fails to file a written protest within the thirty (30) day period provided for, or within the period as extended by the Tax Commission, then the proposed assessment, without further action of the Tax Commission, shall become final and absolute at the expiration of the thirty (30) day period.

3. The Oklahoma Supreme Court has ruled in the *Matter of Hamm Production Co*., 671 P.2d 50, 1983 OK 92, that Subsection (E) clearly prescribes that failure to file a timely protest to the proposed assessment results in the assessment becoming final and absolute at the expiration of the allowed protest period. Therefore, no further inquiry as to the validity or propriety of the assessment can be made because timely filing is jurisdictional. The Oklahoma Supreme Court held in a similar case on point in *Matter of Phillips Petroleum Co.*, 652 P.2d 283, 1982 OK 112 as follows:

A clear reading of the statute indicates that any protest against a tax assessment must be made within thirty (30) days from the mailing date or the assessment becomes final and absolute. In the case at bar, *Phillips* made no communication, informal or otherwise, with the Oklahoma Tax Commission within the thirty (30) day limitation. By operation of the statute the assessment became final after the 30th day of silence by *Phillips*.

4. In the case at bar, PROTESTANT claims that its protest is properly based on Section 221(F) which provides:

The Tax Commission may in its discretion extend the time for filing a protest for any period of time not to exceed an additional Ninety (90) days.

Although the April 25, 1996, date is within a ninety (90) day time period for which an extension of time to file a protest could have been granted, the record in this case contains no evidence that PROTESTANT ever requested an extension nor does it contain any evidence that the Division granted an extension. Based on the record in this case, PROTESTANT'S protest is clearly out of time. The Supreme Court ruled in *Hamm Production*, supra, the legislative intent clearly expressed in Section 221 is that a failure to protest during the initial thirty (30) day period precludes the Commission from granting additional time thereafter. Pursuant to subsection (E) of Section 221, the failure of the taxpayer to protest or request an extension of time to protest within the initial thirty (30) day period following the date of the proposed assessment causes the assessment to become final and absolute at that time and precludes the Commission from granting additional time thereafter.

5. The case at bar is controlled by the cases and statutes cited above and must be dismissed. The protest filed herein must be dismissed for lack of jurisdiction of the Tax Commission to hear the matter because the protest was not timely filed.

DISPOSITION

It WAS DETERMINED based upon the specific facts and circumstances of this case, that the sales tax protest of PROTESTANT be dismissed.

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.