JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-07-10-021 / NOT PRECEDENTIAL**
ID: **P9700345B**
DATE: **07-10-01**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 18th day of May, 2001, the above styled and numbered cause comes on for decision in accordance with the *Order Granting Motion for Reconsideration* issued on May 18, 2001. The order withdrew the *Recommendation of Dismissal* issued in this cause on March 30, 2001, which *Recommendation of Dismissal* was issued pursuant to an examination into the merits of the protest pursuant to 68 O.S. § 221(d). A prehearing conference was scheduled in this matter and notice was sent to MR. B, PROTESTANT, as Manager of PROTESTANT CORPORATION and as an individual, at his last known address. Protestant did not appear for the prehearing conference, nor has Protestant requested an oral hearing.

Upon review of the file and records in this matter, including the protest filed by Protestant, the verified response to the protest filed by the Account Maintenance Division, the *Motion for Reconsideration* and the *Recommendation of Dismissal* issued on March 30, 2001, the undersigned finds:

FINDINGS OF FACT

1. Pursuant to a Business Registration dated March 5, 1996, under the signature of MR. X, PROTESTANT CORPORATION, Inc. (hereinafter "Corporation") appeared for a sales tax permit to operate a business in ANONYMOUS, Oklahoma.

2. The sole officer of the Corporation listed on the Business registration was MR. X.

3. A handwritten notation "not issued" was contained on page four of the Business Registration.

4. Pursuant to a signed statement of THE Administrator of the Account Maintenance Division, PROTESTANT "CORPORATION" was not registered as a corporation with the Oklahoma Secretary of State in 1996.

5. An Oklahoma Tax Commission Collection Division Pay Plan Application and Worksheet dated November 18, 1996, was signed by PROTESTANT as Vice President of the Corporation. Protestant listed the officers of the Corporation as follows:

MR. X - President
PROTESTANT - Vice President
MRS. X - Treasurer

6. Protestant filed sales tax reports on behalf of PROTESTANT "CORPORATION" for the periods April, June and October, 1996. Protestant signed said reports and co-signed a business check issued as a down payment toward the payment of the sales taxes.

7. The Division, on October 10, 1997, caused to be issued against Protestant as manager of PROTESTANT "CORPORATION" and as an individual, a proposed assessment for the period of February, 1996, through June, 1996, and September, 1996, through October, 1996, in the amount of $3,266.34.

8. Protestant timely responded to the assessment, asserting that he "was only the manager of PROTESTANT 'CORPORATION' " and that he "should not be held liable for any sales tax that may be owed."

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. § 221.

2. A vendor is any person making sales of tangible personal property, the proceeds of which are taxable under the Sales Tax Code. 68 O.S. §§ 1352(R) and 1352(I).

3. The incidence of the levy of sales tax is on the consumer who is required to pay the tax to the vendor. 68 O.S. Supp. 1993, § 1361(A).

4. The vendor is required to collect the full amount of the sales tax from the consumer, 68 O.S. Supp. 1993, § 1361(A); and report, 68 O.S. 1991, § 1365(A); and remit the same to the Tax Commission, 68 O.S. 1991, § 1362(A). The vendor is personally liable for the full amount of the sales tax whether or not the tax is collected from the consumer. 68 O.S. Supp. 1993, § 1361(A).

5. The burden of proof in all proceedings before the Tax Commission unless otherwise provided by law is on the party opposing the action to show in what respect the action or the proposed action of the Tax Commission is incorrect. *Oklahoma Administrative Code 710:1-5-47*.

6. In the instant case, the evidence indicates that Protestant was one of the individuals operating PROTESTANT "CORPORATION" and was a vendor responsible for the collection and remittance of sales tax, and therefore was personally liable for the sales tax at issue herein.

7. Protestant has not met his burden of proof to show that the assessment was incorrect; therefore, the protest of Jeff Hardy should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the sales tax protest of PROTESTANT, as Manager of PROTESTANT "CORPORATION", and as an individual, 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.