JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-07-10-027 / NOT PRECEDENTIAL**
ID: **P9800070A / P9800070B**
DATE: **07-10-01**
DISPOSITION: **SUSTAINED AS TO PROTESTANT A / DENIED AS TO PROTESTANT B**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 12th day of June, 2001, the above styled and numbered causes come on for decision pursuant to Rule 710:1-5-38 of the *Oklahoma Administrative Code*. PROTESTANT A and PROTESTANT B (hereinafter "Protestants"), appear pro se. The Audit Division of the Tax Commission (hereafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Upon review of the files and records, the undersigned finds:

FINDINGS OF FACT

1. PROTESTANT LLC is a limited liability company which operated a restaurant at 9999 ANY STREET, BIGCITY, Oklahoma. The business registration form filed with the Tax Commission for PROTESTANT LLC lists ANONYMOUS LLC as a 99 PERCENT owner, PROTESTANT B as a 0.5 PERCENT owner, and PROTESTANT A as a 0.5 PERCENT owner. PROTESTANT B was listed on line 9 of the business registration form as the officer or employee responsible for taxes. ANONYMOUS LLC was owned 40 PERCENT by PROTESTANT B and 40 PERCENT by PROTESTANT A. The business registration form filed by ANONYMOUS LLC, lists both Protestants as managing partners and PROTESTANT B was named as the person responsible for taxes. Both Protestants filed various tax returns for PROTESTANT LLC and signed checks in payment of taxes and other expenses. Both Protestants maintained equal ownership interests in PROTESTANT LLC.

2. On December 12, 1997, the Division issued a proposed assessment of sales taxes to PROTESTANT LLC and the two Protestants as the managing officers for the audit period November 8, 1994 through May 31, 1996 as follows:

Sales Tax	$ 16,784.83
Interest	4,685.04
Penalty	1,948.41
TOTAL	$ 23,418.28

The Protestants timely filed a protest to this proposed assessment on January 9, 1998.

3. This case was submitted to the Administrative Law Judge for decision without a hearing or stipulated facts. The Protestants and the Division each filed briefs with attached exhibits. The Protestants contend that they are not individually responsible for the sales taxes assessed against PROTESTANT LLC because ANONYMOUS LLC was the sole manager of PROTESTANT LLC.

ISSUE

Whether the Protestants are the individuals responsible for the sales tax assessment issued to PROTESTANT LLC.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission, 68 O.S. §§ 207 and 221.

2. PROTESTANT LLC is liable for the sales taxes assessed in this case. Title 68 O.S. § 1361(A) provides that the managers or members of a limited liability company are responsible for sales taxes as follows:

> In the case of a limited liability company, all managers and members under a duty to collect and remit taxes for the limited liability company shall be liable for the tax. If no managers or members have been specified to be under the duty of withholding and remitting taxes, then all managers and members shall be liable for the tax.

Title 68 O.S. § 253 specifies the managers or members liability for sales tax as follows:

> Managers or members of any limited liability company shall be liable for the payment of any tax as prescribed by this section if the managers or members were specified as responsible for withholding or collection and remittance of taxes during the period of time for which the assessment was made. If no managers or members were specified to be responsible for the duty of withholding and remittance of taxes during the period of time for which the assessment was made, then all managers and members shall be liable.

In this case, PROTESTANT B was the manager or member specified as the person responsible for taxes on line 9 of the business registration form filed by PROTESTANT LLC. Because this specification was made, PROTESTANT B is the member liable for the sales tax in this case.

Since PROTESTANT A was not so specified, he has no liability for the assessed sales taxes. Had PROTESTANT LLC not specified a person as responsible for taxes, then all managers and members would have been jointly and severally liable for the trust taxes assessed. Therefore, in the case of a limited liability company, Section 253 looks only to the person specified as responsible and does not require a determination of the responsible person in accordance with the standards of determining liability for payment of federal withholding tax because that standard is limited to determining liability of a principle officer of a corporation.

3. The evidence in this case demonstrates that PROTESTANT B was the member of PROTESTANT LLC specified as responsible for the taxes assessed pursuant to Section 253. The Protestants do not deny this. The Protestants, however, submit that ANONYMOUS LLC is the "manager" of PROTESTANT LLC and liable for the taxes assessed instead of the Protestants. This argument fails for two reasons. First, ANONYMOUS LLC is not a person. Second, ANONYMOUS LLC did not have significant control over the disbursement of funds of PROTESTANT LLC. The Protestants are the only two individuals who met these requirements based on the evidentiary record presented in this case. Section 253 specifically provides that when the Oklahoma Tax Commission files a proposed assessment against corporations
or limited liability companies for unpaid sales taxes, the Commission shall file such proposed assessments against the principle officers of the corporations or the managers or members personally liable for the tax. The members in the case at bar may not insulate themselves from liability by the ruse of a network of related or subsidiary limited liability companies. A person must be specified as responsible and if a responsible person is not specified, then all managers and members are liable. In this case PROTESTANT B holds the required specification.

4. PROTESTANT B's protest to the proposed assessment should be denied. PROTESTANT A's protest to the proposed assessment should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of PROTESTANT B be denied and that the protest of PROTESTANT A be sustained. It is further DETERMINED that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiency 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.