JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-08-01-013 / NOT PRECEDENTIAL**
ID: **P0100038**
DATE: **08-01-01**
DISPOSITION: **DISMISSED AS TO LLC / SUSTAINED AS TO INDIVIDUALS**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 14th August day of June, 2001, the above styled and numbered cause comes on for decision pursuant to Section 221(D) of the ***Uniform Tax Procedure Code***. PROTESTANT LLC and MEMBERS A AND B, as Members of PROTESTANT LLC, and as Individuals (hereinafter "Protestants") appear pro se. The Account Maintenance Division of the Tax Commission (hereinafter "Division") WAS represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Protestants did not appear at the Pre-hearing Conference scheduled in this cause for March 29, 2001. Thereafter, notice was served on the parties that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division. Protestants did not respond to this notice.

FINDINGS OF FACT

Upon review of the file and records, including the July 30, 1999 proposed assessment of sales tax, the letter of adjustment dated December 28, 1999, the letters of protest, and the Division's ***Verified Response to Protest*** and exhibits, the undersigned finds:

1. That Protestants operated a limited liability company in Oklahoma City as reflected on the Business Registration dated August 31, 1993. The Business Registration form listed MR. X as Manager and MR. A and MR. B as Members. MR. X was listed as the person responsible for remitting Oklahoma Income Tax withheld from employees. Mr. X signed the Business Registration form.

2. That by letter faxed to the Tax Commission, Protestant MR. A stated he "terminated" MR. X on August 31, 1998, and from that date, he and his family "have run the business."

3. That Protestants failed to report sales tax to the Tax Commission from August, 1998 through February, 1999.

4. That on July 30, 1999, the Division caused to be issued a proposed assessment of estimated sales tax against Protestants for the period of August, 1998 through February, 1999.

5. That the assessment proposed a total amount due of $6,794.81, inclusive of tax in the amount of $5,600.00, interest accrued through September 17, 1999, in the amount of $634.81, and penalty in the amount of $560.00.

6. That by letters dated August 23 and August 26, 1999, Protestants, through THE manager of Super Tans, filed timely protests to the proposed assessments and submitted documentation regarding their gross sales for the audit period.

7. That the Division by letter dated December 28, 1999, adjusted the proposed sales tax assessment in accordance with the information provided by Protestants and assessed a total amount due of $2,243.08, inclusive of tax in the amount of $1,826.90, interest accrued through January 20, 2000, in the amount of $233.49, and penalty in the amount of $182.69.

8. That the amended assessment was only issued against the limited liability company.

9. That Protestants did not respond to the Division's amended assessment.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. That the Tax Commission is vested with jurisdiction over the parties and the subject matter of this action. 68 O.S. 1991, §§ 207 and 221.

2. That an amended proposed assessment commences the running of a new, sole and separate limitations period for the filing of a protest thereto. ***Ladd Petroleum Corp. v. Oklahoma Tax Commission***, 619 P.2d 602 (Okl. 1980).

3. That the timely filing of a protest to a proposed assessment, which is withdrawn and a new audit is instituted and an assessment is issued, does not relate to or become a part of the second assessment so as to make a purported protest of the second assessment timely by relation back to the first assessment. ***Matter of Request of Hamm Production Co. for an Extension of Time in Which to Protest Proposed Gross Production Tax Assessment***, 671 P.2d 50 (Okl 1983).

4. That the failure of a taxpayer to file either its protest or an application for extension to file such protest, within the 30-day period allowed by statute results in the proposed assessment becoming final and absolute, and the Tax Commission is thereafter without jurisdiction to consider the action. 68 O.S. 1991, § 221(E). ***Hamm***, supra.

5. Here, PROTESTANT LLC did not file a protest to the amended assessment. Accordingly, the cause of action of PROTESTANT LLC should be dismissed. ***Matter of***

Phillips Petroleum Co., 652 P.2d 283 (Okl. 1982).

6. Every person required to collect sales tax, and in the case of a limited liability company, all managers and members specified to be under a duty to collect and remit sales tax or in the event no managers or members have been specified, all managers and members shall be liable for the tax. 68 O.S. 1991, § 1361(A).

7. When the Tax Commission proposes the assessment of sales tax against a limited liability company, the Commission shall also file such assessment against the managers or members personally liable for the tax. 68 O.S. 1991, § 253.

8. Here, the Division by accepting the information submitted by Protestants, instituting a new audit and issuing the amended assessment, withdrew the first assessment against Protestants. Accordingly, the protest of the members to the first assessment should be sustained. Further, the Division failed to file the amended assessment against the members of the limited liability company. Without an assessment and timely filed protest thereto, no case or controversy exists, and the liability of members for the taxes is not at issue.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest of PROTESTANT LLC, be dismissed. It is further DETERMINED that the protest of MEMBERS, MR. A and MR. B, be sustained. It is further PROTESTANT that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiencies due and owing by PROTESTANT LLC.

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.