

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-10-30-013 / NOT PRECEDENTIAL
ID: P0100096
DATE: 10-30-01
DISPOSITION: DENIED
TAX TYPE: SALES / WITHHOLDING
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 19th day of September, 2001, the above styled and numbered cause comes on for decision pursuant to Section 221(d) of the *Uniform Tax Procedure Code*. PROTESTANT appears pro se. The Account Maintenance Division of the Tax Commission (hereinafter "Division") is represented by THE First Deputy General Counsel, General Counsel's Office of the Tax Commission.

Protestant did not appear at the Prehearing Conference scheduled in this cause for July 2, 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. Protestant did not respond to this notice.

Subsequent to the issuance of the *Recommendation of Denial of Protest* on September 5, 2001, Protestant filed a written response thereto which was accepted as a Motion for Reconsideration and a status conference was scheduled. Protestant and counsel for the Division appeared at the status conference. Upon consideration of the events of the conference and further review of the file and records, including the July 21, 2000 proposed assessments of sales and withholding taxes, the letter of protest received on August 11, 2000, and the Division's *Verified Response to Protest*, the undersigned finds:

1. That by letter dated June 20, 2000, Protestant notified the Tax Commission that he became a member of THE LLC on July 1, 1998. Protestant also admitted that he was the responsible party for the payment of the company's taxes from said date. In addition, Protestant does not dispute that he is also the responsible party for the payment of the company's taxes for the months of May and June, 1998.

2. That on July 12, 2000, a Notice to Show Cause Hearing was held regarding the company's delinquent sales and withholding tax liability. As a result of the hearing, an Order was issued by the Tax Commission which was executed by Protestant. The Order sets out the following advice or directives, to-wit: \$25,000.00 down payment previously received; \$500.00 per month pay plan on the balance of tax only; review case in twelve months; officers to be assessed prior to beginning of pay plan; and, must stay current on all taxes.

3. That on July 21, 2000, the Division caused to be issued a proposed sales tax assessment against Protestant for the period of May 1998 through May 1999, August 1999, and November 1999 through March 2000, in the total aggregate amount of \$30,852.94, inclusive of tax in the amount of \$17,326.54, interest accrued through September 29, 2000, in the amount of \$9,245.81, and penalty in the amount of \$4,280.59.¹

4. That on July 21, 2000, the Division caused to be issued a proposed withholding tax assessment against Protestant for the period of May 1998 through May 1999 and August 1999 through March 2000, in the total aggregate amount of \$1,189.72, inclusive of interest in the amount of \$371.45 and penalty in the amount of \$818.27.

5. That the proposed assessments take into account and reflect the receipt of the \$25,000.00 down payment.

6. That the amount in controversy, inclusive of penalty and interest accrued through September 29, 2000, is \$32,042.66.

7. That by letter received August 11, 2000, Protestant filed a timely protest, contending that the amount of the proposed assessments were incorrect. In support of this contention, Protestant offered proof of the \$25,000.00 down payment and the payout plan agreement on the balance owed. Protestant also asserted that "[i]t is understood that payment of this balance will result in the deduction of penalty and interests."

8. That the Division contends that Protestant did not complete the pay plan as agreed and that no waiver order has been issued by the Tax Commission.

9. That Protestant requests a waiver of the penalty and interest assessed, and accrued and accruing, which request Protestant understands cannot be considered prior to satisfaction of the delinquent tax liability.

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Due to a calculation error, the sales tax assessment shows an incorrect total of \$7,909.48 for the period of November 1999 through March 2000 and an incorrect total due of \$30,851.95. The correct amounts are \$7,910.47 and \$30,852.94, respectively.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. 1991, § 207; that a proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988); that the proposed assessments take into account and reflect the receipt of the \$25,000.00 down payment; that according to the pay plan agreement, failure to abide by the terms thereof shall result in cancellation of the pay out plan; and that Protestant failed to come forward with any evidence to show compliance with the terms of the pay out plan, Rule 710:1-5-47 of the ***Oklahoma Administrative Code***.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest of PROTESTANT, Member of PROTESTANT LLC, be denied. It is further DETERMINED that the amount in controversy, plus 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.