

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-12-13-004 / NOT PRECEDENTIAL
ID: P0100123
DATE: 12-13-01
DISPOSITION: DENIED
TAX TYPE: SALES / MIXED BEVERAGE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Audit Division ("Division"), unable to obtain the records and information requested from Taxpayer to conduct an audit, performed a depletion audit for the period of January 1, 1998, through August 24, 2000, utilizing purchases made during the audit period, average prices for the area and regulation pour sizes.

2. As a result of the audit, the Division caused to be issued a proposed assessment of mixed beverage gross receipts tax and sales tax, penalty and interest accrued through March 15, 2001, against PROTESTANT as follows:

Mixed Beverage Gross Receipts Tax

Tax	\$ 5,470.48
Interest	410.29
Penalty	<u>547.05</u>
TOTAL	\$ 6,427.81

Sales Tax

Tax	\$ 3,788.31
Interest	493.49
Penalty	378.85
TOTAL	\$ 4,660.65

3. Protestant filed a written response to the Division's proposed assessments stating that "I can show positively that all taxes were paid on all items sold" and that "our point of sale system should have insured proper sales figures as provided to the OTC."

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. Mixed beverage gross receipts tax is levied and imposed on the total retail sales price received for the sale, preparation or service of mixed beverages, ice and nonalcoholic beverages to be mixed with alcoholic beverages, the total retail value of complimentary or discounted mixed beverages and the total amount of consideration received as charges for admission to a mixed beverage establishment which entitle the person to complimentary or discounted mixed beverages. 37 O.S. 1991, § 576(A) and (B).

3. Sales tax is also levied and imposed on the sale, preparation or service of mixed beverages, ice and nonalcoholic beverages to be mixed with alcoholic beverages. 68 O.S. 1991, §§ 1354(1)(l). The retail sales price received for the sale, preparation or service of mixed beverages, ice and nonalcoholic beverages to be mixed with alcoholic beverages is used in calculating gross receipts for sales tax purposes. 37 O.S. 1991, § 576(E).

4. The authorized method of auditing a mixed beverage establishment is the depletion method. Regulation XXX-20¹. This method accounts for the number of drinks available for sale, preparation or service from the total alcoholic beverages received. *Id.* It is a reasonable method for determining the total gross receipts subject to tax under Section 576(A). *Kifer v. Oklahoma Tax Commission*, 1998 OK CIV APP 34, 956 P.2d 162 (1997).

5. 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 (Okla. 1988). Protestant failed to present any evidence to contradict the mixed beverage gross receipts tax and sales tax assessments. Accordingly, the protest should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusion of law, it is DETERMINED that the protest of the sales tax and mixed beverage gross receipts tax assessments be denied. It is further DETERMINED that the amount of sales tax and mixed beverage tax in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiencies due and owing by PROTESTANT.

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.

¹ Currently codified as Rule 710:20-5-8 of the Oklahoma Administrative Code (July 12, 1993).