**JURISDICTION:** **OKLAHOMA TAX COMMISSION - DECISION**
**CITE:** **2001-12-13-005 / NOT PRECEDENTIAL**
**ID:** **P0000137**
**DATE:** **12-13-01**
**DISPOSITION:** **DENIED**
**TAX TYPE:** **SALES**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A business registration form under the signature of PROTESTANT was received by the Tax Commission on September 17, 1997, for PROTESTANT'S LLC. MANAGER A, MANAGER B, and MANAGER C were listed on the form as managing officers.

2. PROTESTANT listed herself on Line 9 of the business registration form of PROTESTANT's LLC as managing officer and the one responsible for remitting Oklahoma income tax withheld from employees.

3. The Division performed a mixed beverage depletion audit for the period of September 26, 1997, through December 31, 1999, utilizing average prices and a regulation pour size of 1.5 ounces for spirits and 6 ounces for wine.

4. On June 8, 2000, the Audit Division issued a letter of proposed assessment of sales tax against PROTESTANT d/b/a PROTESTANT's LLC for the period of September 26, 1997, through December 31, 1999, in the following amounts:

| | |
|---|---|
| Sales Tax | $ 63,055.12 |
| Interest through 6/15/00 | 9,059.65 |
| Delinquency Penalty | 6,305.59 |
| Total | $ 78,420.36 |

The proposed assessment was based on the mixed beverage depletion audit of PROTESTANT's LLC.

5. Protestant filed a timely protest stating that she was a volunteer unpaid worker; that her position was secretary/bookkeeper; that she was not an owner or officer and was not responsible for payment of debts or taxes; and that her services were terminated in July 1997.

6. Protestant was signatory on PROTESTANT's business account at ITS Bank.

7. Protestant wrote and signed a check on March 20, 1998, for payment of mixed beverage taxes.

8. Protestant testified that she volunteered to help with the company's bookkeeping; that she was not paid for her bookkeeping services; that she had no ownership in the company; and that she signed as an authorized representative of the company on the business registration form to apply for a permit. Protestant further testified that although most checks bear her signature, MANAGER A authorized payment. Protestant stated that, at MANAGER A's request, she made inquiries of the Tax Commission regarding taxes owed by the business. Protestant stated further that she did not prepare the sales tax reports and that the responsibility to submit the monthly reports was never given to her nor did she accept such responsibility.

9. Pursuant to information that the business went into receivership on June 30, 1998, the Division adjusted its assessment. The amount in controversy for the period September 26, 1997, through June 30, 1998, is as follows:

| | |
|---|---|
| Sales Tax | $ 11,575.27 |
| Interest through 11/30/00 | 4,146.01 |
| Penalty | 1,157.53 |
| Total | $ 16,878.81 |

## ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant is personally liable for the delinquent sales tax.

Protestant contends that she was not involved in the day-to-day management of the business and did not have the authority to decide which creditors would or would not be paid.

Division contends that Protestant has not provided any evidence to show that she should not be held personally liable for the periods at issue.

## 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)(I). 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. 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 manager or members have been specified, all managers and members, shall be liable for the tax. 68 O.S. Supp. 1993, § 1361(A).

5. 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. Supp. 1993, § 253.

6. Managers or members of a limited liability company will be responsible 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. *Id.* Accordingly, there is no requirement in Section 253 that a determination of liability be made in accordance with the standards for determining liability for payment of federal withholding tax as is required when ascertaining the liability of a principal officer of a corporation.

In the instant case, Protestant was designated on the business registration form to be the one responsible for the income tax withholding of the LLC. Therefore, Protestant is liable for the outstanding sales tax of PROTESTANT LLC.

## 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 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.