JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-01-28-002 / NOT PRECEDENTIAL**
ID: **P0200158**
DATE: **01-28-03**
DISPOSITION: **DENIED**
TAX TYPE: **WITHHOLDING**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 26th day of December, 2002, 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 AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Protestant did not appear at the Prehearing Conference scheduled in this cause for October 9, 2002. 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.

Upon review of the file and records, including the proposed assessment, the letter of protest, and the Division's ***Verified Response to Protest***, the undersigned finds:

1. That Protestant was listed as treasurer of THE CORPORATION on Schedule A of the Oklahoma Annual Franchise Tax Return filed with the Oklahoma Tax Commission and dated July 1, 1999. The reporting period listed on the form was July 1999 through June 2000.

2. That on March 22, 2002, the Division caused to be issued a proposed withholding tax assessment against Protestant for the period of December 1999 through June 2000, in the actual amount of $4,506.21, inclusive of tax in the amount of $2,769.00, interest accrued through April 26, 2002, in the amount of $837.06, and penalty in the amount of $900.15.

3. That the Division conducted an audit of the Corporation's records and determined that Protestant was responsible for collecting and remitting taxes to the State of Oklahoma and had failed to collect and/or remit withholding taxes during the above-stated period.

4. That by letter dated April 30, 2002, Protestant responded to the assessment, stating (1) that his mandate was to administer THE CORPORATION'S subsidiary in ANOTHER COUNTRY; (2) that he was not involved in the day-to-day operation of THE CORPORATION in the USA; and (3) that he had no knowledge of any delinquent taxes.

5. That the letter of protest was not verified.

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, ϟ 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 every employer who fails to pay to the Tax Commission any sums required to be paid under the Oklahoma Income Tax Act is personally and individually liable therefor to the State of Oklahoma, 68 O.S. 1991, ϟ 2385.3(D); that the term "employer" includes an officer or employee of a corporation who is under a duty to act for the corporation to withhold and remit withholding taxes, Id.; that any sums withheld are deemed to be held in trust and as trustee, the employer has a fiduciary duty to the State in regard to such sums and is subject to the trust laws of Oklahoma, Id.; and that here the evidence proves Protestant should be held personally and individually liable for the misappropriated withholding taxes.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest of Protestant be denied. It is further DETERMINED that the amounts in controversy, plus any additional accrued and accruing interest, be fixed as the deficiencies 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.