JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-02-11-006 / NOT PRECEDENTIAL**
ID: **P0200165**
DATE: **02-11-03**
DISPOSITION: **DISMISSED**
TAX TYPE: **WITHHOLDING**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 9th day of January, 2003, the *Motion to Dismiss* filed by the Audit Division in the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge.

Upon review of the file and record in this cause, the undersigned finds as follows:

1. On May 14, 2001, the Audit Division issued against PROTESTANT CORPORATION d/b/a BUSINESS X and PROTESTANT OFFICER, as President and as an individual (hereinafter "Protestant"), a proposed assessment of withholding tax, interest and penalty for the period August 19, 1996, through December 31, 2000. The proposed assessment was sent to PROTESTANT CORPORATION d/b/a BUSINESS X at XXX S. ANONYMOUS Avenue, ANYTOWN, OK 99999, by certified mail. The return receipt was signed by PROTESTANT OFFICER on May 31, 2001, and returned to the Tax Commission.

2. The aggregate amount proposed for assessment was $4,751.16, inclusive of tax in the amount of $3,117.46, interest accrued through June 11, 2001, in the amount of $854.34, and penalty in the amount of $779.36.

3. By letter dated May 22, 2002, Protestant filed a protest to the proposed assessment referencing tax warrant numbers ITW9999999999-00 and 01, ITW8888888888-00 and 01, and ITW777777777-00-00. Protestant stated in the letter, "I was not a party to the assessment, and have records showing a much-reduced amount of liability owing the State of Oklahoma."

4. The audit was adjusted, and by letter dated May 31, 2002, Protestant was advised of the reduced amount of withholding tax in the aggregate amount of $3,911.72, consisting of tax in the amount of $2,310.35, interest accrued through May 23, 2002, in the amount of $1,023.21, and penalty in the amount of $578.16. The letter indicated that the Division was in receipt of payment of the revised liability and tax warrant fees, in the amount of $4,163.72.

5. By letter dated August 1, 2002, Protestant filed a protest to the "dollar amount assessed" and requested a list of documents used to calculate the amount of taxes owed.

6. On November 20, 2002, the Division filed a *Motion to Dismiss* on the grounds and for the reason that a protest to the proposed assessment was not timely filed. Notice of the hearing scheduled to consider the *Motion to Dismiss* was sent to the parties to this proceeding by letter dated November 21, 2002. The Notice sent to Protestant was mailed to the last known address as provided by Protestant's correspondence of May 22, 2002, and August 1, 2002.

7. Protestant neither responded to the notice of hearing nor appeared at the hearing.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes that the Tax Commission is vested with jurisdiction to consider the *Motion to Dismiss*, 68 O.S. 1991, ϡ 207 and *Oklahoma Administrative Code 710:1-5-46*; that Protestant did not file a timely protest to the proposed withholding tax assessment; and that the proposed assessment is final and absolute and the Tax Commission is without jurisdiction to consider the merits of the protest. See, 68 O.S. 1991, ϡ 221(e).

DISPOSITION

THEREFORE, it is DETERMINED that the protest of Protestant be dismissed. Further, it is recommended that the May 22, 2002, letter be considered a timely request for abatement pursuant to 68 O.S. 1991, ϡ 221(e).

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.