JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-04-15-07 / NOT PRECEDENTIAL**
ID: **P0200115**
DATE: **04-15-03**
DISPOSITION: **DENIED**
TAX TYPE: **SALES / WITHHOLDING**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 14th day of March, 2003, 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. Protestant d/b/a BUSINESS A represents himself in this matter. The Audit Division is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. A hearing was held. Notice of the hearing was mailed to Protestant as his last known address, yet he did not appear. At the conclusion of the hearing, this matter was submitted for decision.

FINDING OF FACTS

1. A business registration form filed February 8, 1991, for PROTESTANT d/b/a BUSINESS A listed Protestant as the sole owner. The form was signed by Protestant. Pursuant to the business registration, PROTESTANT applied for a sales tax permit to operate BUSINESS A, a wholesale dairy products distributing business at XXst and ANONYMOUS Road, ANYTOWN, Oklahoma.

2. The business operated under sales tax permit number 999999 and FEI number 99-9999999.

3. Protestant filed sales tax reports and withholding tax returns and remitted payment of the amounts reflected on those reports and returns for several months during 1999.

4. No sales tax reports were filed by Protestant for the periods of June 1999 through July 1999, October 1999 through November 1999 or December 1999.

5. For the periods during which no sales tax reports were filed, the Division issued a proposed sales tax assessment, dated December 8, 2000, against Protestant in the aggregate amount of $4,173.05, consisting of estimated tax in the amount of $3,250.00, interest through January 11, 2001, in the amount of $598.05, and penalty in the amount of $325.00.

6. No withholding tax reports were filed by Protestant for the periods of June 1999 through July 1999 or October 1999 through December 1999.

7. For the periods during which no withholding tax reports were filed, the Division issued a proposed withholding tax assessment, dated December 1, 2000, against Protestant in the aggregate amount of $3,083.12, consisting of estimated tax in the amount of $2,150.00, interest through January 11, 2001, in the amount of $395.62, and penalty in the amount of $537.50.

8. On December 22, 2000, Protestant filed a timely protest to the proposed assessments.

9. Protestant provided a copy of a sole proprietorship income tax return for 1999 filed by PROTESTANT'S SON relating to income from a milk route for the business, DISTRIBUTORSHIP B. The return lists an expense of $562.00 for taxes and licenses, but no supporting documentation was submitted specifically showing what that figure represents.

ISSUE AND CONTENTIONS

Whether Protestant sustained his burden of proving in what respect the proposed action of the Division is incorrect.

Protestant contends that the amount of the estimated sales tax and withholding tax assessments is too high and should have been based on the first seven months of 1999 rather than the entire year. He stated that on August 1, 1999, he sold one-third of the business to his son, who "filed and paid his taxes".

The Division contends that Protestant is the sole owner of BUSINESS A, filed reports and remitted checks for several months around the assessment period for both sales tax and withholding tax and is the person responsible for filing reports and paying the tax.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 1991, ϶ 207.

2. Sales of tangible personal property are subject to sales tax levy in Section 1354 of the Oklahoma Sales Tax Code unless otherwise exempt. 68 O.S. Supp. 1998, ϶ 1354(1)(A).

3. The incidence of the levy of sales tax is on the consumer who is required to pay the tax to the vendor. 68 O.S. Supp. 1996, ϶ 1361(A).

4. The vendor is required to collect the full amount of the sales tax from the consumer, 68 O.S. Supp. 1996, ϶ 1361(A); and report, 68 O.S. Supp. 1996, ϶ 1365(A); and remit the same to the Tax Commission, 68 O.S. Supp. 1996, ϶ 1362(A). Every person required to collect the tax is personally liable therefor. 68 O.S. Supp. 1996, ϶ 1361(A).

5. Taxes shall be deducted and withheld from the wages paid each employee by every employer making payment of wages. 68 O.S. Supp. 1994, ∋ 2385.2(A). Every employer required to deduct and withhold taxes is required to pay over the amount withheld to the Tax Commission and file a return with each payment. 68 O.S. Supp. 1993, ∋ 2385.3(a).

6. The term "employer" for purposes of the Withholding Tax Act is defined to mean "any person (including any individual, fiduciary, estate, trust, partnership, limited liability company or corporation) transacting business in or deriving any income from sources within the State of Oklahoma for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term 'employer' shall mean the person having control of the payment of such wages." 68 O.S. Supp. 1994, ∋ 2385.1(b).

7. The burden of proof in all proceedings before the Tax Commission unless otherwise provided by law is on the party opposing the action to show in what respect the action or the proposed action of the Tax Commission is incorrect. *Oklahoma Administrative Code 710:1-5-47*.

8. Protestant failed to submit evidence to contradict the sales and withholding tax assessments. Accordingly, the protest should be denied.

DISPOSITION

It is the DETERMINATION of the undersigned Administrative Law Judge, based upon the specific facts and circumstances of this case, that the sales tax and withholding tax protest of PROTESTANT d/b/a BUSINESS A 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.