JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-04-22-05 / NOT PRECEDENTIAL**
ID: **P0300066**
DATE: **04-22-03**
DISPOSITION: **DENIED**
TAX TYPE: **WITHHOLDING**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That according to the records of the Oklahoma Tax Commission, Protestant Corp. was a computer software publishing company and Protestant was listed as an officer of the company during the audit period.

2. That the Division conducted an audit of the Company's records and determined that Protestants were 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.

3. That on February 14, 2003, the Division caused to be issued a proposed withholding tax assessment against Protestants for the period of April 1, 2001 through March 31, 2002, in the amount of $79,067.20, inclusive of tax in the amount of $54,260.85, interest accrued through March 15, 2003, in the amount of $11,241.13, and penalty in the amount of $13,565.22.

4. That by letter dated February 19, 2003, Protestants responded to the assessment, stating the Oklahoma Tax Commission may have utilized incorrect data and made certain incorrect assumptions during the audit.

5. That by letter dated April 8, 2003, the Division responded to Protestants' letter, requesting they submit certain documentation that could help resolve the matter. Protestants failed to respond to the Division's request.

4. That the amount in controversy, inclusive of penalty and interest accrued through March 15, 2003, is $79,067.20.

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. 2001, ϶ 221(D); 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. 2001, ϶ 2385.3(D); that the term "employer" not only includes "any person (including any * * * 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", 68 O.S. 2001, ϶ 2385.1(b); but also "an officer or employee of a corporation, manager or member of a limited liability company * * *, who as an officer or employee of a corporation, or manager or member of a limited liability company * * * is under a duty to act for a corporation, limited liability company * * * to withhold and remit withholding taxes in accordance with 2385.2 of * * * [Title 68]", 68 O.S. ϶ 2385.3(D); 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 Protestants failed to come forward with any evidence to show they are entitled to the relief requested, therefore, Protestants' protest to the proposed assessment must be denied. See, *OAC* 710:1-5-47 and ***Continental Oil Company v. Oklahoma State Board of Equalization***, 570 P.2d 315 (Okla. 1977).

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is detemined that the protest 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.