JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-04-01-33
ID: P-03-164A
DATE: APRIL 1, 2004
DISPOSITION: DENIED
TAX TYPE: WITHHOLDING, OFFICER LIABILITY
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant did not appear at the Prehearing Conference scheduled in this cause for December 8, 2003. 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.

FINDINGS OF FACT

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 at all times relevant herein, Protestant was president of STAFFING COMPANY. (hereinafter "Corporation").

2.That Protestant signed the franchise tax returns filed on behalf of the Corporation for the 1999 and 2000 reporting periods and the checks in remittance of the taxes reported by the returns.

3.That withholding tax reports dated February 14, 2001, were filed on behalf of the Corporation with the Tax Commission for the months inclusive of June 2000 through December 2000.

4.That each of the withholding tax reports were signed by Protestant.

5.That on August 30, 2002, the Division caused to be issued a proposed withholding tax assessment against Protestant for the periods of July 2000 through December 2000, in the actual amount of $64,673.25, inclusive of tax in the amount of $41,682.77, interest accrued through August 30, 2002, in the amount of $12,569.81, and penalty in the amount of $10,420.67.

6.That on September 20, 2002, the Division caused to be issued a proposed withholding tax assessment against Protestant for the above-stated period and for the additional period of May 2002 through July 2002, in the estimated amount of $11,683.14, inclusive of tax in the estimated amount of $9,000.00, interest accrued through December 20, 2002, in the amount of $583.14, and penalty in the amount of $2,100.00.

7.That by letter dated October 10, 2002, Protestant responded to the August 30, 2002 assessment, stating that at no time was he a director of the company nor did he have any authority regarding the handling or payment of monies related to employee withholding tax.

8.That Protestant further stated in the letter of protest that the Corporation was placed in bankruptcy in early part of 2002.

9.That upon learning the Corporation declared Chapter 7 bankruptcy in April 2002, the Division no longer seeks to collect estimated withholding tax for the months inclusive of May 2002 through July 2002.

10.That the amount in controversy is $64,673.25 which represents the actual amount of tax reported by the Corporation for the period of July 2000 through December 2000, plus interest accrued through December 20, 2002 and penalty.

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. Supp. 2002, § 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. 1991, § 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 the Tax Commission is required to file proposed assessments against the principal officers of a corporation who are personally liable for the tax when the Tax Commission files a proposed assessment against the corporation for unpaid sales taxes, withheld income taxes or motor fuel taxes, 68 O.S. 2001, § 253; that the principal officers of any corporation are personally liable for the tax "if such officers were officers of the corporation during the period of time for which the assessment was made", *Id.*; and that here the evidence proves Protestant was President of the Corporation during the period of time for which the assessment was made, that contradictory to Protestant's claim he did have authority regarding the handling or payment of monies related to employee withholding tax and that he should be held personally and individually liable for the withholding tax delinquency of the Corporation.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is THE DECISION OF THE OKLAHOMA TAX COMMISSION that the protest of Protestant, PRESIDENT, be denied. It is further DECIDED that the amount in controversy,

inclusive of 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.