JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-08-31-07
ID: P-03-009-H
DATE: AUGUST 31, 2004
DISPOSITION: SUSTAINED IN PART, DENIED IN PART
TAX TYPE: SALES TAX
APPEAL: APPEAL PENDING

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A confidential hearing was held in this matter on March 10, 2004, at 9:30 a.m.[1] All of the corporate officers were present at the hearing, with the exception of SECRETARY. Upon conclusion of the hearing, the record in this matter was held open for the Division to review and make any revisions to the proposed sales tax assessments, based upon the materials contained in Protestants' Exhibits 3 and 4, which were admitted into evidence at hearing. Upon receipt of the Division's revisions, the record in this matter was closed on May 24, 2004, and this case submitted for decision May 24, 2004.

FINDINGS OF FACT

1. COMPANY. d/b/a HEALTH CLUB was an athletic facility where members exercised using weights and aerobics.[2] Professional trainers were provided to help members with their weight or exercise programs. COMPANY also sold health and nutritional products over-the-counter.

2. On February 28, 2000, the Division notified COMPANY that it has been selected for an audit.[3]

3. On May 6, 2002, the Opening Conference of the field audit was initiated, covering the period of June 1, 1999, through May 31, 2002 ("Audit Period").[4]

4. The bookkeeper at COMPANY, BOOKKEEPER, requested the Division to work with its accountants on the field audit. COMPANY submitted a Power of Attorney designating ACCOUNTANT, CPA and ACCOUNTANT'S WIFE, JD, as Attorneys-in-Fact.[5]

5. On July 12, 2002, the Power of Attorney was signed by SECRETARY, as the Secretary of COMPANY.[6]

6. Initially, the parties agreed to the use of the "projection" audit method for conducting the field audit, but COMPANY was unable to provide sufficient records (including Membership Records) for the months to be reviewed.[7]

7. The only complete records available to the Division to arrive at total gross receipts for the entire Audit Period were taken from bank deposits.[8]

8. On October 8, 2002, ACCOUNTANT acknowledged receipt of the field audit work papers.[9]

9. During the Closing Conference on October 8, 2002, ACCOUNTANT indicated that COMPANY might provide documentation, which could lower taxable sales.[10] Documents were to be provided to verify professional training fees, nutritional consulting fees, and loans.

10. The principal officers of COMPANY during the Audit Period were PRESIDENT, President; TREASURER, Treasurer/Director; SECRETARY, Secretary/Club Manager/ Trainer; and VICE-PRESIDENT, Vice President/Director/Membership.[11]

11. On October 25, 2002, the Division sent proposed sales tax assessments to the Protestants as follows, to-wit:

Tax Due:	$ 78,272.09
Interest @ 15% through 11/30/02:	20,584.68
Tax and Interest due within 30 days:	98,856.77
30 day delinquent Penalty @ 10%:	7,827.22
Tax, Interest, and Penalty due after 30 days:	$106,683.99[12]

12. On December 24, 2002, the Division received a timely filed protest from ACCOUNTANT on behalf of the Protestants.[13] The basis of the protest was that the Division's field auditor in examining bank deposits had not considered other exempt sales, inter-company transfers, loans, refunds of sales, deposits of sales tax collected, and returned checks that had been re-deposited. The Protestants also disagreed with the amount of exempt sales allowed, but acknowledged that due to improper classification of revenues by COMPANY, the financial statements did not accurately reflect exempt sales for professional training and nutritional consulting. Additional documentation was to be provided to reflect exempt sales.

13. ACCOUNTANT submitted a Reconstruction of Taxable Sales for COMPANY with the protest. The reconstruction consisted of a two (2) page monthly summary sheet reflecting deposits made to various bank accounts, less reductions for bank transfers, loans, refunds, returned checks that were re-deposited, and collected sales tax, arriving at a net sales figure, *before exempt sales*.[14] The reconstruction reduced the proposed sales tax assessment from $78,272.09 to $38,231.61, plus penalty and interest.

14. The Division requested, but did not receive, documentation supporting the Reconstruction of Taxable Sales for COMPANY submitted by ACCOUNTANT.

15. On July 1, 2003, FORMER ADMINISTRATIVE LAW JUDGE, permitted ORIGINAL ATTORNEY, to withdraw as counsel for SECRETARY.[15]

16. On August 26, 2003, PROTESTANTS' ATTORNEY filed an Entry of Appearance on behalf of COMPANY, PRESIDENT, President; TREASURER, Treasurer/ Director;

SECRETARY, Secretary/Club Manager/Trainer; and VICE-PRESIDENT, Vice President/Director/Membership.[16]

17. A hearing in this matter was scheduled for December 2, 2003. On December 1, 2003, counsel for the Protestants produced two (2) boxes of documents asserting that they would support the Reconstruction of Taxable Sales for COMPANY submitted by ACCOUNTANT.

18. The hearing set for December 2, 2003, was stricken to permit the Division sufficient time to review the documents.

19. The Division reviewed the documents submitted on December 2, 2003, and on January 14, 2004, adjusted the audit work papers as follows, to-wit:

Sales Tax Due:	$ 74,136.80
Interest @ 15% through 02/29/04:	33,695.53
Tax and Interest due within 30 days:	107,832.33
30 day delinquent Penalty @ 10%:	7,413.68
Tax, Interest and Penalty due after 30 days:	$115,246.01[17]

20. On March 9, 2004, the Protestants provided some additional documents, including two (2) checks drawn on XYZ BANK, Account No. ########, in the name of PROTESTANTS' ATTORNEY, Attorney at Law.[18]

21. Loans made to COMPANY were not supported by any formal documentation, such as promissory notes and loan agreements.[19]

22. The hearing in this matter was held on March 10, 2004, at approximately 9:30 a.m.

23. During the audit period, PRESIDENT was President of COMPANY. As President of COMPANY, PRESIDENT was responsible for the overall management of COMPANY.

24. PRESIDENT had the authority to hire and fire employees of COMPANY.

25. PRESIDENT and SECRETARY became involved with COMPANY in 1991, when their management group took over COMPANY, as a successor business. The prior owners had an outstanding *sales tax* liability that had to be paid before the new management group could operate the business. PRESIDENT originally owned approximately thirty-four percent (34%) of COMPANY stock.[20]

26. PRESIDENT and SECRETARY entered into a pay plan with FORMER OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission, for the payment of the sales tax liability of the prior owners of COMPANY.[21]

27. Sometime in 1995, PRESIDENT moved to North Carolina.

28. Before moving to North Carolina, PRESIDENT, as President, put "good management people" in responsible areas. PRESIDENT gave SECRETARY specific instructions on how sales tax was to be collected and remitted to the Oklahoma Tax Commission. SECRETARY was to manage and run the business. PRESIDENT never called corporate meetings, asked for an accounting of COMPANY, or inquired as to whether sales tax was being paid in accordance with his instructions.

29. After moving to North Carolina, PRESIDENT made advances to COMPANY of approximately $50,000.00 to $80,000.00. The advances were made through SECRETARY's management company, MANAGEMENT CO.[22]

30. SECRETARY, as a stockholder and Secretary of COMPANY, had the authority to hire and fire employees of COMPANY. SECRETARY did hire and fire the employees of COMPANY and had full management authority for the day-to-day operations of COMPANY. SECRETARY supervised all of the day-to-day financial affairs of COMPANY. SECRETARY had signature authority on the checking accounts for COMPANY. Originally SECRETARY owned approximately five percent (5%) of COMPANY.

31. VICE-PRESIDENT, as Vice-President of COMPANY, owned approximately two percent (2%) of the stock in COMPANY. VICE-PRESIDENT was also an employee of COMPANY and was in charge of membership sales and acted as a personal trainer. VICE-PRESIDENT also sold vitamins and other products offered by COMPANY over-the-counter sales.[23] VICE-PRESIDENT was not a signatory on any COMPANY bank accounts and did not participate in the day-to-day management of COMPANY. VICE-PRESIDENT did not have the authority to hire or fire employees of COMPANY, nor did he participate in the financial affairs of COMPANY. All membership forms and sales receipts used by VICE-PRESIDENT had a heading of "HEALTH CLUB".

32. TREASURER knew that he was an officer of COMPANY, but he thought he was the Secretary. TREASURER had an ownership interest in COMPANY as a result of an investment sometime in 1991 and 1992 in the amount of $30,000.00. TREASURER was employed by COMPANY as its janitor sometime in 1997 or 1998. TREASURER was not a signatory on any COMPANY bank accounts and did not participate in the day-to-day management of COMPANY. TREASURER did not have the authority to hire or fire employees of COMPANY, nor did he participate in the financial affairs of COMPANY.

33. SECRETARY retained ACCOUNTANT as the accountant for COMPANY. ACCOUNTANT and his wife, who is an attorney, own a business that does sales tax reporting for hundreds of clients nationwide. ACCOUNTANT reported sales tax for COMPANY during the audit period. The ACCOUNTANT/WIFE had signature authority on a COMPANY bank account for the purpose of reporting and paying sales tax. The ACCOUNTANT/WIFE kept financial records for COMPANY, but they did not keep membership records for COMPANY. Monthly sales reports were based upon

information supplied by COMPANY's bookkeeper BOOKKEEPER, including exempt sales for professional training and nutritional sales.

34. In some cases COMPANY computed and charged sales tax only on the down payment for membership sales, and not on the balance of the entire membership. In other cases no sales tax was charged on the down payment or the balance of the membership.

35. COMPANY was not set up for accounts receivable. As a result, COMPANY entered into an agreement with FINANCIAL CO. FINANCIAL CO collected the monthly membership dues, deducted its fee, and wired the monthly membership fees it collected for COMPANY into a bank account set up for that purpose. [24]

36. COMPANY was a franchise. The franchisor provided COMPANY with operations procedures and forms. All membership forms and sales receipts that were used by COMPANY had HEALTH CLUB indicated on them.[25]

ADDITIONAL FINDINGS OF FACT

1. At hearing the Protestants' Exhibits 3 and 4 were admitted into evidence. Both exhibits consisted of extensive documentation that ACCOUNTANT indicated would further support the Protestants' position that the Reconstruction of Taxable Sales that he had provided was correct and that the Protestants' sales tax liability, *before exempt sales*, for the audit period was $38,321.61, plus penalty and interest.

2. The Division was given time to review Protestants' Exhibits 3 and 4 and report back to the undersigned Administrative Law Judge of its findings.

3. On May 7, 2004, the Division filed a Status Report detailing the adjustments made by reviewing Protestants' Exhibits' 3 and 4. The Status Report did not include any of the documents referenced therein. On May 14, 2004, a request was sent to the Division to provide the referenced attachments.

4. On May 21, 2004, the Division provided a complete copy of the line-item examination of the audit work papers and the information provided by the Protestants. The examination by the Division resulted in the following *condensed* findings:

> There was a total increase in bank deposits of $56,064.59.
>
> Verified exemptions were allowed for bank transfers, loans, refunds, return checks, and sales tax. (Each month of the audit period was checked to make sure all exemptions had been allowed, including an entry for sales exempt from sales tax and verified professional training and nutrition.)
>
> A typed report was found reflecting various account numbers and their account names, including Service FINANCIAL CO Income Acct. #XXX. The Protestants claimed several loans during the audit period from FINANCIAL CO, but the

amounts were booked many times under the FINANCIAL CO Income Payment Acct. #XXX. (The typed report verifies the account as an Income Account and not a Notes Payable Account.)

There was no new information provided which allowed the Division to make any further adjustments for Professional Training and Nutrition. (The documents provided had the heading SALON CORPORATION. and SALON.)

Copies of forms for personal training and nutrition were not allowed. There was no heading at the top of the forms to identify them as being used by COMPANY.

5. The Division's review of the additional information provided by the Protestants on March 9, 2004, and Protestants' Exhibits 3 and 4, resulted in the Division's revising the assessment of sale tax due for the Audit Period as follows:

Revised Sales Tax Due	$ 72,623.20
Interest @ 15% through 04/30/04	34,903.26
Penalty	7,262.32
Revised Total	$114,788.78

6. The Status Report filed by the Division on May 21, 2004, reflects that a complete copy of the Division's findings were sent to PROTESTANTS' ATTORNEY, Counsel for the Protestants.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[26]

2. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[27] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[28]

3. The collection and remittance of sales tax is governed by the Oklahoma Sales Tax Code.[29] A four and one-half percent (4.5%) excise tax is levied upon all sales, not otherwise exempted.[30]

4. Generally, sales tax is collected by the vendor from the purchaser and remitted to the Tax Commission and the vender is liable for uncollected sums.

5. The Tax Commission is authorized to promulgate rules and regulations in the administration and enforcement of the tax code.[31]

6. It is presumed that all gross receipts are subject to the tax until they are shown to be exempt.[32]

7. The monthly member dues or fees charged by COMPANY are subject to sales tax.[33] Sales tax was collectible not only on the down payment, but also on the balance of the monthly membership dues to be collected in the future by FINANCIAL CO.[34]

8. The Commission may cause to be made by its employees an examination of the books, records, papers, vouchers, accounts, and documents of any taxpayer.[35]

9. Upon request by the Commission, or its duly authorized agent, a state taxpayer is required to furnish any information deemed necessary to determine the amount of state tax liability.[36]

10. The Protestants have failed to meet their burden of proof in this matter. The Division examined all evidence presented by the Protestants to support the Reconstruction of Taxable Sales submitted by ACCOUNTANT. The examination resulted in a reduction of sales tax due from $78,272.09 to $72,623.30. The remainder of the reconstruction was unsupported by the documentary evidence needed by the Division to make any further adjustments.

11. The Protestants have failed to sustain their burden of proof that the Division committed any error. The Protestants have wholly failed to come forward with any evidence in support of their protest and have failed to meet their burden of proving in what respect the proposed assessment is incorrect.

12. When the Tax Commission files proposed assessments for unpaid sales tax against a corporation, the Commission shall file such assessment against the principal officers of the corporation as well.[37]

13. A two-pronged test is used by courts to determine liability under the Internal Revenue Code ("IRC").[38] The first prong requires a finding that the person assessed is a "responsible person". The second prong requires the finding of a willful failure to collect or truthfully account for, or pay over the tax.[39] The burden of proof on each issue is borne by the taxpayer.[40]

14. The determination of liability for Oklahoma tax is limited to the standards for determining who is a responsible person.[41]

15. The courts have developed standards to help determine whether an assessed individual is a "responsible person". Factors to consider include the individual's status as an officer or director, the individual's duties as outlined in the corporation's by-laws, the individual's ownership of shares or possession of an entrepreneurial stake in the company, the individual's role in the day-to-day management of the company, the individual's ability to hire and fire employees, the individual's authority to sign checks of the corporation, and the individual's control over the financial affairs of the corporation.[42]

16. The mere holding of office, by itself, does not render one responsible for the collection and payment of trust fund taxes.[43] More than one individual may be found to be a responsible person for a particular tax period, and liability may be imposed on both.[44] Responsibility is a matter of status, duty and authority, not knowledge.[45] The control necessary to support liability under federal law is the ability to direct and control the payment of corporate funds.[46]

17. Responsible persons cannot delegate away their statutory responsibility to report and remit trust taxes.[47] Evidence pertaining to the agreement COMPANY made with FINANCIAL CO to collect its monthly membership dues is irrelevant and does not negate a principal officer's liability as a responsible person.[48]

18. The Oklahoma Statutes provide for the collection of interest and penalty on delinquent tax.[49] "All penalties or interest imposed by [Title 68], or any state tax law, shall be recoverable by the Tax Commission as a part of the tax with respect to which they are imposed."[50]

19. The Protestants were all principal officers of COMPANY throughout the audit period.

20. VICE-PRESIDENT and TREASURER have met their burden of proof in this matter. Although both are principal officers of COMPANY, they are not "responsible persons" liable for the collection and remittance of sales tax.

21. PRESIDENT and SECRETARY have failed to meet their burden of proof in this matter. They are not only principal officers of COMPANY, but they are both "responsible persons" liable for the collection and remittance of sales tax.

PRESIDENT argues that he was the President of COMPANY in name only, and because he had resided in North Carolina since 1995, he could not have participated in the operations of COMPANY. Additionally, he argues that he was only an investor or silent partner, and not the individual who was running the corporation or made decisions as to which creditors would be paid or not paid during the Audit Period. PRESIDENT further argues that he did not have anything to do with the day-to-day operations of COMPANY and was not a signatory on any of COMPANY's bank accounts.

The arguments made by PRESIDENT are unpersuasive. From the beginning, PRESIDENT was the majority stockholder of COMPANY and personally negotiated with the Oklahoma Tax Commission for the payment of the outstanding sales tax liability of the prior owners of COMPANY. He remained the majority stockholder and President of COMPANY throughout the audit period. PRESIDENT testified that before he moved to North Carolina in 1995, he "put responsible persons in place" to manage the day-to-day operations of COMPANY, and that he gave SECRETARY specific instructions on the collection and remittance of sales tax to the Oklahoma Tax Commission.

PRESIDENT had the ability to hire and fire employees of COMPANY, the authority to manage the day-to-day operations of COMPANY, and the ability to be a signatory on COMPANY's bank accounts. He simply did not exercise that authority. Instead, he chose to delegate his authority and responsibility as the majority stockholder and President of COMPANY to SECRETARY.

The evidence in this matter demonstrates that SECRETARY had sufficient status, duty, and authority within COMPANY to be properly identified as a "responsible person" liable for the collection and remittance of sales taxes. The agreement with FINANCIAL CO. to collect the monthly membership dues does not negate his liability because sales tax was not being charged on the balance of the monthly member dues.

DISPOSITION

It is the DECISION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protests be sustained as to TREASURER and VICE-PRESIDENT.

It is the DECISION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protests be denied as to COMPANY, PRESIDENT and SECRETARY, and that the total amount assessed for unpaid sales tax, as reflected by the Division's revision of May 21, 2004, be fixed as the Protestants' deficiency and those amounts be determined as due and owing, including penalties and interest, accrued and accruing.

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.

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[1]The Protestants invoked their right to a confidential hearing pursuant to the provisions of 68 O.S. § 205.

[2] COMPANY was closed by the landlord for non-payment of rent approximately in December 2002. *GMH Management v. COMPANY*, In the District Court of Oklahoma County, Case No. CJ-2001-852. Plaintiff was granted judgment December 9, 2002, in the principal sum of $194,251.30.

[3]Division Exhibit "A".

[4]Division Exhibit "B" and Exhibit "P".

[5]See Exhibit "B".

[6]Division Exhibit "C".

[7]Division Exhibit "B". The Division requested complete membership records, but COMPANY was unable to provide the records. For over-the-counter sales, membership dues and professional training fees, COMPANY could only provide records for one (1) year and part of another year.

[8]Division Exhibit "B".

[9]Division Exhibit "D" and Protestants' Exhibit 1.

[10]Division Exhibit "B".

[11]Division Exhibit "J". Part of Exhibit J is a List of Principal Officers for the Audit Period signed by SECRETARY on July 12, 2002.

[12]Division Exhibit "E". The sales tax due was based upon taxable sales of $999,743.19.

[13]Division Exhibit "F". See also Protestants' Exhibit 2.

[14]Division Exhibit "G". Attached to the reconstruction were twelve (12) pages of detail by month, from June 1, 1999, through May 31, 2002. The detail sheets showed returned checks, Personal Training, and Nutritional Consulting. No documentation to support the reconstruction or detail sheets was attached.

[15]Division Exhibit "H". ORIGINAL ATTORNEY had previously entered an appearance on behalf of SECRETARY on March 3, 2003.

[16]Division Exhibit "I".

[17]Division Exhibit "O" and Exhibit "V". Taxable sales were revised to $948,070.03.

[18]Division Exhibit "U" and Exhibit "T".

[19]Loans were made through writing checks, wire transfers and cashier's check, with the exception of the loan from ABC BANK, co-signed by PRESIDENT. PRESIDENT personally signed a note ABC BANK for a $20,000.00 operating line of credit for COMPANY. COMPANY defaulted on the loan and the bank filed a lawsuit to collect the debt. A judgment was entered against PRESIDENT in the action. The judgment remains outstanding.

[20]At the time of hearing PRESIDENT could not recall the exact percentage of COMPANY stock he still owned.

[21]The prior sales tax liability was paid through the pay plan.

[22]MANAGEMENT CO. was set up by SECRETARY to handle the financial affairs of COMPANY. PRESIDENT did not to his knowledge own any stock or interest in MANAGEMENT CO. PRESIDENT paid the landlord direct on one transaction, with a cashier's check, for back rent for approximately $30,000.00 approximately two (2) years ago.

[23]Before joining COMPANY, VICE-PRESIDENT managed a gym in Stillwater, Oklahoma.

[24]Division Exhibit "R" and Exhibit "S".

[25]Division Exhibit "R" and Exhibit "S".

[26]68 O.S. § 207. See also 68 O.S. § 221(D).

[27]The standard of review in an administrative proceeding is preponderance of the evidence. *Oklahoma Tax Commission Order No. 1999-04-08-003* (citing *Oklahoma Tax Commission Order No. 1991-10-17-061). Oklahoma Administrative Code ("OAC") 710:1-5-77(b)* provides in pertinent part that "preponderance of

the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[28]*Enterprise Management Consultants, Inc. v. Oklahoma Tax Comm'n*, 1988 OK 91, 768 P. 2d 359.

[29]68 O.S. § 1350, *et seq*.

[30]68 O.S. § 1354.

[31]68 O.S. § 203.

[32]OAC 710:65-1-4.

[33]68 O.S. § 1354(A)(11).

[34]68 O.S. § 1352(7).

[35]68 O.S. § 206.

[36]68 O.S. § 248.

[37]68 O.S. § 1364 and 68 O.S. § 253, which provide:

> When the Oklahoma Tax Commission files a proposed assessment against corporations or limited liability companies for unpaid sales taxes, withheld income taxes or motor fuel taxes collected pursuant to Article 5, 6 or 7 of this title, the Commission shall file such proposed assessments against the principal officers of the corporations or the managers or members personally liable for the tax. The principal officers of any corporation shall be liable for the payment of any tax as prescribed by this section if such officers were officers of the corporation during the period of time for which the assessment was made. Managers or members of any limited liability company shall be liable for the payment of any tax as prescribed by this section if the managers or members were specified as responsible for withholding or collection and remittance of taxes during the period of time for which the assessment was made. If no managers or members were specified to be responsible for the duty of withholding and remittance of taxes during the period of time for which the assessment was made, then all managers and members shall be liable.
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> The liability of a principal officer for sales tax, withheld income tax or promulgated motor fuel tax shall be determined in accordance with the standards for determining liability for payment of federal withholding tax pursuant to the Internal Revenue Code of 1986, as amended, or regulations pursuant to such section.

See also *Oklahoma Tax Commission Order No. 1996-12-17-037 (Prec.)*. In contrast to the IRC, 68 O.S. § 2385.3(E) does not contain the words “willful" or “willfully". Consequently, the same standards for determining federal withholding tax liability are utilized up to the point required by Oklahoma Statutes. The Position Letter of the Protestants filed April 5, 2004, goes into a discussion of the willfulness component for determining withholding tax liability on the federal level, which is inapplicable in determining liability on the state level.

[38]*In re Bernard*, 68 AFTR 2d 91-5514, 91-5518 (Bkrtcy. W. D. La. 1991). See *Cooke v. United States*, 796 F. Supp. 1298 (N.D. Cal., 1992) and *Feist v. United States*, 607 F. 2d 954 (Ct. Cl. 1979).

[39]*In re Bernard* at 91-5518.

[40]*Id*.

[41]*Oklahoma Tax Commission Order No. 96-12-17-037 (Prec.)*. In contrast to the IRC, 68 O.S. § 2385.3(E) does not contain the words "willful" or "willfully". Consequently, the same standards for determining federal withholding tax liability are utilized up to the point required under Oklahoma statutes.

[42]See *Rizzuto v. United States*, 889 F. Supp. 698 (S.D.N.Y. 1995); *United States v. Carrigan*, 31 F. 3d 130 (3rd Cir. 1994); *Hochstein v. United States*, 900 F. 2d 543 (2d Cir. 1990).

[43]*Bauer v. United States*, 464 F. 2d 142,149 (Ct. Cl. 1976).

[44]*Turner v. United States*, 423 F. 2d 448, 449 (9th Cir. 1970).

[45]*Mazo v. United States*, 591 F. 2d 1151, 1156 (5th Cir. 1979).

[46]*Wilson v. United States*, 250 F. 2d 312, 316 (9th Cir. 1958).

[47]See Precedential *Commission Order No. 1998-07-30-008*, citing *Lee v. United States*, 951 F. Supp. 79 (W.D. Pa. 1997). In Commission Order No.*1998-07-30-008*, the president of the corporation entered into a "lockbox" agreement with the corporation's principal supplier of inventory and its principal creditor. The officer argued that because of the "lockbox" agreement, he no longer had any significant control over the financial affairs of the corporation and did not effectively participate in any decisions concerning the disbursement of corporate funds.

[48]See Note 41. See also *Commission Order No. 2001-02-22-012* and *Commission Order No. 2001-04-10-008*.

[49]68 O.S. § 217 provides in pertinent part:

> A. If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.
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> B. Interest upon any amount of state tax determined as a deficiency, under the provisions of Section 221 of this title, shall be assessed at the same time as the deficiency and shall be paid upon notice and demand of the Oklahoma Tax Commission at the rate of one and one-quarter percent (1 1/4%) per month from the date prescribed in the state tax law levying such tax for the payment thereof to the date the deficiency is assessed.
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> C. If any tax due under state sales, use, tourism, mixed beverage gross receipts, or motor fuel tax laws, or any part thereof, is not paid within fifteen (15) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax within thirty (30) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

[50] 68 O.S. § 217(G) provides:

> All penalties or interest imposed by this title, or any state tax law, shall be recoverable by the Tax Commission *as a part of the tax* with respect to which they are imposed, the penalties bearing interest as provided in this section for the tax, and all penalties and interest shall be apportioned as provided for the apportionment of the tax on which such penalties or interest are collected. (Emphasis added).