JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-01-18-03
ID:	P-04-043-K
DATE:	JANUARY 18, 2005
DISPOSITION:	DISMISSED
TAX TYPE:	SALES/WITHHOLDING
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled and numbered cause comes on for decision pursuant to a hearing held on November 15, 2004, to consider the *Motion to Dismiss* filed by the Audit Division of the Tax Commission (hereinafter "Division"). Protestant, OFFICER, appeared at the hearing and is represented by ATTORNEY, Attorney at Law. The Division is represented by OTC ATTORNEY, General Counsel's Office of the Tax Commission.

FINDINGS OF FACT

Upon review of the file and records, including the record of the hearing, the testimony of the witnesses, and the exhibits received into evidence, the undersigned finds:

1. That by letter dated July 16, 2003, the Division proposed the assessment of sales tax, interest, and penalty against Protestant, OFFICER, President CORPORATION., d/b/a BUSINESS," in the amount of $67,654.96, consisting of actual tax in the amount of $46,037.22 for the period of July 2001 through August 2001 and April 2002 through August 2002, estimated tax in the amount of $6,000.00 for the period of September 2002, interest accrued through August 15, 2003, in the amount of $10,414.02, and penalty in the amount of $5,203.72. Exhibit D.

2. That the address listed on the assessment letter is "123 FAKE STREET, ANYTOWN, OK 12345."

3. That by letter dated July 16, 2003, the Division also proposed the assessment of withholding tax, interest, and penalty against Protestant, "OFFICER, President of CORPORATION, d/b/a/ BUSINESS," in the amount of $343.73, consisting of estimated tax in the amount of $250.00 for the period of September 2002, interest accrued through August 15, 2003, in the amount of $31.23, and penalty in the amount of $62.50. Exhibit C.

4. That the address listed on the assessment letter is "123 FAKE STREET, ANYTOWN, OK 12345."

5. That by letter dated December 1, 2003, the Division proposed the assessment of sales tax, interest, and penalty against Protestant, "OFFICER, as President of CORPORATION., d/b/a BUSINESS," in the amount of $70,626.55, consisting of tax in the amount of $52,037.22 for the period of July 2001 through August 2001, April 2002 through August 2002, and September 2002, interest accrued through January 15, 2004, in the amount of $13,385.61, and penalty in the amount of $5,203.72. Exhibit A.

6. That the address listed on the assessment letter is '999 SOME ROAD, FAKETOWN, KS 99999."

7. That by letter dated December 1, 2003, the Division also proposed the assessment of withholding tax, interest, and penalty against Protestant, "OFFICER, as President of CORPORATION., d/b/a BUSINESS," in the amount of $358.42, consisting of tax in the amount of $250.00 for the period of July 2002 through September 2002, interest accrued through January 5, 2004, in the amount of $45.92, and penalty in the amount of $62.50. Exhibit B.

8. That the address listed on the assessment letter is '999 SOME ROAD, FAKETOWN, KS 99999."

9. That OTC AUDITOR, Auditor, Audit Division, testified that the July 16 assessments were returned for the reason that the addressee had moved and left no forwarding address. She further testified that she searched the Tax Commission records and internet for Protestant's most recent address which was then used to reissue the assessments on December 1, 2003.

10. That Protestant testified that he received the December 1, 2003 assessments in mid to late December and contacted his attorney because he disputed the amount of the assessments. He further stated that he was not in Tulsa in 2002 and, therefore, had nothing to do with the business during that period of time.

11. That by a faxed letter received by the Tax Commission on February 27, 2004, Protestant's attorney filed a written protest to the proposed sales and withholding tax assessments, stating that he "had left a couple of messages (within the 60 days), but no one called him back." He also stated that Protestant resigned from the corporation in December 2001 and requested that the assessments against Protestant be abated for all periods in 2002 and later. Exhibit E.

12. That at the hearing held November 15, 2004, the Court announced that, based on the evidence presented, it would recommend that the protest be dismissed due to Protestant's failure to file a timely written protest to the proposed assessments.

13. That the total amount in controversy is $70,984.97.

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. Supp. 2002, § 221(E) and Rule 710:1-5-46 of the ***Oklahoma Administrative Code***; that the December 1, 2003 proposed assessments were forwarded to Protestant at his last-known address, 68 O.S. 2001, § 208; that Protestant failed to file a timely written protest to the proposed sales and withholding tax assessments, 68 O.S. Supp. 2002, § 221(C); that the proposed assessments are final and absolute and the Tax Commission is without jurisdiction to consider the merits of the protest, 68 O.S. Supp. 2002, § 221(E); and that accordingly, Protestant's protest to the proposed assessments should be and the same is hereby dismissed.

DISPOSITION

THEREFORE, it is ORDERED that the protest of Protestant, OFFICER, be dismissed. It is further ORDERED, subject to any abatement proceedings pursuant to 68 O.S. Supp. 2002, § 221(E), that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiency due and owing.

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CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.