JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-06-21-04
ID:	P-00-004-K
DATE:	JUNE 21, 2005
DISPOSITION:	DISMISSED
TAX TYPE:	SALES/WITHHOLDING
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By letters dated October 29, 1999, the Division caused to be issued proposed sales tax and withholding tax assessments against Protestant for the period of August, 1999 through September 20, 1999. A timely written protest to the proposed assessments was filed on behalf of Protestant. An oral hearing was not requested in the letter of protest.

On January 12, 2000, the Division forwarded its file in this matter to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The case was docketed as Case No. P-00-004 and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled in this cause for March 6, 2000, by *Notice of Prehearing Conference* issued February 9, 2000.[4] Protestant's representative did not respond to the *Notice* and did not attend the pre-hearing conference. Based on the understanding that a Chapter 7 bankruptcy petition had been filed by Protestant in the United States Bankruptcy Court, Northern District, State of Oklahoma, the undersigned by letter dated March 10, 2000, ordered that Protestant's protest be held in abeyance pending discharge of Protestant from the bankruptcy case.

On March 15, 2005, the ALJ's Office was notified that Protestant's bankruptcy case was closed on August 6, 2004. By letter dated March 16, 2005, the parties were directed to advise the ALJ's Office how they intended to proceed in this cause. Protestant's representative did not respond to the directive and thereafter, the Division was directed and on April 4, 2005, filed *Division's Verified Response to Protest*.[5] Attached to the response were Exhibits A through D.

Although Protestant's representative was notified by letter dated April 7, 2005, that a response to the *Division's Verified Response to Protest* would be accepted for filing on or before April 22, 2005, a response was not filed. On April 29, 2005, the record in this cause was closed and this matter was submitted for decision.[6]

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[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710-1-5-20 through 710:1-5-47 of the Oklahoma Administrative Code ("*OAC*").

[3] *OAC*, 710:1-5-22(b).

[4] *OAC*, 710:1-5-28.

[5] *OAC*, 710:1-5-28(c).

[6] *OAC*, 710:1-5-39(a).

FINDINGS OF FACT

Upon review of the file and records, including the *Division's Verified Response to Protest* and attached exhibits, the undersigned finds:

1. Protestant sold auto parts and serviced automobiles as a retail dealer at its business location in Tulsa, Oklahoma. Exhibit A.[7]

2. The dates reported as the date of Protestant's first sales subject to sales or use tax in Oklahoma and the date it began withholding Oklahoma income tax from employees was July 26, 1993. Exhibit A.

3. Protestant's corporate charter "was suspended by the Secretary of State on the 8th day of April, 1994 upon order of the Oklahoma Tax Commission for failure to comply with the requirements of the Oklahoma Tax Act". Exhibit B.[8]

4. Protestant's corporate charter has not been reinstated. Exhibit B.

5. The Division determined that neither sales tax nor withholding tax reports had been filed by Protestant for the reporting periods of August and September, 1999.

6. By letter dated October 29, 1999, the Division caused to be issued a proposed sales tax assessment against Protestant for the audit period of August, 1999 through September 20, 1999 in the total amount of $3,397.39, consisting of sales tax in the estimated amount of $3,000.00, interest accrued through December 15, 1999, in the amount of $97.39 and penalty in the amount of $300.00. Exhibit C.

7. By letter dated October 29, 1999, the Division caused to be issued a proposed withholding tax assessment against Protestant for the audit period of August, 1999 through September 20, 1999 in the total amount of $3,844.31, consisting of withholding tax in the estimated amount of $3,416.80, interest accrued through December 15, 1999, in the amount of $154.17 and penalty in the amount of $273.34. Exhibit C.

8. By letter dated November 14, 1999, a timely protest to the proposed assessments was filed on behalf of Protestant by its representative. Exhibit D.

9. In the letter of protest, Protestant's representative advises that Protestant filed Chapter 7 bankruptcy on October 4, 1999, that "[a]ll the Corporate records are in the possession of the bankruptcy trustee" and that "[a]s soon as we have access to them we will file the August and September reports". Exhibit D.

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[7] Business Registration filed on behalf of Protestant with the Tax Commission on July 23, 1993.

[8] Certificate of Suspension, Domestic For Profit Business Corporation, Office of the Secretary of State, State of Oklahoma, dated March 21, 2005.

10. Actual sales and withholding tax reports for the periods at issue were filed by Protestant which were accepted as filed by the Division. Paragraph F, Section I *Factual Basis for Assessment*, *Division's Verified Response to Protest*.

11. The aggregate amount due for sales tax for the periods at issue is $6,174.79, consisting of tax in the amount of $3,183.90, interest accrued through April 30, 2005, in the amount of $2,672.49 and penalty in the amount of $318.40. Paragraph F, Section I *Factual Basis for Assessment*, *Division's Verified Response to Protest*.

12. The aggregate amount due for withholding tax for the periods at issue is $6,188.07, consisting of tax in the amount of $2,962.00, interest accrued through April 30, 2005, in the amount of $2,485.57 and penalty in the amount of $740.50. Paragraph F, Section I *Factual Basis for Assessment*, *Division's Verified Response to Protest*.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 2001, § 221(D).

2. No case or controversy exists in this cause. Protestant has filed sales and withholding tax reports for the periods at issue and the Division has accepted those reports.

3. Protestant's protest to the Division's prior action, the assessment of estimated sales tax and withholding tax for the periods at issue; should be dismissed.

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of PROTESTANT, be dismissed.

OKLAHOMA TAX COMMISSION

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.