

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-06-21-07
ID: P-05-018-H
DATE: JUNE 21, 2005
DISPOSITION: DENIED
TAX TYPE: WITHHOLDING
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMPANY, Inc. d/b/a BUSINESS and OFFICER, as President and as an Individual, (“Protestants”) appear pro se.¹ The Field Audit Section, Audit Division, Oklahoma Tax Commission is represented by OTC ATTORNEY, Office of General Counsel, Oklahoma Tax Commission.

A prehearing conference was scheduled in this matter on April 6, 2005, at 3:00 p.m. A Notice of Prehearing Conference was mailed to the Protestants at their last known address. The Protestants did not appear at the Prehearing Conference. Thereafter, notice was served upon the parties that this cause would be closed and the matter submitted for decision upon the filing of a verified response to the protest by the Division. The Division filed its Verified Response to Protest on April 8, 2005. The verification attached to the response was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Supervisor, Field Audit Section, Audit Division, Oklahoma Tax Commission.² The record was closed and this case was submitted for decision on May 10, 2005.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the position letters, the undersigned finds:

1. The Division conducted a withholding tax audit on COMPANY. d/b/a BUSINESS for the period beginning July 1, 2001, and ending December 31, 2003 (“Audit Period”).
2. During the Audit Period, OFFICER was the President and sole officer of BUSINESS, and signatory on BUSINESS’S business bank account.³
3. BUSINESS provided documentation to the Division for the audit, which included payroll ledgers, W-4’s, W-2’s, and Oklahoma Employment Security Commission reports. The audit revealed that the Protestant had withheld income tax from the wages of BUSINESS’S employees, but had failed to report or remit withholding tax during the Audit Period.

¹ “Pro se” is defined as “For himself; in his own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court.” BLACK’S LAW DICTIONARY 1099 (5th ed. 1979).

² See OKLA. ADMIN. CODE § 710:1-5-28(c) (2004).

³ Division’s Exhibit A.

4. On October 8, 2004, the Division issued proposed assessments⁴ against the Protestants for withholding tax, with interest calculated through November 30, 2004, as follows:

Tax	\$145,455.56
Interest	46,132.29
Penalty	<u>36,363.91</u>
Total	\$227,951.76

5. On November 18, 2004, the Division received a timely filed protest letter from the Protestants.⁵ The basis of the protest was an antiquated payroll computer system. The Protestants requested a sixty (60) day extension to gather documentation in order to respond to the proposed assessments. The extension was granted, but no documentation was provided by the Protestants.

6. On March 4, 2005, a Notice of Prehearing Conference was sent to the parties by this office setting the conference for April 6, 2005, at 3:00 p.m.

7. The Protestants did not appear for the Prehearing Conference. On April 7, 2005, the parties were sent notice that the record in this matter would be closed and the case submitted for decision on the merits upon receipt from the Division of a verified response.

8. On April 8, 2005, the Division filed its Verified Response to Protest. No response was received from the Protestants. The record in this matter was closed and submitted for decision on May 10, 2005.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.⁶

2. Every employer is required to deduct and withhold tax and pay over the amount so withheld as taxes to the Oklahoma Tax Commission.⁷

3. Every employer, including officers of corporations, who is required to withhold and remit taxes to the Tax Commission, shall be held personally liable for failure to do so.⁸

4. When the Tax Commission issues a proposed assessment for unpaid withholding taxes, the Commission shall file assessments against the principal officers of the corporation as

⁴ See Division's Exhibit B.

⁵ Division's Exhibit C.

⁶ OKLA. STAT. ANN. tit. 68, § 207 (West 2001).

⁷ OKLA. STAT. ANN. tit. 68, § 2385.3(A) (West 2001).

⁸ OKLA. STAT. ANN. tit. 68, § 2385.3(D) (West 2001).

well. The principal officers of any corporation shall be liable for the payment of withholding tax if such officer held an officer position during the time covered by the assessment. The liability of principal officers for withholding shall be determined in accordance with the standards used for determining officer liability for federal withholding tax.⁹

5. Oklahoma Statutes provide for the collection of interest and penalty on delinquent tax.¹⁰ “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.”¹¹

6. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.¹²

7. The Protestants have failed to meet their burden of showing that the proposed withholding tax assessments are incorrect and in what respect.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest should be denied. It is further ORDERED that the total amounts assessed for unpaid withholding tax be fixed as the Protestants’ deficiency, and that those amounts shall 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 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.

⁹ OKLA. STAT. ANN. tit. 68, § 253 (West 2001). *See also* Oklahoma Tax Commission Precedential Order No. 1996-12-17-037 (December 17, 1996), *available at* <http://checkpoint.riag.com>.

¹⁰ OKLA. STAT. ANN. tit. 68, § 217 (West 2001).

¹¹ OKLA. STAT. ANN. tit. 68, § 217(G) (West 2001).

¹² *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.