

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2006-04-04-26
ID: P-05-192-H
DATE: APRIL 4, 2006
DISPOSITION: MOTION GRANTED
TAX TYPE: SALES/WITHHOLDING
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

OFFICER, as an officer of COMPANY (a suspended corporation) d/b/a BUSINESS, and as an Individual (“Protestant”) appears pro se.¹ The Field Audit Section, Audit Division (“Division”), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On December 2, 2005, the protest file was received by this office from the Division for further proceedings consistent with the Uniform Tax Procedure Code² and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.³ On December 7, 2005, a letter was mailed to the Protestant advising him that this matter had been assigned to ALJ, Administrative law Judge, and docketed as Case No. P-05-192-H. The letter also advised the Protestant that the Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*.

On December 30, 2005, the Notice of Prehearing Conference was mailed to the last-known address of the Protestant, setting the prehearing conference for January 26, 2006, at 10:00 a.m.⁴ On January 3, 2006, OTC ATTORNEY advised this office that she had spoken to the Protestant and his new address was 123 FAKE STREET, BIG CITY, Oklahoma 99999. On January 5, 2006, this office received a call from the Protestant requesting that the prehearing conference be conducted by telephone. The request was granted.

On January 26, 2006, at 10:00 a.m., the prehearing conference was conducted by telephone as requested by the Protestant.⁵ On January 26, 2006, the Division filed a *Motion to*

¹ “Pro se” (proh say or see), *adv. & adj.* [Latin] is defined as “For oneself; on one’s own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA.” BLACK’S LAW DICTIONARY (8th ed. 2004), available at <http://westlaw.com>. (February 27, 2006).

² OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

³ OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

⁴ OKLA. STAT. ANN. tit. 68, 208 (West 2001). The notice was mailed to the Protestant at 9999 BOGUS BLVD., BIG CITY, Oklahoma 99999.

⁵ During the prehearing conference the Protestant verified that his current address was 123 FAKE STREET BIG CITY, Oklahoma 99999 and telephone number of (999) 555-9999.

Dismiss for Lack of Jurisdiction, and on January 27, 2006, the undersigned issued an *Order Setting Hearing on Motion* for February 23, 2006, at 10:30 a.m. No response was received from the Protestant. On February 23, 2006, at 10:30 a.m., the hearing on the Division's *Motion to Dismiss for Lack of Jurisdiction* was held as scheduled. The Protestant did not appear at the hearing. The Division's Exhibits A through F were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on February 23, 2006.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the Division's *Motion to Dismiss for Lack of Jurisdiction*, the undersigned finds:

1. A 3.2 beer depletion audit was conducted by the Division on COMPANY. (a suspended corporation) d/b/a BUSINESS ("COMPANY") for the period of March 1, 2001, through December 31, 2003 ("Audit Period").

2. On February 13, 2004, the Division issued proposed sales tax and withholding tax assessments against the Protestant, as an officer of COMPANY and as an individual,⁶ as follows, to-wit:

Sales Tax	\$11,924.98
Interest @ 15% through 03/31/04	<u>2,615.93</u>
Tax & Interest due within 30 Days	\$14,540.91
30 day delinquent Penalty @ 10%	<u>1,192.28</u>
Tax, Interest & Penalty due after 30 days	\$15,733.19
Withholding Tax	\$ 2,062.78
Interest @ 15% through 03/31/04	<u>465.58</u>
Tax & Interest due within 30 Days	\$ 2,528.36
30 day delinquent Penalty @ 10%	<u>488.37</u>
Tax, Interest & Penalty due after 30 days	\$ 3,016.73

3. The Division mailed the proposed assessments to the last-known address of the Protestant according to the records of the Oklahoma Tax Commission.⁷

4. On October 13, 2005, the Division received an untimely letter of protest to the sales tax and withholding tax assessments.⁸

⁶ Division's Exhibits A and B.

⁷ Division's Exhibits B. According to the records of the Oklahoma Tax Commission, the last-known address of the Protestant was 9999 BOGUS BLVD, BIG CITY, Oklahoma 99999-9999. This address was taken from the Protestant's 2002 Oklahoma Income Tax Return. During the prehearing conference, the Protestant verified that this was his mailing address at the time the proposed assessment was issued and continued to be his address until just recently. This was also the address of the Protestant's son. The Division was not notified of a change in the Protestant's address until OTC ATTORNEY advised this office on January 3, 2006.

5. On August 25, 2005, the Division mailed a letter to the Protestant advising that the proposed assessments had become final.⁹

CONCLUSIONS OF LAW

1. The Tax Commission is without jurisdiction to consider a protest that is not filed within the time provided by statute.¹⁰

2. In order for a protest to be considered timely, it must be in writing pursuant to Oklahoma Statutes, within sixty (60) days after the date of mailing of the Division's notice to the taxpayer at the last-known address of the taxpayer as shown by the records of the Oklahoma Tax Commission.¹¹

3. The assessment of taxes or additional taxes shall be proposed in writing and shall be mailed to the taxpayer at the taxpayer's last-known address in accordance with statutory due process requirements.¹²

4. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.¹³ A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.¹⁴

⁸ Division's Exhibit E. The return address on the envelope is the same address used by the Division on the proposed assessments.

⁹ Division's Exhibit F.

¹⁰ OKLA. ADMIN. CODE § 710:1-5-46(c). *See* OKLA. STAT. ANN. tit. 68, § 207 (West 2001).

¹¹ OKLA. STAT. ANN. tit. 68, 221(C) (West 2001).

¹² OKLA. STAT. ANN. tit. 68, § 208 (West 2001), which states:

Any notice required by this article, or any state tax law, to be given by the Tax Commission shall be in writing and may be served personally or by mail. If mailed, it shall be addressed to the person to be notified at the last-known address of such person. As used in this article or any other state tax law, "last-known address" shall mean the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice, or if no address appears on the records of that division, the last address given as appears on the records of any other division of the Tax Commission. If no such address appears, the notice shall be mailed to such address as may reasonably be obtainable. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. If the notice has been mailed as provided in this section, failure of the person to receive such notice shall neither invalidate nor be grounds for invalidating any action taken pursuant thereto, nor shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.

¹³ OKLA. ADMIN. CODE § 710:1-5-47, which states:

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon

5. The Division mailed the proposed assessments to the last-known address of the Protestant, according to the records of the Oklahoma Tax Commission.

6. The protest in this matter was not received within the sixty (60) day provision provided by Oklahoma Statutes.¹⁵

7. The Protestant failed to present any evidence in opposition to the Division's *Motion to Dismiss for Lack of Jurisdiction* and has failed to meet his burden of proof that his protest was timely filed.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case that the Division's *Motion to Dismiss for Lack of Jurisdiction* should be granted.

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.

grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b), provides in pertinent part:

. . . "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.

¹⁴ See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

¹⁵ See Note 11.