JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2006-07-25-04
ID:	P-06-021-K
DATE:	JULY 25, 2006
DISPOSITION:	DISMISSED
TAX TYPE:	CIGARETTE EXCISE
APPEAL:	NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT appears pro se. The Audit Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, General Counsel's Office of the Tax Commission.

STATEMENT OF THE CASE

An audit of cigarette purchases made by Protestant was initiated by the Division upon information provided by ONLINE STORE of ANY TOWN, New York. As a result of the audit, the Division by letter dated October 7, 2005, caused to be issued a proposed cigarette excise tax assessment against Protestant for the period ending July, 2005. Protestant protested the proposed assessment by letter mailed on December 12, 2005.

On January 27, 2006, the Division's file consisting of a cover sheet, the proposed assessment and the letter of protest was referred to the Office of the Administrative Law Judges ("ALJ's Office") for further proceeding 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-06-021-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled in this cause for March 21, 2006, by *Prehearing Conference Notice* issued February 15, 2006.[4] Pursuant to the pre-hearing conference, a *Notice of Hearing* was issued scheduling the protest for hearing on April 18, 2006.[5] By *Motion for Continuance* of the Division, and for good cause shown, the hearing scheduled for April 18, 2006, was stricken from the docket and rescheduled for May 11, 2006, by *Order Granting Motions for Continuance* issued April 12, 2006.[6]

The hearing was held at the appointed date and time with all parties present and ready to proceed. Protestant, being first duly sworn, gave her statement. The Division offered Exhibits A

[1] 68 O.S. 2001, § 201 et seq.

[2] *OAC*, 710:1-5-20 through 710:1-5-47.

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

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

[5] *OAC*, 710:1-5-28(b). *See*, *OAC*, 710:1-5-29.

[6] *OAC*, 710:1-5-30.

through F which were admitted into evidence without objection. Upon conclusion of the hearing, the record was closed and the case was submitted for decision.

FINDINGS OF FACT

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

1. That between April 14, 2005 and May 17, 2005, Protestant purchased nineteen (19) cartons of cigarettes from ONLINE STORE of ANY TOWN, New York and had the aforementioned cigarettes shipped to her address in CITY, Oklahoma.[7] Exhibits C through E.

2. That by letter dated October 7, 2005, the Division proposed the assessment of cigarette excise tax, interest and penalty against Protestant for the period ending July, 2005, in the aggregate amount of $208.57, consisting of tax of $175.10, interest accrued through December 7, 2005, of $15.96 and penalty of $17.51. Exhibit A.

3. That by letter mailed December 12, 2005, Protestant protested the proposed assessment.[8]

4. That without taking into consideration Protestant's request for a waiver of the penalty and interest accrued and accruing, the amount in controversy is $208.57, exclusive of any additional accrued and accruing interest.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. Supp. 2002, § 221(E); OAC, 710:1-5-46(c).

2. The proposed assessment was forwarded to Protestant at her last-known address. 68 O.S. 2001, §§ 208 and 221(A).

3. The written protest was not filed with the Tax Commission within sixty (60) days of the mailing of the proposed assessment. 68 O.S. Supp. 2002, § 221(C).

4. The proposed assessment is final and absolute and the Tax Commission is without jurisdiction to consider the merits of the protest. 68 O.S. Supp. 2002, § 221(E). *See, Matter of Phillips Petroleum Co.,* 1982 OK 112, 652 P.2d 283.

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[7] The Division only assessed cigarette excise taxes on seventeen (17) cartons of cigarettes. See, Exhibit F. The invoices admitted into evidence as Exhibits C through E show Protestant purchased seven (7) cartons of NY Seneca FF 100 SP and two (2) cartons of GPC LT 100 BX on April 14, 2005, one (1) carton of NY Seneca FF 100 SP on May 3, 2005, and seven (7) cartons of NY Seneca FF 100 SP and two (2) cartons of GPC LT 100 BX on May 17, 2005. The Division's work-papers (Exhibit F) do not reflect the two (2) cartons of GPC LT 100 BX purchased on May 17, 2005.

[8] Official notice of the envelope used to mail the letter of protest is taken. *See, OAC*, 710:1-5-36.

5. Protestant's waiver request is not addressed herein as the ALJ's Office is not authorized to waive penalty and interest. *See*, 68 O.S. 2001, §§ 219, 219.1 and 220. The authority to waive penalty and interest or any portion thereof ordinarily accruing by reason of a taxpayer's failure to pay a state tax within the statutory period allowed for its payment lies with the three (3) members of the Tax Commission or their designees. 68 O.S. 2001, § 220(A).

6. Protestant's protest to the proposed cigarette excise tax assessment should be and the same is hereby dismissed.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT, be dismissed. It is further ORDERED, subject to the request for waiver of penalty and interest that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiency due and owing.

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.