JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2006-10-03-06 (Non-Precedential)
ID:	P-01-191-H
DATE:	OCTOBER 10, 2006
DISPOSITION:	DENIED
TAX TYPE:	MANUFACTURING EXEMPTION
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On August 27, 2001, the protest file was received by this 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] On August 30, 2001, a letter was mailed to the Protestant stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-01-191. The letter also advised the Protestant that a 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 September 20, 2001, the Notice of Prehearing Conference was mailed to PROTESTANT'S ATTORNEY, setting the prehearing conference for October 10, 2001, at 2:30 p.m. The Procedural History from September 21, 2001, through April 23, 2002, is being omitted.

On April 24, 2002, the Division filed a Status Report advising that a final decision in Oklahoma Tax Commission Case No. P-00-197 would effect how the parties would proceed in this matter. The parties requested a stay of this matter pending the outcome of Case No. P-00-197. On April 25, 2002, ALJ, Administrative Law Judge, issued an Order Granting Joint Request for Stay of Proceeding.

On November 7, 2003, the parties were notified by letter that this matter had been assigned to NEW ALJ . On March 14, 2006, Commission Order No. 2006-03-14-37 was issued denying the protest in Case No. P-00-197. No appeal of the order was filed by the Protestant.

On April 27, 2006, the parties were notified Commission Order No. 2006-03-14-37[3] had been issued denying the protest in Case No. P-00-197. The parties were directed to advise the undersigned on or before May 30, 2006, how they wished to proceed in this matter. On May 30, 2006, the Division filed a Status Report advising that PROTESTANT'S ATTORNEY had been contacted and that the Protestant had filed bankruptcy. PROTESTANT'S ATTORNEY was unsure of whether he still represented the Protestant in this matter, but is still counsel of record for the Protestant.

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[1] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[3] A redacted copy of Commission Order No. 2006-03-14-37 was enclosed with the notice.

On June 30, 2006, OTC ATTORNEY filed a Status Report and requested that this matter be dismissed as moot. On July 11, 2006, a Notice of Intent To Dismiss Protest As Moot was mailed to the parties by the undersigned. The Protestant was advised that it could file a response on or before July 26, 2006, to show cause why the protest should not be dismissed. After July 26, 2006, this matter would be deemed submitted for decision pursuant to Oklahoma Administrative Code 710:1-5-46(b). No response was received from the Protestant. On July 28, 2006, the record in this matter was closed and this case was submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, and the Division's request, the undersigned finds:

1. On July 24, 2001, the Division denied the Protestant's five year manufacturing exemption ("5 Year Exemption") for the 2001 tax year, due to an insufficient increase in payroll.

2. On August 3, 2001, the Division rescinded the Protestant's 5 Year Exemption for the 1999 and 2000 tax years, pursuant to Oklahoma Administrative Code § 710:10-7-15.

3. On August 23, 2001, the Division received a timely filed protest to the denial of the 5 Year Exemption for the 1999, 2000, and 2001 tax years.

4. On February 7, 2003, the Protestant filed a Petition for relief under Chapter 11 of the Bankruptcy Code, In the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. XX-XXXX-X. Subsequent to the filing of bankruptcy, the Protestant's business was closed, and all of the tangible and intangible assets of the Protestant were sold or abandoned pursuant to court orders filed in the bankruptcy. All contested matters and adversary proceedings were concluded.[4]

5. On November 16, 2005, an Order Dismissing Case was entered in the bankruptcy case of the Protestant.[5]

6. On June 30, 2006, the Division filed a request that this matter be dismissed as moot.

7. On July 11, 2006, a Notice of Intent to Dismiss Protest as Moot was mailed to the parties by the undersigned. The Protestant was advised that it could file a response on or before July 26, 2006, to show cause why the protest should not be dismissed. No response was received from the Protestant.

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[4] *See* Division's Status Report filed June 30, 2006. Exhibit A.

[5] *See* Note 4. Exhibit B.

CONCLUSIONS OF LAW

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

2. The Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement, and collection of taxes and other levies by the Legislature for the general maintenance and welfare of the State of Oklahoma.[7]

3. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[8]

4. Pursuant to the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*,[9] "moot" means that a case presents no actual controversy or that the issues have ceased to exist.[10] A protest that is or has become moot may be dismissed by the Commission or by the Administrative Law Judge on their own motion or on the motion of a party. At least fifteen (15) days' notice of the motion or intent to dismiss shall be given to all parties, who shall have the opportunity to respond and show cause why the protest should not be dismissed. A dismissal by the Administrative Law Judge is appealable to the Commission in the same manner as appeals from other rulings by the ALJ.[11]

The Division's denial of the 5 Year Exemption for the 1999, 2000, and 2001 tax years is now moot. The Protestant is no longer in business and all of the tangible and intangible assets of the Protestant were sold or abandoned in the Protestant's bankruptcy. All of the contested matters and adversary proceedings were concluded and the Protestant's bankruptcy was dismissed by the Bankruptcy Court on November 16, 2005. Notice was sent to the parties and the Protestant did not file a response to show cause why this matter should not be dismissed as "moot".

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 dismissed as "moot".

OKLAHOMA TAX COMMISSION

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

[7] OKLA. ADMIN. CODE § 710:1-1-1.

[8] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2001).

[9] *See* Note 2.

[10] OKLA. ADMIN. CODE § 710:1-5-46(b) (June 11, 2005).

[11] *See* Note 10.

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.