

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-05-02-011 / NOT PRECEDENTIAL
ID: P0100246
DATE: 05-02-02
DISPOSITION: DENIED
TAX TYPE: MOTOR FUEL GASOLINE / ENVIRONMENTAL
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 3rd day of April, 2002, the above styled and numbered cause comes on for decision pursuant to a hearing held on March 26, 2002. Protestant (Deceased), d/b/a THE COMPANY, appears pro se. The Audit Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Protestant died during the pendency of these proceedings. Prior to Protestant's death, all notices and correspondences had been served on Protestant's representative, ATTORNEY X. Subsequent to Protestant's death, notices have been served on the Estate at Protestant's last known address as reflected by the records and files of the Office of the Administrative Law Judges.

A representative of Protestant's estate was not present at the scheduled hearing. A correspondence from ATTORNEY X, dated January 24, 2002, indicated that neither he because he had not been hired by an heir of Protestant nor any heir of Protestant in his belief would be attending the hearing.

At the hearing, the Division was present and ready to proceed. Upon questioning, the Division's representative indicated for the record that a representative of Protestant's estate had not contacted him regarding the hearing. It was noted for the record that no contact had been received regarding the hearing by the Office of the Administrative Law Judges from a representative of Protestant's estate.

The Division presented its portion of the case by introducing exhibits from its Verified Position Letter, which were received into evidence.

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

FINDINGS OF FACT

1. That Protestant's Application for License(s) of Motor Fuels filed with the Tax Commission by Protestant on October 1, 1996, reports THE COMPANY is a sole proprietorship owned by Protestant.

2. That by letters dated February 2 and March 28, 2000, OIL COMPANY notified the Tax Commission that THE COMPANY, by insufficient bank funds, defaulted on its December 1999 Fuels and Environmental Tax payment, resulting in the amount of \$12,524.34 for 74,799 gallons of gasoline.

3. That OIL COMPANY claimed and received credit for the uncollected tax on its January 2000 tax returns.

4. That as a result of the notification, the Division caused to be issued, by letter dated September 24, 2001, a proposed motor fuel gasoline and environmental tax assessment against Protestant for the period of December 1999 in the aggregate amount of \$16,931.86, consisting of motor fuel gasoline tax in the amount of \$11,776.35, environmental tax in the amount of \$747.99, interest accrued through October 31, 2001, in the amount of \$3,155.08, and penalty in the amount of \$1,252.44.

5. That by and through his attorney, Protestant timely protested the assessment, asserting that no audit of THE COMPANY ever occurred and the taxpayer is not aware of how the audit for the tax deficiency, penalty, and interest was assessed.

6. That Protestant requested a hearing regarding its protest of the proposed assessment.

7. That by Notice issued December 31, 2001, to the Division and Protestant's attorney, a prehearing conference was scheduled for February 11, 2002.

8. That since the filing of the protest and prior to the scheduled prehearing conference, Protestant died.

9. That by Notice issued January 22, 2002, to the Division, Protestant's estate, and Protestant's attorney, a prehearing conference was scheduled for February 11, 2002.

10. That no one appeared on behalf of Protestant at the prehearing conference held on February 11, 2002.

11. That by Notice issued February 13, 2002, to the Division and Protestant's estate, a hearing was scheduled in the referenced cause for March 12, 2002. That by Notice issued March 8, 2002, the hearing was continued to March 26, 2002.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant sustained the burden of proving that the assessment is incorrect.

Protestant contends that no audit was conducted on the records of the business and he is unaware of how the tax deficiency, penalty, and interest were assessed.

The Division contends that Protestant was properly assessed for delinquent motor fuel gasoline and environmental taxes, interest, and penalty, and Protestant has not provided evidence to refute the assessment.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission, 768 P.2d 359 (Okla. 1988). The denial of a protest is appropriate where the party opposing the proposed action fails to provide evidence which is sufficient to entitle the party to the relief requested. Continental Oil Company v. Oklahoma State Board of Equalization, 570 P.2d 315 (Okla. 1977).

3. Here, the evidence indicates that during the month of December, 1999, Protestant d/b/a THE COMPANY purchased 74,799 gallons of gasoline from OIL COMPANY that the taxes attributable to the purchases were to be electronically transferred from Protestant's account at ANONYMOUS Bank, but were not, due to insufficient funds and that OIL COMPANY took credit for the taxes on its January, 2000, report. Further, Protestant has not proposed any argument to show the assessment is erroneous at law nor has it come forward with any evidence to show that the assessment is erroneous in fact.

4. Protestant's protest to the assessment of the motor fuel gasoline and environmental taxes, interest, and penalty should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of Protestant (Deceased), d/b/a THE COMPANY, be denied. It is further DETERMINED that the amount in controversy, plus 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 not 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.