

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-01-02-02 / NON-PRECEDENTIAL
ID: P-85-173
DATE: JANUARY 2, 1986
DISPOSITION: DENIED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration, pursuant to assignment regularly made by the Oklahoma Tax Commission to the ADMINISTRATIVE LAW JUDGE. The Protestant was giving notice of the hearing originally set to be held on September 13, 1985 at 10:00 o'clock a.m. by letter dated August 14, 1985 from the office of the Administrative Law Judge. Upon receipt of request from the Protestant dated September 2, 1985 for an extension of time, said extension was granted by a letter from the Administrative Law Judge of September 9, 1985 setting the hearing for November 19, 1985 at 10:00 a.m., said Protestant receiving notice thereof by return receipt as per Article No. 8498 and Article No. 8461 respectively. Protestant appeared not nor was Protestant represented by counsel. The Sales and Use Tax Division of the Oklahoma Tax Commission was represented by ASSISTANT GENERAL COUNSEL of the General Counsel's Office. AUDITOR, Tax Auditor of the Sales and Use Tax Division, testified on behalf of the Division, and exhibits, not itemized herein, were admitted into evidence. Following closing argument by the General Counsel's Office, the case was submitted for a decision.

STATEMENT OF FACTS

AUDITOR, Tax Auditor, Sales and Use Tax Division of the Oklahoma Tax Commission, testified that pursuant to a notice he observed in JOURNAL in CITY, Oklahoma, he audited the books and records that were available at the Protestant's office at ADDRESS in CITY and found that a sale had been consummated on or about January or February of 1984 when the apartment complex was sold from PROTESTANT, and that included in the sale was numerous fixtures and equipment consisting of refrigerators, ranges, drapes, blinds, office furniture and equipment, clubroom furniture, pool and patio furniture, maintenance equipment, repair parts, supplies, mailboxes and fireplace screens and irons. Based upon the field audit conducted by AUDITOR on or about March 6, 1985, the Sales and Use Tax Division of the Oklahoma Tax Commission issued an assessment for sales tax on March 29, 1985 consisting of sales tax in the amount of Twelve Thousand Fifty-four Dollars and Ninety Cents (\$12,054.90), interest of Two Thousand One Hundred Sixty-nine Dollars and Ninety Cents (\$2,169.90) and penalty of One Thousand Two Hundred Five Dollars and Forty-eight Cents (\$1,205.48), for a total assessment of Fifteen Thousand Four Hundred Thirty Dollars and Twenty-eight Cents (\$15,430.28).

Subsequent to the assessment of March 29, 1985 from the Sales and Use Tax Division, the PROTESTANT filed their protest dated April 8, 1985 with the Sales and Use Tax Division advising that certain adjustments should be made to the assessment and that they would obtain proof necessary to show that the tax, as assessed, was not due and owing and would forward

such to the Division as soon as the necessary information was obtained from the contractor, who was CONTRACTOR located in COUNTY, Texas.

ISSUES AND CONTENTIONS

The sole issue presented in this case is whether or not the assessment for the sale of certain fixtures and equipment contained in APARTMENTS sold by PROTESTANT was subject to the assessment of sales tax for the sale of tangible personal property pursuant to the provisions of Section 1351 of Title 68 of the Oklahoma Statutes.

The Protestant has, as per its protest letter, advised that the amount shown due and owing should be adjusted and that the applicable taxes had been paid on the items contained in the audit.

The Division contends that the sale of fixtures and equipment is taxable as the sale of tangible personal property under the provisions of Section 1351 of Title 68 of the Oklahoma Statutes.

APPLICABLE LAW

The Sales Tax Code, Section 1350 et seq. of Title 68 of the Oklahoma Statutes, is broad and comprehensive and the provisions of the code are to be construed as imposing a tax on the sale of tangible personal property and services not otherwise exempt under the code. Section 1352 of Title 68 of the Oklahoma Statutes define a sale as follows:

(L) "Sale" shall mean the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality or device by which the transfer is accomplished in this state, including but not limited to:

(1) The exchange, barter, lease or rental of tangible personal property resulting in the transfer of the title to or possession of the property;

(2) The disposition for consumption or use in any business or by any person of all goods, wares, merchandise or property which has been purchased for resale, manufacturing or further processing;

(3) The sale, gift, exchange or other disposition of admission, dues or fees to clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities, and

(4) The furnishing or rendering of services taxable under this article.

Section 1354(A) of Title 68 of the Oklahoma Statutes levies an excise tax upon the gross receipts or gross proceeds of the sale of tangible personal property and in the instant case the

Protestant was the seller of an apartment complex including the fixtures and equipment contained therein in the early part of 1984. The apartment complex consisted of 297 units, each unit containing certain items of tangible personal property which the auditor determined were items of tangible personal property having been sold and/or included in the sale of the apartment complex and which was the impetus of the assessment which was issued against the Protestant. The record is void of any documentation or evidence submitted by the Protestant showing that the tax had been paid as alleged in the Protestant's protest letter or any other documentation or evidence supporting the Protestant's contention. In the absence of proof to the contrary, the division's sales tax assessment must stand as correct and proper.

CONCLUSIONS

In view of the above and foregoing findings of fact and law applicable thereto, the undersigned concludes as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the Protestant failed to appear and sustain his burden of proving that the sales tax audit was issued in error and that adjustments thereto should be made as per his protest.
- (3) That the assessment by the Sales and Use Tax Division, pursuant to the provisions of Section 1354(A) of Title 68 of the Oklahoma Statutes, is correct and proper.
- (4) That the protest filed by PROTESTANT should be denied.

DISPOSITION

In view of the above and foregoing findings of fact and conclusions of law, the OKLAHOMA TAX COMMISSION ORDERS that the protest of PROTESTANT be denied and that the Protestant pay the amount of the sales tax assessment including penalty and interest from the due date until paid.

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.