

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 86-01-31-01 / NON-PRECEDENTIAL
ID: P-85-047
DATE: JANUARY 31, 1986
DISPOSITION: DENIED
TAX TYPE: MOTOR FUEL
APPEAL: NO APPEAL TAKEN

ORDER

This matter comes on before the Oklahoma Tax Commission pursuant to regular assignment on the agenda. The Commission, having reviewed the facts and authorities presented therein, and being fully advised in the premises, finds and orders that the Findings, Conclusions and Recommendations of the Administrative Law Judge, filed herein on the 7th day of November, 1985, marked as Exhibit "A", attached hereto and hereby incorporated by reference as though fully set out herein, be and the same are hereby adopted as the Order of the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 7th day of November, 1985, the above styled cause comes on for consideration pursuant to assignment made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. The above protest was scheduled for hearing before the undersigned but no oral hearing was held, such being waived by the respective parties. In lieu of an oral hearing before the undersigned, the Protestant filed its Memorandum Brief in support of its position and the Motor Fuel Division filed their Position Letter by and through the General Counsel's Office. Both parties having addressed and argued the issue before the undersigned, the matter was submitted for a proposed decision. The Protestant, OIL COMPANY represented by ATTORNEY 1 and ATTORNEY 2 and the Motor Fuel Division represented by OTC ATTORNEY of the General Counsel's Office.

STATEMENT OF FACTS

Protestant, OIL COMPANY, an Oklahoma corporation, is a licensed distributor of motor fuel in the State of Oklahoma and through its business activity regularly sells fuel to other distributors. During the months of May and June of 1982 the Protestant sold gasoline and diesel fuel to BUYER OIL COMPANY ("BUYER") but did not collect the gasoline tax and diesel fuel tax pursuant to Sections 502 and 502.1 of Title 68 of the Oklahoma Statutes relying on BUYER'S representation that it was the holder of a valid distributor's license from the State of Oklahoma.

Subsequent to the sale of gasoline and diesel fuel to BUYER in May and June of 1982, the Motor Fuel Division of the Oklahoma Tax Commission conducted an audit of the Protestant's books and records and on February 8, 1985 the Motor Fuel Division of the Oklahoma Tax Commission issued a timely assessment of additional gasoline tax in the amount

of Three Thousand Eight Hundred Nine Dollars and Three Cents (\$3,809.03), penalty in the amount of Three Hundred Eighty Dollars and Ninety Cents (\$380.90), and interest in the amount of One Thousand Six Hundred Ninety-seven Dollars and Twenty-one Cents (\$1,697.21), and an additional assessment for diesel fuel tax in the amount of One Thousand Six Hundred Fifty-seven Dollars and Seventy-five Cents (\$1,657.75), penalty in the amount of One Hundred Sixty-five Dollars and Seventy-eight Cents (\$165.78), and interest in the amount of Seven Hundred Twenty-four Dollars and Twenty-nine Cents (\$724.29). The total amount of the two assessments representing Eight Thousand Four Hundred Thirty-four Dollars and Ninety-six Cents (\$8,434.96).

The Protestant, by letter dated March 7, 1985, timely protested the above assessments contending that the sales of gasoline and diesel fuel to BUYER fell within the exemption provisions of Section 507(a) of Title 68 of the Oklahoma Statutes which provides for an exemption from the motor fuel tax when the sales are between holders of valid Oklahoma distributor's licenses. Based thereon, the Protestant takes issue with the assessment for gasoline and diesel fuel tax as assessed only as such applies to the sales of gasoline and diesel fuel to BUYER and the amount of the assessments in controversy being gasoline tax of Two Thousand Seven Hundred Sixty-five Dollars and Ninety-eight Cents (2,765.98), diesel fuel tax in the amount of One Thousand One Hundred Seven Dollars and Two Cents (\$1,107.02), interest in the amount of One Thousand Eight Hundred Twenty-eight Dollars and Forty-three Cents (\$1,828.43) and penalty in the amount of Three Hundred Eighty-seven Dollars and Thirty Cents (\$387.30) representing a total assessed amount for both gasoline and diesel fuel tax of Six Thousand Eighty-eight Dollars and Seventy-three Cents (\$6,088.73). The remaining portion of the assessment as originally issued by the Motor Fuel Division of the Oklahoma Tax Commission of Two Thousand Three Hundred Forty-six Dollars and Twenty-three Cents (\$2,346.23) was subsequently paid in full plus the penalty and interest computed thereon to the date of the payment.

PROTESTANT'S CONTENTIONS

The Protestant contends that it relied, in good faith, upon BUYER'S misrepresentation that BUYER held a valid Oklahoma distributor's license and that based upon its "good faith" reliance, the sale falls within the exception provided under Section 507(a) of Title 68 of the Oklahoma Statutes which allows an exemption for sales between holders of valid Oklahoma distributor's licenses.

DIVISION'S CONTENTIONS

The Division contends that Section 507(a) of Title 68 of the Oklahoma Statutes is unambiguous and in order to be entitled to the exemption, there must be a sale between two licensed distributors.

ISSUE

The sole issue presented is whether or not the Protestant is entitled to the claimed exemption under the provisions of Section 507(a) of Title 68 of the Oklahoma Statutes which provides for exempt sales of gasoline and/or diesel fuel between licensed Oklahoma distributors.

ARGUMENTS AND AUTHORITIES

In view of the limited scope of the controversy involved in this protest coupled with the fact that the Protestant does not take issue with the levying provisions of the Motor Fuel Tax Code pursuant to Sections 502, 502.1, 522 and 522.1 of Title 68 of the Oklahoma Statutes, an examination of only the relevant statutory provisions of the Motor Fuel Tax Code pursuant to Section 501, et seq. of Title 68 of the Oklahoma Statutes will be necessary.

The Oklahoma Motor Fuel Tax Code defines a licensed distributor pursuant to Section 501(g) of Title 68 of the Oklahoma Statutes as a distributor who is the holder of a valid distributor's license issued by the Oklahoma Tax Commission, and Section 506 of Title 68 of the Oklahoma Statutes provides that every licensed distributor is deemed an agent of the State of Oklahoma for the collection of this Motor Fuel Tax and that the tax so collected shall be deemed held in trust for the State of Oklahoma until the tax is paid over to the Motor Fuel Division of the Oklahoma Tax Commission. Section 505 of Title 68 of the Oklahoma Statutes provides that every distributor shall file and remit monthly motor fuel tax reports with the Motor Fuel Division of the Oklahoma Tax Commission, wherein the distributor shall report the type of fuel sold, the amount of fuel sold, to whom the fuel was sold, and any exemption claimed by the distributor for not collecting the statutorily imposed motor fuel tax.

The exemption provisions of the motor fuel tax code as found at Section 507 of Title 68 of the Oklahoma Statutes, that portion of Section 507 with which we are concerned is 507(a) which provides:

Any licensed distributor may sell motor fuel or diesel fuel to any other licensed distributor and such other distributor must assume the excise tax levied by Section 502 of this code and Sections 3 and 5 of this Act on any such motor fuel or diesel fuel; provided, however, the selling licensed distributor must report each such sale to the Tax Commission currently, giving full details of such sale, including the date of shipment, manifest, bill of lading or invoice number, which number shall be the number used by the original supplier as shown on the basic shipping records which accompany the shipment, quantity, tank car initial and number, or the name of the O.T.C. license number of transporter if delivered by truck, name and address of consignee; and provided, further, the distributor receiving such motor fuel or diesel fuel must separately show in his report to the Tax Commission all such receipts from each distributor, giving full details, including manifest, bill of lading or invoice number and number of gallons of each shipment.

The Protestant concedes that it did not collect the motor fuel tax or diesel fuel tax on sales to BUYER relying rather on BUYER'S apparent fraudulent representation that it was the holder of a valid Oklahoma distributor's license. Prior to the sale between the Protestant and BUYER in May and June of 1982, BUYER had been the holder of a valid distributor's license although the license had been cancelled on or about October 24, 1981 by the Motor Fuel Tax Division of the Oklahoma Tax Commission. The Protestant contends that it acted in good faith in accepting BUYER'S representation that it was the holder of a valid Oklahoma distributor's license at the time of the sale of the gasoline and diesel fuel in May and June of 1982.

In support of the Protestant's contentions concerning the claimed "good faith" exception, Protestant contends that the Commission should take into consideration for public policy reasons, its good faith reliance and therein relieve the harsh effect of a strict interpretation of the exemption statute. Protestant submits that other sister state jurisdictions have adopted "good faith" exemptions citing Rule No. 12A-2.03(1) of the Florida Department of Revenue, which grants relief to a dealer who sells special fuel in good faith relying on the exempt status of the purchaser. Protestant also directs our attention to the Alabama case of Merriwether v. State, Ala. 42 S.2d 465 (1949).

Neither the Florida Department of Revenue rule, nor the Merriwether, supra, case are persuasive. The language of Section 507(a) is reasonable, sensible and falls clearly within the intent of the Legislature as expressed within that section and when the intent of the Legislature is plainly expressed in a statute as in the case at bar, it must be followed without further inquiry. See In the Matter of Hamm Production Company, 671 P.2d 50 (1983) and State ex. rel Thompson v. Ekberg, 613 P.2d 466 (1980).

The settled law of this state is that, absent a self-executing constitutional provision, the power to exempt from taxation lies solely with the Oklahoma Legislature; Pryor v. Bryan, 11 Okla. 357, 66 P. 348 (1901); County Assessor, Okl. County v. United Brotherhood, et al Local 329, 202 Okla. 162, 212 P.2d 790 (1949).

There is plethora of Oklahoma Supreme Court cases which direct the application of the well established rule that tax exemption statutes are to be strictly construed against the person or entity asserting the exemption, and based thereon the Oklahoma Tax Commission is not vested with the privilege or at the liberty to give Section 507(a) the broad and liberal construction contended by the Protestant and which construction and intent is not in keeping with the specific wording of Section 507(a). Further, the record is void of any evidence demonstrating the legislative intent to burden the exemption provisions of Section 507(a). Dairy Queen of Oklahoma, Inc. v. Oklahoma Tax Commission, 238 P.2d 800 (1951); Bert Smith Machinery Company, Inc. v. Oklahoma Tax Commission, .563 P.2d 641 (Okla. 1977); London Square Village, Inc. v. Oklahoma County Equalization and Excise Board, 559 P.2d 1224 (1976); Phillips Petroleum Company v. Oklahoma Tax Commission, 542 P.2d 1303 (Okla. 1975).

CONCLUSION

In view of the above and foregoing factual situation and applicable law thereto, the Administrative Law Judge concludes as follows:

(1) That the Oklahoma Tax Commission has jurisdiction in this matter.

(2) That exemption statutes are strictly construed against the exemption. In light of the statutory requirements set forth in Section 507(a) of Title 68 of the Oklahoma Statutes, Protestant fails to qualify for the exemption claimed.

(3) That the protest of OIL COMPANY is denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of OIL COMPANY, Protestant herein, be denied.

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.